



<u>Decision Ref:</u>	2022-0069
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Payment Protection
<u>Conduct(s) complained of:</u>	Mis-selling Complaint handling (Consumer Protection Code)
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to the Complainants' mortgage payment protection insurance incepted in **2007**.

The Complainants' Case

A letter was sent on behalf of the Complainants to the Provider, on **22 August 2017**. The Complainants state that the Provider acknowledged this letter on **7 September 2017** but did not furnish a response to the questions or comments raised in the letter.

Furthermore, the Complainants say that the Provider failed to disclose the level of commission earned in the period **2004 to 2017** on the Complainants' payment protection cover on account no. *0855 when requested to do so, by the Complainants' representative by letter dated **22 August 2017**.

The Complainants made further submissions to this Office dated **8 April 2021**. The Complainants state that the Provider led them *"to believe that a response would be issued in a very short period"* and it is *"simply untenable for a regulated entity to refuse to respond to a letter from a solicitor acting on behalf of one of their customers for 10 months"* on the basis that the Provider felt that there was no obligation to issue a Final Response Letter.

The Complainants state that a number of calls relating to the matter were not logged by the Provider and they reference a call to the Provider that took place on **6 December 2017** at about 4.27pm. The Complainants reject the Provider's offer of €1,000 and do not accept that the Provider has complied with provision 10.9 of the CPC 2012 (as amended). The Complainants also state that the Provider has not complied with section 2.12 of the CPC 2012 (as amended).

The Complainants submit that the Provider has so far still *"failed to disclose the level of commission earned in the period 2004 to 2017 on the Complainants' payment protection cover on account no. *0855"* and they reference English and Irish jurisprudence to the effect that commission earned in these types of insurance policies should be disclosed.

Ultimately, the Complainants want the Provider to compensate them with a *"full refund of all premiums paid along with compensatory interest"*.

The Provider's Case

The Provider issued a Final Response Letter to the Complainants on **8 June 2018**. The issue concerning the Provider's commission was addressed in this correspondence and stated as *"approximately €2,542.00 over the term of the policy"*. The Provider stated that as part of its *"commercial agreement"* with its insurance partner for payment protection insurance, it also received a *"share of the insurer's profits which may be made on the total PPI business"*. The Provider states that this is worked out after all claims and insurer's costs have been paid and is not available at individual customer level.

The Provider says that the letter sent by the Complainants on **22 August 2017** was a letter of claim rather than a complaint, but it nevertheless acknowledged that there had been a delay in responding to this letter. The Provider apologised for *"this delay and the poor level of customer service this represents"* and *"in recognition of this delay"* made a *"goodwill gesture"* of €1,000 (one thousand euro) to the Complainants.

The Provider sent its formal complaint response to this Office on **18 February 2021**. The Provider re-iterated that it treated the letter dated **22 August 2017** as a letter of claim rather than a letter of complaint and therefore *"believed there was no obligation to issue a Final Response Letter"*. It re-iterated its offer of €1,000 in this respect. The Provider stated that it received no further correspondence from the Complainants between **August 2017** and **June 2018** but that there was one unrecorded phone call from the Complainants' solicitor received on **7 December 2017**. The Provider is satisfied that it has complied with provision 10.9 of the CPC 2012 (as amended).

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The Provider made further submissions to this Office dated **22 April 2021**. It acknowledged that its telephone calls are not recorded, apologised once more for the delay in issuing the Final Response Letter and re-iterated the offer of €1,000 and stated that this offer remains open to the Complainants.

The Complaint for Adjudication

The complaint is that the Provider:

- (i) Failed to issue a Final Response Letter as per the Consumer Protection Code 2012 (CPC 2012) in response to a letter of complaint dated **22 August 2017**; and
- (ii) Failed to disclose the level of commission earned in the period **2004 to 2017** on the Complainants' payment protection cover on account no. *0855 when requested by the Complainants' representative by letter dated **22 August 2017**.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision, I have carefully considered the evidence and submissions put forward by the parties to the complaint. Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **17 January 2022**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

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I note that this complaint was originally made to the Financial Services Ombudsman's Bureau in **March 2017**. The Complainants sought to pursue a complaint regarding the mis-selling to them by the Provider of certain payment protection insurance cover in **2004** and again in **2007**. At the time, complaints to the Financial Services Ombudsman were subject to a strict time limit of 6 years from the date of the conduct complained of and in those circumstances, it was not possible for the FSO to pursue an investigation regarding the complaint sought to be made by the Complainants.

The Complainants' second complaint form was submitted to this Office on **21 February 2018** and again raised issues concerning alleged mis-selling of a payment protection cover. At the time when the Complainants made this second complaint to the FSPO, the time limits for making complaints had been the subject of new statutory provisions as a result of which, in addition to the period of 6 years from the date of the conduct complained of, an alternative time limit was available to the Complainants, being a period of 3 years from their date of awareness of the conduct giving rise to the complaint, for any complaint concerning a "*long-term financial service*".

Having examined the evidence surrounding the issue of time limits, by letter dated **2 May 2019**, the FSPO determined that it would not be possible to investigate the sale of the payment protection insurance cover in **2004** and **2007**, because the complaint did not meet the required time limits. Subsequent to this communication, the Complainants confirmed that they wished to proceed with the complaint which is the subject of this investigation.

By way of further letter dated **15 October 2020**, this Office again referred to the matters referenced in the Complainants' complaint form of **21 February 2018** and clarified that it would review the complaint concerning the Provider's failure to issue a Final Response Letter to a letter of complaint dated **22 August 2017**, and also the complaint concerning the failure by the Provider to disclose the level of commission earned in the period **2004** to **2017** in account *0855 when requested by letter dated **22 August 2017**.

In respect of the complaint that the Provider failed to issue a Final Response Letter in response to a letter of complaint dated **22 August 2017**, I note that the Provider did eventually issue a Final Response Letter on **8 June 2018** and it has apologised for the delay in doing so. I note that the 'complaint' letter sent by the Complainants was referred to as a 'letter of claim' and I accept that this led to certain confusion on the part of the Provider as to whether a Final Response Letter was required. I note in that regard that the Provider has made an offer to the Complainants of €1,000, in recognition of its failure to issue a Final Response Letter in a timely manner, and that this offer still remains open to the Complainants to accept.

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In respect of the complaint that the Provider failed to disclose the level of commission earned, in the period **2004 to 2017**, on the Complainants' payment protection cover on account no. *0855 when these details were requested by the Complainants' representative by letter dated **22 August 2017**, I note that this was addressed by the Provider in its Final Response Letter issued on **8 June 2018**. It stated in that regard that it had received commission in the sum of "€2,542.00 over the term of the policy" as well as a "*share of the insurer's profits which may be made on the total PPI business*".

In my opinion, the jurisprudence referenced by the Complainants, is not directly relevant in the context of this complaint as the Provider has disclosed the commission made over the term of the policy and in any event, the jurisprudence referenced, addresses non-disclosure of commission in the context of mis-selling of policies, rather than in reply to a letter of enquiry.

I take the view on the evidence available, that the Provider delayed significantly in responding to the Complainants' enquiry regarding the level of commission charged in respect of payment protection insurance policies in place from 2004 onwards. This is certainly disappointing, but I note that ultimately, when the Final Response Letter issued to the Complainants, the Provider confirmed in clear terms, the level of the commission which it had received and indeed it also referenced the potential for further benefit to be earned less directly, in the form of "*a share of the insurer's profits which may be made on the total PPI business*". I am satisfied that this represented a transparent response to the Complainants' query.

I note that the Provider when responding to this complaint, recognised its failures, in particular in the context of the delay in issuing a response to the Complainants. In those circumstances, it has offered the Complainants a compensatory payment of €1,000 with a view to resolving the complaint.

I consider this offer to be a reasonable one, which I note was made early in this complaint investigation process, and therefore on the basis that this remains open to the Complainants for acceptance, I do not consider it necessary or appropriate to make any further direction. Given that the Provider acknowledged its wrongdoing at the time of responding to this complaint investigation, I do not consider it appropriate to uphold this complaint.

In my preliminary decision, I noted that it will be a matter for the Complainants to make direct contact with the Provider if they wish to accept the compensatory offer which the Provider has offered to them, and that in that event, they should communicate directly with the Provider as expeditiously as possible as the Provider cannot be expected to hold such a compensatory offer open to the Complainants indefinitely.

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I note that more recently, the Complainants' legal representative has indicated a willingness by the Complainants to accept this payment, by way of conclusion of the matter.

Accordingly, for the reasons outlined above, my decision on the evidence available is that this complaint is not upheld.

Conclusion

My Decision, pursuant to **Section 60(1)** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



MARYROSE MCGOVERN
Financial Services and Pensions Ombudsman (Acting)

23 February 2022

Pursuant to Section 62 of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

- (a) ensures that—**
 - (i) a complainant shall not be identified by name, address or otherwise,**
 - (ii) a provider shall not be identified by name or address,**
- and**
- (b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.**