An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2022-0169
Sector:	Insurance
Product / Service:	Payment Protection
Conduct(s) complained of:	Complaint handling (Consumer Protection Code)
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to a Payment Protection insurance policy which the Complainant purchased in **October 2006**, following the inception of a Credit Card account.

The Complainant's Case

The Complainant is unhappy with the responses received from the Provider following his request for information in **January 2018** and states that the Provider has failed "*to adhere either partly or wholly to multiple provisions set out in the Consumer Protection Code".*

The Complainant contacted the Provider on **3 January 2018**. He states that he was seeking "*clarification"* on certain aspects of his Payment Protection policy. The Complainant's letter asked the Provider for particular information, and copies of various documents. The Complainant states that his letter was interpreted as a complaint by the Provider, and its response letter, dated **9 January 2018** says it had "*investigated* [his] *complaint*".

The Complainant contends that his letter did not constitute a *"formal complaint*". The Complainant asserts that several inaccuracies, mis-information and breaches of the Consumer Protection Code 2012 (as amended) followed. These highlighted the Provider's failure to provide him with specific communications, accurate and *"up to date"* information, along with notification of changes to his Payment Protection policy which, it is suggested, he was not aware of. The Complainant says he raised "*Multiple sub-complaints*" in relation to the administration and internal processes of the Provider.

An instruction to cancel the Payment Protection policy was subsequently made by the Complainant on **11 January 2018.** The Provider failed to action this request, until the Complainant noted the payment deductions in **March 2018** and contacted the Provider again. The policy was eventually cancelled on **10 April 2018**.

The initial complaint also raised the suggested *"mis-selling"* of the policy in **2006** and a number of grievances attached to the sale of the policy. Due to the time limits for maintaining a complaint to this Office, under the ***Financial Services and Pensions Ombudsman Act 2017***, these elements of the complaint do not form part of the matters investigated, and consequently, are not addressed in this decision. The Complainant and the Provider were made aware of these limitations, in correspondence from this Office dated **12 September 2018**.

The Provider's Case

The Provider responded to the Complainant's initial enquiry, on **9 January 2018**. This letter did not address the Complainant's requests, as outlined in his letter. The Provider subsequently issued a second Final Response Letter, on **5 April 2019** which acknowledged its administrative failings and apologised for "*any confusion caused".* The Provider accepted that the information it provided regarding this Office was incorrect and out of date. A goodwill gesture of ***€250.00*** was offered to the Complainant for this aspect of the matter.

The Provider refutes the suggestion that it did not inform the Complainant about the change of underwriter to the policy. It states that it informed its customers in **January 2016** of the change in underwriter of the Payment Protection Insurance policy and says that it has forwarded the Complainant a copy of the correspondence issued to him at that time. The Complainant is unhappy and states he believes other changes to the policy have not been brought to his attention.

The Provider responds to the allegation of how it addressed the Complainant's letter. It submits that all Payment Protection insurance correspondence is treated equally and it *"registers correspondence which indicate potential dissatisfaction relating to PPI under the complaints process".* The Provider goes on to affirm that it responded to the Complainant *"within 5 days"* and did not breach sections of the Consumer Protection Code 2012.

Regarding the Complainant's instruction to cancel the policy on **15 January 2018**, the Provider acknowledges that, due to a *"failure of [its] internal process",* this instruction was not executed. The Provider upheld this aspect of the Complainant's complaint. A second goodwill gesture of ***€250.00*** was offered to the Complainant.

The Provider contends that it has not breached any aspects of the Consumer Protection Code 2012, in relation to providing *"a policy document with the inclusion of a statement that as a regulated entity they must comply with the applicable provisions*".

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The Provider says that the documents it issued in 2006 and 2010, preceded the 2012 Consumer Protection Code (as amended). However, the Provider confirms that it did comply with the provisions of the Consumer Protection Code 2006 when the policy was incepted in 2006, and in issuing an update on the policy to the Complainant, in **November 2010**.

In its Final Response Letter of **5 April 2019**, the Provider concluded by stating that it upheld two elements of the complaint, and it confirmed that the gestures of goodwill totalling **€500.00** "*remain open to* [the Complainant] *to accept".* The goodwill gesture of €500.00 offered by the Provider has not been accepted by the Complainant.

The Complaint for Adjudication

The complaint against the Provider is one of maladministration, in that the Complainant says that the Provider:

1. Failed to make him aware that the underwriter details on the policy had changed in **January 2016**, and failed to notify him of other more recent policy changes;

2. Supplied misleading and inaccurate information to the Complainant, regarding making a complaint to this Office (FSPO);

3. Gave inaccurate information to him regarding the "*6 year rule and general time constraint"* regarding making a complaint;

4. Incorrectly assessed the Complainant's letter of the **3 January 2018** as a complaint, instead of an enquiry, seeking information from the Provider;

5. Failed to provide the Complainant with updates in relation to the complaints process under the Consumer Protection Code 2012, as the complaint/issues had not been *"resolved to the Complainant's satisfaction within five business days";*

6. Failed to carry out the instruction, to cancel the Payment Protection policy, when requested by the Complainant on the 15th January 2018.

The Complainant wants the Provider to:

1. Provide him with "*what was investigated by [it] as part of [its] complaints handling process",* in January 2018.

2. *"Retrospective avoidance of the PPI contract"* resulting in all *"PPI premiums and associated interest charged thereof be returned from when the contract was effected in 2006".* The Complainant states that failing to inform him of the change of underwriters, was a breach of the terms of his policy.

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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 Complainant was 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 **27 April 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. In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

I note that by way of short letter dated 3 January 2018, the Complainant wrote to the Provider referencing "*certain irregularities*" which had come to his attention regarding the "*the mis-sale*" of Payment Protection Cover ('PPC') "*to consumers*". The Complainant requested that the Provider furnish him with copies of five categories of documents, so that he might ascertain if the 'irregularities' might be "*applicable*" in his case. The documents sought included the signed consent or application form, the fact-finding document and contemporaneous notes of sale, the original policy document, as well as "*full disclosure*" with regard to broker/underwriter fees and commission arrangements, and any other "*relevant information*" communicated at the point of sale.

The Provider responded on 9 January 2018 referring to the "*complaint*" that was said to have been made by the Complainant and stating that "*as PPI was applied to account more than six years ago* [the Provider] *is satisfied that it is not obliged to make any refund of premiums or associated interest*". The letter, which set out a "*final response*", provided a phone number in the event that the Complainant wished to cancel the policy. The contact details of this Office were also supplied. According to the Complainant, the Provider furnished, under the cover of this letter, the original policy agreement, a 2010 updated agreement and "*a letter describing what significant changes were made to the policy*".

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The Complainant notes that the signed consent or application form, the fact-finding document and contemporaneous notes, and the commission charges breakdown were not supplied.

The Complainant then raised a formal complaint with this Office on 27 January 2018 primarily referring to "*the way the complaints process was handled*" and complaining that a request for information had been treated as a complaint and determined without any further recourse to the Complainant. Several specific provisions of the Consumer Protection Code were suggested to have been breached by the Provider and the Complainant requested that he be provided with the documentation previously sought.

A four-page letter accompanying the Complaint Form expounded on the various individual aspects of his complaint.

The first matter that falls chronologically to be considered, relates to the fact that the Provider interpreted the Complainant's letter of 3 January 2018 as a complaint. Whilst I can readily understand why the Complainant characterises this letter as a request for information rather than a complaint, I equally can appreciate why the Provider interpreted the matter as a complaint, given the reference to *'irregularities'* and to 'mis-sale'. Without yet commenting on the quality of the response, I do not accept that the Provider acted contrary to the provisions of the ***Financial Services and Pensions Ombudsman Act 2017*** in interpreting the letter of 3 January 2018 as a complaint particularly given the tenor of dissatisfaction which was apparent. Accordingly, this aspect of the Complainant's complaint is rejected.

The response that ensued from the Provider was however deficient, in my opinion. The letter of 9 January 2018 did not address the request for documentation that had been raised and also set out erroneous information, regarding the time limits for making complaints to this Office, albeit this was subsequently acknowledged and an apology and compensation offered. I will return to this below.

In terms of the specific provisions of the Consumer Protection Code invoked by the Complainant in his Complaint Form to this Office, the following is relevant:

1. Provision 2(6)- the Complainant says that there was a failure to "*make full disclosure of all relevant material information, including all charges*". I am satisfied that the Complainant has since been provided with this information which has been set out in detail in the Provider's response to this Office.

2. Provision 2(8)- the Complainant says that there was a failure to "*correct errors and handle complaints speedily, efficiently and fairly*". In my opinion, the letter of 3 January 2018, which was interpreted as a complaint, was handled speedily and efficiently. Equally, the error regarding the time limit to bring the complaint to this Office was acknowledged as incorrect.

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In terms of the 'fairness' of the manner in which the complaint was initially handled, though I have concluded that the response was not adequate, I do not accept that it was 'unfair' as the details provided were accurate; the issue which arose was rather that certain of the documentation requested was not supplied on request, and the Complainant was guided by this Office to pursue the matter with the Data Protection Commission, if he wished to do so. Accordingly, I do not accept that this aspect of the Complainant's complaint should be upheld.

3. Provision 4(4)- the Complainant says that the font size used in the 2010 updated agreement was too small and not clearly legible. I have reviewed this document and, in my opinion, it is clearly legible. The relevant provision of the Consumer Protection Code does not make any specific reference to people who may have some form of visual impairment.

   The relevant provision does however refer to the font being "*appropriate to the type of document and the information contained therein*". In my opinion, the font is entirely industry standard for documents of this nature. Accordingly, this aspect of the Complainant's complaint is rejected.

4. Provision 10.9(b) - the Complainant says that there was a failure to provide him with the name an individual who was to be his point of contact in relation to the complaint. I am not satisfied that this aspect of the complaint has been substantiated. The Final Response to the complaint was sent within six days (four business days) of the date of the letter which had been interpreted as a complaint. This substantive response therefore issued inside of the time prescribed for the acknowledgement of a complaint (5 business days as per Provision 10.9(a)). In those circumstances, I do not consider that the obligation imposed by Provision 10.9(b) had yet arisen. Accordingly, I don't accept that this aspect of the Complainant's complaint should be upheld.

5. Provision 10.9(c) - the Complainant says that there was a failure to provide him with a regular update regarding the investigation. Again, I am not satisfied that this aspect of the complaint has been substantiated. The substantive response in this matter issued inside of the required 20 business day period before an update would have arisen. Accordingly, this aspect of the Complainant's complaint is rejected.

Subsequent to his Complaint Form and accompanying letter of 27 January 2018, the Complainant wrote to this Office by way of six-page letter dated 23 March 2018 setting out a detailed allegation of mis-selling of PPI in 2006. The Complainant has been advised that this Office does not have jurisdiction to consider this aspect of the complaint given that the sale occurred many years before the making of the complaint to this Office.

Thereafter, by way of six-page letter (enclosing an additional three-page 'annex') to this Office, dated 11 June 2018, the Complainant rearticulated his complaint and included various new "*sub-complaints*".

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The detail of this letter was reproduced in a letter of **12 March 2019** to the Provider, in circumstances where this Office had communicated that all complaints must first be made to the Provider, so that it was given the opportunity to address them. The letters addressed, amongst other matters, the following issues where I have used the numbering employed by the Complainant in his letter of **12 March 2019** (but where I have omitted matters already addressed above and matters that touch on the suggested mis-selling of the policy in 2006, that does not form part of this investigation.):

(i) Failure to notify a change in underwriter- the Complainant said that the Provider had failed to notify him of a change in underwriter, a matter he described as a "*fundamental breach*" of the policy. The Provider has furnished a copy of letter which issued to all customers, notifying of this change. I accept that this customer update occurred at that time in **2016**, and accordingly if the communication somehow went astray, I do not accept (in the absence of evidence in that regard) that the Provider was at fault, or that I should uphold this aspect of the Complainant's complaint.

(ii) Details provided regarding the making of complaints to the Financial Services and Pensions Ombudsman (FSPO). As already noted, an erroneous time limit was stated by the Provider within which a complaint could be brought to the FSPO. Additionally, an out-of-date leaflet was furnished. These matters have been acknowledged by the Provider and an apology and compensation offered. I return to this below.

(v) The failure to comply with Provision 4.13 of the Consumer Protection Code requiring the inclusion of a statement in the policy noting that it is subject to the Consumer Protection Code. The relevant provision is to be found in the Consumer Protection Code 2012 and was not a provision to be found in the then current code at the time when the two policies in question here, were drafted and supplied to the Complainant. Accordingly, I do not accept this element of the Complainant's complaint.

(vi) The failure to action the request to cancel the policy. I accept that this failure occurred and indeed this has been acknowledged by the Provider and an apology and compensation offered. The Provider has confirmed that, in addition to the compensation offered, all premiums deducted in the relevant period have been refunded. I return to this below.

Taking account of the details above, I am conscious that one the central components of the Complainant's complaint, that of the suggested mis-selling of the policy in **2006**, falls outside of the jurisdiction of this Office. Apart from that aspect, the complaint comprises a miscellany of different 'sub-complaints', most of which for the reasons explained above, do not, in my opinion, meet the threshold of conduct coming within the provisions of ***Section 60(2)*** of the ***Financial Services and Pensions Ombudsman Act 2017***. Those aspects of the complaint that could come within ***Section 60(2)*** have been the subject of acknowledgements and apologies by the Provider.

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In terms of the provision of erroneous information regarding the making of a complaint to this Office, I am satisfied that the goodwill gesture offered, of **€250** (which I note remains open for acceptance) constitutes adequate compensation. In light of this and in light of the acknowledgement and apology offered, I do not consider it necessary or appropriate to uphold this aspect of the complaint or to make a direction to the Provider. Instead, it will be a matter for the Complainant to make contact with the Provider, if he wishes to accept this offer of redress.

In terms of the failure, over a period of two months, to execute the Complainant's instruction to cancel the PPC policy, I am also satisfied that the goodwill gesture offered of €250 (which I note remains open for acceptance), together with the refund already effected of the premiums wrongfully charged during the relevant period, constitutes adequate compensation and again, I do not consider it necessary or appropriate to uphold this aspect of the complaint or to make a direction to the Provider. Instead, it will be a matter for the Complainant to make direct contact with the Provider if he wishes to accept this offer of redress.

In light of this and in light of the acknowledgement and apology long since offered by the Provider, I do not consider it necessary or appropriate to uphold this aspect of the complaint.

In light of the foregoing, and in the absence of evidence of wrongdoing by the Provider or conduct within the terms of ***Section 60(2)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, 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)

20 May 2022

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PUBLICATION

Complaints about the conduct of financial service providers

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.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.