Decision Ref: 2018-0092

Sector: Insurance

Product / Service: Whole-of-Life

Conduct(s) complained of: Maladministration
Failure to provide correct information

Outcome: Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant and his wife had two term life assurance policies with the Provider. Policy 1, the subject of the present complaint, is an insurance policy in the Complainant's name against the life of his wife. Policy 2 is an insurance policy in the Complainant's wife's name against the Complainant's life. The policies were taken out in 1992 and due to expire when each of them turned 65 years old. Each were entitled to convert the policy, subject to certain restrictions, before the expiry date without the necessity of providing updated medical information. When policy 2 was set to expire in 2014, the Provider allowed the policy to be converted into a further term life assurance policy up to the Complainant's 80th birthday. Prior to the Complainant's wife's 65th birthday in 2017, contact was made by the Complainant's broker with the Provider with a view to converting policy 1 in a similar manner. The broker was given inaccurate information suggesting that it was possible to convert policy 1 to a further term policy up to the Complainant's wife's 80th birthday. When the application was submitted, however, the Provider rejected the application and stated that the relevant terms and conditions of the policy precluded its conversion to a further term life assurance policy after the age of 65. The Provider noted that this restriction had also been in place in relation to policy 2 but that the restriction had not been noticed in 2014 when the conversion was applied for and that it was prepared to honour the conversion that took place in 2014. It was not, however, willing to offer a similar conversion in relation to policy 1 in light of the policy restriction. It offered the option to convert policy 1 to a whole of life policy, a more expensive option, without the need for further medical information but it would not allow conversion to a further term life assurance policy under the conversion option without fresh medical information.

The Complainant has argued that as the two policies were subject to the same terms and conditions, and as the Provider initially suggested that policy 1 could be converted into a further term life assurance policy, the Provider should be compelled to offer the relevant conversion in relation to policy 1.

This is denied by the Provider who has apologised for the error arising and has offered compensation to the Complainant for the misleading information.

The Complainant's Case

The Complainant notes that he and his wife took out Level Net Term Assurance policies with the Provider which commenced on 1 June 1992. The Complainant notes that the policy on his life ("policy 2") had an expiry date of 1 July 2014 and that the Complainant's 65th birthday was one week later on 8 July 2014. The policy on the Complainant's wife's life ("policy 1") had an expiry date of 1 June 2017 with the Complainant's wife's birthday on 8 July 2017. The Complainant notes that the Provider converted his policy in 2014 as he approached 65 and the converted policy will end on 1 June 2029 when he approaches the age of 80. He points to a letter from the Provider dated 1 June 2017 suggesting that his plan is the same as his wife's plan and argues that if policy 1 is the same as policy 2, it follows that the Provider should convert policy 1 to a plan similar to Complainant's current plan under which her life would be insured to her 80th birthday. The Complainant points to two letters from the Provider on 21 April 2017 and 12 May 2017 offering a new plan in relation to policy 1 to be "*issued on the same terms of the current cover*". He notes that these letters are virtually identical to one sent on 10 May 2014 in relation to policy 2 and on the basis of which his current plan was issued. He notes that Provider has stated that the conversion on policy 2 went through in error back in 2014. He further points to the acknowledgement of the Provider that his broker received incorrect information from the Provider's customer service department on a number of occasions. He states that due to the number of errors that the Provider has made from 2014 to 2017, he does not have any confidence in the analysis. The Complainant requests that the Provider convert policy 1 to a similar policy to policy 2. Under this plan, he suggests that his wife's life would be insured for €150,000 at a cost of €174.88 per month plus levy. In essence, as the Provider converted policy 2, the Complainant wants it to convert policy 1 as well, given that it accepts that the two policies are the same.

In an email dated 15 February 2018, the Complainant states that it is possible to convert the policy and it is simply a case that the Provider has decided not to convert it. He suggests that the Provider's arguments that the "*same terms*" refer only to the underwriting of the plan is an arbitrary and narrow view of the words. He suggests that considering it took three years for the initial conversion error to come to light, there may be other similar errors. He suggests that his situation is virtually unique and inexpensive for the Provider to honour. He states that he and his wife have not benefitted greatly as a result of the error as they been paying thousands of euros in premiums over the years and have not been paid anything by the Provider. In an email dated 26 February 2018, the Complainant argues that providing new revised medical information would have cost him less than €100 so the avoidance of that cost did not benefit him greatly.

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The Provider's Case

In its final response letter dated 1 June 2017, the Provider stated that it was unable to convert policy 1 to a term life assurance plan.
The reason it gave for this was that, under the terms and conditions of the plan, conversion was only possible to a term assurance plan up to the life assured (i.e. the Complainant's wife) reaching the age of 65. As a term life assurance policy has a minimum term of two years and the Complainant's wife is currently 64, the Provider notes that it is unable to offer the conversion to a term life assurance plan. The Provider notes that policy 2, which was the same as policy 1, was converted in 2014 up to 1 June 2020 when the Complainant reaches 80 years of age. The Provider states this conversion went through in error and that the error was recognised when the application to convert policy 1 was received. It confirms that it is prepared to honour the conversion that took place in 2014. It apologises that it cannot offer the same terms in relation to policy 1 and acknowledges that the Complainant's broker received incorrect information from the Provider when he called the Provider's customer service department on a number of occasions. The Provider states that policy 1 can be converted into a whole of life policy with no medical underwriting required and that this would be a reviewable plan. Two options were provided under this plan; a more expensive option with no set term or a cheaper option with a set term of 10 years. The Provider apologised for the incorrect information received in relation to the conversion of policy 1 and acknowledged that was not the level of service it aimed to provide. The Provider made an offer to the Complainant of €1,000 towards the payments on a new whole of life plan.

By letter dated 26 January 2018, the Provider responded to queries raised by this office. The Provider points to page 7 of the terms and conditions relevant to the policy which provides an option for the conversion of the policy to "*an Endowment Assurance, Whole of Life Assurance or Term Assurance (without guaranteed insurability) with cover ceasing of age 65, for an equal or smaller sum assured to than applicable sum assured*". The Provider states that while it was therefore possible for the Complainant convert to a whole of life or endowment plan without limit, in the event he wished to convert to a term plan, any cover on the new plan would cease when the life covered reached age 65. It states that the term plans currently on offer have a minimum of term of two years.

The Provider references two phone calls made by the Complainant's broker to its customer service department on 29 November 2016 in which the broker queried if policy 1 could be converted prior to its maturity date in June 2017 or if the Complainant had to wait until nearer the maturity date. The broker was advised that the plan could be converted at any stage prior to the maturity date. The broker then noted that the Complainant intended to convert to plan providing cover up to the age of 80 which was a 16 year term. The broker was advised that he would be able to do the quote himself and it was stated that the current plan had an indexation facility. The Provider argues that the broker did not specify that the plan he was proposing to the customer would be a term plan but rather that it was required for a 16 year term up to the age of 80. The Provider submits that it was possible to set the payment on a whole of life plan for an initial set term of 16 years so there was no incorrect information provided during the phone call. In a second call approximately 15 minutes later, the broker queried if the replacement plan had to be the same format as the original and it was stated that it did. It was also discussed whether price matching would apply in the case

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the plan conversion. A discussion then took place with regard to the online submission of the application with the Provider indicating that as an old plan was being converted, there was no need to complete the medical questions. The Complainant argues that the type of plan the Complainant wished to apply for was not discussed on this occasion either.

The next call received by the Provider's customer service representatives from the broker was on 10 April 2017. On this call, the broker enquired what forms the Provider would require if the Complainant was to convert to a plan providing cover up to the maximum age of 80. He was advised that he would need to submit the declaration and consent section of the application form. The broker was also advised that the maximum age for life cover on term plans had been increased from age 80 to age 85. The Provider notes that while this was correct for standard term plans offered by the Provider, the information was incorrect as regards to policy 1 as, under its governing terms, should the Complainant choose to convert to a term plan, any life cover associated with the new plan would cease on the life covered reached age 65.

The Provider states that an application was submitted online on 9 May 2017 for the Complainant to convert the existing plan (policy 1) to a term life insurance plan which would provide €150,000 life cover on his wife's life over a term of 16 years up to and including age 80. As this was not possible, the Provider contacted the broker and explained that under the terms of the existing plan, it was not possible to convert to a term insurance plan. It was explained that as cover would cease at age 65 (two months later) and the minimum term of the Term Assurance Plan is two years, the proposed plan was not an option to him. However, it was noted that he was eligible for a whole of life plan.

In relation to the Complainant's argument that the Provider's letters of 21st April and 12 May 2017 refer to the new plan quote issued on the same terms as the current cover", the Provider argues that the reference to "same terms" relates the underwriting of the plan so that no new medical information would be sought and acceptance would be based on the same smoking starters and medical loading which applied to the original plan. The Provider also points out that the letter specifically referred to the fact that "certain restrictions may apply in exercising your conversion option" as outlined in the terms and conditions booklet. The Provider argues that the Complainant was made aware of the terms of the guaranteed insurability option in the documentation provided to him with his plan. It accepts that the conversion of policy 2 in 2014 was based on an error which did not come to light until the application in relation to policy 1. It accepts this error and will continue to honour the terms of the plan is put in place in 2014 but the Provider states that it cannot knowingly ignore the terms of the existing plan (i.e. policy 1) and allow the plant to be converted to a term plan based on a previous error on a different plan which has already agreed to honour. It does not deem it appropriate to duplicate the error.

As the Complainant chose not to convert to a whole of life plan in 2017, the Provider was willing to offer a goodwill payment to the Complainant. It looked at whether the Complainant was financially disadvantaged by the decisions he made in 2014 based on the incorrect information provided to his broker at the time and considered what position he would be in today had he received the correct information in 2014. It was acknowledged that based on the information received in 2014, the Complainant assumed he could wait

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until the maturity date of policy 1 in 2017 and then convert the existing plan to a second term plan, providing life cover for his wife up to the age of 80. It states that had he received the correct information in 2014, he would have been reminded that any new term plan would only provide life cover on his wife up to her 65th birthday for a period of 3 further years.

If the Complainant did choose to convert policy 1 in 2014 to avail of the lower level of payment associated with the lesser sum and reduced level of life cover of €150,000 as specified under the 2017 application, the Provider states that the level of payment would have been reduced to €64.62. Therefore, had the Complainant received the correct information in 2014 and chosen convert at that time in order to reduce the costs over the following 3 years until cover on the new plan has expired, the Provider states that he would have paid a total of €2,424.60 less than he did over the same 3 year period in his existing plan.

In an email dated 19 February 2018, the Provider argues that if the conversion had been properly processed in 2014, the proposal in relation to policy 2 would have been declined. In that event, medical information in relation to the life insured under policy 2 (the Complainant) would have been required to put the current plan in place. As it transpired, the conversion was accepted at standard rates in line with the original application. The Provider states that the provision of new revised medical information would have resulted in an increased cost being required in order to maintain the plan. The Provider notes the Complainant's belief that they have contributed to the plan for many years and the Provider has not had to make a payment. It notes, however, that the purpose of the insurance is to ensure that the holder is protected against the eventuality of an event occurring so that if a life insured passes away within months of the plan starting, the Provider would be obliged to accept the claim in relation to the amount covered despite only a few payments being made. It argues therefore that while there is a risk to a customer that a claim will never be made, there is a risk to the Provider that the claim will need to be paid when very little payments have been made by the customer.

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

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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 9 August 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.

In the absence of additional submissions from the parties, my final determination is set out below.

The policy schedule to policy 1 has been provided to me. The expiry date is noted as 1 June 2017. The policy restriction relied on by the Provider is set out on the second page to the schedule under "Notes":

> "*At any time during your policy you have the option to alter part all of your capital sum to an endowment or whole of life assurance policy. You also have the option to convert to another term assurance policy with risk ceasing at age 65*."

In the terms and conditions of the policy, paragraph 14 entitled "*guaranteed insurability option*" provides the following:

> "*Provided that all premiums due have been paid to date and that the Policy is in force THEN at any time before the expiry date of the policy (as stated in the schedule) the Proposer(s) shall have the option to be exercised in writing and without further evidence of health of converting this Policy to an Endowment Assurance, Whole of Life Assurance or Term Assurance (Without guaranteed insurability) with cover ceasing at age 65 for an equal or smaller sum assured to the then applicable sum assured and subject to the payment of subsequent Premiums at the appropriate rate. Each new assurance so affected will be subject to the Company's normal Prospectus Terms at the time the Policy is converted*."

I accept that, under the terms and conditions of policy 1, the conversion option allowed conversion to a further term assurance policy only up to the age of 65 of the life assured.

I note that in letters from the Provider dated 21 April 2017 and 12 May 2017 to the Complainant, the Complainant was notified that policy 1 was close to its maturity date of 1 June 2017 and that he had the opportunity to take out another plan before it ran out without submitting updated medical information. The letters also provided that the "*new plan will be issued on the same terms as the current cover including acceptance terms and smoking status*." The letter further provided that "*certain restrictions may apply in exercising your conversion option. These are outlined in your terms and conditions booklet*." I note that a letter in comparable terms was sent to the Complainant's wife dated 10 May 2014 in relation to policy 2 and that the Complainant seeks to rely on these letters to demonstrate an entitlement to conversion in the same manner. As the letters refer to the fact that certain

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restrictions may apply, I do not accept that these letters are capable of overruling an otherwise clear contractual term, though I appreciate the confusion caused to the Complainant in circumstances where an error was originally made in 2014 in relation to the conversion of policy 2. I further accept the Provider's arguments that the reference to "*same terms*" would not cover the overruling of a contractual restriction but rather applies to the underwriting information provided at the time of the original application in 1992 in relation to medical information and smoking status.

I therefore accept as a matter of contract that the restriction identified by the Provider applies in relation to policy 1 and that the Complainant has no contractual entitlement to conversion to a term life assurance plan in the same manner that policy 2 was converted in 2014.

It is clear, however, that misleading information was given by the Provider to the Complainant through his broker in 2014, 2016, and 2017 in relation to his conversion entitlements under the policy 1. What falls to be determined is whether the provision of inaccurate information had any detrimental impact on the Complainant in relation to his options and whether he should be otherwise compensated for the misleading information. I note that as soon as the error was recognised in May 2017, the Provider immediately acknowledged the error, apologised for same, and offered a goodwill payment gesture to the Complainant which goodwill offer has been increased since that point.

In relation to policy 2 which was converted in error in 2014, the Provider has argued that no loss accrued as a result of the error to the Complainant or his wife and in fact they have received benefits from the error in so far as they were allowed to convert policy 2 to a further term life assurance plan of 16 years on the basis of the medical loading information and smoking status information provided at the inception of the policy in 1992. I note the Complainant's concern that no benefit has been derived under that policy but I accept that the Complainants have had the benefit of life cover and that the Provider was at all times at risk of paying out under the policy in the event that the death should occur of the life assured and that this is the very nature of the policy in question. I accept that if a new term life assurance policy was taken out on the life of the Complainant in 2014 when he was reaching the age of 65, it is highly likely that the premiums payable thereon based on updated medical information would be significantly higher than the premiums associated with medical information provided when he was more than 20 years younger. Furthermore, the Complainant has not expressed any dissatisfaction with the converted plan. I do not believe that any loss can therefore be attributed in relation to the misleading information provided in relation to the conversion option in 2014 in view of the Provider's willingness to honour its commitment under the 2014 conversion.

In relation to policy 1, any potential loss based on the inaccurate information provided in 2014 is somewhat speculative as there is simply no information available as to what choice the Complainant would have made in relation to the conversion option if the correct information had been given to him in 2014. What is clear is the choice that was made in 2017 when the Complainant applied for a reduction in the life cover for his wife to a sum of €150,000. I therefore accept that if Complainant had known in 2014 that cover would cease in 2017 but that he had the option to convert to a shorter term life assurance policy in a

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lesser sum with a reduced premium, he may well have taken that option. This reflects the offer that has been made by the Provider. Had the Complainant received the correct information in 2014 and chosen to convert to a three year term life assurance plan at that time with an insured benefit of €150,000 in order to reduce premium costs over the following three years until cover on the new plan has expired, the Provider states that he would have paid a total of €2,424.60 less than he did over the same three year period in his existing plan. The calculation is made up as follows:

	€131.97 payment of old plan
Less	*€64.62 premium on converted plan*
By	*36 months*
Equals	*€2,424.60*

I believe that this sum appropriately reflects the potential loss to the Complainant arising from the provision of inaccurate information in 2014.

Recordings of the calls between the Complainant and the Provider have been provided in evidence. The recordings of the calls made from the Complainant's broker to the Provider's customer service department on 29 November 2016 and 10 April 2017 are particularly relevant. Despite an initial acceptance that incorrect information had been provided on a number of occasions, the Provider appears to have backtracked somewhat in a submission dated 26 January 2018 and argued that no specific incorrect information was provided in the two calls that took place on 29 November 2016, presumably on the basis that the phrase "*term*" plan was not utilised by either party.

In the context of the broader complaint, I am not willing to accept this. I acknowledge that it was not made explicitly clear that the broker sought to convert from a term life assurance plan to a further term life assurance plan but this was, in my view, mutually understood. The broker would have been under the impression from incorrect information provided in 2014 that it was possible to convert policy 1 to a new term life assurance plan. Policy 2 had been converted to a new term life assurance plan for a period of approximately 16 years until the Complainant reached the age of 80. It is clear from the first call that was made from the broker on 29 November 2016 that the Complainant was interested in a similar conversion in relation to the life of his wife under policy 1. A 16 year term was indicated which reflects the conversion made in relation to policy 2. The broker was clearly seeking information on the available conversion options. I note the Provider's argument that it is possible to set a 16 year term on a whole of life plan but I do not accept that this was the understanding of the parties to that conversation. In light of the error that was made in 2014, it was incumbent on the Provider to indicate any restrictions that applied in relation to the conversion that was proposed. Neither representative of the Provider with whom the broker spoke on 29 November 2016 flagged any such restriction or indicated any potential difficulty that might arise in relation to the exercise of the conversion option. In all the circumstances, I am satisfied that misleading information was provided to the Complainant's broker on the calls in November 2016. Misleading information was also provided subsequently on the call on 10 April 2017 and this is accepted by the Provider.

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Regulated financial service providers are under a duty not to mislead their customers in the provision of information. Under clause 4.1 of the Consumer Protection Code 2012, for example, a regulated entity "*must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English*." There is no doubt that the Provider in the present case failed to meet its obligations under this provision. Understanding the operation of and options associated with financial products is challenging for many consumers who do not have regular exposure to such products. Consumers therefore rely on the information provided to them by regulated providers. I note in this case that the Complainant and his wife dealt with the Provider through a broker who no doubt assisted them in the process but the broker likewise relied on the information emanating from the Provider which he then presumably transmitted to the Complainant and his wife. What is concerning in relation to the present complaint is that it was not a one-off error whereby misleading information was provided. While it is unclear exactly what information was provided in 2014, there is no doubt but that the Provider indicated that conversion to a new term life assurance policy was an option under the policy in question. The fact that a benefits may have ultimately accrued to the Complainant's wife does not nullify the misleading information that was provided. Further misleading information was provided by two separate representatives of the Provider in November 2016 and similar misleading information was provided by a representative of the Provider in April 2017.

In all of the circumstances, it is my view that the complaint should be partially upheld. I do not accept the Complainant's main argument that he should be entitled to convert policy 1 to a 16 year term life assurance plan based on the original medical information on the same basis that policy 2 was converted in 2014. The contractual restriction that applies in relation to the policy is clear and this option was not available to the Complainant when he applied for the conversion in May 2017. The Provider was entitled to decline the application. I am willing, however, to uphold the complaint insofar as misleading information was provided to the Complainant in relation to the conversion options under policy 1.

I appreciate that an acknowledgement was made as early as June 2017 by the Provider that inaccurate information had been given to the Complainant's broker and that it furthermore indicated its willingness to offer a goodwill gesture to the Complainant at that juncture in recognition of the errors made. This is recognised in this decision. I accept that a potential loss has accrued to the Complainant. As more fully set out above, the sum of €2,424.60 reflects the potential loss that arose to the Complainant. In light of the four incidents described above whereby misleading information was provided to the Complainant, it is in my view appropriate to direct that a further amount of compensation be paid to the Complainant in recognition of the serious and repeated incidents of inaccurate information provided to him. Due to the repeated nature of the error, but also recognising the fact that €2,424.60 has already been offered by the Provider to reflect the potential loss and the fact that the Provider took the opportunity at first instance to acknowledge and apologise for its error, I feel that a further sum of €1,000 in compensation to reflect the misleading information and inconvenience caused to the Complainant is appropriate.

Accordingly, I partially uphold this complaint.

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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) (e) and (g).***

Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €3,424.60, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the provider. 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.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

10 September 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) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.