



<u>Decision Ref:</u>	2022-0327
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Mortgage Protection
<u>Conduct(s) complained of:</u>	Failure to provide product/service information Failure to process instructions Lapse/cancellation of policy Maladministration
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns the Provider holding an interest in a life insurance policy (herein referred to as the “Policy”) in the period **1998 – 2017** and its suggested failure to explain why it retained an interest in the Policy, after the underlying loan was repaid in **1998**.

The Complainants’ Case

The Complainants took out a short-term bridging loan from the Provider in **1997** and they say that this loan was repaid in **1998**. As a condition of taking out the loan in **1997** the Complainants were required by the Provider to incept the cover under the Policy, pay monthly premiums on the Policy and assign the benefit of the Policy to the Provider.

The Complainants submit that they made repeated efforts to cancel the Policy after the loan was repaid, and they submit that they were informed by the Provider that they could not cancel the Policy. The Complainants continued to pay monthly premiums on the Policy from **1998** until **31 August 2017**, when they were informed by the Provider, that it no longer had an interest in the Policy.

The Complainants through their appointed Representative submits in its complaint to this office on **31 July 2019** that:

“My clients took out Bridging Finance with [Provider] in 1997 and they were informed that they had to purchase a Life Policy for same, which they did with [Insurance

Company] dated 15th October 2017 (sic). This loan was repaid in 1998. From 1998 until they received the letter from the Manager of the 31st August 2017, they were always informed by [Provider] that the Life Policy was assigned to [Provider] and could not be cancelled.”

Further the Representative stated: -

“It is the local Branch, [Provider] [Branch location], where my client would have called in to discuss the matter with the Life Policy over the years.

To date [Provider] has not explained what interest [Provider] had in the Life Policy between 1997 and their letter of 31 August 2017. They have not explained the wording of the letter which suggests that their interest ended in August 2017. [Provider] are denying my client ever made contact with anyone in the Branch before 2017. However it does acknowledge that they issued a letter of No Further Interest and the policy was released by [Insurance Company] on 3rd August 2017. As you can see [Provider] accept that the policy was assigned prior to August 2017 even though they had no interest in the policy. They have given no explanation as to why they had an interest in the policy when my clients had no loan with them.”

The Provider’s Case

The Provider issued its Final Response Letter on **14 September 2018** stating:-

“You advise that your clients took out life policy number [XXXXX803] in respect of a loan that was drawn down in 1997 and which was fully repaid in 1998. You state that your clients have been trying to cancel the policy since 1998 but have been unable to do so due to [the Provider’s] interest being noted.”

Further in the Final Response Letter the Provider stated: -

“As part of my investigation I contacted [Provider branch] who confirmed that the [First Complainant] spoke to staff in [branch location] in 2017. [The Provider] has no record of the [First Complainant] contacting the branch prior to 2017 requesting for [the Provider’s] interest be removed from the policy and the policy cancelled. I note that [the Provider] issued a letter of no further interest to [First Complainant] on 31 August 2017 and the policy was then released by [the Insurer] on 3 October 2017 on the instruction received from [the Provider]. I confirm that [the Provider] has no record of receiving any request from [the Insurer] to review [the Provider’s] assignment of the policy at any time prior to August 2017.”

And further in the Final Response Letter the Provider stated:-

“Our records confirm that [the Insurer] issued a letter on 14 August 2018 confirming that Annual Benefit Statements issued to your client in relation to this policy. Letter dated 14 August 2018 clearly states; “We issued Annual Benefit Statements which

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included details of your client's policy. Each Annual Benefit Statement invited your client to make contact with our Customer Service Department to seek clarification if they had an issue or query with their policy. I have enclosed copies of your client's last 2 years benefit statements for your records.

Furthermore, Policy Reviews have been carried out every 5 years in accordance with the Policy Conditions on this policy with the purpose of ensuring the current level of premium is sufficient to maintain the benefits. I note from your client's most recent review in October 2017 they had been in touch with our review team and sent in written confirmation to reduce their sum insured."

In response to questions posed by this Office as to why the Policy was still in place after the loan was repaid in **1998**, the Provider in its response of **08 September 2021** to this Office stated:-

"By way of general submission, in order for a life policy to be effective security for a loan, the beneficial interest in same must be assigned to the lender. Borrowers are required to have a suitable life policy in place prior to the draw down of such a loan with the Provider. Furthermore, as part of the general conditions of a mortgage loan offer, such policy is to remain in place until all monies in connection with that loan have been repaid in full by the borrower. Once a loan is repaid, life cover is no longer required in respect of that particular loan and the borrower is entitled to reduce or cancel the level of life cover in place."

Further as part of its responses to this Office of **08 September 2021**, the Provider states:-

"It [the Provider] has no record of any relevant interaction with the Complainants nor does it retain any other relevant documentation prior to 31 August 2017.

The Provider notes that the relevant loan was repaid in 1998. As the loan was repaid prior to coming into force of the Consumer Protection Codes of 2006 and 2012, the retention of records was governed by s.101(2) of the Consumer Credit Act 1995, which provides for a retention period of 5 years subsequent to the final repayment instalment due under the relevant agreement."

The Complaint for Adjudication

Owing to the provisions of **Section 51** of the **Financial Services and Pensions Ombudsman Act 2017**, any conduct of the Provider which occurred prior to 2002, falls outside the jurisdiction of this Office. In those circumstances, this complaint investigation is limited to the period of time in respect of which this Office holds jurisdiction.

The complaint is that the Provider wrongfully continued to hold an interest in the Complainants' Policy in the period from **2002** to **2017** and since **2017**, has failed to explain why it had an interest in the Policy when the underlying loan was repaid in **1998**.

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The Complainants are seeking to have their premiums paid for the policy reimbursed to them, along with interest and compensation for loss of use of their money and costs.

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 **29 August 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 substantive submissions from the parties, within the period permitted, the final determination of this office is set out below.

I note the following items of evidence:

23 October 1997 – A duplicate copy of the notice of assignment of the Policy.

31 August 2017 – A letter from the Provider's branch informing the First Complainant that it no longer had an interest in the Policy.

19 April 2018 – A letter from the Complainants' Representative to the Provider's branch stating:-

"My client contacted [Insurer] to ask what interest the Provider had in this policy as the last loan they had with the Provider was repaid in 1998. I am informed by the Provider's branch would have to establish what interest was in the policy between October 1997 and October 2017.

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You might please confirm what interest the Provider had in this policy after the loan was repaid in 1998 and wasn't released until 2017."

03 May 2018 – A follow up letter was again sent from the Representative to the Provider's branch seeking answers to the same issues posed in his letter of **19 April 2018**.

21 May 2018 – the Representative sent a letter to the Provider's branch stating:-

"I am enclosing copy response I have received to my letter from [the Insurer]. As you can see, they state that the matter is to do with [the Provider] and not [the Insurer]."

[A copy of the actual letter sent by the Insurer was not enclosed]

06 July 2018 – A follow up letter was sent by the Representative to the Provider's branch to his letters of **03 May 2018** and **21 May 2018**, seeking a response within **10 days**.

17 July 2018 – The Provider's branch responded to the Representative by e-mail stating that it referred the matter to [the Insurer] and also to its own Internal Complaints Department.

20 August 2018 – A holding letter was sent from the Provider's Internal Complaints Department to the Representative.

22 August 2018 -The Representative wrote to the Provider's Internal Complaints Department and states: -

"I am enclosing copy of response to a complaint I received from [the Insurer]. They state quite clearly that they cannot deal with the assignment of the Life Policy as [the Insurer] and [the Provider] are two separate legal entities. This is not an issue from my client's point of view."

[A copy of the actual letter from the Insurer is not enclosed and the Representative also references the previous letters sent by him to the Provider's branch]

10 September 2018 – A further holding letter was sent from the Provider's Internal Complaints Department to the Representative.

14 September 2018 – The Provider issued its Final Response Letter.

I note that the Provider was obligated to retain all records relating to the loan for a limited number of years after the Complainants repaid the loan in 1998, but not thereafter. When the Provider was asked by this Office to provide a copy of the loan agreement, the Provider in its response of **08 September 2021** states:

"Please note the Provider retains no records in relation to the said loan agreement, in circumstances where the Complainants state that the same was repaid in 1998...."

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The Provider retains no records in this regard, although it is noted that the Complainants state that same was repaid in 1998, and this is not disputed."

Given that the Provider retained no records in relation to the loan, this Office enquired as to what then would have prompted the Provider on **31 August 2017** to write a letter to the Complainants informing them that the Provider no longer had an interest in the Policy. On **08 September 2021**, the Provider in its response to this question submitted: -

"Regrettably, the Provider can provide little context in this regard. The manager of the [location] branch at the time (who signed the relevant letter) has since left the Provider's employment. Prior to his departure, a complaints investigator within the Provider put certain queries to the manager, and the only context he could provide was as follows: "I spoke to [the First Complainant] in 2017, any conversation I had with him was on obtaining a replacement policy.""

On **31 July 2019** the Complainants' Representative stated:

"It is the local Branch, [the Provider] [location], where my client would have called in to discuss the matter with the Life Policy over the years."

Other than stating that the First Complainant called in over the years to the branch to deal with this matter, no other information of a detailed nature has been supplied as to why he believed there was a continued need to have the Policy in place when the loan was repaid, and how many times he followed up. Additionally, no information has been provided as to what, if any, conversations or communications, the First Complainant may have had with the Insurer during this time to cancel the Policy. No meeting dates, correspondence, names of employees with whom the First Complainant spoke, have been offered.

The Provider also says in its response to this Office on **08 September 2021** that:

"Until that interest is re-assigned or otherwise released, the benefit of the policy remains in the lender / assignee. If the life policy pays out, the proceeds of same will be applied towards the liabilities of the borrower/assignor with the lender. If the borrower has no liabilities with the lender, the proceeds will be disbursed to the borrower or their successors via the lender."

Whilst the Policy was therefore assigned to the Provider for a period of almost **19 years** after the underlying loan was repaid in **1998** (as the parties agree) if there had been cause, for any reason, for the Insurer to pay out under the Policy during this time, the Provider would have been obliged to pay any proceeds to the Complainants or their successors. Consequently, I accept that the Provider's interest was nominal only, once the loan had been repaid, and the real benefit of cover was with the Complainants, over this **19 year** period.

There is little evidence as to what efforts were made by the First Complainant to cancel the Policy with the Provider or indeed the Insurer. The Provider has stated in its response to this Office, that contained within its mortgage general conditions, are details that a life policy is

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no longer required to be in place once the underlying loan is repaid. The relevance of these general mortgage conditions, however, is in question given that the Provider is not in a position to supply a copy of the actual loan agreement, owing to the elapse of some 25 years since it was repaid.

Having considered the matter at length however, I take the view that any request by the First Complainant to the Provider's branch, was likely to have resulted in the Provider's assignment over the Policy being released, just as happened in 2017. There is no evidence available of such a request being declined by the Provider.

It is not in dispute that the Provider retained an assignment over the Policy for a **19-year** period until **2017**, even though it was repaid in **1998**, as a result of which any pay out during this **19-year** period would have ultimately been made to the Complainants, and not the Provider. In those circumstances, I am conscious that the Provider did not obtain any benefit over this **19-year** period from the Policy being assigned to it.

I also note that the Complainants point to the costs they incurred of paying monthly premiums on the Policy when they say that they did not want to retain the policy cover which had been put in place. I am conscious that the Periodic Statements which were issued to the Complainants, reminded them of the existence of the Policy and the level of cover in place. By way of comparison, there is no adequate evidence available of any requests by the Complainants to the Provider up to 2017, for the release of the assignment in question. In those circumstances, I take the view that there is no adequate evidence available such that would justify this complaint against the Provider being upheld.

During the complaints process, certain letters sent by the Representative were not received by the Provider and only when they were all attached to an e-mail subsequently, did the Provider respond. This resulted in a delay of some 3 – 4-months.

As a gesture of goodwill for the delay experienced by the Complainants, the Provider on **08 September 2021** offered the Complainants **€1,500.00** in full and final settlement of the present complaint. I consider this gesture to be generous and as the offer of **€1,500.00** remains open to the Complainants to accept, I do not consider it necessary or appropriate to make any direction and it will be a matter for the Complainants to advise the Provider directly whether they now wish to accept that offer. I note indeed that since the preliminary decision of this office was issued in August 2022, the Complainants' representative has confirmed that he has contacted the Provider to accept the offer of €1,500.

Accordingly, on the basis of the evidence available, I do not consider it appropriate to uphold this complaint.

Conclusion

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

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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)

27 September 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.