An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0041
Sector:	Insurance
Product / Service:	Term Insurance
Conduct(s) complained of:	Maladministration
Outcome:	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants' complaint relates to their attempt to exercise their plan's Guaranteed Cover Again Option (conversion option) when their plan was due to expire on 1st April 2013. In addition, the Complainants say that they understood that the death benefit that was attaching to their plan would be paid to them on their plan's maturity.

The complaint is that the Provider did not correctly administer the policy in relation to the conversion option and in relation the Provider's failure to pay out a surrender value / benefit amount on the policy.

The Complainants' Case

The Complainants' complaint is that their initial policy 02774*** commenced on the 1st November 1987 and matured on the 1st March 1998 at which time they received a surrender payment. The Complainants state that on 20th January 1998 Mr R and another gentleman arrived unannounced to their home at approximately 8-9pm in the evening to discuss what they believed was a new policy similar to the existing one which they had (policy 06194*** dated 1st April 1998 to the 1st April 2013) and also to inform of the amount payable to them on the original policy mentioned above.

The Complainants state that Mr R was very cordial and polite whilst inputting relevant details onto his laptop during the course of this meeting. The Complainants state that the other gentleman seemed very impatient and made them feel that he wanted to finalise

details as quickly as possible. The Complainants say that whilst Mr R went through the policy particulars they were never made believe that there was any difference, in the type of policy they were undertaking, that is, that while there would be a pay out in the event of death before age 80 and as with the policy they had before, there would also be a payment at maturity.

The Complainants' positon is that at this time neither of them understood what was meant by the Wavier Option on the proposal. An option which requires the client to decline to seek further financial advice.

The Complainants submit that during the course of this policy statements were sent out by the Provider to Mr R and to them. The Complainants state that they always believed that the amounts shown were increases to their payment on maturity and were not led to believe any different by Mr R. The Complainants say that when they received a statement in February 2013 they thought this was for a payment settlement. The Complainant's state that they also received various advice notices to increase their policy in line with inflation which they regularly did. During the intervening years they wrote to the Provider requesting a representative to meet with them to discuss the policy, but this never happened (letter dated 12/01/05).

In relation to the letter dated 13 February 2013 from the Provider, which stated that the Complainants should ring the Provider on or before the 1st April to discuss an extension to the policy, the Complainants states that on the 1st of April 2013 they tried contacting the Provider to discuss what they believed was what would be paid out, but unfortunately that day was a bank holiday and nobody was on the switch board. The Complainants state that they again telephoned on the 2nd April to be informed that they would not be receiving any payout as was the case with the first policy, and that all monies paid were now gone.

The First Complainant had just turned eighty and this policy was taken out not for themselves, but for their child's health condition. The Complainants state that to say they were devastated is an understatement. The Complainants submit that throughout their life they always considered the Provider to be an honourable company, and that they never envisaged being *set up* like this.

The Complainants state that they feel that during the course of this policy they have *been cheated* by the Provider. Therefore, they are not looking for compensation, but a Refund of monies paid, and believe this to be €22,900.

The Complainants state that the main items that they would like to highlight are as follows:

- The two gentlemen (Mr R & another) calling privately to their house.

- Particular attention was not drawn to the difference between the old and the new policy.

/Cont'd…

- The ambiguity of the "Waver option" and they question why a sub clause was necessary.

- When requested in the letter of the 8th June 1999 to extend the policy before the age of 74, why was this never acted upon.

- Were two maturity warning letters sufficient?

- Although they had requested review of the policy at various times this never seemed to happen (a letter dated the 14th February 2005 is relevant in this regard).

- In relation to the call made on the bank holiday Monday, the Complainants question what policies were in place to deal with such a scenario. Was the call logged so that the Provider was aware that the call had in fact been made on time.

- No documentation describing the Terms and Conditions of the policy was provided at the time of acceptance nor was a proper description of the policy given.

The Complainants state that in the maturity letter dated the 19th February 2013, paragraph 1 & 3 had led the Complainants to believe that the plan could be continued / renewed.

The Provider's Case

The Provider states that the Complainants Level Net Term Assurance plan, which they elected to take out over a 15 year term, started on 1st April 1998. The Provider says that as such the plan ended on 1st April 2013. The Provider submits that the Plan provided valuable death cover on the lives of the Complainants over this 15 years. The Provider explains that the nature of the Complainants' Term Assurance plan is such that it never accumulates a value and it only pays out in the event of death during its term once the regular payment is maintained. It is the Provider's position that at no time did it ever inform the Complainants that their plan accumulated a value or provided a lump sum payment on maturity if neither of the lives covered passed away.

The Provider refers to the Complainants' Plan Terms and Conditions, a copy of which it says was issued to the Complainants when their plan started. In particular the Provider refers to paragraph 14 in which it is stated: This policy will not acquire a surrender value. The Provider says that while the Complainants' recollection is that they did not receive their plan Terms and Conditions it can assure that they were issued along with a copy of the plan booklet and plan schedule in line with the Provider's standard practice.

The Provider states that having held a number of plans with it over the years the Complainants would have known that it was normal to receive their plan documents shortly after their plan started. The Provider says that as such it would be its expectation that if the Complainants did not receive their documentation in 1998 that they would have contacted the Provider about this in a more timely manner. The Provider says it has no record of this happening. The Provider submits in addition that the Complainant made a request in February 1999 for details on their plans at this time. The Provider says that it

/Cont'd…

responded to this request on 1 March 1999. The Provider states that in a letter to the Complainants it confirmed that plan number 06194** was a protection plan only and that it never accumulated a value. The Provider also refers to the Annual Benefit Statements which it says were clear that their plan is a protection plan which only pays out in the event of death and that it does not accumulate a value. The Provider says that these statements also confirmed that the plan had a Guaranteed Cover Again option and that the life cover on the plan ended on 1 April 2013.

The Provider submits that as mentioned one of the benefits on the Complainants' plan was a Guaranteed Cover Again or 'Conversion option' as provided by paragraph 12 of their plan Terms and Conditions. The Provider says that this benefit allowed the Complainants to convert their cover to a new plan (subject to the rules of the product being converted to at the time of exercising the conversion option) at any time during the term of their existing plan without the need to provide any new medical evidence.

The Provider says that because this benefit allowed for new cover to be taken out without having to provide medical information / evidence of health there are strict reinsurance arrangements in place. The Provider states that as such the benefit must be exercised before the expiry of the existing plan. The Provider says that while it is possible to exercise this option at any time during the term it is not possible to exercise this option once a plan has matured.

The Provider's position is that as the conversion option on the Complainants' plan had not been exercised, in advance of their plan maturing on 1 April 2013 it wrote to the Complainants on 19 February 2013 and 12 March 2013. The Provider says that in these letters it reminded the Complainants that their plan was maturing on 1 April 2013.

The Provider states that the Complainants had the option to take out a new plan before their existing plan ended without the need for any health checks.

The Provider says that this option expired on the expiry of their current plan.

The Provider submits that in particular it highlighted in these letters that:

> *Please note that after 1 April 2013, you will need to fill in a full application form for any cover you want in the future. This application will be subject to our normal underwriting process.*

The Provider states that the Complainants did not exercise their option to convert their plan before its maturity date of 1 April 2013 and as such the opportunity to take out a new plan without the need to provide any medical-evidence expired along with their plan and its cover at this time. The Provider says that in order to take out cover after this date a full application subject to medical underwriting was required.

The Provider states the First Complainant says that he phoned its office about converting on 1 April 2013 which was the day that his cover and option to convert actually expired. The Provider says that this day happened to be a bank holiday Monday of the Easter weekend and as such its office was closed in line with most other Irish Financial Institutions.

/Cont'd…

The Provider sates that it needs to stress that even if its office had been open on this particular day it was still not possible to exercise the conversion option as the plan had expired at this time.

The Provider submits that it is very important to highlight that had the Complainants exercised their conversion option in advance of 1 April 2013, because of their ages at this time, the option that would have been available to them would have been to convert to another term plan which would have provided cover up until the oldest life covered (the First Complainant) reached age 80. The Provider states that when the First Complainant reached age 80 the cover would have cancelled.

The Provider submits that as neither Complainant passed away before The First Complainant turned 80 years of age there was no loss to them by not exercising their conversion option on plan number 06194***. It is the Provider's position that in fact the Complainants benefited by not having to make a regular payment to a plan over this term to protect them against an event which did not occur.

The Provider states that all payments (which totalled €22,960.40) made by the Complainants to their plan over its fifteen year term paid for the cost to maintain their plan and their valuable life cover benefit over this period. The Provider says as such it is not agreeable to this being refunded.

Evidence and further submissions from the parties to the complaint:

The Provider's correspondence of 13th June 2018:

1. *Yes the Terms and Conditions contained within section 6 were posted to [the Complainants] along with their plan booklet and Schedule when their plan started.*
2. *We use standard delivery with An Post when sending clients their plan documentation or indeed any plan correspondence. It is not practical for us to use registered post given the volume of customer correspondence that we issue each year (currently in the region of 3 million pieces per annum). As such we have no evidence of [the Complainants] documents being delivered. Their documents were posted to them as per our normal practice by standard delivery with An Post. Our records do show that the first time that [the Complainants] informed us that they did not receive their plan documentation was in 2013 which was 15 years after their plan had started. It is our expectation that if they did not receive their plan documents when their plan started that they would have informed us in a more timely manner.*
   *[The Complainants] held a number of plans with us before taking out plan number 06194*** in 1998. As such they were familiar with the practice of receiving their plan documents when their plan started. If they did not receive their documents in 1998 we would have expected them to contact us about this at this time.*

/Cont'd…

3. *I have attached a copy of [the Complainants'] Term Assurance Plan Booklet. This booklet was posted to [the Complainants] along with their plan Terms and Conditions and Schedule when their plan started".*

Complainants' submission of 12 July 2018

"…the only thing that I'd like to reiterate is that:

1. *The sales representative who initially sold the policy did so with an associate with him yet [the Provider] has no record of another person being present*
2. *My father at that time did believe he was buying a policy like before that had a guaranteed payment on maturity*
3. *My father did not receive a copy of the policy before the cooling off period expired*
4. *My mother was called into the room to sign a policy that wasn't explained to her.*
5. *[The Provider] has no policy to deal with policies that mature on a bank holiday, when my father called he got a voice mail to call back after the policy matured.*

My father is old school and a man's word is taken at face value, he was not given any indication that this policy was different to the previous one he had which pay out just before he took out this new policy".

Policy Documentation

Plan Booklet

"What is the Term Assurance Plan?

The Term Assurance Plan is a protection plan that pays out a lump sum if you die during a specified period of time".

"How does the Term Assurance Plan Work?

..

You can choose cover for any term from two years upwards (to age 79).

Can I extend the term of my cover?

When you take out a Term Assurance Plan you can choose a "guaranteed insurability option". This means we guarantee that you will be able to convert your plan to another life cover plan at any time up to the end of the term. This will happen irrespective of your state of health. If you have serious illness cover included in your plan you can choose the serious illness option on your new plan. .."

"What happens at the end of the term?

If you opted for the "guaranteed insurability option" when you took out the plan you can convert your plan to another life cover plan at any time up to the end of the term. You can do this irrespective of your state of health".

/Cont'd…

Page 6

"Will there be money in my plan at the end of the term"

Answer: "No. Like car or household insurance all your contribution goes towards the cost of your cover so there is no cash value at the end of the term. This keeps the cost of your cover to a minimum"

Policy Provisions

Paragraph 2

"Definitions

(a) The "Expiry Dare" is the date so described in the Schedule as the date on which (subject to sub-paragraph 11 (b)(ii) cover shall cease".

The Expiry date recorded in all communications with the Complainants is 1st April 2013

Paragraph 12

"Guaranteed Insurability Option

This paragraph shall apply only if so specified in the Schedule to the Policy.

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

Paragraph 14 – Surrender

"This policy will not acquire a surrender value"

Annual Benefit Statements

"Date you started your plan – 1 April 1998

Date your cover will end – 1 April 2013

Basis of cover – joint life first death

Life Cover

/Cont'd…

Indexation

Guaranteed cover again

Important notes for your plan:

- Your benefits are provided in line with terms and conditions booklet, and any special conditions or endorsements agreed with us as outlined in your plan schedule.

- Your life cover will end on 1 April 2013 (Life 1) 1 April 2013 (Life 2)"

19 February 2013 –Letter from the Provider to the Complainants:

"If you want to take out another plan, please let up know as soon as possible and we will send you further details. Please note that after 1 April 2013, you will need to fill in a full application form for any cover you want in the future. This application will be subject to our normal underwriting process.

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

12 March 2013 –Letter from the Provider to the Complainants:

"If you want to take out another plan, please let up know as soon as possible and we will send you further details. Please note that after 1 April 2013, you will need to fill in a full application form for any cover you want in the future. This application will be subject to our normal underwriting process.

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

The Complainants' positon is that they tried to contact the Provider on 1st April 2013.

The Provider's positon is that:

*"It is regrettable that you waited until the Easter Weekend, when the majority of Irish Businesses were closed before attempting to covert your plan to a new one. Unfortunately due to contractual arrangements with our Reinsurers, who provide the underlying cover for these types of term assurance plans, [the Provider] has no discretion in relation to allowing customers to convert to a new similar type plan once the existing plan has expired. In order to take out a new plan we would have had to issue you with a range of options for your to choose from and be in receipt of your completed application forms for your chosen option, again before the expiry / maturity date of Level Net Term Assurance Plan 0619*** on 1 April 2013. It is for this reason that we wrote to you on 19 February 2013, well in advance of the expiry / maturity date to allow you the time to make these arrangements. Even had you*

/Cont'd…

been able to speak to us on Monday 1 April 2013 if would still have been too late to avail of the option".

It is the Provider's positon that even if its office had been open on 1st April 2013 it was still not possible for the Complainant to exercise the conversion option as it states the plan had expired at this time.

23 February 1999 – letter from the First Complainant to the Provider

"Re Various Policy No's …., …, … ,..,

I refer to the above and request you to forward direct to me details of the above, and all transactions relating to same".

1st March 1999 – the Provider to the First Complainant:

"Please find enclosed the information you requested". The following information was contained in a table setting out, as follows:

"Policy No:	*Status*	*Date of Expiry*	*Current Premiums:*	*Current Cover:*	*Current Value*
*6191****	*Inforce*	*01/04/1988*	*£63.07 per month*	*£16,000 Life Cover on [the First Complainant and Second Complainant]*	*Term Assurance plan have no value at any time purely for protection"*

8th June 1999 – Letter from the First Complainant to the Provider

*"I refer to your letter of 6th inst, you have confirmed that policy no. 6191**** is indeed a term policy for 15 years, albeit with options to convert to a whole of life contract, provided this option is exercised before 74th birthday. You then state we could have taken out a whole life policy at the time of affecting the above 15 year term contract however, this would have been more expensive as the current premium we are paying would be more expensive to maintain the benefits on a whole life contract.*

Are we to assume therefore that the cost of converting this policy to whole life in the future as we advance in age will be less expensive than when we effected the 15 year term contract?"

There is no copy of a response to this letter in the Complainants' or the Provider's submissions.

/Cont'd…

14 February 2005 – Letter from the Provider to the Complainants, in response to theirs of 28th January 2004:

> *"I would like to address the concerns that you raised in relation to the product that [PR] sold you in April 1998. The Lifeline term assurance plan provides life cover over a fixed term and for a fixed premium. The product also allows you to convert the plan to whole of life when the fixed term expires without providing new medical information. The cost of life cover is calculated at the end of your fixed term and will provide life cover for the rest of your life".*

The Complaint for Adjudication

The complaint for adjudication is whether the Provider correctly and reasonably administered the policy in relation to the conversion option and in relation to any payout of a surrender value / benefit amount on the policy.

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 21st January 2019, 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.

/Cont'd…

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

Analysis

As regards the allegations in relation to the sale of the policy in 1998, that is that the policy was mis-sold to the Complainants and that they were not provided with a policy document at that time, due to the passage of time is not being examined by this office as part of this complaint.

The examinable aspect of the complaint is whether the Provider correctly administered the policy, in relation to the benefits provided therein, and in relation to the communication of the option to take out another plan prior to the expiry of the existing plan.

I accept that the benefits provided under the Level Net Term Assurance Plan were Life Cover for a 15 year term, Indexation and Guaranteed cover again. I accept that there was no surrender value or maturity benefit on this policy.

It is noted that in March 1999 the Provider advised the Complainants, upon the Complainants' request for the details of the policy, that it had Life Cover on both lives assured and that: ***"Term Assurance plans have no value at any time purely for protection".***

I find no evidence of the Complainants being advised in any correspondence over the years from the Provider of a value accruing on this policy, at surrender or maturity.

As regards the option to take out another plan prior to the expiry of the existing plan, I do consider that the Complainants were reasonably alerted by the Provider (twice) as to the approaching expiry date of their plan and as to what they needed to do to exercise the option to take out another plan. That said, I do not accept the Provider's positon that had the Complainants being able to make contact on 1st April 2013 that they would have been too late as the policy had expired. I consider that the cover under the existing policy only expired at the end of that day, and not before. Therefore, I consider that had the Complainants actually been able to communicated their wish to exercise their option for cover again on that day, they would have been able to do so. In this regard it is noted that the correspondence that issued to the Complainants from the Provider specifically stated that it would be *"after 1 April 2013"* that a full application would be required.

However, I do have concerns with the correspondence that alerted the Complainants to their opportunity to exercise the option for cover again, in that it was not tailored to their particular circumstances. I would have reasonably expected that the Provider would have set out what options were available for the Complainants and be more clear on the closing date for the exercise of those options. The Provider was aware that 1st April 2013 was a bank holiday weekend and while I accept that the Complainants would also have been aware of this, the Provider could reasonably have alerted them to the strictness of the expiry time frame even where such a bank holiday was intervening.

/Cont'd…

The Provider has stated that the only cover that could have been provided by the Complainants exercising the option, at 1st April 2013, was cover up to the First Complainant's 80th birthday, which on my calculations would have been less than a year from the expiry of cover under the existing policy (the First Complainant's 80th birthday occurring in January of 2014). The criteria for obtaining the existing cover in 1998 is noted as follows: *"You can choose cover for any term from two years upwards (to age 79)".*

The Provider could have reasonably advised at this time (prior to April 2013) of any limitations of what could and could not be offered by way of cover going forward and could also have introduced its new product "Over 50's Life Insurance" for the Complainants' consideration.

Overall, it is difficult to ascertain what benefit or advantage the Complainants had with their Guaranteed cover again option under their existing plan, because of their ages and the Provider's stated positon on what could have been offered by them exercising the option in April 2013.

I consider that given that there was a Financial Advisor assigned to the Complainants, it may have been beneficial for the Complainants if the Provider had copied the Financial Advisor on its letters advising the Complainants of the upcoming expiry of their plan.

Overall, I accept that given what the Provider knew about the Complainants, in particular their advanced years, and the limited type of cover that could be offered to them by way of them exercising the guaranteed cover again option (or obtaining cover otherwise from the Provider), greater and better communication with them was required here.

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.

To conclude, I accept that (i) there was no surrender value / maturity benefit amount attaching to the Complainants' policy (ii) the Provider could have communicated in a better manner with the Complainants about what could be availed of by them when their existing cover was to expire and (iii) the Provider could have alerted the Complainants of the reduced time available for them to exercise the conversion option due to the Bank holiday weekend intervening and copied their Financial Adviser on its communications about the exercise of the option under the policy.

While I do not consider it appropriate to direct the return of premiums that the Complainants are seeking (as the Complainants did have the benefit of the life cover over the 15 year period in question, which had to be paid for) I consider that in respect of the Provider's failings as outlined above, that a substantial compensatory payment is merited. Therefore, it is my Legally Binding Decision that the complaint is partially upheld and I

/Cont'd…

direct the Provider to pay the Complainants the compensatory payment of €5,000 (five thousand euro).

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 Complainants in the sum of €5,000, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants 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

14th February 2019

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

ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.