



<b><u>Decision Ref:</u></b>	2018-0007
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Life
<b><u>Conduct(s) complained of:</u></b>	Failure to provide correct information
<b><u>Outcome:</u></b>	Upheld

**LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

**Background**

This complaint arises on foot of a series of alleged errors by the Provider in furnishing the Complainant with a number of inaccurate policy valuations in respect of life policies held by her late husband, following his death in 2009.

The Complainant is both the widow and the legal personal representative of the deceased, who was the holder of the life policies which are subject to this complaint. The Complainant is also the beneficiary of the deceased's estate.

The Complainant is represented by her brother in law in pursuing this complaint against the Provider.

It is the Complainant's complaint that the Provider wrongfully and repeatedly issued her with erroneous valuations in respect of certain life policies, as a result of which she used her own personal funds to discharge debts of the estate in the expectation that she would, as beneficiary of the will, be refunded from the proceeds of her late husband's estate. The Complainant submits that she has incurred financial losses as a direct consequence of the Provider's erroneous valuations, and seeks reimbursement of these losses from the Provider.

The Provider has offered to compensate the Complainant for its errors, but has declined to do so in respect of a credit union loan the Complainant says that she discharged in July 2012 in the amount of €50,000.00.

### **The Complainant's Case**

The Complainant states that her husband passed away in 2009. His life was assured under a number of life assurance policies he held, underwritten by the Provider, including three With Profit Personal Pension policies. The Complainant was appointed executrix of her husband's will. She is also the sole beneficiary of the will.

The Complainant states that she sought valuations for the policy death benefits at the time of her husband's death, and that the Provider furnished her solicitor with valuations in

respect of the three With Profit Personal Pension policies on 18 August 2009, totalling €139,376.92. The Complainant submits that she was not aware of the valuations issued at the time as the Provider communicated directly with her solicitor.

The Complainant states that subsequently, in 2011, her brother in law began to assist her in tying-up her late husband's affairs, whereupon further details were sought from the Provider in respect of the death benefits attaching to the policies in question.

The Complainant states that she received a valuation of €433,387.50 in respect of the death benefits on the three With Profits Personal Pension policies on 8 November 2011. The Complainant states that four further valuations were issued between that date and early 2013, three to her solicitors and one to her brother in law, all of which were different from each other, but generally speaking indicated values in the region of €417,178.91 to €467,178.91.

The Complainant states that she requested final valuations from the Provider in May 2013, when the estate was near to being finalised, and that the Provider quoted a total death benefit figure of €130,207.73 payable in respect of the three With Profits Personal Pension policies.

The Complainant states that she was shocked by the sudden drop in valuation. She submits that she had made decisions about expenditure from her own funds, based on the expectation that she would be reimbursed from the estate. She states that it transpired, once the estate was recalculated based on the life policy valuations from May 2013, that the estate was in deficit and is now insolvent.

Throughout her complaint to the Provider, the Complainant has referred in particular to a credit union loan of €50,000.00, which she has submitted was a debt of the estate which she discharged out of her own resources in the expectation that she would be refunded from the estate. The Complainant states that, as a result of the errors of the Provider, she will not now recover the monies she paid to the credit union. The Complainant has submitted that she would not have discharged the debt from her own funds if she had known that the estate would be unable to reimburse her.

The Complainant seeks reimbursement from the Provider of the sum of the credit union loan. In addition, the Complainant states that she seeks compensation for pain and suffering caused by the errors of the Provider.

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The Complainant states that the offer of €5,000.00 made by the Provider on 6 September 2016 does not reflect a fair compensation sum.

### **The Provider's Case**

The Provider acknowledges that errors were made in issuing death benefit valuations to the Complainant in respect of three of her late husband's With Profits Personal Pension policies, and the distress that this has caused. The Provider states that it takes the errors very seriously and apologises for these errors.

The Provider states that, while it has offered to make a payment to the Complainant for the errors caused, it is only able to reimburse the costs of any losses incurred by the Complainant once she is able to provide valid documentary evidence that proves that those losses were as a direct consequence of the erroneous valuations. The Provider states that to date it has received no such evidence.

Furthermore, the Provider does not consider that the repayment of a debt, such as a credit union loan, may be considered a loss arising from the errors in question. The Provider states that, if the estate (to which the proceeds of the policies were due) was liable for repayment of the loan to the credit union (and any other relevant borrowings), this would have been the case no matter what the final amounts payable were.

The Provider indicates that, in any event, loans to credit union members would normally be covered under a group protection scheme which would clear the balance of the loan in the event of death. The Provider suggests that, although it has not seen any details of the credit union loan in question, the Complainant might be able to avail of this benefit if the loan was held in her late husband's name.

The Provider understands that the Complainant may be disappointed with the death benefit payable on the With Profits Personal Pension Policies, but states that it is important to note that the total premiums of €40,184.00 paid in respect of these policies could not have been sufficient to provide a death benefit in the order of €443,499.00.

The Provider states that the policies in question are three With Profits Personal Pension Policies, which are designed to build up a fund for retirement and also have a death benefit in the event of death before retirement. The Provider states that the deceased was also insured under two Self Employed Term Assurance Policies, which pay a death benefit of the sum assured stated on the policy schedule plus interest on the amount from date of death to date of payment of benefit.

The Provider states that the errors occurred in the valuations provided on the three With Profit Personal Pension Policies.

The Provider offered the Complainant an *ex gratia* payment of €2,500.00, on 5 June 2013, in full and final settlement of these errors, and subsequently increased this sum to €5,000.00 on 6 September 2016. The Provider states that this does not include any

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potential reimbursement for costs incurred, and evidentially established, which flow directly from reliance on the incorrect valuations.

In a letter to this office dated 26 October 2016, the Provider explained its offer of €5,000.00 as follows:

*“Our offer of €5,000 is based on a payment of €250.00 for each instance of the incorrect valuations issued (total €1,250) and €3,750.00 in recognition of the distress and inconvenience caused.”*

The Provider submits that this sum reflects the seriousness with which it views the Provider’s poor level of administration in relation to the incorrect values.

### **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.

During the course of the adjudication of this complaint, it was suggested by the Provider in a written communication to this Office dated 24 October 2017 that an Oral Hearing might be beneficial to both parties as a means of clarifying and quantifying the issues arising. The Complainant, in a response dated 31 October 2017, expressed the view that an Oral Hearing was not required.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished do 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 are sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

As a preliminary issue, I note that the Complainant initiated this complaint against the Provider as the widow of the deceased consumer, and in her capacity as appointed executrix of the deceased’s estate. The appropriate certified copy of the High Court Grant of Probate is included in the evidence. The Complainant is also the sole beneficiary of the deceased’s estate. In the context of the commencement of the ***Financial Services and Pensions Ombudsman Act 2017***, on 1 January 2018, I am satisfied that the Complainant is now also eligible to make this complaint under section 44(1) of the Act, as an actual or potential beneficiary, as defined by section 2(1) of the Act.

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A Preliminary Decision was issued to the parties on **21 February 2018**, 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.

This complaint arises on foot of a series of alleged errors by the Provider in issuing a number of inaccurate policy valuations over a period of time to the estate of the Complainant's late husband, who died in 2009.

It is the Complainant's complaint that the Provider misled her in respect of these policy valuations, and that as a result she used her own personal funds to discharge debts of the estate in the expectation that she would be refunded these monies from the monies coming in to the estate from the proceeds of certain life policies. The Complainant submits that she has incurred financial losses as a direct consequence of the Provider's erroneous valuations, and seeks reimbursement of these losses from the Provider.

The submissions show that the Provider has investigated the matter and has acknowledged that errors occurred in the calculation of death benefits on the With Profits Personal Pension policies in question. The Provider submits that this was due to an administrative error, and offered the Complainant a sum of €5,000.00 to compensate her for this maladministration.

In the context of the commencement of the ***Financial Services and Pensions Ombudsman Act 2017***, on 1 January 2018, the Provider was given the opportunity to make any additional observation which it considered might arise as a result of that development.

In a written submission to this office dated 8 February 2018, the Provider explained that its approach in trying to resolve the Complainant's complaint "*had been to recognise the distress and inconvenience caused to [the Complainant] as a consequence of the erroneous valuations*" and that it "*did not distinguish between [the Complainant's] capacity as Executrix and as beneficiary*". The Provider submitted that "*in light of this we propose our offer of €5,000 be made to [the Complainant] in her capacity as beneficiary for the distress and inconvenience caused with an additional €1,500 for the rework of papers for probate as Executrix*".

The Complainant has not accepted this settlement offer.

#### **Policy Numbers 8902421D, 8904796G, 8900578E**

The submissions show that these policies are With Profit Personal Pension policies which are designed to provide guaranteed benefits on specific dates contained in the policy schedule, and a death benefit in the event of death before that date.

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Section 6 of the With Profit Personal Pension policy provisions sets out that the death benefit on each policy is “a lump sum equal to the accumulation of the pension premiums paid or regarded as having been paid by the proposer at the rate of interest and from the dates mentioned in the schedule to the policy. The lump sum under this provision is in lieu of all other benefits under the policy”. The Provider has explained that the method for calculating the benefit is that compound interest is applied to the premiums paid into the policy at a percentage rate on certain dates as stated in the policy schedule.

The table below shows the details for each of these policies:

Policy Number	Compound Interest Rate	Effective Date (interest paid from)
8902421D	10%	1 April 1989
8904796G	9%	1 June 1990
8900578E	7%	1 November 1985

The Provider has submitted that “policy numbers 8902421D and 8904796G are segmented policies which means that they were split into 4 sub-policies (segments) of equal premium and value. Policy number 8900578E was a single segment policy.”

The Provider has furnished the following table which shows the number of segments and the premiums paid for each policy:

Policy Number	Number of Segments	Amount paid per segment	Premium	Total premiums paid
8902421D	4	€26.45	€105.81 (monthly)	€31,637.19
8904796G	4	€317.43	€1,269.73 (yearly)	€1,269.73
8900578E	1	€22.60	€22.60 (monthly)	€7,277.20
				<b>€40,184.12</b>

The Provider has submitted that, when calculating the death benefits, the premiums were multiplied by the applicable rate of compound interest, but that for the segmented policies that value was further multiplied by the number of segments, in error.

The Provider has submitted the following table setting out the valuations which were issued in respect of the three With Profit Personal Pension policies during the period August 2009 to May 2013:



**With Profit Pension Policy Valuations Issued**

Date	8902421D	8904796G	8900578E	Premiums Paid	Value Issued	Issued To
18.08.09	€108,175.76	€4,900.23	€26,300.93	€40,184.12	€139,376.92	Compl's solicitors
08.11.11	€387,465.72	€19,600.92	€26,320.93	€40,184.12	€433,387.50	Compl
26.06.12	€387,465.72	€19,600.92	€26,320.93	€40,184.12	€433,387.50	Compl's solicitors
04.12.12	€421,850.97	€19,600.92	€26,320.93	€40,184.12	€467,772.75	Compl's solicitors
21.12.12	€397,433.24	€19,745.67	No value issued	€40,184.12	€417,178.91	Compl's brother in law
15.03.13	€397,433.24	€19,745.67	€26,320.93	€40,184.12	€443,499.58	Compl's solicitors
30.05.13	€99,358.31	€4,936.20	€25,913.22	€40,184.12	€130,207.73	Compl's brother in law

The Provider submits that the correct final calculation of death benefit for each policy is as follows:

Policy Number	Premium Paid	Total Premiums Paid	Benefit Payment Date	Benefit Amount Paid
8900578E	€22.60 (monthly)	€7,277.20	April 2014	€26,320.86
8904796G	€1,269.73 (yearly)	€1,269.73	April 2014	€4,900.23
8902421D	€105.81 (monthly)	€31,637.19	March 2016	€106,601.84
		<b>€40,184.12</b>		<b>€137,822.93</b>

**Policy Numbers 8900579F and 8902425H**

The submissions show that the Complainant's late husband also held two Term Assurance Policies, under which the death benefit payable is the sum assured as stated in the policy

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schedule, increased with interest from two calendar months after date of death until payment of the death benefit. The following table sets out the benefit payable in respect of each policy:

<b>Policy Number</b>	<b>Sum Assured</b>	<b>Net Interest Due (as of 15 May 2013)</b>	<b>Death Benefit Payable</b>
8900579F	€63,486.90	€2,147.58	€66,076.66
8902425H	€63,486.90	€2,147.58	€66,076.66

## **Analysis**

It is not disputed by the Provider that it issued a number of incorrect policy valuations, in respect of the death benefit payable under the three With Profit Personal Pension Policies, to the estate of the Complainant's late husband between November 2011 and March 2013.

The submissions indicate that a valuation in the sum **€139,376.92** had issued to the Complainant's solicitors on **18 August 2009**, following the death of the deceased. The Provider has submitted that this valuation was correct at that time.

The Provider has acknowledged that thereafter, on five dates between November 2011 and March 2013, it issued five erroneous valuations in respect of the three With Profits Personal Pension Policies.

On **8 November 2011**, an incorrect valuation of **€433,387.50** in respect of the three policies issued to the Complainant.

On **26 June 2012**, an incorrect valuation of **€433,387.50** in respect of the three policies issued to the Complainant's solicitors.

On **4 December 2012**, an incorrect valuation of **€467,772.75** in respect of the three policies issued to the Complainant's solicitors.

On **21 December 2012**, an incorrect valuation of **€417,178.91** in respect of the three policies issued to the Complainant's brother in law.

On **15 March 2013**, an incorrect valuation of **€443,499.58** in respect of the three policies issued to the Complainant's solicitors.

Finally, on **22 May 2013**, a corrected valuation of **€130,207.73** in respect of the three policies issued to the Complainant's brother in law. This valuation represented a reduction of in excess of €300,000.00 on the valuation issued to the Complainant's solicitors on 15 March 2013.

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The final calculation of death benefit, and the sum paid out to the Complainant's solicitor in respect of the three policies, with the final payment being made in **March 2016**, was **€137,822.93**. This represented a payment of €31,221.09 in respect of two of the policies, in April 2014, and a final payment of €106,601.84 in respect of the third policy, in March 2016.

The Provider has submitted, upon inquiry by this Office, that the difference between the valuation of **€139,376.92** issued to the Complainant's solicitors on 18 August 2009, following the death of the policyholder, and the final death benefit payment of **€137,822.93** made in respect of the three policies in March 2016, is the result of a retrospective Waiver of Premium claim made under policy number 8902421D in 2013. The Provider states that Waiver of Premium Benefit was claimed by the deceased policyholder's estate under policy number 8902421D in the amount €6,083.48 (WOP Benefit of €5,395.78 + interest of €687.68). The Provider states that, as this benefit was being claimed, the value in respect of policy number 8902421D was recalculated in order to reflect this.

This is supported by the documentary submissions, which indicate that the deceased policyholder was paying a monthly "Waiver Premium" under policy number 8902421D, and that the Complainant's representative requested, in a letter dated 10 June 2013, that the Provider consider a retrospective claim for Waiver of Premium Benefit under section 9 of the policy ("Waiver of Premiums"). I note that, following assessment of medical information pertaining to the deceased policyholder's period of incapacity, the Provider advised the Complainant's representative, in a letter dated 22 December 2015, that the total benefit payable under policy number 8902421D was €106,201.40, and that this was "*including retrospective waiver of premium claim of €5,395.78*" (sic).

I remark on this aspect of the benefit payable under policy number 8902421D, but make no comment in this regard. The Waiver of Premium claim has not been disputed on the Complainant's behalf, and does not form part of this complaint.

It is the Complainant's complaint that she has suffered significant financial loss on foot of erroneous policy valuations issued by the Provider on five occasions between November 2011 and March 2013, and that the Provider has declined to compensate her fairly for the losses incurred.

The Complainant states that, on the understanding, based on the Provider's incorrect life policy valuations, that the proceeds of her late husband's estate would be in excess of €550,000.00 (including the death benefit payable under the two Term Assurance policies), she made decisions about expenditure from her own funds, based on the expectation that she would be reimbursed from the estate. She states that it subsequently transpired, once the estate was recalculated based on the updated valuations from May 2013, that the estate was in fact in deficit, by a sum of in excess of €200,000.00.

The Complainant refers in particular to a credit union loan of €50,000.00, which she states was a debt of the estate, and which she discharged out of her own resources in the expectation that she would be refunded from the estate. She submits that she would not

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have discharged the debt from her own funds if she had known that the estate would be unable to reimburse her.

It is the Provider's position that it would only be able to consider reimbursing such expenditure on receipt of evidence that the erroneous valuations had led directly to consequential losses by the Complainant.

The Complainant has submitted a copy of a sworn Inland Revenue Affidavit to the High Court dated 13 June 2013 in which she affirmed the valuations of the three With Profit Pension Policies at €443,499.84, representing the valuations with which she had been furnished by the Provider in March 2013. I note that [X] Credit Union is noted on the affidavit as an Irish debt of €50,000.00 owing by the deceased.

The Total Gross Irish Estate is affirmed in the affidavit dated 13 June 2013 at €584,446.00, the Total Irish Debts at €373,224.00. The Net Irish Estate is affirmed in the affidavit at €211,222.00.

The submissions show that as of 22 May 2013, some three weeks prior to the swearing of this affidavit, the policy valuations had been corrected downwards by the Provider and that these reduced valuations had issued on that date to the Complainant's representative, her brother in law. It is not clear why the Complainant swore the Inland Revenue Affidavit to the High Court on 13 June 2013 at the higher level of valuation, some three weeks after the corrected valuations had issued. The Complainant has made no submission in this regard.

The Complainant has submitted an extract from a Corrective Affidavit, which is undated, but which records a subsequent corrected Gross Irish Estate of €276,784.00, a corrected Total Irish Debt of €398,224.00, and a corrected Net Irish Estate of €121,440.00 in deficit. These reduced figures would appear to reflect the reduced policy valuations issued by the Provider on 22 May 2013, with some other suggested debts of the estate which had been overlooked.

Against this, it is evident that the Complainant's solicitors had received correct valuations in respect of the three policies in August 2009, some six months after the death of the Complainant's husband. The Complainant has stated that she did not receive these valuations at the time as the valuations were issued directly to her solicitors. In issuing valuations to the Complainant's solicitors, as her legal representatives, the Provider was entitled to assume that these valuations had been received on behalf of the Complainant. In these circumstances, it is unclear why the Complainant and her brother in law did not question the considerably enhanced valuations issued on the three With Profits Personal Pension policies in November 2011.

Nonetheless, the fact remains that incorrect valuations were issued to the Complainant on five occasions between November 2011 and March 2013. There is no doubt that the downward correction in the valuations in May 2013 was dramatic, and that the repeated issue of incorrect valuations on five separate occasions over a period of some 16 months represented a remarkable and significant error on the part of the Provider. I accept that in organising her late husband's estate, and in tidying up his affairs, the Complainant, in her

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capacity as executrix of his estate, would have taken into account, and would have been entitled to take into account, the death benefit sums confirmed by the Provider. The Complainant was entitled to expect that the Provider would issue correct information about the death benefits payable on her late husband's policies.

The Consumer Protection Codes of 2006 and 2012, impose obligations on financial service providers with respect to the provision of information to consumers. Chapter 4 of the CPC 2012 provides that:

*“4.1 A regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information.*

*4.2 A regulated entity must supply information to a consumer on a timely basis. In doing so, the regulated entity must have regard to the following:*

- a) the urgency of the situation; and*
- b) the time necessary for the consumer to absorb and react to the information provided”.*

It is accepted by the Provider that the administration service provided to the Complainant in this instance was not of the standard to which it aspires. Nor was it in line with what is expected of a Provider as set out in the Consumer Protection Codes.

I accept that accurate information should have been made available to the Complainant at all times in relation to the death benefits payable under the three policies in question, in order to allow the Complainant to deal with her late husband's affairs in her capacity as executrix of his estate, and to plan finances accordingly. It is particularly important that accurate information is made available in relation to such products and I accept that particular care should have been taken by the Provider in supplying this information when requested. One would expect that, with proper checks and balances in the process, the required information could and should have been provided to the Complainant in an accurate manner by the Provider.

The Complainant has submitted that she should be reimbursed additional costs incurred by her as a result of the Provider's errors, in particular the discharge by her of a credit union loan in the name of her late husband. I note that the Provider has asked the Complainant on a number of occasions to furnish documentary evidence to support her contention that financial losses were incurred by her as a direct consequence of the erroneous valuations issued by the Provider. I refer in particular to the Complainant's contention that she discharged out of her own personal funds, a credit union loan of €50,000.00, which was owed by the estate of her deceased husband, in anticipation of a reimbursement from the estate.

The submissions made by both parties to this office indicate that no documentary evidence of this nature was submitted by the Complainant, either to the Provider or to this office. In circumstances where these issues are now the subject of an investigation and adjudication by this office, the Complainant was requested by this office to submit the

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aforementioned evidence to be taken into account in support of her position, in the adjudication of this complaint.

The Complainant was also invited to submit details in relation to any protection schemes which the credit union in question might have been in a position to avail of, in respect of her late husband's loan of €50,000.00, in the event that the Complainant had not discharged the loan after her husband's death, because the estate proceeds were insufficient to meet the debt.

The response of the Complainant's representative, dated 1 March 2017, contained the following statement:

*"I have checked the Credit Union loan. The loan was taken out by [the Complainant] to fund treatment for [the deceased] in Canada and stem cell treatment in China. It was included in the Revenue Affidavit in error and does not form part of [the deceased's] estate".*

Upon further inquiry by this office, the Complainant's representative stated that the purpose of this loan had been to fund medical treatment for the Complainant's husband in Canada, China and the Dominican Republic between 2005 and 2007, prior to his death in 2009. The Complainant's representative stated that the Complainant had retained little documentary evidence of these trips, but has now submitted a copy of a medical report from a doctor in Canada, and the passports of the Complainant and her late husband for the period of time in question, showing certain Visa entry and exit stamps, as evidence that these trips had been made. In a letter to this office dated 21 June 2017, the Complainant's representative submitted that:

*"The costs of these trips and payment of the fees associated with the consultations were substantial. Unfortunately [the Complainant] kept no records of the outlay.*

*These trips were funded by [the Complainant] through the loan she took out in her name with [X] Credit Union and which she paid off with a settlement figure in July 2012, also from the proceeds of the life insurance she received...*

*While I have been unable to submit invoices or receipts I submit the passports as proof of the trips which were undertaken for the purposes of receiving treatment in the hope of obtaining a cure... With regard to the [X] Credit Union loan, the cost of travel and treatment had to be funded. It would have been her expectation that if, as it turned out, [the Complainant's husband] did not survive his illness she would have recouped the costs from his insurances".*

I have considered the additional submissions made on behalf of the Complainant. These submissions have also been made available to the Provider, and the Provider has been given the opportunity to consider the content of these additional submissions and to respond.

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The fact that the credit union loan in question was taken out in 2005 by the Complainant, and not by her late husband, is a significant factor in considering her claim for additional costs incurred as a result of the Provider's errors. It has been the Complainant's contention throughout this complaint that she discharged out of her own personal funds a credit union loan, owed by the estate of her deceased husband, in anticipation of a reimbursement from the estate. It is now evident that the credit union loan in question was not taken out by the deceased, and did not constitute a debt against the deceased's estate. The credit union loan was taken out in 2005 by the Complainant as a personal loan in her own name. I note also that the loan was in the sum €40,000.00, and not €50,000.00 as previously suggested.

It is clear that the Provider was not furnished with correct information by the Complainant, herself, in relation to this credit union loan and the identity of the person who had taken out the loan and was legally responsible for the discharge of the debt. It would also appear that this credit union loan was incorrectly included by the Complainant in the High Court Revenue Affidavit dated 13 June 2013 (and in the subsequent undated Corrective Affidavit) as an Irish debt of €50,000.00 owed by the deceased.

I do not doubt that the circumstances of the deceased's illness, and the lengths to which his family went in order to obtain medical treatment for him, required the investment of a great deal of energy and expense by his wife, the Complainant, and by her family. I also note the Complainant's submission that the purpose of the loan was to fund medical treatment for her husband, and that she had an expectation that she would recoup her outlay from the proceeds of his life assurance. I note the submissions made on behalf of the Complainant to establish the purpose of the loan. I also note that no evidence has been submitted to vouch the Complainant's suggestion that it had been envisaged by the deceased that she would be reimbursed these credit union loan monies from the proceeds of the estate. In any event, the evidence is that it was the Complainant who bore the liability for this debt, and not the deceased or his estate. The Complainant was legally responsible for the discharge of the debt, irrespective of the policy valuations issued by the Provider in respect of her late husband's life assurance policies. Indeed, I note that the loan was entered into many years before the Provider's valuations (which are at issue in this complaint) were sent to the Complainant or to her representatives. In repaying this debt in July 2012, the Complainant acted in a personal capacity, discharging her own liability for a personal debt, and not in her capacity as executrix discharging a debt on behalf of the estate.

In these circumstances, I do not accept that the discharge of the credit union loan in July 2012 constituted a financial loss incurred by the Complainant as a direct consequence of the erroneous valuations issued by the Provider, such that the Provider should now reimburse the Complainant the sum of this loan.

During the course of the further inquiries made by this office, the Complainant's representative made reference to additional debts in the form of personal borrowings by the deceased in 2005/2006, prior to his death. The Complainant's representative referred to sums borrowed by the deceased from two of the Complainant's sisters, €11,690.00 from one sister and €8,000.00 from another. The Complainant's representative states that

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the Complainant was unaware of these loans at the time of borrowing, but that she has, since her husband's death, paid the loans from the proceeds of a life insurance policy held with another life assurance company, of which the Complainant had been the beneficiary.

It is submitted on the Complainant's behalf that *"the loans which were repaid by [the Complainant] to her sisters formed part of [the deceased's] estate and were paid by [the Complainant] in the expectation that she was going to be in receipt of a substantial payment from [the Provider's] policies"*.

The Provider was not notified by the Complainant of these additional borrowings, or any claim by her to be reimbursed these monies by the Provider. These sums did not constitute part of the Complainant's initial complaint to the Provider and were not mentioned in the Complaint Form completed by the Complainant initially upon referral of her complaint to the Financial Services Ombudsman, for investigation and adjudication.

The Complainant's representative was subsequently advised that the Financial Services Ombudsman held no details in relation to such loans, and that if this new aspect of the complaint was to be considered, it would be necessary to submit details and vouching documentation in relation to these suggested debts. In response, by letter dated 21 June 2017, the Complainant's representative submitted a copy of the Complainant's bank account statement which records the lodgement to the Complainant's account of an insurance cheque in the sum €23,114.85 on 2 August 2012. It also records that a cheque in the sum €11,690.00 was cashed against the account on 7 August 2012, and that a sum of €8,000.00 was withdrawn in cash on 10 August 2012. The Complainant has submitted signed statements from two of her sisters, dated 20 June 2017, each sister confirming that she received payment of one of these sums from the Complainant in August 2012 and stating that *"the payment was a refund of monies borrowed by [the Complainant's husband] from me during 2005/2006..."*.

I note that no documentation has been submitted which is contemporaneous with the suggested loans in question, or which confirms the deceased's liability for these debts. The Complainant's representative has submitted a copy of a cash account prepared by the solicitors of the Complainant and her late husband on 2 November 2006 which includes a list of various individuals to whom monies were owing at that time, with a proposal to pay these borrowings from the sale of assets. It is submitted on behalf of the Complainant that the borrowings from the Complainant's two sisters date from 2005/2006, yet I note that these borrowings are not included on this list. This is acknowledged by the Complainant's representative, who submits that *"their claims would be against the estate after [the deceased's] death. When [the Complainant] received the proceeds of life insurance on which she was the sole beneficiary she paid them back"*.

In short, I must conclude that, in my opinion, there is insufficient evidence to establish that these additional debts were owed by the deceased at the time of his death, or that the Complainant discharged these debts in 2012 on behalf of the deceased's estate, as a direct consequence of the erroneous valuations issued by the Provider, such that the Provider should now reimburse the Complainant her financial loss.

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In these circumstances, there is no evidence before me upon which it would be reasonable to make a finding that the Complainant incurred the suggested items of expenditure as a direct result of reliance on the erroneous valuations received from the Provider. During the course of the investigation of this complaint, a concern was expressed on behalf of the Complainant that other policyholders may have suffered similar policy valuation errors at the hands of the Provider, similar to those experienced by the Complainant's late husband's estate. In an email to this Office dated 29 September 2017, it was submitted on behalf of the Complainant, as follows:

*"It is clear that the company has no regard for customers or accountability. How many others has this happened to. How do we know that policyholders have not lost out on their benefits through their defective practices."*

The Complainant's representative has, with the consent of the estate of a deceased third party policyholder, submitted a copy of two letters from the Provider to the estate of the deceased third party policyholder, which relate to a death claim on a life assurance policy held by the deceased third party. These letters are dated 27 March 2017 and 18 July 2017. In an email dated 29 September 2017, it is submitted on behalf of the Complainant that the reason for submitting these letters is *"to show that nothing has changed at [the Provider]. They informed the FSO and me some time ago that the procedures had been changed to prevent this type of error recurring. Obviously this has not happened"*. It is submitted on behalf of the Complainant that the content of these letters indicates yet another example of errors made by the Provider, in providing an incorrect death benefit quotation to the estate of a deceased policyholder in May 2017, contrary to the Provider's assertion that its procedures had been changed to ensure that this type of error would not occur again.

In its response dated 17 October 2017, the Provider has confirmed that an error did occur in the death benefit quotation provided to the deceased third party policyholder's estate, and that this has been the subject of a separate complaint to the Provider by the deceased policyholder's estate. The Provider states that the policy in question was also a *"legacy policy (25 years old)"* and that, similarly to the Complainant's late husband's policies, there was an element of manual intervention and off-system processing in the administration of these legacy policies. The Provider submits that *"this means that there is human interaction which always carries an increased risk of errors happening"*.

The Provider states further that *"the only error in relation to the calculation of death benefits that we are aware of since receipt of [the Complainant's] complaint in 2013 is [the deceased third party's] policy. To that extent, we believe that our controls and checks have been effective, although where there is human intervention, no control can be 100% guaranteed"*.

The Provider has submitted that the deceased third party life assurance policy is a decreasing term assurance policy with no investment element and a set sum assured that decreases in line with the mortgage. While I have not been furnished with any policy documentation relating to this third party life assurance policy, I have no reason to doubt

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that this is the position and that the third party life assurance policy is in fact a different type of policy from that held by the Complainant's late husband.

I have considered the content of both of the letters submitted by the Complainant's representative (with the consent of the deceased third party policyholder's estate), in the context of the complaint which has been made by the Complainant to this Office. The Complainant's representative has been advised by this Office on a number of occasions that, as the additional third party documents upon which he wishes to rely do not relate to the Complainant concerned in this complaint, and do not relate to the life policies which are the subject of this complaint, they will not have any bearing on the outcome of this complaint.

I accept that it is a matter of concern to the Complainant that an erroneous death benefit quotation has issued from the Provider to another deceased policyholder's estate, within the past 12 months, in circumstances where the Provider had assured the Complainant that steps had been taken to prevent such errors occurring again. I note the Provider's explanation for this occurrence, and expression of regret.

However, every complaint to this Office is investigated on an individual basis and every complaint is assessed on its own merits. The error allegedly experienced by the deceased third party policyholder's estate, at the hands of the Provider, is a matter separate from the one under consideration, and one which is unrelated to the policy of the Complainant's late husband. I am of the view that it does not have any specific bearing on the consideration of the issues raised by the Complainant in this complaint. I note, indeed, that the incident to which the Complainant refers has been the subject of a separate complaint to the Provider by the deceased third party policyholder's estate, and the Provider has indicated that the matter has been settled between the parties concerned.

In summary, having considered the submissions made by both parties to this complaint, I accept that significant and remarkable errors were made by the Provider, on five separate occasions between November 2011 and March 2013, in issuing incorrect valuations to the Complainant and to her representatives in respect of the three With Profit Personal Pension Policies held by the Complainant's late husband.

In considering the extent of any suggested financial losses suffered by the Complainant as a result of the Provider's errors, I do not accept, for the reasons outlined above, that the discharge of the credit union loan in July 2012 constituted a financial loss incurred by the Complainant on behalf of the deceased's estate, as a direct consequence of the erroneous valuations issued by the Provider, such that the Provider should now reimburse the Complainant the sum of this loan.

In respect of certain additional debts to which the Complainant refers, in the form of personal borrowings said to have been made by the deceased in 2005/2006, prior to his death, there is insufficient evidence to establish that these additional debts were owed by the deceased at the time of his death, or that the Complainant discharged these debts in 2012 on behalf of the deceased's estate, as a direct consequence of the erroneous

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valuations issued by the Provider, such that the Provider should now reimburse the Complainant financial loss.

I note the Provider's efforts to resolve this complaint, and the offers of redress which have been put to the Complainant in recognition of the errors made, and as compensation for any distress or inconvenience caused. The submissions show that, on 6 September 2016, the Provider offered the Complainant a sum of €5,000.00 in full and final settlement of her complaint. In a letter to this office dated 26 October 2016, the Provider explained the offer of €5,000.00 as follows:

*"Our offer of €5,000 is based on a payment of €250.00 for each instance of the incorrect valuations issued (total €1,250) and €3,750.00 in recognition of the distress and inconvenience caused."*

More recently, on 6 February 2018, in recognition of the inconvenience and additional work to the Complainant in her capacity as executrix, the Provider increased its offer of €5,000.00 by an additional sum of €1,500.00 *"for the rework of papers for probate as Executrix"*.

The Complainant has chosen not to accept this offer of settlement.

I am satisfied that, on the basis of the evidence before me, the complaint should be upheld in circumstances where significant and remarkable errors were made by the Provider, on five separate occasions between November 2011 and March 2013, in issuing incorrect valuations in respect of the three With Profit Personal Pension Policies held by the Complainant's late husband.

I accept that the errors of the Provider caused significant distress and anxiety to the Complainant personally, in her capacity as the widow of the deceased, and also in her capacity as the beneficiary of the estate. I also recognise that the errors of the Provider caused significant inconvenience to the estate of the deceased.

I take the view that, although the losses suggested by the Complainant have not all been established, the significant and remarkable errors of the Provider in issuing incorrect policy valuations in the circumstances set out above, merit a compensatory payment in favour of the Complainant, both in her capacity as beneficiary of the estate, and in her capacity as executrix of the estate.

Accordingly, it is my Legally Binding Decision that the complaint is upheld and, to mark that finding, I direct the Provider to make a compensatory payment of €10,000.00 to the Complainant, in her capacity as executrix of her late husband's estate, and for the benefit of the estate. I also direct the Provider to make a compensatory payment of €5,000.00 to the Complainant personally, in her capacity as widow of the deceased policyholder and beneficiary of his estate.

## **Conclusion**

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld, on the grounds prescribed in **Section 60(2)(g)**.
- Pursuant to **Section 60(4)(d)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct that the Respondent Provider pay amounts of compensation to the Complainant for any loss, expense or inconvenience sustained by the Complainant as a result of the conduct complained of, in the terms set out above, within 35 days of the date of this decision.
- Pursuant to **Section 60(6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct that interest is to be paid by the Respondent Provider on the said compensatory payments, at the rate referred to in **Section 22** of the **Courts Act 1981**, where the amounts are not paid within 35 days of the date of this decision.
- Pursuant to **Section 60(8)** of the **Financial Services and Pensions Ombudsman Act 2017**, the Respondent Provider is now required, not later than 14 days after the period specified above for the implementation of the direction pursuant to Section 60(4), to notify this office in writing of the action taken or proposed to be taken in consequence of the said direction outlined above.

**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  
DIRECTOR OF ADJUDICATION AND LEGAL SERVICES**

27 March 2018

**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) in accordance with the Data Protection Acts 1988 and 2003.**