



<u>Decision Ref:</u>	2022-0181
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Failure to provide accurate account/balance information Failure to advise on key product/service features Failure to provide correct information Failure to provide product/service information Misrepresentation (at point of sale or after)
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns a home loan mortgage agreement between the Provider and the deceased, who passed away on **15 February 2017**.

The Complainant's Case

The Complaint is made on behalf of the Estate of the deceased by the two Executors of her Estate ('the Complainants'). The Complainants are represented by their legal representative ('the Complainants' representative').

The Complainants' representative sets out that the deceased had a mortgage since **2005** with another bank and that it was serviced by "*a single direct debit which discharged the mortgage contribution and life policy contribution*" monthly. In **2011** the deceased switched the mortgage loan account to the Provider. She accepted a mortgage offer on **28 April 2011** and the mortgage loan was drawn down on **11 May 2011**.

The Complainants' representative (in an email to this office dated **27 July 2018**) refers to **5** Audio call recordings that took place between the deceased and the Provider during the periods **2011** to **2016**. During these **5** calls the deceased explains to the Provider that she switched her mortgage to it in **May 2011**. She asks on more than one occasion if she has life cover in place on the mortgage. She says she thought the life cover would "*automatically*" switch to the Provider when she switched the mortgage and she asks if the life cover premium is being paid. She queries if the premium is included in the mortgage direct debit amount because the Provider's mortgage advisor, 'Ms A', told her all would be taken "*together*". She says that "*nobody seems to have any answers*".

The Complainants say that the Provider during these telephone calls, confirmed on more than one occasion that life cover is in place and said that it received a letter on **26 May 2011** from the Life Insurance Company, which stated the life policy could not be assigned to the Provider because it was a type of life policy that could only be assigned to the previous loan owner.

The Complainants point out that the Provider says it sent an email to mortgage advisor Ms A on **8 June 2011** *“to enquire if client advised to organise new life cover”* as the Provider confirmed the premium was not being deducted from the mortgage payment and suggested that the deceased contact the Life Insurance Company.

The Complainants’ representative submits a copy of a letter from the Life Insurance Company to the First Complainant dated **24 July 2017** which sets out that payments were not collected on the policy from **1 June 2011** and that a letter on **23 July 2011** issued to the deceased confirming this position. The letter continues that the deceased telephoned it in **September 2011** and asked to reinstate the policy, and that it issued an *“Evidence of Health”* document to her, which she returned completed, but a second document issued to her, thereafter, titled *“General Medical Underwriting Questionnaire”* and this was not returned and the plan remained out of force.

The Complainants say that on **23 May 2017** one of them informed the Provider of the death of the deceased and requested that the Provider redeem, via her life insurance policy, the mortgage loan balance on the estate property of *“circa €80,000”*.

On **19 June 2017** the Provider informed him by telephone that a life assurance policy was not in place.

In a letter to the Complainant on **29 August 2017**, the Provider sets out that it *“was not a condition of the mortgage that life cover was in place... the requirement for life cover would have been listed in the Special Conditions”* [underlining added].

In a letter to the Complainant on **20 November 2017**, the Provider says it *“confirm[s] that life cover was a condition of the loan and apologise[s] for advising [the First Complainant] that this was not in fact the position”* [underlining added]. The Provider continues, that in compliance with the **Consumer Credit Act 1995** it is *“satisfied that life coverwas in place at the time of drawdown”*. Further, that upon receipt of the letter from the Life Insurance Company it spoke to the deceased *“to advise her of the position and she advised that she would contact [the Life Company] in relation to the life policy”*.

In a letter to this Office on **15 December 2017** the Complainants’ representative contends that the Provider was *“[in] breach of s[1]26 of the Consumer Credit Act”* and that it breached the terms and conditions of the loan by not ensuring a *“valid”* life insurance policy was in place.

In a letter to this Office on **6 June 2018** the Complainants' representative states:

"[the Provider] allowed ... [the deceased] to draw down her switcher mortgage with [the Provider] at a time it knew or ought to have know[n] the life assurance policy then in place with [the previous loan owner] was not capable of assignment to [the Provider]".

The Complainants' representative continues that the Provider assured the deceased on **4 "separate occasions"** that the life assurance policy was in place. Further, he asserts that the Provider *"never wrote to [the deceased] in her lifetime requesting a new life assurance policy would be put in place"*.

The Provider's Case

The Provider in its **Final Response Letter** dated **23 February 2018** sets out that in accordance with the terms and conditions attached to the **Letter of Offer** dated **20 April 2011**, the onus was on the deceased to ensure that the life policy was assigned to the Provider, the premiums were paid, and the policy was in force for the duration of the loan term. The Provider states:

"it accept[s] that [it] did not pursue the matter fully to establish that the policy ha[d] been assigned to [the Provider]. It is [it's] position that it was the responsibility of [the deceased] to follow up with [the Life Insurance Company]"

The Provider refers to Section 126 of the Consumer Credit Act as amended, which provides that:-

"a mortgage lender shall arrange...a life insurance policy" in respect of a housing loan that will redeem the loan in the event of death of the borrower. It should be noted that Section 126 (2) of the CCA provides for exceptions to this requirement.

The Provider says that in the specific circumstances of this complaint, the deceased sought to refinance an existing mortgage on her home with the Provider. There was at that time, an insurance policy in place with [Life Insurance Company]. Section 126 (2) (d) of the Consumer Credit Act provides an exception to the requirement set out in Section 126 (1) and it holds that the requirement for a mortgage lender to arrange a life assurance policy does not apply where there was an existing life assurance policy already arranged.

The Provider says that it subsequently transpired that by letter dated **26th May 2011**, from [Life Insurance Company] it was informed that the Policy could not be transferred. This correspondence simply stated that the policy could not be assigned but did not give any indication that the Policy was cancelled or not in place.

The Provider says that the fact that the Policy could not be assigned as security did not render the policy "invalid", within the meaning of Section 126 of the Consumer Credit Act.

/Cont'd...

Even if it was incorrect in this assertion, the Provider says it could not be privy to the terms and conditions contained within the Policy, given that it was not a party to the Policy contract. In that regard, the Provider could not be on notice of any issue with the Policy and could only rely on the representations made by the Complainant and the Life Assurance company.

The Complaint for Adjudication

The complaint, made by the Estate of the deceased is that:

- The Provider failed in **May 2011** to ensure that a valid life assurance policy was in place and assigned to the Provider, in respect of the mortgage borrowing, before permitting the deceased to draw down funds.
- The Provider misled and misinformed the deceased over the course of at least four telephone calls (between 2011 and 2016) that her life cover was in place.

The Complainants' representative wants the Provider to redeem the mortgage loan "*in full*".

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 **11 May 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 correspondence from the Complainant's representative, the final determination of this office is set out below.

Prior to considering the substance of the complaint, I consider it useful to reproduce certain passages from the phone recordings received in evidence.

Phone Recordings

12 July 2011

Deceased	<i>I switched my mortgage to you in May from [the previous Bank]. I don't seem to have got any life insurance- I thought that was to automatically go with it. And they rang me yesterday to know what's going on, [the Life Insurance Company]. ...</i>
Provider	<i>So its mortgage protection with [the Life Insurance Company] is it?</i>
Deceased	<i>That's what I had, you know the life insurance or whatever you have.</i>
Provider	<i>Yeah, it still looks like, from our records there it's saying you still have it. What are [the Life Insurance Company] saying, you don't have, it is it?</i>
Deceased	<i>They're saying I haven't paid the last two months. And then when I ring them, they're saying you can't transfer to new, you can't transfer from one... so I don't know what's going on</i>
Provider	<i>We sent [a Provider employee] an email on the 8th of June...</i>
Deceased	<i>What email did you send her on the 8th of June?</i>
Provider	<i>Basically, we received a letter from [the Life Insurance Company] stating that they can't allow your policy to be assigned to ourselves.</i>
Deceased	<i>Why is that?</i>
Provider	<i>It doesn't say why.</i>
	<i>....</i>
Provider	<i>And what did [the Life Insurance Company] say? That they can't allow you to transfer to ourselves?</i>
Deceased	<i>Yeah- when I rang up last month, that's what they told me.</i>
Provider	<i>What [the Life Insurance Company] has told us here, looks like a new policy needs to be set up. Are they cancelling that policy?</i>

/Cont'd...

Deceased	<i>No- they said I can keep going with that policy. No I said if I can keep going with that policy, why do I need to take out a new one then?</i>
	...
Provider	<i>From what I can see, it looks like this one is going to have to be cancelled and a new one taken out, if they won't let it be assigned to ourselves because we require that you have insurance on the property</i>
Deceased	<i>But like why wasn't I told that when I was swapping mortgages, they said everything was ok, why is it coming up now?</i>
Provider	<i>It's [the Life Insurance Company] making the decision, I don't know why [the Life Insurance Company] are saying that. Let me see if there is anything here</i>
Deceased	<i>Do you deal with [the Life Insurance Company]?</i>
Provider	<i>Yeah but If we're advising you when taking out a mortgage, we assume that the policy can be assigned over.</i>

29 November 2016

Deceased	<i>I just want to know what kind of cover... have I got life insurance or anything on my cover, cause I'm not sure if I ever had?</i>
Provider	<i>Yeah you would, you'd have to have life insurance on it, but I can just, I'll just have a look and see who it is you have it with. Yeah, so you have it with [the Life Insurance Company]</i>
Deceased	<i>I have definitely, yeah?</i>
Provider	<i>Yeah, you would. That would be something you would need to have on it.</i>
Deceased	<i>Alright thanks. Can you send me details on that then? Because, how much do I pay a month on that?</i>
Provider	<i>What you will have to do on that, you will have to contact [the Life Insurance Company] and they will give you some information on it. I can give you your policy number if you like?</i> <i>[policy number provided]</i>
Deceased	<i>So I definitely have [the Life Insurance Company] ...</i>

/Cont'd...

Provider	<i>Yeah, you definitely have.</i>
Deceased	<i>I just pay the mortgage, so it's included in the mortgage amount then, is it?</i>
Provider	<i>No, you will have to repay your mortgage repayments on it.</i>
Deceased	<i>So its all included in the one payment is it?</i>
Provider	<i>No. it wouldn't be. That's what I'm saying; you will have to get in touch with [the Life Insurance Company]</i>
...	
Deceased	<i>But is the system saying here that I have [the Life Insurance Company] yes?</i>
Provider	<i>You have [the Life Insurance Company] cover, yes.</i>

Legislation

Section 126(1) and (2) of the Consumer Credit Act 1995 (as amended) provides as follows:

126.—

(1) Subject to the provisions of this section, a mortgage lender shall arrange, through an insurer or an insurance intermediary, a life assurance policy providing, in the event of the death of a borrower before a housing loan made by the mortgage lender has been repaid, for payment of a sum equal to the amount of the principal estimated by the mortgage lender to be outstanding in the year in which the death occurs on the basis that payments have been made by the borrower in accordance with the mortgage, such sum to be employed in repayment of the principal.

(2) Subsection (1) shall apply as respects all housing loans except—

(a) where the house in respect of which the loan is made is, in the mortgage lender's opinion, not intended for use as the principal residence of the borrower or of his dependants,

(b) loans to persons who belong to a class of persons which would not be acceptable to an insurer, or which would only be acceptable to an insurer at a premium significantly higher than that payable by borrowers generally,

(c) loans to persons who are over 50 years of age at the time the loan is approved,

/Cont'd...

(d) loans to persons who, at the time the loan is made, have otherwise arranged life assurance, providing for payment of a sum, in the event of death, of not less than the sum referred to in subsection (1).

I note that the deceased switched her mortgage provider in 2011 and, after having signed a mortgage agreement in April 2011, she drew down the funds on 11 May 2011. It is clear that, before switching her mortgage to the Provider, the Complainant made a single direct debit payment only per month to her previous bank, and that this payment encompassed both the mortgage repayment and the life insurance premium payable.

This arrangement did not however continue after the switch, in circumstances where the Provider presented a monthly direct debit to cover only the mortgage repayments. It is readily apparent that this was a source of confusion to the deceased and that she did not understand this, prior to the switch.

Nonetheless, it is clear that at the time of the switch, the Complainant did have an existing life insurance policy in place with the Life Insurance Company. This policy did not lapse for a further two months after she switched mortgage provider, following her failure to make repayments in that period, after which the policy was cancelled.

The first aspect of the Complainants' complaint is that the Provider breached Section 126 of the Consumer Credit Act 1995. I do not believe that this allegation is substantiated by the evidence. The relevant section provides (at subsection 2(d)) for a derogation from the requirement to arrange a life insurance policy in relation to individuals who "*have otherwise arranged life assurance*". I note that a valid policy was in place at the time of the switch, even if it had not been assigned to the Provider, and this policy clearly satisfied the requirements of Section 126(1) and/or Section 126(2)(d).

The Act in question imposes no obligation on a financial service provider to arrange or ensure the assignment of a policy in the event of a switch. Indeed, there is no formal obligation that the interest of a lender, be noted on the policy. The obligation is simply that a policy capable of repaying whatever figure might be outstanding on the date of death, exists at the point of drawdown.

I note that such a policy was in existence at the time of drawdown in this instance, and the policy would have remained capable of funding the redemption of the mortgage in the event of the deceased's death if payment of the premiums had been continued. Accordingly, in my opinion, this first aspect of the Complainants' complaint must be rejected.

I am conscious of the Complainants' representative's contention that a transcript of a phone call between the Provider and the Life Insurance Company on 09 May 2011 demonstrates that the Provider was aware that the policy "*was non assignable*". Whatever the Provider's level of knowledge then, or thereafter, when it had received the Life Insurance Company's letter of **26th May 2011, in fact**, the transcript simply reflects that the policy had not, at that point in time, been assigned to the Provider.

/Cont'd...

Following drawdown, two problems arose. In the first part, for reasons that remain unconfirmed, the Life Insurance Company declined to allow the assignment of the policy from the previous bank to the Provider. Separately, in circumstances where no new direct debit was set up to service the policy repayments, the policy lapsed.

The refusal by the Life Insurance Company to assign the policy to the Provider is not something for which the Provider can be held responsible. Equally therefore, in my opinion, any necessity to incept a new policy, rather than simply continuing the old policy, is not something for which the Provider can be responsible.

The Provider does however bear some responsibility for the failure by the deceased to set up a new standing order so that the old policy, or indeed a new policy, might have been serviced. This is due to the fact that the Provider advised her on a number of occasions in 2011 that the policy with the Life Insurance Company remained alive (as well as in 2016 albeit that at this stage she clearly knew the policy had lapsed given that she had partially engaged in the process to reinstate it). It seems to me to be likely that this may have occurred because the Provider's internal systems had noted the existence of the policy at drawdown, and this was never modified because the Life Insurance Company had no obligation to notify the Provider of any cancellation of the policy in circumstances where the policy, had not been formally assigned to the Provider.

I am satisfied that the Provider relayed inaccurate and misleading advice to the deceased, and in my opinion, this repeated error on the Provider's part was unreasonable conduct within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**. However, the Provider did repeatedly advise the Complainant to contact the Life Insurance Company directly, to investigate the matter. It is equally clear that, as of **12 July 2011**, the deceased was aware that there had been two missed payments on the policy and she was also advised, on a number of occasions, that payments on the policy would not be made through the Provider, and that the mortgage repayment to the Provider would not include any amount to be applied towards any policy premium.

Ultimately the policy lapsed due to non-payment. Whilst the Provider is to be criticised for the fact that it repeatedly advised the deceased that the policy remained in place, I do not accept that the Provider can be held wholly, or even primarily, responsible for the policy lapsing in circumstances where the deceased had been in direct contact with the Life Insurance Company and was aware, certainly by July 2011, that payments had been missed in circumstances where she failed to put in place the necessary repayment arrangements. This, in my opinion, is a critical point; the deceased was advised of the missed payments but failed to take the necessary action to rectify matters.

Whilst the conduct of the Provider was not helpful, I accept that the deceased was on notice of a problem with the premium payments, and she failed to take appropriate action. Equally, it would appear that she failed to complete the process of reinstatement of the policy in 2011 that had been proffered by the Life Insurance Company. With regard to this point, I note the Complainants' representative's comment that, by this point, the deceased's *"health complications had overcome her"* such that cover could not be retained.

/Cont'd...

In later correspondence, the Complainants appear to row back from this proposition in stating that they are unclear on the exact state of the deceased's health condition at the time. Either way, there would appear to have been a delay from **May/June 2011** to the point in September 2011 at which the deceased sought to reinstate the policy and then, though she did complete the initial step of the application, she omitted to return the final document completed, which had been furnished to her on **13 October 2011**. It seems likely to me that, had the deceased taken prompt action upon first being notified of the missed payment, it may have been readily possible for her to make arrangements to keep the policy going.


In light of the foregoing, I do not accept that it would be appropriate to hold the Provider responsible for the financial implications of the policy lapsing. I have however noted that the Provider is to be criticised for relaying inaccurate and misleading information to the deceased. The Provider itself was made aware that there was a significant issue with the assignment of the policy and yet it failed to update its system to reflect any issue. This should not have occurred.

Following the issue of a preliminary decision to the parties, on 11 May 2022, indicating my intention to partially uphold this complaint, I note that the Complainants' representative indicated the Complainants' disappointment with the outcome in question. However, in light of the above, I remain of the opinion that it appropriate to partially uphold the Complainants' complaint and to direct the compensation which I have detailed below.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(b)**.
- Pursuant to **Section 60(4)(d) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the respondent Provider to make a compensatory payment in the sum of **€8,000.00** (eight thousand Euros) to be credited by the Provider to the deceased's mortgage account within a period of 35 days from today. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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)

2 June 2022

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.