An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2018-0116
Sector:	Insurance
Product / Service:	Unit Linked Whole-of-Life
Conduct(s) complained of:	Results of policy review/failure to notify of policy reviews Delayed or inadequate communication
Outcome:	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant is unhappy with the substantial increase in premium payments on her Whole of Life Policy. The Company advised the Complainant of the need for an increase in premiums following a Review of the policy in 2015

The Complainant seeks an adjudication on what she feels is a grossly excessive and sudden increase in the insurance premium.

The complaint is that the Company incorrectly and unreasonably sought an increase of premium after reviewing the policy.

The Complainant's Case

The Complainant's submission of February 2017

The Complainant states that the policy was originally taken out by her in February 1991 with the objective of protecting her young son from a massive claim for death duties on her property, in the event of her death. The Complainant states that in that event, the proceeds of the policy would be paid direct to the Revenue Commissioners to cover such taxes up to a sum of circa €342,000. The Complainant says that she did not seek to take the policy out as an investment, but that her sole concern was to have life cover for the above mentioned purpose.

The Complainant submits that the policy was entered into by her, in good faith, for what at the time seemed a reasonable premium. The Complainant says she had every reasonable expectation that this would continue to be the case in the future and she did not expect to be hit with the sort of massive and unreasonable increase demanded by the Company in 2015.

The Complainant explains that the policy started with a monthly premium of about 98 pounds, subject to what she regarded as reasonable increases from time to time. Premiums were always paid on time as requested. The Complainant states that these small increases continued to occur up to the amount of €163.60 until December 2015 when she received a letter demanding a payment of €763.16: an increase of over 400%. It is the Complainant's position that this appeared to her to be an entirely unexpected, unreasonable and unjustifiable demand.

The Complainant supplies the following details in relation to the amounts of monthly premiums charged in 2002, 2005, and 2010 compared with that which was sought in 2015.

Review date	
1/11/2002	154.56
5/12/2005	166.64
7/12/2010	163.60
21/12/2015	763.16

The Complainant submits that the Company has attempted to justify this on the grounds that there are two divisions to the policy (a) an Investment, and (b) Life cover. The Complainant says that from what she now understands, the Company was taking funds from the investment part to cover increases in charges for the life part above the amount of the ostensible premium paid.

The Complainant states that the grounds given for this, and the premium jump, is that the cost of the Life Cover goes up as one gets older. The Complainant says however, that she is well aware that, in calculating a premium, Insurance Companies work on a statistical basis and aim to give themselves a healthy profit over all as well as meeting their obligations. The Complainant states that companies also employ re-insurance. The Complainant considers that there should be no need for any massive jump in premiums as time passes - unless the Company got their sums wrong in the first place and expect the client to pay for that.

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The Complainant submits that the same applies to the investment fund, but here, apart from the total cash paid, the Company has had the use of her money for a period of over twenty-five years and should be showing a good profit on that. The Complainant questions if that has been inadvertently mismanaged, is she expected to compensate the Company for that too.

The Complainant states that she first requested some explanation, but received an attempted justification from the Company, in March 2016. The Complainant submits that in an attempt to arrive at an understanding of what was going on, she wrote further to the Company on 20/05/2016. The Complainant says that in requesting "full and complete details of all documentation in relation to these reviews" she hoped to get some idea at least of what had been going on: especially with the Fund.

The Complainant's position is that she remained none the wiser. The Complainant states that details of the standing of the Fund are not included in the Review statements issued in 2002, 2005, and 2010. The Complainant says that what she got from the Company was a formulaic account of what the Company was charging or proposing to charge, together with the assertion that as the policy ages it gets more expensive to maintain.

The Complainant states however, I have recently come to realise that there is another important aspect to consider. In this regard the Complainant says she initially took out the policy at a premium of about 98 pounds per month and in recent years was paying a premium of about165 Euro per month — as shown on the Company's statements. The Complainant states that then, in May 2016 she received a letter from the Company setting out the amount deducted by it from the Fund in each of the first five months of the year – about 300 Euro per month. That amounts to about 3600 Euro per annum.

The Complainant states that on thinking about that, she realised that instead of an actual premium of about165 Euro per month she was really paying a "de facto" premium of about 465 Euro per month - much more than she thought and that she has been unaware of the reality of this procedure for an unknown period of time. The Complainant submits that since, she does not have full information on the standing of the Fund since its inception she cannot say how much has been deducted from it, in total, to date, nor how long these deductions have been in force.

The Complainant submits that to emphasise this she received a statement from the Company, dated January 2017. It shows: "premium amount 163.60 Euro Monthly, "Total premiums paid during statement period 1799.60 euro". The Statement period is 24 December 2015 to 22 December 2016.

The Complainant submits however that on the back of this page is a "Summary of transactions from 24 December 2015 to 22 December 2016." It shows a sum of 5996 Euro appropriated from the Fund by the Company under the heading "Policy fees and charges".

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The Complainant submits that this approximates to a total "de facto" premium of 653 Euro per month actually being charged.

The Complainant's positon is that the Company was for some time, unobtrusively extracting funds from the Investment side of the policy to meet premiums on the Life side and that this has had the effect of blurring the fact that there were already huge premium increases going on, she says "*for all I know, well before December 2015*, even if not so in name".

The Complainant states that all she has been seeking is a continuation of the existing life cover at a reasonable premium, which she can afford to pay, and without the threat of a massive increase continually hanging over her head. The Complainant states that looking back on the correspondence from the Company over the past years it seems to her that what the Company has been doing is continually evading the issue while trying to get her to drop this policy, either completely, or in its existing form, and take out a new policy with gains all round for the Company and losses all round for her. The Complainant says that the involuntary losses incurred by her due to the peremptory deductions from the Fund seem particularly questionable. The Complainant states that what is also questionable is the continued presenting of statements by the Company showing a "premium" of about 165 Euro when, in actual fact, the real cost to her is much greater.

The Provider's Case

The Company states that the policy is subject to review. The purpose of the reviews is to ensure that the premiums being paid are sufficient to support the policy benefits. The Company states that its terms and conditions allow for, and set out, the basis of policy reviews. The Company says that this is confirmed under the following provisions which sets out the purpose of the review as well as options available to policyholders (i.e. reduced the sum assured or increase the premium):

The policy terms and conditions states under Section 1. Definitions, part (f) titled *"policy review date: the 10th anniversary of the currency date and each 5th anniversary thereafter except that where the insured has attained age 70 the policy review date shall be each yearly anniversary of the currency date".*

Section 14. Policy Reviews: *"If the [Company] cannot insure the Guaranteed Benefit until the next Policy Review Date then the Grantees will have the option of reducing the Guaranteed Benefit to the maximum allowable by the [Company] for the premium then payable or to increase the rate of the Premium payable in the future to the amount required by the [Company]. The [the Company] may additionally require special reviews where alterations are made under paragraphs 5.c, 9, 10, 11 or 12 so as to determine the amount of Guaranteed Benefit which can be sustained until the next Policy Review Date having regard to the amount of secured benefits and the rate of premium then payable".*

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The Company submits that the Complainant states in her complaint form that she was not advised that this was a reviewable policy. The Company's positon is however, that it is clear the Complainant was advised in her policy terms and conditions, which form part of the contract which she entered into. The Company says that the workings of the policy and how it is administered were set out in the policy document issued to the Complainant on commencement of the policy.

The Company states that on 6 February 1991, it issued a letter called the notification of policy issue which highlighted to the Complainant the importance of making sure that the policy issued did meet her needs. The Company submit that in addition to this, there was a notification of her right to cancel the policy within a 15 day period from the date of the notice, if having considered the information provided in the policy was not suitable for her particular needs. It is the Company's position that the onus rested with the Complainant to ensure that she understood the nature of the policy as well as its individual features.

The Company says that if the Complainant had any issues or concerns with the information provided she should have discussed this at the time with her financial advisor.

The letter of 6th February 1991specifically stated:

> *"We would like to draw your attention to a number of aspects which are sometimes misunderstood. Please make sure that this policy meets your requirements.*
>
> *Life assurance is a very competitive long term savings and investment medium and in addition is the only financial product which can provide your family or other dependents with financial security in the event of your untimely death.*
>
> *It is however a long-term contractual commitment and therefore it is vital that you make sure that your policy meets the specific or general requirements you had in mind when you decided to take out a life insurance policy. We would urge you therefore to study carefully the terms and conditions of your policy and be sure that it is really what you want.*
>
> *We would recommend that you should pay particular attention to the following aspects of your policy.*
>
> *(i) The benefit payable on death*
> *(ii) The direct linkage between the survival benefits payable and the value of the underlying assets in the Managed Fund Series 2 attributable to your policy. Unit Values are not guaranteed and may fall as well as rise in line with fluctuating investment conditions.*

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(iii) The level of premium you must pay, the period over which premiums are payable, and whether the premium will be adjusted automatically in line with movements".

The Company states that the first review was completed in 2002 and no premium increase was required. The Company say that a second review was done in 2005 and no premium increase was required. The Company sates that a third review was done in 2010 and again no premium increase was needed. It is the Company's positon that these reviews indicated that the premium being paid at that time was sufficient to maintain the policy benefits until the next review date. The Company says that this was a clear reminder to the Complainant that her policy was reviewable and that the premium might increase in the future. The Company says that it was suggested to the Complainant in this letter that it may be an opportune time to review her life assurance needs and to speak with her financial advisor.

The Company submits that in 2015 it advised the Complainant that an increase in premium was required if the current level of policy benefits were to be maintained.

The Company states that all reviews were carried out on time and that the review letters were issued to the Complainant and her financial advisor.

The Company confirms that the Complainant did contact the Company after she received her 2015 review letter and explained it was a bad time of year and her financial advisor was on leave. The Company says that the Complainant advised that she wanted more time to review her options which the Company says it was happy to allow.

The Company states that while dealing with the Complainant's complaint in 2015, it acknowledged that the premium increase required was very high. The Company's position is that it made numerous attempts to resolve this complaint in a fair and reasonable manner by offering the Complainant various further remedies.

The Company states however, that the Complainant advised that she was not happy with any suggestion and stated she wanted to continue paying monthly premium of €163.60 for life cover of €342,869. The Company says that to date it has yet to receive a response to the review.

The Company states that it has agreed to maintain the present premium level and life cover benefit pending the outcome of the Financial Services Ombudsman adjudication. The Company says however, that this will eventually result in a negative unit holding in July 2018 due to the difference in premium paid and the cost of the life cover benefit.

The Company's policy explanation is as follows:

> *"This policy is a unit linked life assurance contract. This type of contract has the benefit of being a whole of life policy as long as the premiums continue to be paid and they are sufficient to support the policy benefits.*

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The workings of the policy mean that for each monthly premium paid units are purchased in the designated investment fund and allocated to the current unit holding. Once the units have been allocated to the unit holding all costs associated with the policy are then deducted by cancelling units equivalent to the cost of providing the life cover benefit.

Both the workings of the policy and how it is administered were set out in the policy document issued to the Complainant on commencement of the policy.

The main reasoning behind unit linked protection contracts is that it affords the policyholders the chance to contribute a premium in the early years that more than covers the cost of the provision of the policy benefits and the balance of the premium remains invested in the designated investment fund (i.e. as accumulated units). The purpose of this is two fold, as it allows the policyholders to build a fund up, that is accessible at all times or it can help to supplement the premium paid in future years allowing the same level of life cover to be maintained. This assists the policyholder as the fund diminishes the impact of the increasing cost of the benefits provided under the policy".

The Company states that this policy is primarily a life assurance contract and the workings of the policy are tailored towards ensuring that the life cover benefit can be maintained for as long as possible (i.e. whole of life).

The Complainant's concerns relate to the increase in premium communicated to her by the Company in order to maintain her policy until the next review date.

The Company says it noted the Complainant's comments that: *"this policy was entered into by me, in good faith, for what at the time seemed a reasonable premium. I had every reasonable expectation that this would continue to be the case in the future and I did not expect to be hit with the sort of massive and unreasonable increase demanded by [the Company] in December 2015"*

In addressing the Complainant's concerns, the Company provided the following explanation into the reasoning behind the large increase in premium now required following the 2015 policy review. The Company also explain the reasons for the different premiums in 2002, 2005 and 2010, as follows:

"Factors that affect premiums

(i) Indexation

The reason for the "reasonable increases" in premium in 2002 and 2005 is explained here. When the Complainant applied for her policy in 1991, she requested indexation. Indexation is one of the options available to our policyholders under these types of policy.

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Due to the long term nature of it inflation can erode the true value of the policy benefits and by increasing the sum assured and premium each year (in line with the Consumer price Index) it can help to mitigate its impact. So it is a valuable option offered to our policyholders as the sum assured automatically increases by 5% on each policy anniversary date without the need for the increase in sum assured to be medically underwritten.

However, it is important to recognise that this increase in sum assured is contingent on the premium level also being increased to cover the additional cost associated with the higher sum assured. The premium increased in line with the amount to pay for the extra 5% sum insured.

It's important to point out that Indexation is a standalone option under the policy and is not linked to the policy review condition, as the purpose of the policy review condition as set out below is to ensure that the current premium can support the policy benefits until the next review date.

In 2006, the Complainant confirmed she didn't want indexation on her policy and it was fully removed.
(ii) Policy reviews
The Company would now like to explain why there was no premium increase required for the previous policy reviews (2002, 2005, 2010) but now a large increase in premium is required for 2015.

Reviews are normally carried out every 5 years. How it works is that the fund value is projected forward to the next review date taking into account future premiums, policy fees and life cover charges. If the projected fund is greater than zero at the next review date then no premium increase will be required. This was the case for the policy reviews carried out in 2002, 2005 & 2010.

If the projected fund value is less than zero at the next review date then a premium increase is required, which was the case for the review in 2015. The premium increase required is calculated so that the projected fund value at the next review date is zero. The reason for the large increase in premium for this policy is because the life cover charges (see below) are now very high relative to the current premium paid. This is due to the Complainants age (66 years old) and the large sum assured (€342,869).

(iii) Cost of Life Cover

While I do acknowledge that the increase in premium required to maintain her policy after the 2015 review has risen considerably, when compared to the existing premium being paid. I can assure you, that the increase in premium was the best way to maintain this policy until the next review date bearing in mind the long term nature of this type of policy (whole of life) and the increasing cost of the life cover benefit.

Policy reviews are both a common and integral part of ensuring that the policy taken out by our policyholders can be maintained on a whole of life basis. I fully appreciate

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the Complainant's dissatisfaction with the level of the premium increase required. However for your information the monthly cost of providing the life cover benefit under this policy was approximately €602 per month in September 2017, whereas the monthly premium paid was approximately €163.60. As the fund value has been supplementing the premium paid over the last number of years the policy value has been eroding. It was in August 2007 that the cost of life cover increased from €160.20 to €179.72 per month. At this point we started to deduct more units from the fund to cover the cost of cover.

(iv) Fund performance

It's also important to keep in mind that the excess funds contributed to the policy were invested in a managed fund so over the long term many factors have had a detrimental impact on the fund value itself. Since this policy started economic conditions have dramatically changed and since 2000 the global economy has suffered two bear markets. These changed investment conditions have affected the value of the underlying assets held by our Managed Fund as well as significantly reducing the returns they were generating. In particular equity markets have suffered significant falls in values as a result of poor investor confidence and global economic uncertainty. Unfortunately, this type of period of decline cannot be predicted and is outside our control. However this has resulted in a lower unit price being declared, which ultimately affects the fund value. The lower fund value combined with the increasing cost of life cover has meant that the premium needed to be supplemented by the fund, which has eroded the fund value and also necessitated the large increase in premium required to maintain the policy until the next review date.
..

I've provided information of what the value of this policy was at each review date.

Date	*Units*	*Price*	*Fund Value*
01/11/2002	*1699.248*	*8.372*	*€14,266.11*
12112/2005	*1845.566*	*11.007*	*€20,314.15*
20/12/2010	*1648.691*	*9.953*	*€16,409.42*
21/12/2015	*738.6144*	*14.898*	*€11,003.88*

The current value as at 17 October 2017 is €3,618.51. The value has continued to drop on this policy as we have yet to receive a response to the 2015 review. A letter was issued to the Complainant on the 12th May 2016 confirming same.

Our policy terms and conditions allow us to deduct from the fund if the premium is not sufficient.

(v) Change in assumptions

At the of start of this policy, the assumptions used in the calculations of estimated values at the maturity date were based on investment and interest rate conditions that had existed during the 1990's.

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Prior to this policy being taken out, investment markets were producing returns in excess of 15% p.a.; however interest rates (14.5% p.a.) and inflation levels (8.7% p.a.) were also much higher relative to what has been seen over the last ten to fifteen years.

In 1999 assumption was based on a growth rate of 7% and 9% per annum. When the policy reviews were done in 2002 to 2010 the current fund value is projected forward using an assumed annual investment return of 4.8%. From 2015, our calculations now assume an investment return of 4% per annum. When a policy review is carried out it is based on the present position of the policy at that time, which cannot be forecast.

Overall, the costs associated with the life cover benefit vary and are dependent on all the factors outlined above, most notably the age of the life assured, the level of benefits and the policy value. This means that the costs and invariably the premium increase as the life assured gets older. These factors have all contributed to the increase in the premium now required to maintain the policy. If the current premium is paid then the fund value is projected to go negative in July 2018. A large premium increase is required now to cover the projected life cover charges over the period until the next review date of 1 February 2021".

The Company go on to state:

"Broker's role

I think it is worthwhile to clarify the roles and responsibilities of the parties involved in this particular dispute. [The Company's] role was to establish the policy based on the instructions received from the applicant and their financial advisor. Once the policy was established our role was to administer the policy thereafter in accordance with the policy terms & conditions and the policyholders instructions. Whereas the financial advisor is responsible for the financial advice they provide to their clients pre and post the inception date of a policy.

At outset, [the named independent intermediary] acted on the Complainant's behalf in arranging this policy. It was incumbent on them to ensure that their clients fully understand the workings and features as well as the nature of any product they recommend prior to their clients completing the application form to proceed with the policy and this extended to explaining the whole of life policy, the policy review provision, premium increases etc".

The Company states that the Company is the administrator of the policy and do not provide financial advice to the policyholders in relation to any of its policies or the options available to them. The Company submit that if the policyholders required financial advice at any time they needed to seek the services of an independent intermediary.

The Company says that both the workings of the policy and how it is administered were set out in the general provision. The Company explain that this type of contract has the benefit of being a whole of life policy as long as the premiums continue to be paid and they can

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support the policy benefits. From the outset the policy term and conditions outlined that this policy was reviewable.

The Company states that the policy documentation issued to the Complainant on the 6 February 1991 highlighted to the Complainant the importance of making sure that the policy issued did meet her needs. The Company says that in addition to this, notification was given of her right to cancel the policy within a 15 day period from the date of the notice, if having considered the information provided the policy was not suitable for her particular needs. The Company's position is that the onus rested with the Complainant to ensure that she understood the nature of the policy she had affected as well as its individual features. The Company states that if the Complainant had any issues or concerns with the information contained in the documentation she should have discussed this at the time with her financial advisor.

The Company states that as far back as 2002 its communication sent to the Complainant and her financial advisor highlighted that this policy was reviewable. Each review letter states:

"The purpose of your review is to check if the premium you are paying is sufficient to maintain your benefit index linked if applicable until the next Review date". And from 2005 it also states: *"this might be a good time to review your overall life assurance needs and take action if necessary. The reason for effecting your policy may have changed over the years and your FA will be in the best position to provide personal advice."*

The Company say that Annual Benefit Statements issued to the Complainant outline each year the current unit position and value.

From 2012 on page 5 of the Annual Benefit Statements it specifically states that: *"where applicable, reviews will be carried out on whole of life unit linked contracts. The purpose of the review is to check if the premium you pay is sufficient to maintain your policy benefits until the next scheduled review date. If following a review, your current premium is not sufficient to maintain your policy benefits, we will write to you, advising you of your options".*

The Company's position is that the workings of the policy were set out in the policy terms and conditions at outset and the onus rests with each policyholder to monitor their own policy. It states that if the Complainant required any information at any times this would have been provided on request.

The Company says that it put forward an alternative option to the Complainant in its April 2015 policy review letter that it hoped would be an alternative option for her. In 2015 the Company offered the Complainant an option of replacing her (reviewable) policy with a fixed term assurance policy. The term assurance policy offered was a fixed sum insured for a fixed term and the premium is not subject to review. The Company states what this would provide is as follows:

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- the Complainant could have transferred the current level of life cover (€342,869) to a level term policy expiring before her 90th birthday. Medical evidence was not needed.
- The life cover would transfer to the new policy and this existing policy would cancel.
- The new policy would end after the new term and no benefit would be payable.
- The premium would not be subject to review and would remain level for the term of the policy.
- If the Complainant required alternative quotes for a lower sum insured or alternative term the Company says it was happy to provide this.

The Company recommended that the Complainant discuss the matter with her Financial Advisor before she made any decision. The Company states that it hoped the offer would give the Complainant a viable alternative option. The Company state that the Complainant did not avail of this offer at the time.

The Company state that the offers/options given to the Complainant were outlined in the Company's letters dated 21 December 2015, 16 January 2016 and 31 May 2016 and that a summary of all the options given to the Complainant are as follows:

Whole of Life Policy (current policy)

1. Increase premium to €763.16 for life cover of €342,869 until February 2021
2. Reduce Life Cover to €150,362 for same premium of €163.60 until February 2021
3. Alternative option - increase premium to a level she could afford to maintain a lower sum insured. We were happy to provide different quotes.

Term Cover option (alternative option explained above)

Alternative option Term Cover — The Company offered the Complainant an option to transfer her policy. This would involve the transfer of the current level of life cover to a level term policy expiring before her 90th birthday. Medical evidence would not be needed. The life cover would transfer to a new policy and her existing policy would be cancelled.

- Increase premium to €738.62 for life cover of €342,869.00
- Reduce Life Cover to €150,000 for a premium of €328.03
- Alternative option - increase premium to a level she could afford to maintain a lower sum insured. The Company was also happy to provide different quotes.
- Encash her policy — receive current value. The then value of the policy was €3,618.51.

The Company provided the following Warning: *"The surrender value is not guaranteed and may fall as well as rise. This value assumes all premiums are paid to date. The amount payable on surrender will be calculated on the day after all completed claim documentation is received in the company".*

The Company states that it would always recommend that the Complainant speak to her financial advisor as they can help her decide what options are best for her.

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The Company states that at the date of its submission it had not received any communication from the complainant in relation to these options.

The Company says that during the term of this policy so far the Complainant has paid in a total of €46,590.12 in premiums, however, continues to have life cover for €342,869 in the event of death. The policy is issued under the provision of Section 60 of the Finance Act 1985, which relates to insurance policies effected for the purpose of paying inheritance tax.

The Company submit that due to the specific nature of the policy it was essential that the Complainants and her financial adviser monitor this policy following communication from the Company from outset and discuss her options each time. The Company states that this was not the Company's responsibility.

The Company's position is that the factors affecting the premium increase were outlined in the policy terms and conditions. And that the following should be noted:

1. *The Company was not a party to the sale.*
2. *As the supplied timeline indicates, the Complainant and her financial advisor were clearly aware of the reviewable nature of the policy in the years after the policy was taken out. All reviews were carried out on time. The Complainant was advised that it may have been an opportune time to review her life assurance needs with her financial advisor.*
3. *After genuine and varied attempts to resolve this to the Complainant's satisfaction, the Complainant has not taken any action. The Complainant then escalated the matter to the Financial Services Ombudsman.*
4. *The Company is satisfied that the policy was administered as per the terms & conditions*

This policy is a whole of life policy which essentially means that once the premiums are paid and they support the life cover benefit the life cover benefit will become payable at a future date. Therefore they are a more costly product than a fixed term assurance policy where the life cover ceases at the end of a specific period irrespective of the insured event occurring or not".

Evidence

Policy Provisions

Section 1. Definitions, part (f) titled *"policy review date": the 10th anniversary of the currency date and each 5th anniversary thereafter except that where the insured has attained age 70 the policy review date shall be each yearly anniversary of the currency date".*

Section 14 — Policy Review it states:

"On each policy review date the society will adjust the Servicing Fee to a level then being charged for similar policies and will also review the relationship between the premium then payable and the Guaranteed Benefit having regard to the amount of secured benefits at the

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time. If the Society cannot insure the Guaranteed Benefit until the next policy review date then the Grantees will have the option of reducing the Guaranteed Benefit to an amount allowable by the society for the premium then payable or to increase the rate of premium payable in the future to the amount required by the Society. The Society may additionally require special reviews where alterations are made under paragraph 5(C) 9, 10, 11 or 12 so as to determine the amount of Guaranteed Benefit which can be sustained until the next Policy Review date having regard to the amount of secured benefits and the rate of Premium then payable. In the event that a special review requires there to be an alteration in the relationship between the Premium and the Guaranteed Benefit the Grantees will have the option to adjust either the Premium or the Guaranteed Benefit or both within the limits quoted by the Society at the time".

The workings of the policy mean that for each monthly premium paid units are purchased in the designated investment fund (i.e. Managed Fund) and allocated to the current unit holding. Once the units have been allocated to the unit holding all costs associated with the policy are then deducted by cancelling units equivalent to the cost of providing the life cover. This was outlined in the policy terms and conditions as follows:

Sections (6) Unit Allocations

"Each month on the Monthly Valuation Date Units are realised at the Bid Price ruling at that date to cover the cost of the Servicing Fee and Mortality Charge as specified in the paragraph 19 (titled ˝Charges") as well as to purchase With Profits sums insured in accordance with the percentage specified in the Schedule and the provisions of paragraph 7(a) (titled ˝Cash Fund and With Profit Allocations'). The total Units in force may also be increased by any Renewal bonus declared under paragraph 20 (titled "Renewal Bonus").

Section 19- Charges

A1 "Each month on the monthly valuation date units are encashed at the bid price ruling at the date to pay

(i) The policy servicing fee is £1.50 except as amended following a review on a policy review date

(ii) The cost of the life insurance cover. This cover is equal to the excess of the guaranteed death benefit over the total of the bid value of units attaching and the surrender value of the With Profit Sum Insured and declared bonuses. The cost of such cover shall be calculated by the Society having regard to the sex, date of birth and smoking habits of the Insured as declared on the proposal and any additional premium imposed for underwriting reasons which has been communicated to the Insured. The rates used for the purpose of this paragraph shall be those deemed by the Society from time to time to be appropriate to this class of policy".

<u>Annual Statements</u>

2009, 2010, 2011 – Premium and Current Values are set out

Annual Benefit Statement for 2012 states:

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"Glossary
Policy fees and charges – this is the monetary value of certain fees and charges deducted from your policy during the statement period. Your policy may have been subject to additional charges in accordance with your policy's terms and conditions which are not captured here but are reflected in the "Movement in period" section"

A summary the transactions is then set out. The Company set out that the Payments made amounted to €1,963.20 and that the Policy fees and charges amounted to a minus figure of €3,731.72. There was no further breakdown as to what the fees and charges entailed, that is, that the life cover charge exceeded the premiums paid.

The Company did advise in this statement that "Where risk benefits are paid for by deduction of units from fund(s), this will have the effect of decreasing your fund value over the lifetime of the policy". However, it did not specifically state that this was the position at this stage.

The Company then advised that: Where applicable reviews will be carried out on whole of life unit linked contracts. The purpose of the review is to check if the premium you pay is sufficient to maintain your policy benefits until the next scheduled review date. If following a review, your current premium is not sufficient to maintain your policy benefits, we will write to you, advising you of your options".

The 2013 Annual Benefit Statement set out the same information, but advised that the Payments made amounted to €1,963.20 and that the Policy fees and charges was a minus figure of €4,192.02.

The 2014 Annual Benefit Statement set out the same information, but advised that the Payments made amounted to €1,963.20 and that the Policy fees and charges was a minus figure of €4,716.18.

The 2016 Annual Benefit Statement set out the same information, but advised that the Payments made amounted to €1,963.20 and that the Policy fees and charges was a minus figure of €5,299.35.

The 2017 Annual Benefit Statement set out the same information, but advised that the Payments made amounted to €1,799.60 and that the Policy fees and charges was a minus figure of €4,996.58.

<u>Policy Review Communications</u>

2002 Review – *"Your review indicates that the current level of premium you are paying is sufficient to support the policy benefits until the next review date. This assumes that a growth rate of 4.8% per annum is achieved until the date of your next review, (this cannot be guaranteed as markets can go down as well as up)".*

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Current premium is shown, but the true cost of life cover is not set out. In particular the Company does not specifically advise whether the premiums being paid were enough on their own to cover that cost, or whether the fund was supporting the cost of life cover.

2005 Review– *"Your review indicates that the present premium you are paying is sufficient to maintain your benefits until the next Review date. Review information is enclosed. We have assumed an investment growth return of 4.8% per annum in our calculations and payment of all future premiums. Actual investment returns in the future may be greater or less than this".*

Current premium is shown, but the true cost of life cover is not set out. In particular, the Company does not specifically set out whether the premiums being paid were enough on their own to cover that cost, or whether the fund was supporting the cost of the life cover.

2010 Review– *"Your review indicates that the present premium you are paying is sufficient to maintain your benefits until the next Review date. Review information is enclosed. We have assumed an investment growth return of 4.8% per annum in our calculations and payment of all future premiums. Actual investment returns in the future may be greater or less than this".*

Current premium is shown, but the true cost of life cover is not set out. In particular, the Company does not specifically set out whether the premiums being paid were enough on their own to cover that cost, or whether the fund was supporting the cost of the life cover.

Frequently Asked Questions that accompanied the Reviews

"What is a flexible whole of life unit-linked Policy with premiums payable throughout life. The Policy is subject to periodic policy Reviews.

What is a Policy Review?

Policy reviews are inbuilt into your Policy Conditions and are carried out at regular intervals during the course of your Policy. The purpose of each Review is to check your Policy to ensure that the premium you are paying is sufficient to support your benefits until the next Policy Review. At each Policy Review we specify the next Review Date.

What does this Review mean for my Policy?

Your Review indicates that the present premium you are paying is sufficient to maintain your benefits until the next Review date. However at future Reviews in order to support your benefits an increased premium may be necessary".

The Company was asked by this office to provide evidence of when the it had begun to supplement the cost of life cover from the policy fund. The Company advised that the fund value has been supplementing the premium paid since August 2007. The Company advised that in August 2007 the cost of life cover increased from €160.20 to €179.72 per month. The

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Company advised this office that at this point it started to deduct more units from the fund to cover the cost of cover.

While the Company's position is that it had advised at the 2002 to 2010 reviews that there was enough between the premium and the fund value to cover the cost of life cover until the next review dates, I consider that this could have been more explicitly outlined in the communications from the Company.

It was not until March 2015 that the Company advised the Complainant of the Policy fees & charges, in particular that the premium that she was paying was not enough on its own to pay for the policy benefits. This information was only supplied to her following her specific request for same.

19th November 2002 – Company to the Complainant
"The purpose of such reviews is to calculate the level of premium required to support policy benefits (the sum assured), index linked if applicable, until the next review date.
Your review indicates that the current level of premium you are paying is sufficient to support the policy benefits until the next review date. This assumes that a growth rate of 4.8% per annum is achieved until the date of your next review, (this cannot be guaranteed as markets can go down as well as up)".

19th December 2005 – Company to the Complainant

> *"The purpose of the Review is to check if the premium you are paying is sufficient to maintain your benefits, index linked if applicable, until the next Review Date, which is 1st February 2011.*
>
> *Your Review indicates that the present premium you are paying is sufficient to maintain your benefits until the next Review date. Review Information is enclosed.*
>
> *We have assumed an investment return of 4.8% per annum in our calculations and payment of all future premiums. Actual investment returns in the future may be greater or less than this.*
>
> *This might be a good time to review your overall life assurance needs, and take action if necessary. The reason for effecting your Policy may have changed over the years and your Financial Advisor will be in the best position to provide personal advice".*

Frequently Asked Questions

"What is a flexible whole of life unit-linked Policy with premiums payable throughout life. The Policy is subject to periodic policy Reviews.

What is a Policy Review?
Policy reviews are inbuilt into your Policy Conditions and are carried out at regular intervals during the course of your Policy. The purpose of each Review is to check your Policy to ensure

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that the premium you are paying is sufficient to support your benefits until the next Policy Review. At each Policy Review we specify the next Review Date.

What does this Review mean for my Policy?

Your Review indicates that the present premium you are paying is sufficient to maintain your benefits until the next Review date. However at future Reviews in order to support your benefits an increased premium may be necessary".

20th December 2010 – Company to the Complainant
"The purpose of the Review is to check if the premium you are paying is sufficient to maintain your benefits, index linked if applicable, until the next Review Date, which is 1st February 2016.

Your Review indicates that the present premium you are paying is sufficient to maintain your benefits until the next Review date. Review Information is enclosed.

We have assumed an investment return of 4.8% per annum in our calculations and payment of all future premiums. Actual investment returns in the future may be greater or less than this.

This might be a good time to review your overall life assurance needs, and take action if necessary. The reason for effecting your Policy may have changed over the years and your Financial Advisor will be in the best position to provide personal advice".

Frequently Asked Questions

"What is a flexible whole of life unit-linked Policy with premiums payable throughout life. The Policy is subject to periodic policy Reviews.

What is a Policy Review?
Policy reviews are inbuilt into your Policy Conditions and are carried out at regular intervals during the course of your Policy. The purpose of each Review is to check your Policy to ensure that the premium you are paying is sufficient to support your benefits until the next Policy Review. At each Policy Review we specify the next Review Date.

What does this Review mean for my Policy?

Your Review indicates that the present premium you are paying is sufficient to maintain your benefits until the next Review date. However at future Reviews in order to support your benefits an increased premium may be necessary".

21st December 2015 – Company to the Complainant

"I am writing to tell you that we reviewed your policy. We do this to check if the premium you pay is enough to meet the cost of your life cover until your next review ..

/Cont'd…

If you want to keep the amount of life cover benefit that you have, then based on our review you will need to increase the amount that you pay. ..
Options to consider:

1. *Increase your premium from €163.60 to €763.16 monthly …*

We can only keep your policy in force as long as it has a fund value to pay for your policy benefits"

11th January 2016 – Company to the Complainant – complaint response:

"The way this works is, at the start of your policy the premium you paid was at a higher rate than the actual cost of providing cover. In order for us to be sure that there are always enough units in your fund to support the increasing cost of cover, a policy review clause is built into your policy terms and conditions.

The way this works is, at the start of your policy the premium you paid was at a higher rate than the actual cost of providing cover. This allows you to build up a fund value to support the increasing cost of your cover as you get older. For us to make sure you always have enough units in your fund to pay for the increasing cost of life cover, reviews are carried out on your policy.

At the review dates we look at the cost of providing life cover along with the value of your fund" … We reviewed your policy on the 01 November 2002 and subsequent reviews were carried out on the 12 December 2005. The results of these reviews showed you had enough units to cover the cost of life cover and no alteration was needed".

11th January 2016 – Complainant's financial consultant to the Complainant

"1. I totally understand that you are unhappy with the suggested increase in premium, we have had many other cases like this in the past and no customer likes to see such an increase.
2. However I believe the increase is within the Terms and Conditions of the original policy which had the advantage of providing a high level of cover reasonably cheaply, but the disadvantage of a non-guaranteed premium. (This is why [the Company] can review the price at this point in time).
3. In other cases like this we have arranged alternative cover for clients to resolve the issue".

4th February 2016 – The Company to the Complainant explaining what is meant by a paid up policy (Section 16 of the policy terms and conditions).

29th March 2016 – Complainant – *"In particular, I am trying to ascertain how much was held in the fund on the review dates and the details to show me how an investment return of 4.8% would have yielded the necessary funding for the policy without requiring dramatic increases in the monthly premium".*

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20th May 2016 – Complainant to the Company – *"Given what has transpired, you appear to be leaving me with no other option than to encash the policy, which you say is currently valued at nine thousand three hundred and forty five Euro 33 cents".*

Letter of same date – *"Does this mean that, in addition to the premium of 163.60 Euro which I pay each month, [the Company are, in effect, also taking an extra approximate 370 Euro per month from the available funds? My understanding was, that until a decision was reached by me on this matter, no further action would be taken by [the Company]"*

31st May 2016 – The Company advised the Complainant of the true cost of cover, that is the amount over and above the amount she was paying in premiums. The Company also advise of the then current value of €9,309.82.

11 June 2016 – Complainant to the Company

"It appears from the correspondence that the premiums I paid were invested with the object of making provision for a payment in event of my death, and presumably profit for themselves. There have been modest increases in the premium since its inception in 1991. However, the current increase of 600 Euro per month is far in excess of anything in the past .."

30th October 2017 – Complainant to this office with response to the Company submission and offer:

"Having considered the extensive documentation from [the Company], I would merely comment as follows: (a) I do not feel that they have dealt with the concerns which I have raised, and which are set out in my letter to you of 10/2/17; and (b) I wonder if the financial re-arrangement referred to in their letter of 28/10/15 is indicative of an attempt to correct "getting their sums wrong": something which I also queried in my letter".

9th November 2017 – the Complainant's comments on the Company's October benefit statement:

"I note that the "Total premiums paid", given as 1799.6 Euro appears to cover an eleven month period rather than a year and there is again no direct reference to the fact that a sum of 3586.60 Euro has been deducted from the investment funds to increase the real cost to me of maintaining the cover and giving a de facto premium of c 490 Euro per month rather than the 163.60 per month given in the statement".

The Company duly responded to the Complainant's submission of 30th October 2017.

We have agreed to maintain the present premium level and life cover benefit pending the outcome of the Financial Services Ombudsman adjudication. However, this will result in a negative unit holding accumulating under the policy due to the difference in premium paid and the cost of the life cover benefit".

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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 9th 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, the final determination of this office is set out below.

The issue for investigation and adjudication is whether the Company has correctly and reasonably administered the policy, in particular in relation to the reviews of the Policy and communications concerning these reviews.

Analysis

The policy that the Complainant took out in 1991.

The policy is a unit linked life assurance contract, which has the benefit of being a whole of life policy as long as the premiums continue to be paid and they can support the policy benefits. The main reasoning behind a unit linked protection contract is that it affords the policyholder the chance to pay a premium in the early years that more than covers the cost of the life cover benefit with the balance of the premium remaining invested in the designated investment fund. The purpose of this is twofold, it allows the policyholder to build up a fund, that is accessible at all times or it can help to supplement the premium paid in future years allowing the policy benefits to be maintained. On this basis the policy allows for ongoing reviews in order to establish if the premium being paid and the investment fund are sufficient to maintain the policy benefits to the next scheduled review date.

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I would point out that even though a unit-linked whole-of-life policy allows the policyholder to build up a cash lump sum over and above what is needed to pay for the life insurance, this usually only happens if the fund performs much better than expected. It can be the case that the policy would have a little or no cash value. Such policies are not meant to be savings plans.

The cost of providing the policy benefits increases as the life assured gets older. In effect, the accumulated fund diminishes the impact of the increasing cost of the policy benefits thereby minimising the increase in premium required at each review date. However, if the premium level and the fund value cannot maintain the policy benefits until the next review date some action needs to be taken (either increase the premium or reduce the sum assured). If the fund value has been completely exhausted, or is nearing a nil balance, the level of the premium increase required may be significant.

I accept that the documentation sent to the Complainant in respect of her plan did not set any expectation that the protection benefits and payment would remain at the same level throughout the lifetime of the plan. I also accept that the Company has advised the Complainant at all times of the certainty of a policy reviews occurring.

While I accept that the Company has for the most part correctly administered the policy and carried out the review of the policy in a correct manner I consider that greater communication by the Company was required over the years as regard the extent to which the fund value was being used to support the cost of cover.

The Company was asked by this office to provide evidence of when the Company had begun to supplement the cost of life cover from the policy fund. The Company advised that the fund value has been supplementing the premium paid since August 2007. The Company advised that in August 2007 the cost of life cover increased from €160.20 to €179.72 per month. The Company advised this office, that at this point it started to deduct more units from the investment fund to cover the cost of cover.

While I accept that a Provider does not have to notify a policyholder in advance of increasing the annual charges made for mortality rates, I do consider it reasonable that a Provider communicates at the earliest opportunity, be that be at policy anniversary date or at review stage, that the premium being paid is no longer sufficient on its own to cover the cost of providing the policy benefits.

The Company's position is that it had advised at the 2002 to 2010 reviews that there was enough between the premium and the fund value to cover the cost of life cover until the next review dates, I consider that this could have been more explicitly outlined at these times, and over the years in the communications that issued from the Company.

It was not until March 2015 that the Company advised the Complainant of the breakdown of the policy fees & charges, in particular that the premium that she was paying was not enough on its own to pay for the policy benefits. It must be noted that this information was only supplied to the Complainant following her specific request for it, in March 2015.

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In the above regard I note that in the Annual Benefit Statements, the Company highlighted what the Policy fees and charges were in comparison to the premium payments that were being paid by the Complainant. However, it was only in 2015 that the greater level of information was supplied to the Complainant by the Company, that is that the premium payments were not enough on their own to cover the policy benefits, and in such circumstances the balance would be taken by the Company from the policy fund.

As stated above, it was necessary for the Company to reduce the policy fund to support the premium payments to cover the benefits. However, the information that was communicated by the Company, to the Complainant over the years was that:

> *"Your review indicates that the present premium you are paying is sufficient to maintain your benefits until the next Review date. Review information is enclosed. We have assumed an investment growth return of 4.8% per annum in our calculations and payment of all future premiums. Actual investment returns in the future may be greater or less than this".*

While there may be an implication here that it was not only the premium payments that were being considered when coming to the above conclusion *(that the present premium was sufficient to maintain benefits)* the reality is that the fund value was also being considered in the calculations. However, the fact the premium payments were not meeting the cost of the policy benefits was not so clearly communicated.

With regard to the provision of information to a consumer the Consumer Protection Codes state that a regulated entity must ensure that all information it provides to a consumer is clear and comprehensible, and that key items are brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information. I accept that there was a continuing failure by the Company to correctly inform the Complainant about how the policy was being administered relative to the contractually required Reviews.

The importance of the communication of the action of reducing the fund was that the Complainant would have had the choice at an earlier date, as to whether to continue with the policy or withdraw from the policy and take the benefit of a higher surrender value. The fact that the Complainant would have known that the value was changing over the years did not mean that she was aware of the reason for such changes in value, other than in the latter years when the "Policy fees and charges" were outlined. The actual breakdown of what those "Policy fees and charge" entailed, was not communicated until 2015, when the complaint arose. The information that was then supplied showed that in fact the premium payments had not been sufficient on their own, for some to time to meet the life cover charges. The information supplied to the Complainant showed that the fund values quoted by the Company were changing from year to year, but those changes could reasonably be taken to happen for other reasons such as the fluctuating values due to the investment market rising and falling.

I do not accept that it was reasonable of the Company to merely advise the Complainant from Review to Review that her premium payments were sufficient to cover the cost of

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benefits in the future, without telling her that the cost of cover had already begun to exceed the premium payment, and that the fund value was being relied upon to cover the excess cost for some time. I also cannot accept that it was reasonable of the Company when the formal reviews of the policy took place, not to explain that the Complainant's premium payments had not been sufficient to cover the Risk Cost for some time. I do not consider it reasonable to just outline a ball park figure for "Policy fees and charges" without further clarifying what the elements of those charges were going towards, particularly when the investment fund had begun to supplement the cost of the policy benefits, over and above what was being paid in premiums.

I consider that the need for the fullest disclosure of information on a policy is particularly required where the cover being provided is Life Assurance cover.

With regard to the provision of information to a consumer the Consumer Protection Codes state that a regulated entity must ensure that all information it provides to a consumer is clear and comprehensible, and that key items are brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information. I accept that there was a continuing failure by the Company to correctly inform the Complainant about how the policy was being administered relative to the premium payments.
Section 51 (5) of the Financial Services and Pensions Ombudsman Act 2017 states that:

"(a) conduct that is of a continuing nature is taken to have occurred at the time when it stopped and conduct that consists of a series of acts or omissions is taken to have occurred when the last of those acts or omissions occurred, and

(b) conduct that consists of a single act or omission is taken to have occurred on the date of that act or omission".

While I accept that there was a lapse by the Company in regard to the communications from the Company, I do not accept that this lapse is sufficient to warrant a direction for the Company to maintain the benefits as they were and at their existing lower cost. I accept that the issue here is one of a requirement for greater and better communication from the Company and for the identified lapse in same I accept that a compensatory payment is merited in this case.

Having regard to the particular circumstances of this complaint, in particular the failing that have been noted above, it is my Legally Binding Decision that the complaint is partially upheld and the Company is to make a compensatory payment of €5,000 (five thousand euro) to the Complainant. The Complainant must now decide what she wishes to do in relation to the cover and premium options that are now being offered by the Company. In considering the options in relation to the current policy cover, or the alternative policy options, it would be prudent that independent advice be sought by the Complainant.

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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)(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 €5,000, 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

10th 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.