An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2018-0144
Sector:	Insurance
Product / Service:	Life
Conduct(s) complained of:	Lapse/cancellation of policy (life) Rejection of claim
Outcome:	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant is the daughter of the policyholder, who sadly died on 23 November 2013. The policyholder had incepted Policy 01148010 on 1 December 198. This was a whole of life policy which at that time provided life cover in the amount of IR £27,000. In addition, the policyholder had also incepted Policy 02608821 on 1 August 1998, a fixed term policy providing life cover for a period of 23 years. Both these policies lapsed with effect from 1 September 2012 due to the non-payment of premiums.

The Complainant's Case

The Complainant is the daughter of the policyholder, who died on 23 November 2013. The policyholder had incepted Policy 01148010 on 1 December 1987, a whole of life policy which at that time provided life cover in the amount of IR £27,000. In addition, the policyholder had also incepted Policy 02608821 on 1 August 1998, a fixed term policy providing life cover for a period of 23 years.

The Complainant sets out her complaint, as follows:

> *"Both policies lapsed in September 2012 after being paid for numerous years.* [The policyholder] *had been severely ill long before she died. The illness was very hard both physically and psychologically and caused severe exhaustion with sleep deprivation because of the medication. When both policies went into arrears on this occasion this was far from* [the policyholder's] *mind.* [The policyholder] *lived on her own and being in such a vulnerable state of mind and body, the policy lapsed.* [The

policyholder] *died 1 year and 3 months later on 23/11/13.* [The Company] *would not pay on either policy as both policies were lapsed"*.

In addition, in her correspondence to this Office dated 22 December 2017, the Complainant submits, as follows:

> *"When my mam got sick she could not even speak most of the time because of the oxygen and breathing* [apparatus] *she hooked up to and she never thought she was that sick she was going to die and I know if she was not so poorly she would have sorted out her affairs and especially her insurance policies …*
>
> *She was not in a position to have the control she had had over herself and she was taken poorly so rapidly she was not able to think straight and very sad that her being a loyal customer for all those years it means nothing to* [the Company] *and my mother insurance was always her priority".*

In this regard, the policyholder's GP, Dr C. O'H. advises in correspondence dated 15 May 2018, as follows:

> *"*[The policyholder] *was referred to hospital in October 2011 with a subsequent diagnosis of Pulmonary Fibrosis. Her health deteriorated following diagnosis resulting in her being unable to manage her personal and financial affairs"*.

In addition, the policyholder's Broker submits in correspondence dated 15 March 2016, as follows:

> *"Basically* [the policyholder] *who lived alone was severely ill for long time before her death. Her illness affected her mind and competence. She became a vulnerable person due to her health and lack of ability to cope and her life policies lapsed in this period.*
>
> *One of the policies in particular was a whole of life policy with an encashment value of €4,700 at the time of death and unlike other companies who use this value to sustain the risk benefit in such instances until the surrender value expires* [the Company] *chose not to do this even retrospectively. Our contention is that a similar occurrence must arise on many occasions for these policies as many older folks have such policies and many of the older generation advance into a similar vulnerable state and after paying into such expensive policies for very many years the policies only have to lapse once to allow the life company to walk away from such claims. Other companies had treated clients of mine on a very fair basis but* [the Company] *has chosen not to"*.

The Complainant considers that as Policy 01148010 was a whole of life policy, that in the absence of premium payments the Company ought to have used this fund value to maintain the policy, like similar whole of life products provided by other insurers, and that if it had done so, the policy would have been in force at the time of the policyholder's death on 23 November 2013 and would have provided the life cover benefit. Instead, the Complainant

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received the sum of €4,886.82 from the Company on 17 November 2016, that is, the fund value of Policy 01148010 of €4,710.97 along with an additional death benefit of €175.85.

As a result, the Complainant *"would like to see the whole of life policy* [01148010] *paid in full"*, that is, the life cover benefit paid in full, and in respect of the policyholder's other policy, 02608821, *"I feel a percentage settlement would be appropriate as policy was only unpaid for 1 year + 3 months out of 14 years + 3 months, in other words it was paid for 88% of the time"*.

The Complainant's complaint is that the Company wrongly or unfairly lapsed the policyholder's two policies with effect from 1 September 2012 due to the non-payment of premiums.

The Provider's Case

The Company was notified in December 2013 that the policyholder had died the previous month, on 23 November 2013. Company records indicate that the deceased had previously held two policies with the Company, namely, Policy 01148010, incepted on 1 December 1987, and Policy 02608821, incepted on 1 August 1998. Both these policies had lapsed with effect from 1 September 2012 due to the non-payment of premiums, some 15 months prior to the death of the policyholder, and therefore the life cover no longer remained in force under either policy. There was no benefit due in respect of Policy 02608821, which had been a fixed term policy providing life cover. However, as Policy 01148010 was a whole of life policy, there remained a fund value of €4,710.97 payable and the Company wrote to the Complainant on 12 December 2013 confirming this value and the documents required in order to process the claim.

The Complainant subsequently contacted the Company requesting that it consider paying the life cover element of these policies and submitted medical reports confirming that the policyholder had been suffering ill health prior to her death and as a result had neglected to continue to make premium payments in respect of her two policies. However, as the death of the policyholder occurred 15 months after the lapse of these policies the Company advised that there were no grounds for it to consider paying the life cover element on these policies, which was in keeping with these policies' terms and conditions.

The Company notes that the Complainant considers that as Policy 01148010 was a whole of life policy, that in the absence of premium payments the Company ought to have used this fund value to maintain the policy, like similar whole of life products provided by other insurers, and that if it had done so, the policy would have been in force at the time of the policyholder's death on 23 November 2013 and would have provided the life cover benefit.

In this regard, the Company notes that the September 2012 premium for Policy 01148010 was returned by the policyholder's bank unpaid. As a result, the Company wrote to the policyholder on 21 September 2012 advising that the direct debit would be reissued to her bank account and that the premium must be collected in order to maintain the policy benefits. In addition, a copy of this correspondence was also sent to the policyholder's Broker. For a second time, the bank returned the direct debit unpaid and as a result the

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Company again wrote to the policyholder on 5 October 2012 advising that the September 2012 premium was unpaid and that if she wished to recommence premium payments and maintain policy benefits the Company would require payment of the outstanding premium. In addition, a copy of this correspondence was also sent to the policyholder's Broker.

As no response was received and as a result of unpaid premiums, Policy 01148010 lapsed, in accordance with the terms and conditions. The Company wrote to the policyholder on 17 October 2012 confirming that Policy 01148010 had lapsed and outlining that the outstanding premium would need to be paid in order for the policy to be reinstated. In addition, a copy of this letter was also sent to the policyholder's Broker.

Similar correspondence issued in respect of Policy 02608821 at that time.

The Company states that it is satisfied that it wrote to both the policyholder and her Broker on a number of occasions in relation to these unpaid premiums and noted the importance of maintaining the premium payments in such correspondence. Regrettably, no response was received and no premium payments were made, resulting in these policies remaining lapsed.

The Company notes that the death of the policyholder occurred 15 months following the lapse of the two policies. The relevant policy documents clearly stipulate that premiums must be paid in full for cover to remain in place, and having advised the policyholder and her Broker on three separate occasions between September 2012 and October 2012 - that is, 21 September 2012, 5 October 2012 and 17 October 2012 - of the importance of maintaining premium payments, the Company states that it is satisfied that there are no grounds to consider the payment of life cover under either policy. Whilst it says it wholly sympathises with the Complainant and the loss of her mother, the Company decision in this matter is in keeping with any lapsed policy with the Company and there are no grounds to specifically make an exception on this case over any other similar cases that may arise.

The Company issued a payment in the amount of €4,886.82 to the Complainant on 17 November 2016, representing the fund value of Policy 01148010 of €4,710.97 along with an additional death benefit of €175.85. The Company states that it is satisfied that this payment represented the full and final discharge of its liability in respect of this policy.

The Company states that it is satisfied that it has acted in accordance with the terms and conditions of the policies in question, however, as a gesture of goodwill and without accepting any liability on these policies, it is offering to pay the Complainant the balance of the funeral expenses owed, that is, the sum of €1,041.28. This is the total funeral bill of €5,928.10 less the value previously paid in respect of policy 01148010 of €4,886.82 on 17 November 2016. This offer remains open to the Complainant to accept.

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

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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 11 October 2018, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

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

The complaint at hand is, in essence, that the Company wrongly or unfairly lapsed the policyholder's two policies with effect from 1 September 2012 due to the non-payment of premiums. In this regard, the Complainant is the daughter of the policyholder, who died on 23 November 2013. The policyholder had incepted Policy 01148010 on 1 December 1987, a whole of life policy which at that time provided life cover in the amount of IR £27,000. In addition, the policyholder had also incepted Policy 02608821 on 1 August 1998, a fixed term policy providing life cover for a period of 23 years. Both these policies lapsed with effect from 1 September 2012 due to the non-payment of premiums.

The Complainant sets out her complaint, as follows:

> *"Both policies lapsed in September 2012 after being paid for numerous years.* [The policyholder] *had been severely ill long before she died. The illness was very hard both physically and psychologically and caused severe exhaustion with sleep deprivation because of the medication. When both policies went into arrears on this occasion this was far from* [the policyholder's] *mind.* [The policyholder] *lived on her own and being in such a vulnerable state of mind and body, the policy lapsed.* [The policyholder] *died 1 year and 3 months later on 23/11/13.* [The Company] *would not pay on either policy as both policies were lapsed"*.

The Company notes that the death of the policyholder occurred 15 months following the lapse of the two policies in question and that the relevant policy documents clearly stipulate that premiums must be paid in full for cover to remain in place. In this regard, and having

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advised the policyholder and her Broker on three separate occasions between September 2012 and October 2012 - that is, 21 September 2012, 5 October 2012 and 17 October 2012 - of the importance of maintaining premium payments and having received no response and no further premium payments, the Company is satisfied that there are no grounds to consider the payment of life cover under either policy. The Company also says it is satisfied that its decision in this matter is in keeping with any lapsed policy with the Company and there are no grounds to specifically make an exception on this case over any other similar cases that may arise.

I note that the Complainant received the sum of €4,886.82 from the Company on 17 November 2016, representing the fund value of Policy 01148010, a whole of life policy. The Complainant considers that in the absence of premium payments the Company ought to have used this fund value to maintain the policy, like similar whole of life products provided by other insurers, and that if it had done so, the policy would have been in force at the time of the policyholder's death on 23 November 2013 and would have provided the life cover benefit. She now seeks for the Company to retrospectively use the fund value to pay the premiums from 1 September 2012, when the policy was lapsed, until 23 November 2013, when the policyholder died, and pay out the life cover benefit.

Life cover, like all insurance cover, is subject to the terms, conditions, endorsements and exclusions set out in the policy documentation. In this regard, I note that the Fifth Schedule, 'Privileges and Conditions', of the Policy Document for Policy 01148010, provides, among other things, as follows:

> *"**Payment of Premiums***
>
> 1. *The initial Premium Due on the date of commencement of this Policy must be paid by the Policy Owner on the commencement date otherwise this policy will be deemed void ab initio. Thirty days grace is allowed for the payment of each subsequent renewal Premium Due. Should the Life or Lives insured die during the said period of grace, any premium then due and unpaid shall be deducted from the amount otherwise payable on settlement of the claim …*
>
> 2. *If, after this policy has acquired an encashment value, a Premium due is not paid within the days of grace (30 days), the policy shall be made paid up under the provisions of paragraph 14* ['Paid up Policy'] *of the Schedule …*
>
> ***Paid up Policy***
>
> 14. *After this policy has acquired an encashment value it may, at the request of the Policy Owner be converted to a paid-up policy with the First Life Sum Insured…equal to zero with a reduced Guaranteed Encashment Value. No further Premiums due shall be credited to, and no further policy fees shall be debited from the investment account"*.

Whilst other whole of life products provided by other insurers may, in the absence of premium payments, allow for the fund value to maintain the policy, this was not a feature of the policyholder's Policy 01148010. Instead, the terms and conditions of Policy 01148010

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provides that where the premium is not paid within 30 days of its due date, the policy will become paid up. I therefore must accept that the Company, in lapsing Policy 01148010 with effect from 1 September 2012 due to the non-payment of the premium and then making the policy paid up, acted in strict accordance with the terms and conditions of the policyholder's policy.

In addition, I note that the Company wrote to both the policyholder and the policyholder's Broker on 21 September 2012, as follows:

> *"Your bank has returned unpaid the most recent direct debit on your policy.*
>
> *We will reissue the direct debit to your account to collect this premium and maintain policy benefits.*
>
> *We would be grateful if you could contact your bank to ensure that this direct debit and future direct debits are paid"*.

The Company also wrote to both the policyholder and the policyholder's Broker on 5 October 2012, as follows:

> *"Your bank has returned unpaid the most recent direct debit issued to your account. As a result premiums due since 15 September 2012 are outstanding.*
>
> *If you wish to recommence premium payment and maintain policy benefits, please forward payment of the outstanding premiums. We will then recommence collection of premiums by direct debit from the next premium due date.*
>
> *If your current premium payment date is unsuitable, we are happy to offer the alternative dates detailed below. If you decide to amend the payment date, please complete the slip provided below and return with the payment.*
>
> *There may be other policy options and premium levels available in relation to your policy, which we would be happy to discuss with you"*.

Furthermore, I note that the Company also wrote to both the policyholder and the policyholder's Broker on 17 October 2012, as follows:

> *"According to our records we have not received payment of the outstanding premiums and as a result your policy has lapsed.*
>
> *We hope that as a valued client, you will consider applying to reinstate your policy. If you wish to apply for reinstatement please forward the outstanding amount and confirm how future premiums will be paid.*
>
> *Your revival application will be subject to acceptance by the company"*.

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I accept that the Company provided the policyholder with appropriate notice that the policy premium was unpaid.

With regard to Policy 02608821, a fixed term policy providing life cover for a period of 23 years which the policyholder had incepted on 1 August 1998, I note that Section 2, 'Payment of Premiums', of the applicable Policy Document, provides, among other things, as follows:

> *"**Days of Grace** ...*
>
> *4. You are allowed thirty days grace for the payment of each of your subsequent premiums. If your premium due is not received within these days of grace, your policy will be cancelled and* [the Company's] *liability for any benefits under your policy will cease …*
>
> ***Ceasing Premium Payment***
>
> *7. If you cease paying premiums, your policy has no cash value and* [the Company's] *liability for any benefits will cease"*.

I accept that the Company, in lapsing Policy 02608821 with effect from 1 September 2012 due to the non-payment of the premium, acted in strict accordance with the terms and conditions of the policyholder's policy.

Accordingly, I accept that the Company, in lapsing Policy 01148010 and Policy 02608821 with effect from 1 September 2012 due to the non-payment of premiums, acted in strict accordance with the terms and conditions of the policyholder's two policies.

That said, I consider that a greater explanation could reasonably have been communicated by the Provider to the Policyholder in October 2012 as to what the Provider meant when advising the Policyholder of the status of her policy.

The two communications that issued in October 2012 advised that the Policy had lapsed and did not mention the phrase "Paid-up". The December 2012 communication referred to the "Policy Status" as being "In Force Paid-up" and advised that the "Current Premium" was "Not Applicable", but further advised that the "Premium Frequency" was "Monthly". The meaning and effect of what "Paid-up" had on the policy was not clarified in these communications.

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.

While greater clarity from the Provider was required here, I cannot ignore that ultimately the responsibility for paying premiums and making sure that the cover remains in place rests with the Policyholder. I am also cognisant that there was an Intermediary in place here and the Provider had copied that Intermediary with the communications it was sending the

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Policyholder. Any alleged acts or omissions by an Independent Intermediary would not be the responsibility of the Provider, and for any examination of such alleged acts or omissions by an Independent Intermediary, a separate complaint would have to be made for consideration. Therefore, the conduct of the intermediary does not form part of this Decision.

Having regard to all of the above, while accepting that the Provider acted within its contractual rights in relation to the lapsing of the policy and making it "Paid-up", I consider that a compensatory payment is merited for the identified lack of clarity in the Provider's communications with the Policyholder in October and December 2012. Therefore, I partially uphold this complaint and direct that the Provider make a compensatory payment of €3,000 to the Complainant.

Finally, I note that as a gesture of goodwill, the Company has offered to pay the Complainant the balance of the late policyholder's funeral expenses, that is, the sum of €1,041.28. This offer is a matter between the Complainant and the Company and it is for the Complainant to advise the Company whether she now wants to accept this offer or not.

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) (b) and (f).***

Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €3,000, 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

9 November 2018

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Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,
(ii) a provider shall not be identified by name or address,
and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.