An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2018-0221
Sector:	Insurance
Product / Service:	Term Insurance
Conduct(s) complained of:	Failure to advise on key product/service features Complaint handling (Consumer Protection Code) Dissatisfaction with customer service Misrepresentation (at point of sale or after)
Outcome:	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The first Complainant holds a guaranteed protection life assurance policy in the name of her husband, the second Complainant, with the Provider. The policy was taken out on 13 December 1996 for a period of 19 years with the maturity date of 13 December 2015. The dispute concerns the conversion option associated with the life assurance policy. The Complainants suggest that the first Complainant was informed in May 2014 that there was no conversion option associated with the policy in question. She and her Broker were subsequently informed in November 2015 that a conversion option was available and she was provided with a number of options, including the option to convert the policy to a 20 year life assurance policy which option was selected by her. She was subsequently informed that this option had been provided to her in error and that under the terms of the original policy, any term policy conversion option would expire when the life assured (i.e. the second Complainant) reached the age of 65 years old.

The Complainants argue that a contract came into existence between them and the Provider in December 2015 based on terms and conditions offered to them in November 2015 and accepted by them on the payment of the premium and signature of application papers on 10 December 2015. They are seeking to have the Provider bound by the alleged contract.

The Provider argues that through human error, its customer service representative provided incorrect information to the first Complainant and her Broker in November 2015 but that the options offered to them at this point were not available under the terms and conditions

of the policy in question and that this misinformation does not alter the stated terms and conditions of the product. Once the application for the 20 year term policy was received by the Provider, the error was recognised when the application was viewed by the new business team.

The Provider argues that no contract came into place between the parties and that it is not in a position to offer the 20 year policy as sought by the Complainants owing to the terms and conditions of the original policy. The Provider argues that it has made all reasonable efforts to compensate the first Complainant as a result of the error in question.

The Complainants' Case

In a complaint to this office, the Complainants make two separate complaints in relation to the life assurance policy which they held with the Provider. The first relates to alleged misinformation provided to the first Complainant in relation to a conversion option on 30 May 2014. The second relates to the Provider's refusal to fulfil an alleged contract to convert the said policy on terms which were offered by the Provider in November 2015 and which were allegedly accepted by the Complainants in December 2015. The Complainants state that on 9 November 2015, the first Complainant received a letter from the Provider informing her that the Complainants had the option to convert the life policy on the second Complainant's life on the same terms and conditions and without any health checks. The letter recommended that she contact the Provider or their Broker. The first Complainant phoned the Broker on the same day and spoke to EC who said he would look into the matter. EC phoned the first Complainant later that day to confirm that she could convert the policy and sent her quotes for various annual premiums over various time frames.

The first Complainant states that she was surprised that she could convert because in May 2014, she phoned the Provider to ask about converting the policy. She states that she spoke to a woman who told her that she could not convert the policy and that it would expire on the maturity date of 13 December 2015. The first Complainant claims that she contacted the Provider at that time because they had another life policy with a third party provider which was due to expire in early 2015 in which she was offered the option of converting to a new 20 year term. She states that the amount insured under the Provider's policy was higher and therefore the Complainants' preference was to convert with the Provider if this was possible and so she sought the relevant clarification in May 2014. She states that the Provider has confirmed that it received a phone call from her on 30 May 2014 but that a recording of the call cannot be retrieved.

During the first Complainant's call to EC on 9 November 2015, she informed him of the misinformation given to her in May 2014. He recommended that she notify the Provider of this because if the Complainants now chose to go with a quote from the Provider, they would be paying €6,410 to the Provider in December 2015 having already paid €6,100 to the third party provider in February 2015, effectively unnecessarily based on the incorrect information provided in May 2014. EC told her that he contacted the Provider in relation to the complaint and that its representative would be in contact with her.

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The first Complainant states that she expected that this communication would be by letter and was surprised when she got a call from the complaints department of the Provider in mid-November 2015 dealing with the matter verbally over the phone. She states that ED from the Provider said she would investigate the matter and asked what she was looking for. The first Complainant stated that she was out of pocket by over €6,000 by paying a premium unnecessarily to the third party Provider in February 2015 having received the misinformation.

The Complainants consulted with EC and opted to go with a premium of €6,410 for a sum assured of €750,000 over a 20 year period. The first Complainant met EC on 10 December in his offices to pay the premium and sign the relevant documentation.

EC confirmed that he would get the relevant documentation to the Provider and that once the Complainants had received confirmation paperwork from the Provider that they should cancel the third party policy. The Complainants note that the Provider's policy was due for renewal on the 14 December 2015 and the first Complainant noticed by 15 December that the cheque she had written had not been cashed despite the fact that she received an acknowledgement in relation to the payment dated 15 December 2015. When the cheque had not been cashed by 21 December 2015, the first Complainant called the Provider and spoke to B. B noted that there was a complaint on the file and said that she would have to get back to the first Complainant but that there was a problem with the conversion option. The first Complainant states that this was the first she had heard about the issue and claims that if she had not followed up with the Provider, this would not have been made known to her despite the fact that the policy had been due to expire on 13 December 2015. The first Complainant informed her Broker, who contacted the Provider who agreed to extend cover until 13 January 2016 to allow the Provider time to look into the matter. The first Complainant states that several phone calls were made by ED of the Provider to her over the Christmas period which she found extremely unhelpful. On the encouragement of EC of the Broker, the first Complainant wrote an email setting out her desired outcome on 6 January 2016. Conscious of the looming deadline of 13 January, she instructed solicitors on 8 January 2016. With their intervention she states that the deadline was extended to 29 January 2016 to investigate both issues, though she claims that the Provider had already decided its position at that point.

The first Complainant argues that the Provider ignored the Complainants' argument that a contract came into existence between them as offered to EC on their behalf in November 2015 and accepted on 10 December 2015. The Complainants argue that it is unacceptable for the Provider to rely on the fact of a mistake. She further argues that it is not acceptable that a crucial phone call (i.e. the May 2014 phone call) cannot be retrieved. The first Complainant states that she found all dealings with the Provider utterly unsatisfactory and found that the method of making phone calls when an email was required was inexplicable. She argues that the phone calls that were made over the Christmas period concern matters that required time and consideration to process the information being provided and that they were not therefore given a proper opportunity to read and reflect on what was being argued. She found the experience very stressful. She argues that the Provider is effectively reneging on its own offer and shrugging off its obligation to fulfil a contract made on terms offered by it on the basis that it was a mistake. She argues that she never sought

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compensation and her email of 6 January 2016 makes it clear that she wanted the alleged contract from December 2015 to be honoured rather than compensation for the premium of €6,000 that was paid to the third party provider in February 2015 as a result of the May 2014 misinformation. In addition to being unsatisfied that phone calls were made in relation to the complaint rather than emails, the Complainants argue that the letters that issued from the Provider were not clear and were at times confusing and full of "official speak". The first Complainant states that where these letters followed phone calls, they did not reflect her recollection of the phone calls. She also argues that the Provider effectively left them with a 'take it or leave it' situation rather than properly dealing with the disputed issues. She states that on 12 February 2016 she received a cheque for €500 from the Provider for an alleged "overpayment" with no further details. She notes that this cheque arrived before the Provider's final response letter.

By letter dated 25 October 2016, the first Complainant takes serious issue with the Provider's conjecture that she converted the third party policy on the basis of correct information having been provided to her in May 2014 on the basis that this was the most attractive conversion option. She states that she paid the premium cheque to EC of the Broker on 10 December 2015 and queried with EC when the cheque had not yet been cashed on 15 December since payment was due on 13 December 2015. When it had still not been cashed by 21 December 2015, on EC's advice the first Complainant states that she phoned the Provider and was first informed that there was a difficulty in relation to the term. She did not contact the Provider to query the term but rather to confirm that everything was in order when her cheque had not yet been cashed and the policy had expired the week before. She accepts that ED of the Provider emailed her later that afternoon. She claims that correspondence from the Provider contains an inference that she is some sort of fortune hunter looking for compensation and that she simply wants the contract offered to her in November 2015 to be honoured by the Provider and on that basis would be prepared to forego any compensation in relation to the misinformation provided to her in May 2014.

By email dated 26 January 2017, the first Complainant argues that on the basis of the information given by the Provider in November 2015, she accepted the Provider's offer to pay the requested premium in December 2015 which meant that she had paid an unnecessary premium to the third party provider from February to December 2015. She further argues that it was reasonable for her and her husband to infer that the new policy on terms offered by the Provider came into existence when the old policy expired on 13 December 2015. She argues that it was not reasonable for the Provider to contact her on the 21 December at 12 noon to tell her that there was a problem as this was eight days after the old policy expired.

The Provider's Case

In its final response letter dated 10 February 2016, the Provider set out the terms and conditions of the guaranteed protection plan that was taken out by the first Complainant. The Provider stated that the guaranteed protection plan allowed her to convert to another term assurance plan up to the life cover attaining age 65 or to a whole of life plan. The letter noted that as the plan was due to expire on 13 December 2015, the Provider wrote to her regarding her conversion options. These letters of 31 October and 21 November 2015 noted

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that certain restrictions may apply in exercising her conversion option. In relation to the telephone call of 30 May 2014, the Provider states that the first Complainant believes that it was explained to her that her guarantee protection plan did not include a conversion option and that she chose to convert another plan with a third party based on information provided during that telephone call. The Provider has been unable to retrieve the telephone call with the customer service department on 30 May 2014 and apologises for this. The letter therefore states that the Provider is unable to confirm what was explained to the first Complainant during the conversation.

The letter notes that EC of the Broker contacted its customer service department on 9 November and 19 November 2015 to discuss the conversion options available to the first Complainant. The Provider asserts that it was incorrectly explained to EC during the telephone conversations that the first Complainant could choose to convert to a term insurance plan up to the life covered attaining 80 years old.
The Provider apologised for the incorrect information provided to EC on these occasions. The letter acknowledged that EC provided the incorrect information, given to him, to the first Complainant and that she made an invalid conversion choice based on this. The letter acknowledges that the first Complainant wishes to avail of the option to convert the plan to a term insurance plan up to the life covered attaining 80 years old but that the Provider has previously explained that the Provider cannot agree to this as it does not comply with the terms and conditions of the plan. The letter notes that in light of the complaint, the Provider agreed to extend the date for conversion to 29 January 2016 but that the first Complainant has indicated that she did not wish to avail of the option and that the option to convert has now expired.

In an earlier letter, the Provider had indicated that the first Complainant could convert to a term assurance plan with a term of just five years, but in a letter dated 21 January 2016 confirmed that the Provider was willing to allow her to convert to a term assurance plan with a term of up to 10 years. The letter notes that the first Complainant also requested a payment of €6,000 due to the incorrect information being provided to her in relation to the conversion plan in May 2014 as the first Complainant paid €6,000 for a different plan with a third-party provider when she then believed that the Provider's plan did not include a conversion option.
The Provider notes that she previously explained that the Provider would consider the request to pay compensation of €6,000 if the first Complainant proceeded with the conversion of her guaranteed protection plan with the Provider. As she did not avail of this option to convert the Provider's plan, the Provider argues that she was not disadvantaged by converting to a different plan with another third-party company so it did not therefore agree to the request to pay the customer service award of €6,000. The letter notes that the Provider will send a cheque for €500 shortly by way of apology for the poor service which the first Complainant had experienced. It stated that it would also arrange to return the premium cheque received in December 2015 to the first Complainant.

In a letter to this office dated 11 October 2016, the Provider states that it is regrettable that the first Complainant and her Broker were misinformed of the maximum term applicable to the conversion option but that the error does not negate the terms and conditions covering the contract. It notes that at some potentially considerable expense to itself, the Provider

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offered a compromise option to allow conversion for a term of 10 years and to compensate the first Complainant for one year's worth of annual premium in relation to her third-party policy but that these offers were rejected by the first Complainant. The Provider states that the conversion option available with its policy was in fact less attractive than the third-party policy in respect of the length of the term and that therefore it was to the first Complainant's benefit that she decided to convert third-party policy in February 2015, albeit under disputed circumstances. The Provider states that it:

> "*must entertain the distinct possibility that when the Complainant made a call to the Provider's Customer Services in May 2014, the reason she eventually decided to convert her [third-party] policy with a 20 year term may well have been because she was correctly advised that the maximum term available with the conversion option on [the Provider's] policy was up to the life assured the age of 65 and as this was less attractive than her [third-party] policy, which allowed for the conversion to a new term of 20 years, she correctly made the decision to convert that plan for a 20 year term rather than the Provider's plan with a more limited five-year maximum term*."

As the first Complainant noted on a call dated 8 December 2015 with ED that she was financially out of pocket as a result of paying the annual premium of over €6,000 to the third-party provider in February 2015, the only conclusion that ED could draw from this remark was that her ideal solution was to be compensated for making this payment under what she considered to be false pretences. This conversation was prior to the issue with the maximum term of the converted plan coming to light on the 21 December 2015. In relation to the first Complainant's suggestion that it was she who contacted the Provider to query the term, the Provider states that ED emailed the first Complainant on 21 December 2015 to update her on the progress of her original complaint regarding information received in May 2014. In that email, ED brings the matter of the 20 year term associated with the conversion application to the Complainant's attention. The Provider notes that the first Complainant's Broker was also contacted by the Provider and in the absence of EC, his colleagues were both briefed on the issue and both of these individuals spoke with the first Complainant on the 21 and 22 December 2015.

The Provider argues that as soon as the conversion application form was received and reviewed, the issue with the longer than allowed for term of 20 years was noted and both the first Complainant and her Broker were informed of the error with the quotations and the correct term of five years communicated to them along with appropriate premium quotations. The Provider states that is unaware that first Complainant has suffered financially as a result of the error with the quotation for the 20 year term which was corrected when the application was received and reviewed on 21 December 2015. The Provider does not accept the contention that the provision of a quotation is the basis of the contract as all quotations provided are for illustrative purposes only, are not guaranteed, and are subject to change.

By letter dated 19 February 2016, the Provider acknowledges that its letter dated 10 February 2016 enclosing a cheque for €500 incorrectly explained that the payment is due to an overpayment. The Provider states, however, that it is satisfied that its final response

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letter dated 10 February 2016 clearly explains the reason for the payment of €500 to the first Complainant.

In response to queries raised by this office, the Provider responded by letter dated 9 November 2016, and confirmed that it has been unable to retrieve the logged telephone call of 30 May 2014 as the call took place over a non-recording device so it is not possible to establish what information, correct or incorrect, was provided during that call. It notes that in the spirit of good customer care, however, it offered to compensate the Complainant in relation to the premium that she paid to the third party provider as part of the overall settlement proposal which was ultimately declined by the first Complainant. It accepts that incorrect information was provided to the first Complainant and her Broker in November 2015 which suggested that the converted plan could be taken out for a term of up to 20 years when in fact in accordance with the terms and conditions the maximum allowable term was just five years. Once the application was received, the first Complainant was informed that the 20 year term was not possible. The deadline for conversion was extended to facilitate the first Complainant and the Complainant was then offered the option to convert to a new plan for an extended term of 10 years in order to resolve the complaint. This offer was rejected by the Complainant in January 2016. The Provider states that the ex-gratia payment discussed in relation to the third party policy was made on the proviso that the first Complainant proceed with the compromise conversion option offer but that this was rejected.

The Provider subsequently offered a customer service award of €500 by way of apology for the misinformation provided to the first Complainant. The Provider argues that it is satisfied that it made every effort to reach an accommodation with the first Complainant within the bounds of a practical workable solution. The Provider indicated its willingness to increase the customer service award for the misleading information from €500 to €1,000.

In a letter to this office dated 10 January 2017, the Provider argues that regardless of any incorrect information provided to the first Complainant in May 2014, her decision to convert the third-party policy with a term of 20 years was and continues to be the best option available to her between the two providers. As to the proposed compensation in relation to the third party policy, the Provider states that this was discussed to reflect any loss to the first Complainant on the proviso that she wanted to convert her policy with the Provider in preference to converting the third party policy. The Provider acknowledges that the first Complainant made a call to it on the 21 December 2015 and spoke to B. Independent of this contact, however, the Provider notes that ED who had already been dealing with the first Complainant in relation to the May 2014 complaint telephoned the first Complainant on the same day to update her on the investigation and to raise the matter of the maximum term allowable with her recent conversion application. On request, ED called the first Complainant back that afternoon to provide a corrected quote for the shorter term, followed by a confirmation email. The Provider rejects the argument that the error would not have come to light if the first Complainant had not made a call on the 21 December 2015. The Provider states that the application and cheque was not received by the new business team until Wednesday, 16 December 2015 and the application was first reviewed on Monday, 21 December 2015 at which point the issue in relation to the term came to light. It argues that the proposed start date of the newly converted plan was the day the Broker

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uploaded the first Complainant's application on the Provider's online systems (i.e. on 16 December 2015) and not on the 13 December 2015 as argued by the first Complainant. The Provider states that the annual premium would not have been allocated to the conversion plan until all details and requirements associated with the application have been checked and verified and on that basis the cheque would remain uncashed until the application had passed the quality checks which did not happen in this instance. No monies were therefore accepted and no contract was entered into.

By letter dated 10 May 2017, the Provider reiterates that the application for the new 20 year term policy was uploaded by the Complainant's Broker on 16 December 2015 and reviewed by the new business team on 21 December 2015, a lapse of three working days which is within the Provider's own agreed service level. It argues that any replacement policy will only come into effect once all necessary requirements have been received from the Broker and these have been checked and verified by the new business team and the plan schedule documents have been issued. As the application received was flawed in respect of the length of term eligible for the particular life assured, the application did not pass the necessary quality checks and so never came into force.

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 Complainants were 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 19 November 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, I set out below my final determination.

There are three complaints raised by the Complainants: (i) misinformation was provided to the first Complainant in relation to her conversion options by telephone call dated 30 May 2014; (ii) the Provider is refusing to honour the contract entered into in December 2015 and/or that misinformation was provided to the first Complainant and her Broker in relation to her conversion options in November/December 2015; and (iii) the Provider's method of communication in relation to the complaint in December and January 2015 was inappropriate and confusing. As the main substance of the complaint relates to the conversion options available to the Complainants, it is important to firstly determine the conversion option that was available under the guarantee protection plan.

The Conversion Option

I have been provided with a copy of the of the policy conditions of the guaranteed protection plan entered into in December 1996. Clause 31 is entitled "Conversion Option" and provides as follows:

> "*If the Conversion Option applies, the Grantee(s) shall, at any time before the first to be born of the Lives Assured attains the age of 65 years and provided the policy is then in force, have the option, to be exercised in writing and without further evidence of health, of converting this policy to another life assurance policy (the New Policy). The New Policy shall be a Term Assurance with cover ceasing not later than the date on which the first to be born of the Lives Assured attains the age of 65 years or our*
>
> *Whole of Life Assurance or, provided the company has such a policy on offer at that time, a policy providing Critical Illness Insurance.*
>
> *This The New Policy will not have a Conversion Option.*" (emphasis added)

I am satisfied that the policy in question had a conversion option. I am further satisfied that the conversion option contained a restriction whereby conversion to a new term assurance plan (as opposed to a whole of life assurance plan) could only be for a term up to the date on which the life assured attained the age of 65 years old. The life assured in the present case is the second Complainant, the husband of the first Complainant.

It is not in dispute that at the time that the first Complainant sought to convert the Provider's policy in December 2015, the second Complainant was 59 years old. Under the terms and conditions of the policy, therefore, the first Complainant had the option to convert the policy for a term life period of up to 5 years or to a whole of life assurance product.

Telephone Call of 30 May 2014

The first Complainant states that she made a call to the Provider's customer service department on 30 May 2014 seeking information as to the conversion option or options

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associated with her guaranteed protection term assurance policy with the Provider. She states that she made this call as she had another policy with a third party provider which contained a conversion option to a term of 20 years, which option she had to make a decision in relation to. As the sum insured with the Provider was greater than that with the third party, her preference was to convert the Provider's plan if possible rather than the plan of the third party and she was therefore seeking information for this reason. The first Complainant states that the Provider's agent informed her that her policy contained no conversion option. On this basis she therefore opted to convert the third-party policy.

The Provider accepts that the first Complainant made a telephone call to its customer service department on 30 May 2014 but states that it has been unable to locate a recording of the call in question and is therefore not in a position to confirm what was said to the first Complainant at the time.

In the circumstances and in the absence of any evidence from the Provider to the substance of the phone call, I accept that the first Complainant was wrongly informed on 30 May 2014 by the Provider's representative that there was no conversion option associated with the Provider's guaranteed protection plan and that she therefore chose to convert a third party plan. I therefore uphold this aspect of the complaint.

In light of the fact that the Provider was unable to provide any evidence of the content of the phone call of 30 May 2014, and in light of the admitted and repeated misinformation provided to the first Complainant and her Broker the following year, the tone of its letter to this office dated 11 October 2016 is most surprising. With no evidence whatever to back up its conjecture, it alludes to the "*distinct possibility*" that the first Complainant was provided with correct information in May 2014 as the conversion option associated with her third party policy was more advantageous than the Provider's conversion option. The first Complainant is understandably aggrieved by this.

The Provider is of course entitled to defend complaints made against it and to point to the advantages of the conversion option chosen but this kind of unsubstantiated allegation against a customer to whom there is evidence of the Provider repeatedly providing incorrect information to does not reflect the attitude that this office would expect from a regulated financial services Provider in the context of a genuine complaint.

<u>November/December 2015 Conversion Options</u>

By letter dated 31 October 2015, the Provider wrote to the first Complainant noting that the policy was close to its maturity date and that she had the option under the plan to take out another plan before the maturity date without any health checks. This letter provided as follows:

> "*If you want to take out another plan, please let us know as soon as possible and we will send you further details. Please note that after 13 December 2015, you will need to fill in a full application form for any cover you want in the future. This application will be subject to a normal underwriting process.*

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Please note that certain restrictions may apply in exercising your conversion option. These are outlined in your terms and conditions booklet."

The first Complainant was encouraged to contact her financial adviser or the Provider directly. A letter in similar terms was sent on the 21 November 2015.

On 9 November 2015, the first Complainant was provided with various quotations in relation to her conversion options from the Provider's sales team over the phone. Quotes were provided for periods of 10, 15 and 20 years and it was recommended that she speak to her Broker. The first Complainant's Broker then spoke to the Provider querying the conversion option quotations and was also advised that the maximum term for conversion was to age 80 (i.e. a period of 20 years). On 19 November 2015 the Broker again queried the maximum term allowable on the conversion option and sought confirmation that the maximum term on the converted plan was to age 80. This was incorrectly confirmed by the Provider's customer service representative and the Broker was advised that no further conversion option was allowed on the plan. On 4 December 2015 the Broker again rang to query whether life cover could be reduced over the proposed term of the new plan of 20 years. Between 9 November and 4 December 2015, incorrect information was therefore provided to the first Complainant and/or her Broker on a total of four separate occasions. The incorrect information provided was consistent but wrong. On each occasion the Provider wrongly informed that the first Complainant could convert to a new term of 20 years.

By email dated 9 November 2015, EC of the Broker set out a number of quotes available to the first Complainant in relation to converting the policy on her husband's life. These quotes included her chosen quote of a 20 year term with the sum insured of €750,000 for €6,410 per annum. The Provider accepts that this information was provided to EC by it. The first Complainant raised certain queries with EC in relation to the policy which are set out in an email dated 19 November 2015.

EC explained that the policy could only be converted once up to the age of 80 years old so that if the policy was converted for a 10 year period, it could not thereafter be extended for a further 10 year period. Further quotes were provided by EC to the first Complainant by email dated 1 December 2015 in relation to higher sums assured.

By letter dated 15 December 2015, the Provider acknowledged receipt of a cheque for €6,410 which was said to be received on that date. On 16 December 2015, the Provider wrote to the first Complainant acknowledging receipt of her recent application and enclosing a summary of all questions and answers submitted in relation to the application.

It asked that if anything in the application form was not true and complete, that she contact the Provider as soon as possible. The enclosed application form sought a policy term of 20 years on the life of the second Complainant in the sum of €750,000 for an annual premium amount of €6,347.36. The application form specified that the plan was to replace the previous policy.

By email to the first Complainant dated 21 December 2015, ED on behalf of the Provider stated that she was unaware of whether the May 2014 telephone conversation could be

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retrieved and further stated that the Provider had received paperwork in relation to a conversion of the policy but that the term requested could not be facilitated. ED noted that the Provider's customer service department had provided incorrect information about the term that could be availed of through conversion of the policy to the first Complainant's financial advisers and apologised for this. ED confirmed that the first Complainant could convert a whole of life policy or to a term plan with the maximum term of five years. ED indicated that the first Complainant could exercise this conversion option until 13 January 2016. This information was repeated in an email from ED to the first Complainant dated 23 December 2015.

In an email to EC of the Broker dated 6 January 2016, the first Complainant states clearly that she wished for the Provider to honour the conversion policy allegedly entered into by her in December 2015 without alteration and if they were prepared to do this, she would be prepared to drop the complaint made in relation to the misinformation provided to her in May 2014.

There was also correspondence during this period between the Provider and the first Complainant's Broker. The issue with the incorrect information being passed to EC by the Provider was flagged by the Provider to the Broker on 21 December 2015. The Provider explained that conversion to a term plan was only possible for a period of five years. In an email from the Broker to the Provider dated 22 December 2015, TM noted that he had spoken to the client who was very unhappy and determined to pursue the term cover for 20 years as originally advised. Similar sentiments were expressed by MS by email dated 22 December 2015 who noted she had spoken to the first Complainant the previous day. In an email dated 8 January 2016, ED on behalf of the Provider explained to the Broker that the first Complainant originally asked for the payment of €6,000 customer service award in relation to the third party plan that she had recently converted. ED stated that if the customer exercises her conversion option for the Provider's plan, it would review the information submitted about the alternative cover and her request would be reviewed.

I note that the offer here was for a review by the Provider of the requested compensation rather than a direct offer of compensation subject to conversion. ED noted that she was unable to finalise the complaint as she did not know whether or not the first Complainant would exercise the conversion option. She noted that if the first Complainant chose to maintain the plan she has converted with the third party and does not exercise the conversion of the Provider's policy, it would not be prepared to meet a request to pay the customer service award. The email acknowledges the incorrect information provided in relation to the conversion choice but notes that the Provider must administer the conversion choice in accordance with the terms and conditions of the product and that therefore the first Complainant does not have the option to convert the term life insurance plan with a term exceeding five years.

By letter dated 21 January 2016, the Provider wrote to solicitors acting on behalf of the Complainants confirming that the conversion option on the policy has been extended to 29 January 2016 and that if the Complainants choose to avail of the conversion option, the Provider will backdate the start date of the new plan to 14 December 2015, the day after the previous policy expired. The Provider noted that its customer service department had

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informed EC of the Broker that the customer had the option to convert to a term assurance contract up to the life assured attaining the age of 80 years old. The Provider states that this information was incorrect and apologised for any concern and inconvenience that was caused. It confirmed that the original terms and conditions of the guaranteed protection plan allow for conversion to a term assurance plan up to the life assured attaining the age of 65 years old or to a whole of life contract. As the life assured was 59 years old, the maximum term allowed for a conversion to a term assurance plan would be five years in accordance with the plan's terms and conditions. The Provider confirmed that it could not allow the customer to convert to a term assurance plan providing cover until the life assured was 80 years old under the terms and conditions of the plan. The Provider stated that in light of the complaint, it was agreeable to allow the customer to convert to a term assurance with a term of up to 10 years or alternatively the customer could convert to a whole of life plan.

By letter of response dated 25 January 2016 solicitors on behalf of the Complainant stated that they were not prepared to accept the offer set out (i.e. conversion to a term plan of 10 years) as the first Complainant maintains that she accepted the offer made to her Broker on 9 November 2015 and is seeking for the Complainant to honour the policy entered into in good faith with her in December 2015.

By letter dated 10 February 2016, the Provider enclosed a "*refund cheque for €500 due to an overpayment on your plan*". This was received on 12 February 2015 and necessitated a letter in response from the Complainants for an explanation for the cheque alleged overpayment. The cheque in fact related to the complaint.

The first issue that falls to be determined is whether the quotations provided in November 2015 and the application form and cheque received by the Provider in December 2015 from the first Complainant constitutes a binding contract between the parties in relation to a new term policy of 20 years. I do not accept that this is the case. It is clear that quotations provided are not binding.

Indeed the initial quotation provided of €6,410 in November 2015 was slightly higher than that reflected in the updated quotation with the application form submitted. Further, it was clear that the first Complainant completed an application form on 10 December 2015 and that the cheque provided was received but not encashed by the Provider. In my view, therefore, the incorrect quotations provided by the Provider can be legally classified as 'invitations to treat' rather than 'offers' by the Provider. The relevant offer was in fact made by the first Complainant when she filled out the application form and sent the relevant cheque. Although the application form and cheque were received by the Provider on the 15 or 16 December 2015, the first Complainant's 'offer' was never in fact accepted by the Provider. Rather, when the application was reviewed by the Provider on 21 December 2015, the issue in relation to the term of the conversion option was discovered and the first Complainant informed that there was a difficulty.

I fully appreciate that the first Complainant may have felt that she was accepting the Provider's 'offer' when she filled in the application form and sent the relevant cheque but as a matter of contact law, I cannot uphold her argument that a contract was thereby

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completed. I am accordingly not satisfied that the Provider is bound in contract by the quotations provided by it in November 2015. The terms and conditions of the original contract (including the 5 year limitation in relation to the term of the new term policy on conversion) therefore continued to govern the contractual position between the parties.

Recordings of calls between the parties have been provided in evidence. From the content of this audio evidence, I am satisfied that incorrect and misleading information was provided to the first Complainant and her Broker, on several occasions in November 2015 in relation to the conversion options available on the policy. On 9 November 2015, the first Complainant was informed by a customer service agent of the Provider that she could convert to a policy with a maximum term of 20 years. The same incorrect information was provided to EC, the Complainants' Broker, by another customer service representative later the same day. That representative went so far as to confirm that the only restriction on the policy was that the conversion took place before the maturity date of the original policy. In a third call on 19 November 2015 between the Broker and a third representative, the Provider once again confirmed that the converted term was possible until the life assured reached the age of 80 (i.e. a 20 year term). Finally on 4 December 2015, a fourth representative of the Provider failed to correct the Broker when he indicated that conversion to a term of 20 was proposed. This amounts to four incidents of incorrect and misleading information being offered by four different customer services representatives.

Regulated financial service providers are under a duty not to mislead their customers in the provision of information. Under clause 4.1 of the Consumer Protection Code 2012, for example, a regulated entity "*must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English*." There is no doubt that the Provider in the present case failed to meet its obligations under this provision. Understanding the operation of and options associated with financial products is challenging for many consumers who do not have regular exposure to such products. Consumers therefore rely on the information provided to them by regulated providers.

I note in this case that the first Complainant dealt with the Provider through a Broker who no doubt assisted her in the process but the Broker likewise relied on the information emanating from the Provider which is then transmitted to the Complainants. This is accepted by the Provider in question. What is particularly concerning in relation to the present complaint is that it was not a one-off error whereby misleading information was provided.

I have already accepted that the first Complainant was informed in May 2014 that there was no conversion option under her policy. A year and a half later, the first Complainant received a letter from the Provider which contradicted this and informed her that if she wished to avail of her conversion option, she had to do so prior to the maturity date of the policy i.e. 13 December 2015. Thereafter there were four examples of misinformation provided to the first Complainant and her Broker, EC, by four separate agents of the Provider. There is no doubt but that the Provider indicated that conversion to a new term life assurance policy of 20 years was an option under the policy in question. The Provider's argument that the best conversion option actually available in the period 2014 to 2015 to the Complainants was the

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20 year term offered by the third-party provider does not nullify the misleading information that was provided in both May 2014 and November 2015.

This was further compounded by the inaccurate letter enclosing a cheque in the sum of €500 that was sent to the first Complainant on 10 February 2016 which suggested that the sum of money was in relation to an overpayment when in fact it reflected an offer of compensation in relation to the complaint. This litany of misleading and inaccurate information is completely unacceptable.

In all of the circumstances, it is my view that the complaint should be partially upheld. I do not accept the Complainants' main argument that she should be entitled to convert the policy to a 20 year term life assurance plan. The contractual restriction that applied in relation to the policy is clear and this option was not available to the first Complainant when she applied for the conversion in December 2015. The Provider was entitled to decline the application. I am willing, however, to uphold the complaint insofar as misleading information was provided to the Complainants in relation to their conversion options. I appreciate that an acknowledgement was made as early as 21 December 2015 by the Provider that inaccurate information had been given to the first Complainant and her Broker and that it later indicated its willingness to offer a 10 year term policy rather than the five-year provided for under the terms and conditions of the contract in recognition of the error. I further acknowledge the goodwill gesture of €500 that was offered to the first Complainant, which offer was increased to €1,000. It was entirely appropriate for the Provider to attempt to agree a solution with the first Complainant in light of the misleading information that it had provided to her in relation to the proposed 20 year term. It was also entirely appropriate for the Provider to acknowledge the misleading information provided as soon as it came to light. I do not accept that a customer service award of €6,000 was offered to the first Complainant on the proviso that she opted to convert the Provider's policy in recognition of the conversation of the third-party policy. All that was offered was a review of this suggestion in the event of conversion.

If the Complainants had opted to convert their policy with the Provider to a new 10 year term policy as offered by the Provider in January 2016, there may have been an argument that they suffered financial loss as a result of their decision to convert the third-party policy to a new policy of 20 years in February 2015.

As they did not avail of the Provider's offer and instead allowed the Provider's policy to lapse as and from December 2015, I cannot see that the Complainants have suffered any direct financial loss as a result of the facts underlying present complaint. I accept that the information provided to the first Complainant in May 2014 may well have had a bearing on her decision to convert the third-party policy but it appears to be the case that only the third-party policy allowed the Complainants to convert to a new 20 year policy while the Provider's policy allowed for conversion for a period of five years only. It is not possible to determine at this juncture what choice the Complainants would have made if the Provider had not provided them with inaccurate information but they have not sought to make the argument that they would have chosen the Provider's five-year term policy instead of the 20 year term on offer by the third-party Provider in February 2015 and, in such circumstances, I do not accept that any direct loss can be shown in the present case.

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In light of the multiple incidents described above whereby misleading information was provided to the Complainants, however, it is in my view appropriate to direct that an amount of compensation be paid to the Complainants in recognition of the serious and repeated incidents of inaccurate information provided to them.

Due to the repeated nature of the error, but also recognising the offers made by the Provider in January 2016 to remedy the matter and the fact that the Provider took the opportunity at first instance to acknowledge and apologise for its error, I feel that a sum of €3,000 in compensation to reflect the misleading information and inconvenience caused to the first Complainant is appropriate.

Consumers rely on the information furnished by financial service providers to make informed and important decisions about their financial planning. Such decisions can have serious implications for consumers. I am concerned that wrong information was repeatedly given by the Provider to the Complainants.

Method of Communications from the Provider

The first Complainant has suggested that it was inappropriate for the Provider to contact her by telephone in the period December 2015 to January 2016 in relation to her initial complaint and the subsequent issue regarding her conversion options. She suggests that the matters under discussion were not suitable for conversation over the phone and that the letters that issued from the Provider were confusing. While I appreciate the overall confusion that has arisen in this matter stemming from misinformation provided to the first Complainant and her Broker in May 2014 and November 2015, I do not accept that communications from ED over the Christmas period were inappropriate or confusing.

It is clear that communications from the Provider to the first Complainant were a mixture of phone calls, emails and letters and that telephone calls were not therefore the only or primary method of communication used by the Provider. For example, by letter dated 23 December 2015, the Provider wrote to the first Complainant referring to an initial complaint acknowledgement letter of 4 December 2015, to telephone calls between ED and the first Complainant of 8 December and 21 December 2015, and emails dated 21, 22 and 23 December 2015.

The letter noted that ED had tried to contact the first Complainant by telephone that day to give her an update on the progress of the complaint but was unable to speak to her and asked that she would contact ED. By letter dated 29 December 2015, ED stated that the first Complainant had the option to convert the policy for up to five years until 13 January 2016. In response to a letter from the Complainants' solicitors dated 11 January 2016, the Provider extended the conversion option until 29 January 2016 and stated the five-year maximum term of the term assurance plan. By letter dated 18 January 2016, ED on behalf of the Provider wrote to the first Complainant referring to her previous letter of 23 December 2015 and their telephone conversation of 12 January 2016 in relation to her complaint. The letter notes that the writer understood that the first Complainant's financial adviser, EC of the Broker has been in contact with her regarding her conversion choices and confirms that the

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Provider had contacted EC to confirm the conversion choices available to her. In a call on 19 January 2016, the first complainant requested that an email be sent to her instead of a conversation by phone and ED followed up with an email that day as per her request. The email set out the new offer of a term plan of 10 years. A further letter was sent by the Provider to solicitors acting on behalf of the Complainants dated 21 January 2016 outlining the position of the Provider and its offer of a 10 year term policy conversion.

In seeking to deal with the complaint within a tight timeframe owing to the imminent expiry of the conversion option, I accept that it was reasonable for the Provider to contact the Complainant by telephone. The Provider followed up these calls with emails and letters. I do not accept that the letters were drafted in such a way as to lead to confusion. The factual background to and timing of the complaints in the present case were somewhat complicated. I accept that the Provider sought to explain the position as clearly as possible to the first Complainant. Accordingly I do not uphold this aspect of the complaint.

For the reasons outlined above, I partially uphold this complaint and direct that the Provider pay a sum of €3,000 in compensation to the first Complainant.

Due to the possible implications for other customers who may be seeking clear and accurate information from the Provider in relation to the conversion of similar policies, I propose to bring this Decision and the issues it raises to the attention of the Central Bank of Ireland.

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) (a) and (e).***

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 first Complainant in the sum of €3,000 to an account of the first Complainant's choosing, within a period of 35 days of the nomination of account details by the first 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.***

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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

12 December 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.