An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2018-0120
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 complaint concerns the reviewable nature of a Whole of Life Policy taken out in 1992.

The complaint is that the Company did not implement policy reviews correctly up to 2012 (when the Company agreed to freeze the benefit amount until review of the policy in 2015). The Company's suggested increase in premium payments at the 2015 review were not taken up by the Complainant, instead the life cover was reduced to match the premium being paid. The Complainant is now seeking to have life cover restored at the same level of benefit for the original premium.

The Complainant wants the Company to restore the original life cover benefit on the policy of €126,974 at a monthly premium of €77.73.

The complaint is that the Company has not correctly or reasonable administered the policy.

The Complainant's Case

The Complainant states that in 1992, he was advised by the Company's, Regional Manager, to take out a Section 60 policy. At the same time the Complainant also took out a Minimum Cost Joint Whole of Life (Section 60) plan. It is the Complainant's positon that he was not

advised that the premiums could be reviewed at specified review dates and this was not evident from the illustrations provided or from the policy schedule.

In 1997, the Complainant became aware that the premium could increase during the life of the unit linked policy. He then realised that he had taken out a policy which he would never have considered purchasing if the premium structure had been properly explained. The Complainant states that after correspondence to and from the Company, in February 1998, the Complainant's mind was put at ease and fears allayed about major changes in the monthly premium.

A premium review took place in April 2003 and the Complainant was advised that the present premium was sufficient to maintain the benefits until the next Review Date (June 2012). In April 2012, at the second premium review, the Complainant was advised that in order to maintain the existing cover the monthly premium would have to increase from €77.73 to €546.95 until the next review date of 1st June 2017. The Complainant states that he had been paying the initial premium for almost 20 years and was now faced with a totally unexpected increase. The Complainant states that this correspondence came as a huge shock and created distress to both him and his wife. Given their age and health, they were not in a position to arrange any alternative life assurance cover.

The Complainant states that on reviewing the policy conditions, it came to light that the Company should have, in accordance with the policy terms and conditions, carried out a policy review in 2004 and annually thereafter. The Complainant states that the Company acknowledged that it did not carry out the premium reviews on the dates set out in the policy Terms and Conditions.

It is the Complainant's positon that had such policy reviews occurred this would have given him possible alternatives, perhaps some eight years earlier when both policyholders were younger and in better personal health. The Complainant argues that by not carrying out policy reviews at the scheduled review dates outlined in the policy terms and conditions, the Complainant was unaware of the compounding requirement for a massive increase in premium and was not prompted to seek alternative life assurance cover.

The Complainant states that each year for eight years the Company failed to update the Complainant on premium requirements. The Complainant says that significant premiums have now been paid into this Policy and since June 2015, the premium has remained at €77.73 and the Life cover benefit has been reduced to €14,619. The Complainant says that should he continue to pay the monthly premium, the life cover benefit will never exceed total premiums paid. The Complainant says he believes that the Company should be held accountable for depriving him of the 'effective warnings signs' which annual premium reviews would have highlighted in the policy. It is the Complainant's position that the Company should not be afforded total discretion on the timing of the policy reviews as it has significant consequences in affording consumer protection to the policyholder.

By way of background the Complainant explains that in the early 1990's he and his wife realised they had no life cover and were put in touch with the Company's, Branch Manager.

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The Complainants say that it was suggested that they should consider taking out Section 60 policies for Estate Duties.

The Complainant states that at the time, they requested a minimum sum assured of circa IR£140,000 and were quoted a fixed monthly premium of IR£186.30 payable for 27 years. It was then suggested that as an alternative, they should take out two policies — (1st policy) A Minimum Cost Joint Whole of Life 2nd Death (Section 60) plan with a minimum sum assured of IR£100,000 with a monthly premium of IR£103.50 and a payment term of 27 years and (2nd policy) an Inheritance Tax High Protection Plan also with a minimum sum assured of IR£100,000 but at a lower monthly premium of IR£60.61 The Complainant states that he remembers distinctly asking why there was a price difference and it was explained that premiums relating to the Minimum Cost Joint Whole of Life would be taken until 1st May 2019.

However, the premiums in relation to Inheritance Tax High Protection would continue throughout lifetimes and hence the lower cost. The Complainant submits that this was confirmed in writing in the Branch Manager's letter dated 30th April 1992 pertaining to both policy options.

It is the Complainant's position that the Company's Regional Branch Manager did not advise them of a 'premium review' or 'review dates' in respect of the Inheritance Tax High Protection Plan. The Complainant says that they proceeded with an application for IR£100,000 second death joint life cover under both the Minimum Cost Joint Whole of Life 2nd Death (Section 60) plan and the Inheritance Tax High Protection Plan, on the basis that both plan types would provide a minimum death benefit of IR£100,000.

The Complainant states that the Company contend that the policy was taken out through an Intermediary and he says that this is not true. In this regard the Complainant refers to the Intermediaries File Note dated 14th April 1992 which stated that:

"[The Company's Regional Branch Manager] also confirmed for me that [the Complainant and his wife], had taken out a Section 60 Policy through [the Company], recently. All contracts are presently being prepared. When matters are finalised, the contracts will be forwarded directly to our offices here at [Broker's address]".

The Complainant states that on the Intermediary Client File there are no copies of any Proposal Forms completed by the Complainant. The Complainant submits that this is not surprising as the Proposal Form was completed at the Company's office in the company of the Company's Regional Branch Manager, Mr S.

The Complainant submits that on 8th April 2013, he requested a copy of the completed Proposal Form pertaining to a Policy from the Company. The Complainant states that the Company advised that the original proposal was for a single life policy for his wife only with

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a sum assured of IR£140,000, but this was followed by a proposal amendment to issue a joint life 2nd death with a sum assured of IR£100,000.

The Complainant points out that the original proposal for the initial Policy was only completed and signed by his wife. The Proposal Amendment which was signed by both the Complainant and his wife does not refer to any existing proposal. The Complainant states that there is no Proposal number or date of any proposal shown.

The Complainant states that on 16th June 1992 he received notification that the policy had issued to the financial advisor. The Complainant says that on receipt of the policy documents, all appeared in order i.e. 'Guaranteed Death Benefit of IR£100,000 and a monthly premium on the 1st of every month of IR£60.61 from 01/06/1992 until death of Survivor of Insured'. The Policy Schedule relating to the policy makes no reference to a Policy or Premium Review. The Company state that the Policy Review was outlined in the Policy Conditions. The Complainant states that Policy Conditions also refer to 'With Profit Benefits' and 'Cash Funds', but he understood these do not apply to their policy. The Complainant's position is that the Premium Review is effectively "lost" in the policy conditions.

The Provider's Case

The Company's position is that the Complainant was aware as far back as January 1998 that this policy was reviewable and that the premium cannot be maintained at the current level (as this would contravene the policy conditions). The Company submit that the Complainant's complaint is that they were unaware that their policy was reviewable does not appear to be logical bearing in mind all the foregoing. Additionally, all of these issues arose a considerable period of time ago.

As regards the sale of the policy, the Company states that it did not sell this product to the Complainant. The Company says it is important to point out that this policy was originally sold to the Complainant in June 1990 by an independent financial adviser. The Company says that from the outset, the independent intermediary acted on the Complainant's behalf in arranging this policy. The Company says that the financial advisers are responsible for the financial advice they provide to their clients pre and post the inception date of a policy, and they were also responsible for explaining both the workings and features of the product prior to the Complainant completing the application form and this extended to explaining the whole of life policy, the policy review provision etc.

The Company states that the Company is the administrator of the policy and do not provide financial advice to its policyholders in relation to any of its policies or the options available to them. The Company's positon is that if the policyholders required financial advice at any time they needed to seek the services of their own financial advisers. The Company says that an onus also rested with the Complainant to ensure that he was familiar with both the workings and features of the policy including the policy review provision.

As regards the Policy Reviews, the Company states that the first policy review was carried out in 2003. The Company says that apart from checking whether any premium increase was

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required, this also served as a clear reminder to the Complainant that his policy was reviewable. The Company states that no increase was required at that time and the Company says it advised the Complainant that no increase would be required until the next specified review date of June 2012.

The Company's position is that no increase was required between 2003 and 2012 so the Complainant's suggestion that increases during this period would have prompted them to seek alternative cover is not correct.

The Company says that no increases would have been required and it suggested to the Complainant in 2003 that he review his life assurance needs.

The Company states that the second review was carried out in April 2012 and it was confirmed that the increase in premium was needed if the Complainant wanted to maintain the life cover of €126,974. The increase at this time would have been from €77.97 to €546.95 per month.

The Company submits that in an effort to resolve the matter and in recognition that the policy could have been reviewed annually (and that this would have been more consistent with the policy terms and conditions) — it agreed to maintain the policy benefits at the same premium from June 2012 to June 2015. The Company says that given no increase in premium was required during 2003 to 2012; it believes that this was a fair and proportionate resolution. The Company says it gave the Complainant stability and certainty on the premium for a 3 year period and also financially benefited him in the amount of €16,905.34.

The Company says that this agreement was made even though the last review in 2012 determined that an increase in the monthly premium to €546.92 was needed to support the sum insured. The Company states that it maintained the life cover of €126,974 and the premium at the same level between 2012 and 2015 when an increase was required and it wrote off the negative unit holding to the value of €16,905.34.

The Company submit that it was confirmed to the Complainant (letter dated 12 December 2013) that in June 2015 when the policy was next reviewed, there would have been a negative value on the policy because the current cost of life cover was approximately €429 each month. The monthly premium of €77.73 was therefore not enough to maintain this cost. The Company states that as a result there was a much greater negative value in 2015 than would have been the case had the premium increased or sum insured reduced in 2012.

The Company says that it advised the Complainant that in normal circumstances, this negative unit holding would have been included in the calculation to determine the increase needed to maintain the sum insured. The Company state however, that in 2015 it did not include the negative value in the next policy review. The Company states that it altered the negative value to zero to ensure that the increase needed in 2015 would be kept to a

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minimum. The Company states that unfortunately the Complainant was not happy with any of its offers or options.

The Company says that in early 2014 the Complainant visited the Company at its offices to discuss his options again. The Company submit that in a further effort to try to resolve this dispute and looking forward to future policy reviews it provided the Complainant with revised premiums if the policy was reviewed annually from 2015 to 2024 in an effort to spread the cost of Life Cover. The Company says that this was its final offer to maintain the existing policy at its current level of €126,974. The Company advised the Complainant what the premiums would increase to going forward from 2015 to 2025 if he wanted to maintain the current level of cover of €126,974. The Company states that again with these revised premiums from 2015 until 2025 it altered the negative value to zero each time to ensure that the increase needed in premiums from 2015 to 2025 would be kept to a minimum.

Evidence

Policy Provisions

"(f) Policy Review Date
The tenth anniversary of the Currency Date and each fifth anniversary thereafter except that where the Insured has attained age 70 the Policy Review date shall be each yearly anniversary of the Currency Date".

14. Policy Reviews
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 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. The Society 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".

19. Charges
A.1 Each month on the Monthly Valuation Date Units are encashed at the Bid Price ruling at that date to pay
(i) The policy Servicing Fee which is £1.50 except as amended following a review on a Policy Review Date.
(ii) the cost of life insurance cover. This cover is equal to the excess of the Guaranteed Benefit over the total of the Bid Value of Units attaching and the surrender value of the With Profits 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

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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.
(iii) any levy imposed by the Government which is chargeable against this Policy.
(iv) Upon payment of the first monthly or yearly Premium, or any subsequent increase in the Guaranteed Benefit, Units are encashed at the Bid Price ruling at that date to pay any Stamp Duty which is chargeable against this policy.

A.2 Encashment of Units to pay charges shall mean a debit against the number of Units credited to the policy in the Managed Fund Series 2 or the Cash Fund Series 1, if deemed appropriate by the Society".

Correspondence dealing with the Review of the Policy

Illustration that is said to have issued in 1992

"On second death the amount payable is the encashment value of the plan subject to a Guaranteed Minimum Payment of 100000 until the review date"

24th November 1997 – Company to the Complainant

"You will note that under the .. Policy that a review date is clearly mentioned on the quotation form and this matter is further addressed in the policy conditions which our Head Office will confirm to you shortly"

28th November 1997 – Complainant to the Company questioning the renewable nature of the policy

8th January 1998 – Company to the Complainant

"Plans of this nature have in-built policy reviews … note that it indicates that the premiums are reviewable. .. You will see that section 14 of the policy deals with "policy reviews" and indicates that at a review date the premium and benefits are reviewed to see if the premium can support the then level of benefits to the next review date".

11th February 1998 – Company to the Complainant

"I note that you say you were not informed at outset that the premium could be increased. However you will see from the quotation that it does indicate that the death benefit applies "until the review date". This as you know is followed up by references in the Cooling Off notice asking you to ensure that you have read the policy and that it suited your circumstances and in the policy itself the reviews were explicitly covered".

23rd February 1998 – Company to the Complainant

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"I am pleased to advise that based on a number of assumptions, as detailed below, the current level of premium will support the current level of cover (100,000) until June 2015. This projection assumes that our current rates of policy and mortality charges apply until June 2015. They also assume a growth rate in the Managed Fund of at least 7% per annum during this period".

21st November 1999 – Company to the Complainant

"However as the policy stands the premium of IR£60 is payable monthly for as long as the policy remains in force".

24th April 2003 – Company to the Complainant

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

"Frequently Asked Questions

What is a Policy Review?

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"

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".

18th July 2007 – Letter from the Company to the Complainant's Broker

"Further to your telephone call on the above mentioned policy. Please find detailed below confirmation of the unit transactions on this policy, on an annual basis, from 1999 to date. Units purchased refers to all units bought with premiums paid. Units sold refers to all units that were deducted to pay for the cost of the life cover and the policy fee.

	Units purchased	*Units sold*
01/07/2003 to 30/06/2004	*103.6661*	*94.1793*
01/072004 to 30/06/2004	*95.6212*	*106.0077*
01/07/2005 to 30/06/2006	*83.5053*	*111.9871*
01/07/2006 to 30/06/2007	*75.2905*	*121.5999*

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10th April 2012 – Company to the Complainant

"When the present premium no longer maintains the Policy benefits we regret your Policy will lapse. Assuming an investment return of 4.8% per annum and continuation of payment of the present premium we estimate that the lapse will occur on the 1st August 2012".

Frequently asked questions

What does this mean for my Policy?
In order to maintain your benefits at the present level until your next Policy Review your premium must be increased".

16th April 2012 – Company to the Complainant

"The purpose of the Review is to check if the premium you are paying, is sufficient to maintain your benefits, until the next Review Date, which is the 1st June 2017.

Your Review indicates that a revised monthly premium of €546.95 is necessary in order to maintain your present benefits of €126,974.00 to the next Review Date"

4th May 2012 – Complainant to Company

"[*W]e ask that [the Company] provide us with sufficient time to understand and fully ascertain the implications of the rise in premiums and also provide us with time to quantify any inheritance tax liabilities. For this extended period, we would ask [the Company] to continue to maintain the current policy benefits at the current premium".*

4th May 2012 – The Company to the Complainant

"I can confirm that we will maintain the present life cover on your policy at the current premium until 1 August 2012"

13th June 2012 – Company to the Complainant

"Your policy was previously reviewed in April 2003. This review indicated that the premium your were paying at that time was sufficient to maintain your policy until the next review date in June 2012. It is important to note the review takes into account the fund value on your policy and allowing for it to be used to help pay for the cost of cover when necessary. … As set out in in your policy terms and conditions these units can be used to help subsidise the cost of your cover in future years if the amount you are paying is less than the cost of cover. …

As you get older the cost of cover increases and the cost of the cover has been in excess of the premium amounts that you have being paying. ….Regrettably the

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cash value on your policy will continue to decrease due to the increased cost of life cover. The difference between the cost of this cover and the existing monthly premium is taken from the fund value of the policy on a monthly basis in order to maintain the cover on the policy and unfortunately there are no longer sufficient funds to continue doing so. The current cost of cover is approximately €333.00 per month which is significantly higher that your current monthly premium of €77.73".

30th August 2012 – Company to the Complainant's Broker (copied by the Company to the Complainants on 10th September 2012)

"I can confirm in this instance we are willing to allow the current premium maintain the life cover until June 2015. Please note, should [the policyholders] go ahead with this option we estimate that in June 2015 the fund value of this policy will be -€12,072 and as a result we estimate the premium increase required in 2015 will be €543.67".

10th September 2012 – E-mail from the Complainant's Broker to the Company

"Can you arrange to extend the cover on this policy further as a decision has not been made regarding this policy due to unforeseen circumstances".

20th September 2012 - E-mail to the Company from the Complainant's Broker

"Unfortunately, [the Complainant] has been unwell and was recently hospitalised for 10 days"

23rd October 2012 – E-mail from the Company to the Complainant's Broker

"I will hold cover until 16 November 2012 on this case, we will have no option to lapse this policy if no response is received as the cost of providing life cover in considerably in excess of the premium payable".

15th November 2012 – Complainant to the Company

"We were never advised when we took out this policy that the monthly premium can change .. We want to continue with the current level of cover at the current premium".

12th December 2012 – Company to the Complainant's Broker

"Unfortunately we are not in a positon to offer a guaranteed whole of life policy at the current premium. However, I confirm that the current premium of 77.73 will maintain the life cover of 126,974 until June 2015".

24th February 2013 – Complainant to the Company

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"The Terms and Conditions which you sent to us does not provide us with any clarity regarding the policy. …We purchased this policy following lengthy discussions and advice from the [Company representative] and he made no reference to any alteration of premiums during the life of the policy".

27th March 2013 – Company to the Complainant

"As your financial Advisor when you started the policy [named Broker] were responsible for explaining both, the workings and the features of the product, prior to your completing the application form. Our role has been to administer the policy in accordance with the completed and signed application form received"

20th November 2013 – Complainant to the Company

"Had these reviews taken place in accordance with the Policy's conditions, the requirement to increase premiums may have arisen earlier thus enabling us the opportunity to arrange alternative cover elsewhere".

12th December 2013 – Company to the Complainant

"I acknowledge that we did not carry out the policy reviews on the dates set out. However, we have agreed to maintain the sum insured of €126974 at a monthly premium of €77.73 until June 2015. This agreement was made even though the last review in 2012 determined that an increase in the monthly premium to €546.92 was needed to support this sum insured. …[In] 2015 we will not be including the negative value in your policy review. We will alter the negative value to zero to ensure that the increase needed at that time will be kept to a minimum".

10th February 2014 – Company to the Complainant

"Thank you for taking the time to visit our Head Office on 5 February 2014. …

Reviews on your policy were out of the sync with the policy terms and conditions. As a result, we undertook a full review of your policy. Had reviews been carried out on time, the first premium increase required would have been in 2012 to €546.92.

We have offered to maintain your policy for €77.33 until the next review date in June 2015 at a cost to [the Company] of €16905.24".

13th April 2015 – Company to the Complainant

"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.

Your Current Premium & Benefits:
Premium 77.73 Monthly
Live Cover €126,974"

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Annual Benefit Statements were issued showing the "Payments made" and "Policy fees and charges". The Statements that issued from 2013 showed that the "Payments made" were much less than the "Policy fees and charges" taken from the policy fund by the Company. However, the actual cost of life cover over and above that being paid by the Complainant in premiums was not highlighted.

17th April 2015 – Complainant's Broker to the Company – re Review options;

> *"[C]an you advise me for the reduced monthly premium if (i) Life Cover was reduced to ..50,000 ..75,000 under the existing Unit Linked Whole of Life Plan"*

1st May 2015 – Company to the Complainant's Broker advising of costs on the reduced sum assured.

29th May 2015 – The Complainant signs the Company's Policy Review Response Form selecting the option to "Reduce the benefits to €14,619.00 with the premium remaining at current premium of €77.73 to the next review date"

4th June 2015 – A Policy Endorsement was sent to the Complainants.

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 on 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.

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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 correctly and reasonably administered the policy, particularly in relation to the carrying out of Reviews and its communications regarding same.

This complaint relates to the increase in premium which the Company says was required to maintain life cover of €126,974 on a Whole of Life basis following a policy review.

The Complainant had a joint life, whole of life, unit linked policy, commencing in June 1992. The Company says that the policy was sold to the Complainants by the Complainant's original independent financial advisors. The Complainant disputes that he had an independent intermediary from the outset, but that it was a Company Branch Manager, who initially sold the policy. 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 policy terms and conditions allow for, and set out the basis of policy reviews. This is confirmed under the following policy condition 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):

> Section 14. Policy Reviews: *"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 the maximum allowable by the Society for the premium then payable to increase the rate of the Premium payable in the future to the amount required by the Society. The Society 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".*

The Complainant states in his complaint form that he was not advised in the schedule that this was a reviewable policy. The Company's positon is that it is clear the Complainant was advised in his policy terms and conditions which form part of the contract which he entered into. The Company states 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 16 June 1992 it issued a letter called the notification of policy issue which highlighted to the policyholders the importance of making sure that the policy issued did meet their needs. The Company states that in additional to this, it provided the policyholders with a notification of their 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 their particular needs. The Company says that the onus rested with the policyholder to ensure that they understood the nature of the policy as well as its individual features, and if they had any issues or concerns with the information provided they should

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have discussed this at the time with their financial advisor. The letter that the Company issued on 16th June 1992 specifically stated:

> *"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:*
>
> *(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 in the Consumer Price Index. "*

The Company submit that the first review was completed in 2003 and no premium increase was required. The Company states that this review indicated that the premium being paid at that time was sufficient to maintain the policy benefits until the next review date which the Company advised would take place in June 2012. The Company states that this was a clear reminder to the Complainant that his policy was reviewable and that the premium might increase in the future. It was suggested to the Complainant in this letter that it may be an opportune time to review his life assurance needs and to speak with his financial advisor. The Company submit that no increase would have been required had the policy been reviewed in 2004 (or any subsequent year up to 2012). The Company state that therefore, the Complainant's contention that a subsequent increase in premium would have prompted him to seek alternative cover is not a viable line of argument — given no increase was required until 2012. The Company says that in addition, the Company suggested to the Complainant in 2003 that it may have been an appropriate time to review his life assurance needs.

A second review was done in 2012 and the Company advised the Complainant that an increase in premium was required if the current level of policy benefits were to be maintained.

The Complainant states that the Company did not adhere to review conditions. Policy reviews could have been carried out annually from 2005 (first anniversary after the first life assured turned 70 years old). In this regard Section 1. Definitions, part (f) titled "policy review date" sates that: *the 10th anniversary of the currency date and each 5h anniversary thereafter except that where the insured has attained age 70 the policy review date shall be each yearly anniversary of the currency date".*

The Company state however, that as stated above, it is important to note that the policy was reviewed in 2003 and that it advised the Complainant that no increase would be required until 2012 and that the next review would occur in 2012.

The Company states that while dealing with the Complainant's complaint in 2012, it acknowledged that reviews were not carried out on the above scheduled review dates. The Company says that however, when it conducted an overall policy review in 2012, it re-confirmed that no alterations were required on the policy until 2012. The Company submit that during numerous interactions with the Complainant it offered to maintain the policy benefit at the same level for the same premium up to June 2015. The Company says that

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this agreement was made even though the last review in 2012 determined that an increase in the monthly premium to €546.92 was needed to support the sum insured. The Company submit that the cost of this to the Company was €16,905.34 and was done in an effort to resolve the matter and take into account the above-mentioned policy review issue.

The Company states that it was its understanding at this point that the complaint was now closed. The Company say that this was a reasonable understanding given it had maintained the policy benefits at the same premium for three further years at a cost to the Company of €16,905.34. The Company says that it believed (and still maintain this view) that this was a fair resolution and consistent with the Ombudsman's approach to such matters.

The Company submit that in subsequent years it has made numerous attempts to resolve the complaint in a fair and reasonable manner by offering the Complainant various further remedies.

The Company says however, the Complainant advised that he was not happy with the suggested remedies and stated he was never aware of policy reviews, and wanted to continue paying monthly premium of €77.73 for life cover of €126,974. The Company's positon is that given the foregoing, this was not a tenable line of argument. The Company hold that the Complainant was clearly on notice that the policy was reviewable and that this occurred at the policy outset, following the issue of the policy and in 2003.

The Company states that one final review of the case was carried out after meeting the Complainant face to face. In a further attempt to resolve the matter the Company reviewed the policy annually from 2015 to 2025 in an effort to spread the cost of Life Cover for the Complainant. The Company advised the Complainant what the premiums would increase to from 2015 to 2025 if he wanted to maintain the current level of cover of €126,974. The Company says that it altered the negative value to zero each time to ensure that the increase needed in premiums from 2015 to 2025 would be kept to a minimum.

The Company states that in April 2015, approaching the expiry of the 3 year period, review options were sent to the Complainant. The Complainant elected to reduce the life cover from €126,974 to €14,619 with the premium remaining at €77.73 to the next review date of 1 June 2016.

The Company say that the Complainant is now seeking the restoration of the original life cover benefit on the policy of €126,974 at a current monthly premium of €77.73.

The Company's positon is that it is apparent to the Company that the Complainant received a fair resolution with the waiver of €16,905.34 but then came back to dispute the same issues again. The Company says it made numerous subsequent attempts to resolve the matter. The Company states that the Complainant then voluntarily opted to reduce his cover and to pay the same premium. The Company submit that the Complainant is now seeking to reverse this and dispute the same issues again.

The Complainant states that in the Company submission the Company state that no increase in premium would have been required had the policy been reviewed in 2004 (or any

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subsequent year up to 2012). The Complainant questions that no alteration to the premium would have been made to take into consideration, for example, the following events during the period: (1) the significant decline in the value of the unit holdings in the Managed Fund during the global financial crisis, (2) the increased life cover cost (monthly life cover costs exceeded the monthly premium from February 2005) and (3) additional units in the Managed Fund would have been encashed to supplement the increased life cover costs at the lower unit prices. The Complainant submits that as no policy reviews were carried out between 2004 and 2012, at 31st May 2012, the value of units attaching to the policy invested in the Managed Fund was €556.23 (less than 2 months Life Cover Cost). The Complainant's position is that had the policy reviews taken place and had the premiums increased each year during the period, the investment fund would have been in a much healthier position. The Complainant states that this fund could then have been used to dilute the severity of premium increases due to increased life cover costs. The Complainant says that on reviewing the Company's submission, his understanding is that the Company does not look beyond the next review date when calculating premiums at the review date.

The Complainant says that in 2012, the Company reviewed the Policy for a second time. The Company indicated that a revised monthly premium of €546.95 was necessary in order to maintain the then benefits of €126,974 to the next review date which was **1st June 2017**. The Complainant questions why did the Company select the next review date in June 2017, because the next review date should have been June 2013 and yearly thereafter. The Complainant contends that had the Company adhered to the policy terms and conditions and advised the policyholders that the next review date would be June 2013 and annually thereafter, he calculates that the approximate monthly premium required would have been circa. €369 per month up to June 2013, approximately €440 per month for the next 12 months up to June 2014 and approximately €530 per month for the next 12 months up to the end of May 2015. It is the Complainant's position that, the Company by delaying a review date from 1 year to 5 years, this had the effect of significantly increasing the monthly premium. (Not unlike the effect of increasing the term on a life assurance policy, the longer the term then the higher the premium).

The Complainant states that in 2012, when he received the policy review, the Complainant was 77 years old and his wife was 75 years old. The policyholders had been paying the same monthly premium for 20 years. They had paid a lot of money to the Company for the cover and suddenly were advised to pay significantly higher premiums or reduce the cover and moreover the premium would be reviewed again in 2017 and thereafter. The Complainant states that as this policy was taken out originally as a Section 60 policy for inheritance tax purposes, a valuation of their estate was required in order to try to ascertain future inheritance tax liabilities and the continued suitability of the policy and benefits. This review involved legal and tax advice which took a lot of time to arrange and complete due to policyholders' serious health issues at the time. The Complainant states that this review had not been completed when the policyholders accepted the offer from the Company to maintain cover at the same level at the unchanged premium until June 2015 (date premiums will support current level of cover outlined in the Company's letter to policyholders dated 23rd February 1998). The Complainant states that in the Company's letter to the policyholders dated 12th December 2013, it outlined future monthly premiums to maintain the level of cover of €126,974.

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The Complainant states that prior to the April 2015 policy review, the option to convert to a term assurance policy was considered. The Complainant says however, that this type of policy is not a Section 60 policy. The maximum term of the term policy was to the Complainant's 89th birthday. This was not an attractive option as should the Complainant live beyond the maturity date then no benefit would become payable and all premiums would effectively be lost.

The Complainant states that unfortunately, this policy was not properly explained to the Complainant when the policy was recommended by the Company, Branch Manager, in 1992 and has not been administered in accordance with the policy rules regarding the policy reviews since 2004. The Complainant states that the obligation to properly administer the policy lies with the Company. The Complainant submits that the Company do not have the discretion when to review the Whole of Life policy. The rules are set out in the policy conditions. The Complainant states that an Annual Policy Statement is not a substitute for carrying out a policy review. The Complainant states that a policy review in a Whole of Life policy is comparable to an 'annual service' in a policy. The Complainant states that had the policy reviews taken place in line with the rules, there would most likely have been annual increases to take account of the increased life cover costs. The Complainant states that they would then have had greater clarity on what potential increases could apply in the future to their policy and then look at alternatives.

Analysis

A Policy Review provides the Company with an opportunity to realistically assess how the policyholder's needs are being met. Furthermore, a Policy Review should give the Company the information to provide the policyholder with an up to date picture of the level of cover chosen and provide an indication as to how long the premium and policy fund is likely to sustain that cover. Such Reviews are important as they allow the Company discuss with the policyholder what, if any, action needs to be taken. This is highly important for the Policyholder.

The Company accept that it did not carry out the contractually required Reviews over the period 2004 to 2012. By not undertaking the Reviews of the policy over this period, the policyholders were denied an early opportunity to decide what action they wished to take regarding the policy. It could, for example, be the case that:

(i) The policyholders may also have wished to exit the policy, after discovering that this is how the policy actually operated in practice. It is one thing to set out in the policy document how something is going to be done, but not knowing the full implications, including the financial implications of a Review process is another matter.

(ii) The policyholders may also have wished to take the fund value that was available at the relevant Review times. This opportunity has also been lost due to the lack of communication from the Company, in a timely manner, of the missed Reviews over the period 2004 to 2012.

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The consequence of policyholders not having their plan reviewed when it should be reviewed means the loss to policyholders of an early insight into the operation and effect of such reviews on their policy. In this case, I accept that (i) the Company should have correctly reviewed the policy at the appropriate and contractual review dates and (ii) communicated the failure to carry out the scheduled Reviews earlier than it did. It was not until the 20th anniversary of the policy in 2012 (and in the later complaint communications) that the Complainant became aware that reviews had been missed over the years. It was also not until 2012 that the Complainant was made fully aware (in a practical sense) of what actually happens upon a Review of the policy.

In 2003 the policyholders were advised of how long it was expected that their then premium could support their then level of cover. What was not so clear was that it was not only the premium itself that would be supporting the premium, but also the fund that had been built up.

The reality was that the premium being paid from 2005 was no longer sufficient and that the policy fund was supplementing the cost of cover. While the fund can be contractually relied upon by the Company to fund any shortfall in premium payments, I accept that the Company should have made this much clearer for the policyholders in its communications.

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.

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

The evidenced shows that the Company (i) missed a number of Reviews (ii) failed to communicate for many years that these Reviews were missed (iii) failed for some time to correctly communicate that the premium being paid was not sufficient on its own to support the cost of the policy benefits (the fund was supplementing the cost of cover for some time).

That said, I find the Policy terms and conditions that the parties agreed to from the outset, outlined the policy features. Accordingly, the Company was entitled to Review the policy.

I accept that the documentation sent to the Complainant in respect of their Policy did not set any expectation that the protection benefits and premium would remain at the same level throughout the lifetime of the Policy.

Having reviewed the express wording of the policy terms and conditions, I accept that the Complainant was on notice from the time of commencement of the policy that the policy was to be reviewed on its tenth anniversary and thereafter every 5 years (and in the situation where the policyholder reached age 70 years, on annual basis) and that the Company could assess if the level of cover could be maintained at the existing premium until

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the next scheduled review or whether it was necessary to increase the premium to maintain the level of benefit.

I note, however, that there is very little information available in this document to notify the Complainants that there would be various options open to them at the time of a policy review with implications regarding the premium to be paid. I question whether the Complainant would have been fully aware as to what would occur if their premiums alone were insufficient to maintain the cover.

While I accept that the Company carried out the recent reviews 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. It is noted that some information was supplied to the Intermediary in 2007, but the breakdown of the deductions (policy charges and fees) were not highlighted While the fund was being used to support the cost of cover, it was not communicated for some time. Better communication should also have taken place in relation to the Reviews that did not take place over the years.

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 up to 2015 to correctly inform the Complainants about how the policy had been administered relative to the Reviews provided for in the Policy Document. Section 51 (5) of the Financial Services and Pensions Ombudsman Act 2017, allows for the examination of conduct of a continuing nature.

As regards the allegations in relation to the sale of the policy in 1992, that is that the policy was mis-sold to the Complainant, this is not being examined due to the passage of time.

However, the key point is that conduct of an ongoing nature allows in certain circumstances a consideration of conduct which might initially have started or been caused by conduct that occurred beyond the 6 year period, but which continues up to a more recent point in time which brings the complaint within our jurisdiction. I accept some of the failings by the Company outlined above were of a continuing nature.

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".

The correspondence between the Complainant and Company (from inception of the policy) shows that the Complainant had concerns about the reviewable nature of the policy. The

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responses from the Company in relation to the Complainant's concerns do highlight the reviewable nature of the policy, however, up to 2012, the Company's responses to the Complainant's queries and concerns over the years were always that his premiums were sufficient to maintain the policy cover. It was only with the Company's correspondence of 13th June 2012 that it was highlighted to the Complainant for the first time the connection between the cost of cover and the need for the Company to rely on the policy fund where the premium was not sufficient to pay for the life cover. The fact that the premium was no longer sufficient on its own to pay for the policy cover was not early advised to the Complainant in a clear manner, prior to this.
While I accept there were lapses by the Company in regard to the administration of this policy, I do not accept that the lapses warrant a direction for the Company to maintain the benefits as they were and at their existing lower cost. Overall, I accept that the issues here are ones requiring better administration and greater and better communication from the Company and for the identified lapses in same I accept that a substantial compensatory payment is merited in this case. This compensatory payment is to be in addition to the Company's compensatory measure of maintaining the policy cover at a the lower premium up to June 2015 (the Company states that this was done at a cost to the Company of €16,905.24).

Having regard to the particular circumstances of this case, in particular the failings that have been noted above, it is my Legally Binding Finding that the complaint is partially upheld and that the Company should make a compensatory payment of €15,000 (fifteen thousand euro) to the Complainant.

It is noted that the Company has advised the Complainant of alternative policies that it has available which would provide some certainty as to the cost of the cover being provided, going forward (fixed sum assured for a fixed term). I would suggest that the Complainant should seek independent advice before deciding on what to do regarding alternative life cover.

Having regard to all of the above it is my Legally Binding Decision that this complaint is partially upheld.

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 €15,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant/s 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.

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- 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.