



<u>Decision Ref:</u>	2019-0133
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Personal Pension Plan
<u>Conduct(s) complained of:</u>	Failure to advise on key product/service features
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant took out a Personal Pension Policy in 1997. The Complainant's complaint is that most of her premiums are going towards life insurance rather than to her pension. The Complainant wants the life assurance amounts in excess of €105,000 to go to the pension fund as the Complainant thought that was what was happening.

The complaint is that the Provider did not correctly or reasonably administer, and communicate upon the pension plan. It is argued that there was a lack of clarity in relation to the division of the payments for life cover and in respect of the payment going into pension fund itself.

The Complainant's Case

The Complainant's position is that the Provider is incorrectly deducting monies from her pension to cover costs of life insurance. The Complainant states that she had previously declined the indexation of the cover in 1999.

The Complainant says that she was advised that the Brokerage she took out the policy through ceased trading. The Complainant submits that the Broker still represents the Provider under a different company name. The Complainant says that the Broker is still named on her annual benefit statements from the Provider. The Complainant states that no advice was given to her by the Broker since the brokerage was changed. The Complainant's position is that her Pension Policy is being fully treated as a Life Insurance Policy and that she did not take out the policy for that purpose.

The Complainant submitted a document from the Provider which stated:

“While the policy may provide a level of Life Cover and / or Disability Benefit, it is intended to meet your Pension rather than your Protection needs”.

The Complainant states that the policy is certainly not meeting her Pension needs. The Complainant says that she is extremely annoyed about this as coming up to Retirement age it appears she has no pension after paying into the plan for 20 years.

The Complainant says that she wants the Life Insurance amounts in excess of the €105,000 she thought she had paid to her pension, credited back to her pension fund as she had intended. The Complainant wants the premiums deducted for excessive life cover of €326,000 put back into her pension.

The Provider’s Case

The Provider states that it received a Pension Application at inception and the eligibility questions were correctly answered at the time.

As regards the removal of indexation the Provider submits that it received a telephone call in 1999 to decline the indexation offer for 1999. The Provider says that there was no note from the administrator that indexation was to be removed on an ongoing basis. As a result it was processed as a once off decline. The Provider states that in order to remove indexation from the policy at the time, it required a clear instruction from the client that this was to be removed entirely from the policy and no further increases were to apply. The Provider says that there is no onus for the client to contact the Provider twice in order to remove the indexation permanently. The Provider says that the reference to declining indexation twice is a process whereby if the client declines the yearly increase in two consecutive years, it will automatically remove indexation from the policy permanently. The Provider says that this is noted in the Policy Document , Second Schedule 21:

“The Company reserves the right to offer no further increases in the Death Sum Insured under the provision of this Schedule if two successive increases are waived or cancelled.”

The Provider states that Indexation letters were issued on a yearly basis from 2002 to 2017. These letters confirmed the proposed increase in Life Cover and the premium. The Indexation letters noted that if the Complainant did not want to proceed with the indexation offer she should contact the Provider to advise this. The Provider’s position is that as a result the annual increases were processed as per its correspondence. The Provider submits that no indexation offers were issued to clients in 2000 & 2001 due to a systems update.

The Provider says that in relation to the percentage of indexation increases in the life cover, as it was not notified by the Complainant of her earnings, as per the Policy

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Document, Second Schedule 20 - the increases offered were in line with the appropriate index determined by the Provider. The Second Schedule 20 states that:

"In the event of the Policy Owner not advising the Company of an increase in earnings since the previous Policy Anniversary the Company may offer increases based on the increase in the Consumer Price Index maintained by the Central Statistics Office or any other appropriate index".

The Provider says that for the benefit of the Complainant it provided optional increases in the life cover without the requirement for underwriting. The Provider says that as a result of the proposed increases not being declined, the life cover increased on an annual basis. In the event of a death claim, the Provider was liable for the increased level of life cover provided.

As regards the cost of life cover the Provider submits that the cost of the life cover is deducted from the unit account. If the cost of life cover is greater than the monthly premium, this will lead to a reduction in the unit account.

The Provider states that the breakdown in premiums was provided from 1999 as this was the time the Complainant's query commenced.

The Provider says that a copy of any information booklets/brochures/leaflets in relation to the working of the Complainant's Pension would have been provided to the Complainant at point of sale. The Provider says it has reviewed its archived documents and unfortunately it does not have these details on file. Likewise with regard to copies of the Plan Schedule — the Provider does not have copies of these on file, however it notes the Complainant has provided copies of these.

The Provider has advised that the Complainant has reduced the life cover to €105,000.00 with effect from 01/07/2017.

The Provider's position is that it is satisfied that the policy has operated in line with the terms and conditions set out in the policy document. It says that full explanations were provided when requested; that the Complainant was provided with regular opportunity to reject the optional annual increases and the cost of providing cover was set out in the Provider's letter of 24/01/2006 to the broker. The Provider says that the cost of cover was also noted in Section 785 on some of the Retirement Annuity Contract certificates (RAC Certificates) provided with the annual letters. The Provider states that the cost of cover was outlined in the policy charges section of the Annual Statements from 2014 on, and that illustrative maturity values were also regularly provided to the Broker. The Provider says that appointed agents as per the original proposal are independent brokers.

Further submissions from the Complainant and the Provider

The Complainant's submission of 17th April 2018

"I am not sure what the significance of the call recording is? It clearly shows my confusion at no funds being directed to my Pension but instead all premiums I was paying were going towards Life Cover despite asking [the Provider] to stop increasing this. I did contact the Agent [..], who informed me that the company I took out the policy with was no longer trading and therefore I should forget about it as there was nothing he could do. I also tried to contact [...] of the same company but she did not respond to my email.

I would like to mention how irate [the Broker] became towards me for questioning the policy which I found most suspicious. [The Broker] still acts as an agent for [the Provider] but under [Broker's name] so I would expect that [the Provider] have some responsibility for their Agents.

I agreed to take out this policy in good faith, accepting the word of the Agent that I would have a Pension for my retirement. I cannot understand how [the Provider] can be allowed deduct money from your pension to pay for Life Cover you didn't want or need in the first place".

The Provider's submission of 25th April 2018

"Yes I agree with [the Complainant], the phone call does not provide any additional information than outlined in my complaint letter. I included this as it is the only call that touches on the matter raised so more for full clarity purposes than anything else.

In relation to the issues raised about [the broker], I can confirm that [the Broker] is currently the Independent Broker appointed on the policy. Although [the Broker] ceased trading, as the [the Provider's] policies were transferred to [the Broker] any complaints re mis-selling or broker advices must be referred to them as they are independently regulated and continue to hold responsibility for policies sold under the original agency".

The Complainant's submission of 30th April 2018

"My complaint relates to the way my pension is being handled by [the Provider].

They continued to allocate Pension Contribution to Life Cover despite being instructed to cease doing so in June 1999 by my broker".

The Provider's submission of 3rd May 2018

"We can confirm the instruction received in 1999 was not to cease pensions contributions to the Life Cover. We have noted the instruction as a decline of the

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annual indexation of the life cover and premium offered in that year. As the request was not made to remove indexation on a permanent basis indexation continued to be offered on an annual basis as per the correspondence evidence submitted previously”.

The Complainant’s submission of 3rd May 2018

“Apologies for confusing the terminology. I have no experience with pensions. [The Provider] is correct is saying it was the indexation I cancelled.

I refer to letter from [the Provider] dated 22nd June 1999 confirming that I did not want to avail of the indexation offer and furthermore that the benefits and premiums would remain unchanged.

It is my understanding that my broker called [the Provider] in April 2009 [presumably should be 1999] to arrange this”.

Evidence

The Provider’s letter of 22nd June 1999

“Thank you for your advices of 21 June 1999. We note that you do not wish to avail of the recent indexation offer.

*Consequently, your benefits and premiums will be maintained at last year’s level.
The details are as follows:
Total Life Cover : 105000”*

The Provider submits that no indexation offers were issued to clients in 2000 & 2001 due to a systems update.

July 2002 – an Annual Indexation letter issued from the Provider: **[It is noted that there was no mention by the Provider of the missed indexation offers due to its system update]**

Sum Insured was to be increased to €165,572 – Total Contribution was to increase from €109.07 to €118.28

“Your policy provides for your pension contributions to increase each year in line with the increase in your salary or earnings. Such increases are essential to take account of inflation and to help you achieve your ultimate retirement goal. ... If we do not hear from you, we will assume that the proposed changes as set out above are acceptable and they will be implemented from the policy anniversary date”.

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July 2003

The Sum Insured was to be increased from €165,573 to €175,905 – Total Contribution was to increase from €118.28 to €125.66 per month.

“If we do not hear from you, we will assume that the proposed changes, as set out above, are acceptable and they will be implemented from the Primum Increase Date above. If you prefer, you may leave your protection benefit(s) and premium unchanged, or you may opt for a lesser or greater increase”.

July 2004

The Sum Insured was to be increased from €175,905 to €186,881 – Total Contribution was to increase from €125.66 to €133.50 per month.

“If we do not hear from you, we will assume that the proposed changes, as set out above, are acceptable and they will be implemented from the Primum Increase Date above. If you prefer, you may leave your protection benefit(s) and premium unchanged, or you may opt for a lesser or greater increase”.

19th July 2004 – Provider to the Complainant’s Broker:

“We recently wrote to your client, however our letter has been returned by AN POST, marked: Gone Away”

22 July 2004 – The Provider to the Complainant’s Broker

“Thank you for your recent correspondence advising us of change of address under this policy”

There is no indication from the content of this letter that the Provider was going to / did re-send the indexation letter to the Complainant. No additional copy letter was submitted by the Provider as evidence of a further contact with the Complainant at that time.

July 2005 – The Provider to the Complainant

The Sum Insured was to be increased from €186,881 to €197,963 – Total Contribution was to increase from €133.50 to €141.42 per month.

“If we do not hear from you, we will assume that the proposed changes, as set out above, are acceptable and they will be implemented from the Primum Increase Date above. If you prefer, you may leave your protection benefit(s) and premium unchanged, or you may opt for a lesser or greater increase”.

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1 December 2005 – The Provider to the Complainant’s Broker in response to the Broker’ request for illustrations.

Illustrative values for pension. assuming a total monthly premium of €300.00 is paid from 01/01/2006 and at age 65

5th December 2005 – The Provider to the Complainant’s Broker

“Return on Performance Pension & Investment”

9th December 2005 - The Provider to the Complainant’s Broker in response to the Broker’ request for illustrations.

Illustrative values for pension, assuming a total monthly premium of €300.00 is paid from 1/01/2006 and at age 60

12 December 2005 - The Provider to the Complainant’s Broker

The Provider advises that based upon its calculation, the total amount paid into the pension policy from 01/01/2006 inclusive is €11,104.28.

29 December 2005 - The Provider to the Complainant’s Broker in response to the Broker’ request for illustrations.

Illustrative values provided where premiums were increased to €300 and €400 and to ages 60/65 years.

24th January 2006 - The Provider to the Complainant’s Broker

The Provider advises that the Life Cover is €197,963.00 at a cost of €38.02 per month.

July 2006 - The Provider to the Complainant

The Sum Insured was to be increased from €197,963 to €209,702 – Total Contribution was to increase from €141.42 to €149.81 per month.

“If we do not hear from you, we will assume that the proposed changes, as set out above, are acceptable and they will be implemented from the Primum Increase Date above. If you prefer, you may leave your protection benefit(s) and premium unchanged, or you may opt for a lesser or greater increase”

Assuming you accept the premium increase outlined above, RAC/Tax certificate(s) are enclosed to enable you to claim tax relief on these revised amounts”

The RAC certificate sets out what amount of each periodical or single contribution was going towards the Section 784/785.

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July 2007 - The Provider to the Complainant

The Sum Insured was to be increased from €209,702 to €222,662 – Total Contribution was to increase from €149.81 159.07 per month.

“We will be applying these increases on 1st August 2007 unless we hear from you with alternative instructions. You can choose whether to accept the offered inflation increases or you may opt for a lesser or greater increase. It is important to note that any alternate choice may be subject to further requirements.

Assuming you accept the premium increase outlined above, RAC/Tax certificate(s) are enclosed to enable you to claim tax relief on these revised amounts”.

10th October 2007 – The Complainant to the Provider

“I wish to increase my monthly contribution on the above Policy to €250.00 per month from 01/10/2007. Please issue confirmation of the increase along with a RAC Certificate for tax relief”.

11 October 2007 – The Provider to the Complainant (copy sent to the Complainant’s Broker)

“In accordance with your instructions, we have increased the monthly premium from €159.07 to €250.00 with effect from 01/10/2007”

July 2008 – The Provider to the Complainant

The Sum Insured was to be increased from €222,662 to €236,423 – Total Contribution was to increase from €250.00 to €265.45 per month.

“We will be applying these increases on 1st August 2008 unless we hear from you with alternative instructions. You can choose whether to accept the offered inflation increases or you may opt for a lesser or greater increase. It is important to note that any alternate choice may be subject to further requirements.

Assuming you accept the premium increase outlined above, RAC/Tax certificate(s) are enclosed to enable you to claim tax relief on these revised amounts”.

July 2009- The Provider to the Complainant

The Sum Insured was to be increased from €236,423 to €247,535 – Total Contribution was to increase from €265.45 to €277.93 per month.

“We will be applying these increases on 1st August 2009 unless we hear from you with alternative instructions. You can choose whether to accept the offered

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inflation increases or you may opt for a lesser or greater increase. It is important to note that any alternate choice may be subject to further requirements.

Assuming you accept the premium increase outlined above, RAC/Tax certificate(s) are enclosed to enable you to claim tax relief on these revised amounts”.

12 August 2009 – The Provider to the Complainant’s Broker

*“The amended cover on this policy with effect from 01/09/2009 is as follows:
Current Life Cover: €247,535.00
Current Monthly Premium: €153.55.*

It is estimated that a revised Monthly premium of €65.45, with effect from 01/09/2009, should sustain Life Cover of €95,620.00 until 16/08/2020. This should provide an Estimated Maturity Value of €21,417.00 at 16/08/2020”

29 September 2009 – The Provider to the Complainant’s Broker

*“The current cover on this policy is as follows:
Current Life Cover: €247,535.00
Current Life Cover Premium: €73.45
Current Monthly Premium: €153.55.*

It is estimated that a revised Monthly premium of €68.26, with effect from 01/10/2009, should sustain Life Cover of €100,000.00 on the life insured until 16/08/2020. The premium assumes that at the policy selected retirement date the EMV (Estimated Maturity Value) will be €22,347.00”

July 2010 - The Provider to the Complainant

The Sum Insured was to be increased from €247,535 to €259,169 – Total Contribution was to increase from €153.55 to €160.77 per month.

“We will be applying these increases on 1st August 2010 unless we hear from you with alternative instructions. You can choose whether to accept the offered inflation increases or you may opt for a lesser or greater increase. It is important to note that any alternate choice may be subject to further requirements.

Assuming you accept the premium increase outlined above, RAC/Tax certificate(s) are enclosed to enable you to claim tax relief on these revised amounts”.

July 2011 - The Provider to the Complainant

The Sum Insured was to be increased from €259,169 to €271,350 – Total Contribution was to increase from €160.77 to €168.33 per month.

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"We will be applying these increases on 1st August 2011 unless we hear from you with alternative instructions. You can choose whether to accept the offered inflation increases or you may opt for a lesser or greater increase. It is important to note that any alternate choice may be subject to further requirements.

Assuming you accept the premium increase outlined above, RAC/Tax certificate(s) are enclosed to enable you to claim tax relief on these revised amounts".

27 March 2012 – the Provider to the Complainant's Broker

"The current levels and costs of the risk benefits are as follows:

Current Life Cover (Exclusive of Fund): €271,350.00

Current Cost of Exclusive Life Cover: €102.01 per month.

The monthly premium is currently €168.33. The above cost of cover, together with other administration fees, are deducted from the policy's Investment Account, as detailed in the Policy Document".

July 2012 - The Provider to the Complainant

The Sum Insured was to be increased from €271,350 to €284,103 – Total Contribution was to increase from €168.33 to €176.24 per month.

"We will be applying these increases on 1st August 2012 unless we hear from you with alternative instructions. You can choose whether to accept the offered inflation increases or you may opt for a lesser or greater increase. It is important to note that any alternate choice may be subject to further requirements.

Assuming you accept the premium increase outlined above, RAC/Tax certificate(s) are enclosed to enable you to claim tax relief on these revised amounts".

December 2012 – The Provider to the Complainant

"Current Premium - €176.24

Current Fund Value €18257.75"

July 2013 - The Provider to the Complainant

The Sum Insured was to be increased from €284,103 to €297,456 – Total Contribution was to increase from €176.24 to €184.52 per month.

"We will be applying these increases on 1st August 2013 unless we hear from you with alternative instructions. You can choose whether to accept the offered inflation increases or you may opt for a lesser or greater increase. It is important to note that any alternate choice may be subject to further requirements.

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Assuming you accept the premium increase outlined above, RAC/Tax certificate(s) are enclosed to enable you to claim tax relief on these revised amounts”.

December 2013 – The Provider to the Complainant

*“Current Premium €184.52
Current Fund Value - €20275.93”*

20 July 2014 – Provider to the Complainant – Annual Statement

*“A summary of the Protection Benefits
Life Sum Insured (Exclusive of Fund) €297456.00”*

*“A summary of your Policy Transactions over the Statement Period
Premiums Paid €2214.24
Policy Charges (excluding annual management charge) €-1900.87”*

*“Notes
Policy Charges
This represents monthly policy fees, Bid/Offer Spreads, fund switching fees, any other charges applied to your premiums, any risk benefit charges deducted from your policy, and any charges applied to amounts withdrawn from your policy”.*

12 August 2014 - The Provider to the Complainant

The Sum Insured was to be increased from €297,456 to €311,436 – Total Contribution was to increase from €184.52 to €193.19

“We will be applying these increases on 1st August 2014 unless we hear from you with alternative instructions. ... You can choose whether to accept the offered inflation increases or you may opt for a lesser or greater increase. It is important to note that any alternate choice may be subject to further requirements.

Assuming you accept the premium increase outlined above, RAC/Tax certificate(s) are enclosed to enable you to claim tax relief on these revised amounts”.

16 July 2015 - The Provider to the Complainant

The Sum Insured was to be increased from €297,456 to €311,436 – Total Contribution was to increase from €184.52 to €193.19

“We will be applying these increases on 1st August 2015 unless we hear from you with alternative instructions. ... You can choose whether to accept the offered inflation increases or you may opt for a lesser or greater increase. It is important to note that any alternate choice may be subject to further requirements.

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Assuming you accept the premium increase outlined above, RAC/Tax certificate(s) are enclosed to enable you to claim tax relief on these revised amounts”.

20 July 2015 – the Provider to the Complainant – Annual Statement

*“A summary of the Protection Benefits
Life Sum Insured (Exclusive of Fund) €311436.00”*

*“A summary of your Policy Transactions over the Statement Period
Premiums Paid €2214.24
Policy Charges (excluding annual management charge) €-2105.04”*

“Notes

Policy Charges

This represents monthly policy fees, Bid/Offer Spreads, fund switching fees, any other charges applied to your premiums, any risk benefit charges deducted from your policy, and any charges applied to amounts withdrawn from your policy”.

20 July 2016 – the Provider to the Complainant – Annual Statement

*“A summary of the Protection Benefits
Life Sum Insured (Exclusive of Fund) €311436.00”*

*“A summary of your Policy Transactions over the Statement Period
Premiums Paid €2318.28
Policy Charges (excluding annual management charge) €-2439.38”*

“Notes

Policy Charges

This represents monthly policy fees, Bid/Offer Spreads, fund switching fees, any other charges applied to your premiums, any risk benefit charges deducted from your policy, and any charges applied to amounts withdrawn from your policy”.

August 2016 - The Provider to the Complainant

The Sum Insured was to be increased from €311,436 to €326,073– Total Contribution was to increase from €193.19 to €202.27 per month.

“We will be applying these increases on 1st August 2016 unless we hear from you with alternative instructions. ... You can choose whether to accept the offered inflation increases or you may opt for a lesser or greater increase. It is important to note that any alternate choice may be subject to further requirements.

Assuming you accept the premium increase outlined above, RAC/Tax certificate(s) are enclosed to enable you to claim tax relief on these revised amounts”.

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The Retirement Annuity Contract certificates (RAC certificates)

The RAC / Tax certificates that issued in the latter years merely indicated that the amount of contribution going towards the "Section 785" (life cover) part of the plan was the larger amount. There is no clarification for the Complainant in these statements or in any of the accompanying letters that the "Section 785" part of the plan is the life cover element. The RAC Certificate that issued in the later years also indicated that there was nothing being paid towards the "Section 784" (the pension element of the plan). Again there is no clarification for the Complainant in these statements or in the accompanying letters that the "Section 784" part of the plan is the pension element only.

The 2012 communications do set out the cost of the life cover as €102.01 out of the total monthly premium of €168.33, but the RAC certificate that issued did not reflect any monies going into the Section 784 part of the policy.

The 2010 RAC certificate indicated that out of the Total Premium of €160.77 a payment of €3.33 went towards "Section 784" part of plan and €157.44 went towards the life cover.

The August 2009 RAC certificate indicated that for the "Section 784" part of the Plan a single premium of €153.55 was paid. For the "Section 785" part of the certificate "N/A" is entered. The letter accompanying the certificate did state that a revised monthly premium of €65.45 should sustain Life Cover of €95,620.00 until 2020.

The July 2009 Indexation letter does not advise on the break down of life cover and pension payment, but the accompanying RAC Certificate does state that for "Section 784" a the contribution was €135.19 and for the "Section 785" part of the plan it was €142.74. Likewise the July 2009 RAC certificate sets out the breakdown of premium between Sections 784 and 785 (again without any explanation as to what do the sections mean).

A letter dated 11th October 2007 states that as instructed the premiums would increase to €250.00. The RAC certificate only apportions this €250 premium to the "Section 784", with "N/A" recorded for "Section 785".

The RAC certificate for July 2007 gives a breakdown of the premiums as €44.63 for "Section 784" and €114.44 for "Section 785"

The January 2007 RAC certificate shows one payment of €125.66 for "Section 784" and "N/A" for "Section 785".

The July 2006 RAC certificate shows that a payment of €47.80 was going towards "Section 784" and €102.01 towards "Section 785".

A letter dated 24 January 2006 advises, following an specific enquiry from the Broker that the cost of life cover as €38.01.

The July 2005 RAC certificate shows that a payment of €50.28 was going towards "Section 784" and €91.14 towards "Section 785".

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The July 2004 RAC certificate shows that a payment of €52.09 was going towards "Section 784" and €81.41" towards "Section 785".

The July 2003 RAC certificate shows that a payment of €125.66 was going towards "Section 784" and "N/A" is entered for "Section 785".

The July 2003 RAC certificate shows that a payment of €118.28 was going towards "Section 784" and "N/A" was entered for "Section 785".

The Complainant's e-mail of 12 June 2017

"Regarding our telephone conversation, I would like to freeze the Life Insurance element of my Pension to an amount of €105,000, as was intended since 1999".

Policy Provisions

Policy Schedule (Second Schedule dated 2010)

"13. Cost of Insurance Cover

The Company shall be entitled to debit the ... Account or, if none, to cancel sufficient Accumulator Units at their Bid Price to pay for the cost of any Sums Insured provided under the "Additional Policy". The cost of the Death Sum Insured is determined by applying mortality rates to the Death Sum Insured.

..

14. Pension Fund Deduction

The Company shall deduct from each Pension Fund such amounts as it considers appropriate in respect of the following:-

- (a) All expenses, taxes, duties and other charges incurred in the purchase, sale, management, valuation and maintenance of the investments of the Pension Fund including in the case of land or buildings the expenses of management, repair, maintenance, valuation and insurance;*
- (b) Interest on money borrowed for the account of the Pension Fund;*
- (c) Any liabilities, expenses, taxes, duties or other charges not previously taken into account due in connection with the Pension Fund or made on the Company and referable to the Pension Fund".*

Sixth Schedule – Annual Policy Increases

"1. Increase in Premium

The premium shall be increased proportionately to any increase in the earnings of the Policy Owner since the previous policy anniversary without any evidence of the continued good health of the Policy Owner unless the Policy Owner elects to take a lesser or no increase. However, the Company may at its discretion increase the premium by a greater amount to be calculated by the Actuary having regard to the

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age of the policy Owner and the size of the Sums Insured under the “Additional Policy”

2. Increase in Earnings

In the event of the Policy Owner not advising the Company of an increase in earnings since the previous Policy anniversary the Company may offer increases based on the increase in the Consumer Price Index maintained by the Central Statistics Office or any other appropriate index”.

1997 Schedule

Second Schedule

“18. Annual Policy Increases

At each policy anniversary while premiums continue to be paid the Death Sum Insured under this policy shall be increased proportionately to any increase in the earnings of the Policy Owner since the previous policy anniversary without any evidence of the continued good health of the Policy Owner unless the Policy Owner elects to take a lesser or no increase.

..

20. In the event of the Policy Owner not advising the Company of an increase in earnings since the previous Policy anniversary the Company may offer increases based on the increase in the Consumer Price Index maintained by the Central Statistics Office or any other appropriate index.

21. The Company reserves the right to offer no further increases in the Death Sum Insured under the provision of the Schedule if two successive increases are waived or cancelled”.

The Complaint for Adjudication

The complaint is that the Provider did not correctly or reasonably administer, and communicate upon the pension plan. It is argued that there was a lack of clarity in relation to the division of the payments for life cover and in respect of the payment going into pension fund itself.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider’s response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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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 29th April 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.

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

Analysis

The Complainant Plan was a Personal Pension Plan. However, it is evident from the documentation and the Terms and Conditions that the plan also provided Life Assurance. This means that any payments that were made into the plan are used to cover the cost of providing this additional benefit under the plan. Under section 13 of the Plan it states that the premium payment is based on a number of factors including age, sex and smoking habits of the Life Assured.

It is the Provider's position that having reviewed the file in full it is satisfied that the plan has been administered in line with the Terms and Conditions of the plan.

I accept that the documentary evidence does not indicate that the cost of providing the benefits would remain fixed, but that the costs involved in providing the Complainant with the life cover increased as she grew older and upon the indexation of the premiums.

It is clear that the Complainant signed up for the Personal Pension Plan with Life Cover when she took out the plan in 1997.

The Provider would not be responsible for any alleged act or omission of the Independent Broker who advised on the policy over the years. For any examination by this office of the Broker's role in the matter, a separate complaint would have to be first made to the Broker by the Complainant.

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I accept that from a review of the documents which were provided to the Complainant when she took out the plan that these documents confirmed how the plan works. I note from the Complaint Form that the Complainant's occupation is accountant, and I would have expected that she should have been in a position of having some familiarity with the pension product, and how it operated.

I accept that the costs for maintaining the benefits were to be taken by unit deduction from the fund value and the cost of providing these increased as the Complainant grew older and with indexation increases.

It is noted that the Complainant did request the cancellation of the indexation in 1999 and the Provider specifically advised that it would maintain the premiums at the previous year's level. The Provider states that for the following two years (2000 and 2001) Indexation was not offered due to a systems update. However, it is noted that there is no evidence of the Provider communicating this system update to the Complainant at that time or in the subsequent years. It appears that the first time that the Complainant was made aware of this was from the Provider's submission in response to this office's questions and request for information. It is also noted that in the next offer of indexation in 2002 the Provider did not communicate that the two years indexation offers were missed. The Provider did not submit any evidence of the Broker's request in relation to the 1999 indexation option. It is the Complainant's position that the indexation was to cease completely from 1999 and the fact that the subsequent two years were indexation free would reasonably have led her to believe that her request was actioned by the Provider, at least for that period. However, the evidence does show that indexation was offered annually after 2002 and there is no evidence of the Complainant refusing the Provider's offer of indexation. I am satisfied that the letters offering indexation clearly shows that the offer was one that could be rejected by the Complainant.

That said, I do consider that the Provider could have provided greater information over the years on the increasing cost of the benefits provided under the plan. The Provider has pointed to instances where it did provide this information. These instances are intermittent in nature. It is noted that for the most part, the Provider only communicated this information in its fullest sense when it was specifically sought by the Complainant's Broker. I consider that the fact that the life cover cost was increasing to such an extent that there was little or no contributions going towards the Pension Fund itself was important information that could and should have been communicated more fully and on a more frequent basis over the years.

I consider that the RAC certificates and the accompanying cover letters were not very clear or consistent as to the division of the premium payment between "Section 784" and Section 785" and with regard to what those particular sections related to. I consider that the Provider should have explained that Section 785 concerned the life cover element of the plan and Section 784 concerned the pension part of the Pension Plan. I also note that it was only in some of the RAC certificates that the Provider itemised the individual division of the payments, that is, in some certificates the Provider did not itemise the cost of life cover under "Section 785".

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I note that the Complainant's policy refers to the Complainant's pension contributions increasing each year in line with the increase in her earnings.

The policy states as follows:

"2. Increase in Earnings

In the event of the Policy Owner not advising the Company of an increase in earnings since the previous Policy anniversary the Company may offer increases based on the increase in the Consumer Price Index maintained by the Central Statistics Office or any other appropriate index".

I find no evidence of the Provider questioning or seeking from the Complainant or her Broker, the details of her earnings over the years.

While I consider this position, I am also mindful that the Complainant or her Broker had knowledge of what was happening as regards the indexation of the Plan and the increasing cost of life cover and do not appear to have taken any remedial action until 2017. I also note that the Complainant had the benefit of independent advice from her Broker and her Broker should have been aware of how the policy was operating.

Overall, I consider that this is a dispute where there could have been better and greater communication between the parties on how the Plan was performing and particularly in relation to the division of the payments into the plan.

With regard to the provision of information to a consumer the Consumer Protection Codes state that a regulated entity must ensure that all information it provides to a consumer is clear and comprehensible, and that key items are brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information.

I accept that a key item of information, that is the cost of the life cover in comparison to what was going into the pension fund, should have been communicated more fully by the Provider on an annual basis over the years, and in regard to this failing, I consider that a compensatory payment is merited.

Having regard to all of the above it is my Legally Binding Decision that the complaint is partially upheld and I direct the compensatory payment of €5,000 (five thousand euro). The Complainant had the benefit of the increased life cover over the years and as this was provided at a cost I do not consider that the premiums paid should be refunded.

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)**.

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- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €5,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

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