



<u>Decision Ref:</u>	2020-0486
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Whole-of-Life
<u>Conduct(s) complained of:</u>	Maladministration
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns the Provider's administration of a life policy held with a third party insurer, assigned to the benefit of a mortgage held with the Provider.

The Complainant's Case

The Complainant holds a mortgage with the Provider, which was drawn down in **2004** jointly with her late husband. The Complainant and her late husband engaged the services of a third party broker to assist in applying for the said mortgage. The Complainant and her late husband entered into a mortgage protection / life assurance policy with a third party insurer and that policy was assigned to the benefit of the Provider, to protect the payment of the mortgage liability, in the event of the occurrence of an insured risk. It is the administration of this policy that forms the basis of this complaint.

The Complainant's husband passed away in **[month redacted] 2013**. However, when solicitors acting for the Complainant sought details of the above mortgage protection policy, the Provider advised that the insurer had informed it that the said policy had lapsed in **November 2011**, due to non payment of premiums, and no benefit was therefore payable.

Although the Complainant held the policy jointly with her late husband, the premiums were paid from an account held solely by her late husband. The Complainant was therefore unaware that premiums had not been paid.

The Complainant believes that the Provider was under a duty to notify her when premium payments on the life policy were not paid.

The Complainant also believes that the Provider had a duty to notify the insurer of its interest in the policy within a reasonable amount of time after the Deed of Assignment had been signed (in **October 2004**). The Complainant believes that if it had done so, then the insurer would have alerted the Provider to any missed premium payments, and the Provider would in turn have notified the Complainant.

The Complainant is of the view that if she had been notified of any missed premium payments, she would have been in a position to make those payments and the policy would not have lapsed; she would then have been entitled to a death benefit payment of €165,000 towards the outstanding mortgage balance in the context of her husband's death.

The Complainant seeks compensation equivalent to the amount that would have been payable under the life policy had it not lapsed, being a figure of €165,000.

The Provider's Case

The Provider says that it was the responsibility of the borrowers (i.e. the Complainant's late husband and the Complainant) to maintain adequate life cover for the mortgage. It does not accept that it had any duty to monitor the payment of premiums or to contact the borrowers in the event that premiums went unpaid. It points to section 13 of the mortgage deed in this regard.

The Provider notes that it entered into three separate repayment arrangements with the Complainant and her late husband in respect of this mortgage, and on each occasion the Complainant and her husband signed acceptances of terms, which re-emphasised to them the responsibility of the borrowers to maintain adequate life cover for the mortgage.

In light of the above, the Provider maintains that, while it does not accept it had any responsibility to monitor life cover status, the importance of maintaining life cover was clearly brought to the attention to the borrowers by it, on a number of occasions.

With regard to notification of the assignment of the life policy to the insurer, the Provider states that the onus to notify the insurer of the assignment, lay with the borrowers (or their representatives/solicitors).

The Provider also notes that the letter of assignment once again, emphasised the importance of maintaining the policy, and the responsibility of the borrowers to do so.

The Provider notes that following the death of the Complainant's husband in December 2013, it placed the mortgage on an interest rate of 0% and agreed a repayment moratorium to ensure that the account did not go into further arrears. It believes that it has dealt with this complaint in a compassionate and fair manner.

The Provider has referred to the terms of the Loan Offer Letter dated **10 December 2003**, signed by the Complainant and her late husband on **26 January 2004**, in the presence of their solicitor

- **Special Condition 3**

- *“Life policies for the amount and term of the Mortgage must be effected, assigned, and lodged, prior to drawdown.”*

- **Loan General Condition 7(vii)**

“The Mortgage Protection Policy (if any) in the amount and for the term of the advance as specified in the Particulars must be effected and duly assigned to the Lender. Age must be admitted on the policy, the original of which will be held by the Lender.”

The Provider has also cited Section 13 of the Complainants’ mortgage deed, in support of its position. I note that a copy of the mortgage deed in question is not included in the evidence made available by the parties, but the Complainant’s legal representative has not suggested the Provider is incorrect in its contention that Section 13 of the Deed prescribes as follows:

“The Borrower [i.e. the Complainant and her late husband] covenants with the Lender [the Provider] during the continuance of the Mortgage:-

(xiii) that [they] will duly and punctually pay all premiums and other charges payable in respect of all policies of life assurance required to be effected as a condition for advancement of the Secured Monies and will keep all such policies in full force and effect”

Letter of Assignment dated 16 October 2004

“ ... In consideration of Advances made, or to be made by [the Provider] (“the Lender”) and in order to secure all liabilities, present or future to the Lender, either alone or jointly with others, and whether as Principal or Surety on any account whatsoever, do hereby, as Beneficial Owner(s), assign unto the Lender, its Successors and Assigns, the Policy(ies) of Assurance ... And I/We undertake and agree, during the continuance of this Security, to keep the Policy(ies) on foot by regular payments of Premiums and otherwise, and to hand over to the Lender, when required, the Policies and the Receipts for same...”

The Provider has also referred to the Repayment Arrangement Agreements entered into by the Complainant and her late husband.

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The Agreement of 23 August 2011 included the following:

“As the Loan is being amended, the level of life cover on any life assurance policy you have may no longer be sufficient to repay the Loan in the event of death of the borrower. Where the Loan is secured on your/your dependant’s home we strongly recommend that you put adequate life cover in place as soon as possible.”

I note that an identical term was contained in the subsequent repayment arrangement agreements of both **July 2012** and **April 2013**.

The Complaint for Adjudication

The first complaint is that the Provider failed to notify the Complainant of missed premium payments on the life policy.

The second complaint is that the Provider failed in a timely fashion to notify the insurer of its interest in the policy.

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 17 August 2020, 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

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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.

Telephone calls have been received as part of the evidence requested by this Office in relation to this complaint regarding the conduct of the Provider. The calls however took place after the death of the Complainant's late husband, in 2013.

Analysis

There is no doubt that, fundamentally, the responsibility to ensure that premiums were paid rested with the Complainant and her late husband. The Complainant's first complaint however is that when premium payments were not made, the Provider failed to notify her.

The Complainant and her late husband held the policy and the mortgage loan jointly, and I note that correspondence was issued to them jointly (in one letter addressed to them both) by the insurer to advise that premium payments had been missed.

Policy premiums were paid from an account held in the sole name of the Complainant's late husband. Therefore if a direct debit was missed from that account, any letter from the holding bank advising of this, will have issued to the Complainant's husband only and it is understandable therefore why the Complainant was not made aware of the situation at that time.

Neither was the Provider aware that the policy had lapsed until after the death of the Complainant's husband in December 2013 and therefore it could not have notified the Complainant and/or her late husband, even if it might have elected to do so, had it been aware. I note in that regard that the Provider has confirmed that the policy in question was never assigned to it. It points out in that regard that the onus to effect and serve notice of the policy, lay with the Complainant and her late husband and their legal representative. The signed loan offer letter details the following in relation to the assignment of the life policy at Special Condition 3:-

- "3. Life Policies for the amount and term of the mortgage must be effected, assigned, and lodged prior to drawdown."*

The Provider has also referred to the solicitor's undertaking details which included the following:-

- "2. **Execution of Security Documents**
To ensure, prior to negotiating the loan check(s) or the proceeds thereof that:*

...

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- (d) *The borrower has executed the lender's Standard Form of Life Policy Assignment, if specified in the facility letter/letter of offer (the "Facility Letter")*
..."

In those circumstances, the evidence before this office does not suggest that the failure to assign the policy, was a failure of the Provider.

Accordingly, as the Provider could not have known that the Complainant and her late husband had missed the payment of premiums on the life policy in question, there is no reasonable basis upon which it would be appropriate to uphold the first complaint.

The second complaint is that the Provider failed to notify the insurer of its interest in the policy, in a timely fashion. It is the Complainant's contention that if the Provider had notified the insurer of its interest in the policy (i.e. if it had sent Notice of Assignment to it in 2004, or at any time prior to the lapse of the policy), the insurer would have notified the Provider of the missed premium payment(s) / risk of policy lapse, and the Provider could in turn have contacted the Complainant.

I am not in a position to uphold the second complaint for two reasons. Firstly, there is no evidence before me to ground a finding that the Provider was under a duty to notify the insurer of its interest in the policy at any time prior to it ultimately seeking to submit a claim.

Of course, even if the insurer had notified the Provider at the time of premiums being missed and the Provider had then written to the borrowers, there is no evidence to suggest that the Provider's correspondence in this regard, would have been any more likely to have found its way to the Complainant, than the correspondence that it is assumed will have issued from the insurer directly to the Complainant and her husband. The Provider's correspondence was addressed to both the Complainant and her late husband jointly, not by way of two individually addressed (but identical) letters.

I note in that regard that Section 19 of the Loan General Conditions did not require the Provider to write to the Complainant and her late husband separately, in any event:

"(ii) a notice may be served by the Lender on the Applicant(s) by sending it by ordinary pre-paid post or leaving it in a letter addressed to the Applicant(s) (or where more than one person constitutes the Applicant(s) addressed to any one of such persons)..."

While the circumstances and net legal issues were not identical to those raised in this complaint, the judgment of the High Court (Barrett J.) in *Kearney -v- Permanent TSB* [2018] IEHC 159 is informative in that it shows what a limited duty a lender has, in law, where a policy is incepted between an insurer and a borrower, contrary to the significantly higher degree of responsibility contended for by the Complainant in this complaint.

The question must then be considered whether or not the Provider was on notice as to circumstances which would have placed an onus upon it to ensure that the Complainant was written to separately from her late husband. The basis of this contention is the suggestion that the Provider was made aware during 2011 that the Complainant's husband had been diagnosed with, and was undergoing treatment for [illness].

In fact, on the basis of the evidence before me, what the Provider was informed of (by letter from their financial advisor/broker dated **5 August 2011**) was that the Complainant's husband had been "*recently admitted to hospital and is currently undergoing psychiatric care*". It was 10 months later in June 2012 when a standard financial statement was signed by both the Complainant and her late husband, and received by the Provider (which did not include life assurance payments as an outgoing) and stated "*the last year has been very difficult I have had [illness] and been in hospital the last time was in April at the moment I'm on a lot of medication to treat my illness*".

I do not accept that this information placed an onus on the Provider to arrange to write to both the Complainant and her husband separately. The Complainant's late husband's situation was known to the Complainant and I take the view that it was a matter for the Complainant to liaise with the Provider if she believed that changes were required to the normal communications arrangements. She did not do so however, and I do not believe that it was a matter for the Provider to effect any such changes without receiving a request to do so.

The circumstances of this complaint are tragic, and the Complainant has found herself in a very difficult situation. However the jurisdiction of this office permits the FSPO to uphold a complaint only where there is evidence of wrongful conduct on the part of a provider within the meaning of **Section 60(2)** of the **Financial Services and Pensions Ombudsman Act 2017**.

I can find no evidence of such wrongful conduct on the part of the Provider and consequently, it would not be appropriate in my opinion 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.

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
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

9 September 2020

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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.

