An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0167
Sector:	Insurance
Product / Service:	Whole-of-Life
Conduct(s) complained of:	Results of policy review/failure to notify of policy reviews
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns the Provider's administration of two Whole of Life policies taken out by the Complainants in **1984** and **1989** respectively. The Complainants submit that the policy premiums have substantially increased in recent years and that they now find themselves in a position where maintaining their current level of life cover under the policy in future will cost them more than they feel they should be paying. The complaint is that the Provider is wrongfully seeking to increase the Complainants' premium level payable regarding life cover.

The Complainants' Case

The Complainants submit that they took out the above policies (hereinafter policy 256**** will be referred to as 'Policy A' and policy 2287**** will be referred to as 'Policy B') in 1984 and 1989 respectively. The Complainants contend that the current monthly premium for Policy B is €311.08, with life cover benefit of €29,622 *"in spite of the fact that the total payments to date [amount to] €48,726"*. They further contend that the current monthly premium for Policy A is €208.34 with life cover benefit of €34,890 *"and the total payments to date [amount to] €34,383"*. The Complainants assert that the cost of premiums, *"a total of €554.06 a month"* is *"making it almost impossible for [them] to pay [in order] to maintain the level of life cover".* The Complainants want the Provider to *"reduce [their] monthly premiums to a reasonable amount without a big reduction in life cover"*.

The Provider's Case

The Provider submits that it wrote to the First Named Complainant (hereinafter referred to as the FNC) in **December 2012** after he raised a number of issues regarding his policy, including his unhappiness with the plan reviews and the fact that he wanted his *"benefits and payments to remain the same"*. The Provider contends that it explained the plan review process to the FNC fully in the aforementioned communication, as well as the elements that are used to calculate the cost of life cover and the fact that his life cover was, at that point, greater than the premium payments. The Provider submits that it wrote to the Complainants again regarding these matters, in **January 2014**, in response to a complaint received from them in **December 2013** and contends the letter from the Provider again "*fully explained the plan review process"*. The Provider further submits that this letter *"also explains why it is necessary to increase [the Complainants'] repayment or reduce [their] life cover in order to continue with [their] plan at each plan review"*.
The Provider submits that *"the current cost of maintaining [the Complainants'] plans and the life cover, is inevitably higher, because the age-related risk to be insured is greater"*.

The Complaint for Adjudication

The complaint is that the Provider is wrongfully seeking to increase the Complainants' premium level payable regarding life cover. The issue for investigation and adjudication is whether the Provider is acting wrongfully in reviewing the premium level each year and increasing the cost of cover for the Complainants. The Complainants believe that the Provider is over-charging for the cover in question and they believe that they should not be *"penalised for living too long"*. The Complainants' policies A and B were the subject of a Decision from the Insurance Ombudsman in 2003 (which found that policy reviews were provided for in the policy documents and that the Provider was entitled to apply these provisions and carry out reviews as per the terms and conditions of the policies) but this does not prevent this Office from proceeding with the Complainants' current grievance regarding the more recent conduct of the Provider, in increasing the level of premiums payable for the cover in question.

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.

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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 9 May 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.

Evidence

[redacted] **Policy Document (Policy A)**

"Paragraph 2. Definitions –

(l) The 'Policy Review Date' means the twelfth anniversary of the Date of Commencement of the Assurance and thereafter every sixth anniversary thereof provided always that where the Life Assured has attained age 70 and the Policy has been in force for twelve years the Policy Review Date shall mean every anniversary of the Date of Commencement".

"Paragraph 13. Variation in Guaranteed Minimum Death Benefit –

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(b) Automatic Increase – Unless the Proposer declines such increase then on the third anniversary of the Date of Commencement of the Assurance and thereafter on every third anniversary thereof prior to the attainment by the Life Assured of age 60 whilst premiums continue to be payable and are paid under the Policy the Guaranteed Minimum Death Benefit will automatically be increased without any further evidence of health. The increased Guaranteed Minimum Death Benefit shall be equal to the percentage increase in the Consumer Price Index between the last quarterly Consumer Price Index published before notification by the Company to the Proposer of the increase and the last published Consumer Price Index published before notification by the Company to the Proposer of the increase and the last published Consumer Price Index extant three years previously. On such increase the amount of premium currently payable shall be increased by a similar proportion to the increase in the Guaranteed Minimum Death Benefit subject to a minimum in such premium increase of IR£6 per month or its equivalent or such other minimum as the Actuary shall decide. Provided that if the Proposer declines such increase on any relevant anniversary date then no further such increases will be given under this sub-paragraph without production of evidence of good health satisfactory to the Company unless the Company shall otherwise decide".

"Paragraph 16 – Policy Review –

At each Policy Review Date the Company's Actuary will:

(a) Review the Policy Fee and may adjust it to the level compatible with the scale then being charged by the Company for similar policies or if such policies are no longer being issued by the Company to such level as the Company's Actuary deems appropriate.

(b) Determine the maximum Guaranteed Minimum Death Benefit the Company is willing to allow under the Policy until the next following Policy Review Date and in determining the said maximum Guaranteed Minimum Death Benefit the Company's Actuary will inter alia take into account the Accumulated Fund on the said Review Date, future options under the Policy, future allocations of Units to the Policy up to the next Policy Review Date assuming all due premiums are paid and then current mortality rates. If on a Policy Review Date the Guaranteed Minimum Death Benefit under the Policy exceeds the permitted maximum as determined by the Company's Actuary then the Guaranteed Minimum Death Benefit under the Policy will be reduced to the said maximum or at the option of the Proposer the amount of premium payable in the future

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will be increased to such amount as the Company's Actuary shall determine.

(c) Review the limits specified in paragraph 4 and paragraph 14 and adjust either or both if he deems necessary".

[redacted] Policy Document (Policy B)

"Paragraph 2 - Definitions

(o) The 'Policy Review Date' means the tenth anniversary of the Date of Commencement of the Assurance and thereafter each fifth anniversary thereof provided always that where the Life Assured or the older of the Lives Assured has attained age 70 and the Policy shall have been in force for not less than ten years the Policy Review Date shall mean every anniversary of the Date of Commencement of the Assurance".

"Paragraph 4 – AUTOMATIC INCREASE IN PREMIUMS & GUARANTEED MINIMUM DEATH BENEFIT

On the first anniversary of the Date of Commencement of the Assurance and on each subsequent anniversary thereof the then current premium payable under the Policy shall be increased by the yearly rate of increase in the Consumer Price Index for the preceding year subject to a minimum increase of 5% per annum WHEREUPON the then current levels of Guaranteed Minimum Death Benefit and Ancillary Benefits shall automatically be increased in the same proportion without evidence of health of the Life or Lives Assured".

"Paragraph 20 – Policy Review

At each Policy Review Date the Company's Actuary will:

(a) Review the Policy Fee and may adjust it to the level compatible with the scale then being charged by the Company for similar policies or to such level as the Company's Actuary deems appropriate.

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(b) *Determine the maximum Guaranteed Minimum Death Benefit the Company is willing to allow under the Policy until the next following Policy Review Date and in determining the said maximum Guaranteed Minimum Death Benefit the Company's Actuary will inter alia have regard to the Accumulated Fund on the said Review Date future options under the Policy and then current mortality rates. If on a Policy Review Date the Guaranteed Minimum Death Benefit under the Policy exceeds the permitted maximum as determined by the Company's Actuary then the Guaranteed Minimum Death Benefit under the Policy will be reduced to the said maximum or at the option of the Proposer(s) the amount of premium payable in the future will be increased to such amount as the Company's Actuary shall determine.*

(c) *Review the limits specified in paragraph 3, 16 and 19 and adjust any he deems necessary".*

'Complaint Response Letter' issued to the FNC by the Provider dated 11 December 2012

In this communication, the Provider responds to concerns raised by the FNC with regard to Policy B:

"…… over time as you grow older the cost of providing life cover increases. This is common with most forms of insurance"

"Eventually it reaches a point where the regular payment is no longer sufficient to cover the cost of providing your life cover. Instead of continuously amending the payment to reflect the increasing cost of benefits, we rely on….. its fund value. This is in line with the Terms and Conditions"

"Over the years, the combination of the regular payment and fund value was sufficient to cover the cost of your life cover….. The fact that the cost of providing your life cover is now greater than the payment amount we are receiving, the fund value has been reduced in order to help maintain your life cover, as allowed or in the plan's Terms and Conditions. Therefore, it is necessary to make amendments to this plan in order to maintain your life cover in the absence of a fund value"

"[The Provider appreciates] that any increase in [the FNC's] payment is unwelcome….. Under the Terms and Conditions we must review the payment from time to time. The proposed payment increase was a reflection of your increased age and the charges are a reflection of the increased risk being undertaken by [the Provider] in providing your cover"

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"'[The Provider understands] that [the FNC] is unhappy that [he] increased [his] plan annually through Indexation and that [the Provider] has asked [him] to increase [his] payment again despite [his] annual increases. Each time [the FNC's] life cover and payments were adjusted in line with inflation. The level of these increases is the higher of the increase in the Consumer Price Index or 5%"

"It is important to bear in mind that these 'Indexation' increases related solely to ensuring that the real value of the existing cover and payment were preserved and that they were not eroded over time by the effects of inflation….. The Indexation and plan review process are unrelated"

"As your plan is open-ended, we must carry out Plan Reviews to ensure that your payment is enough to cover your level of life cover. As the cost of your life cover is more than your regular payment, we are unable to continue to provide your current level of cover for your current payment"

'Response Letter' issued to the FNC by the Provider dated 23 January 2014

In this communication, the Provider responds to concerns raised by the Complainants with regard to Policies A and B:

"As a person grows older, the cost of providing life cover increases as the age-related risk to be insured is greater…. the cost of life cover gets more expensive as one gets older"

"When your monthly payment was no longer sufficient to cover the cost of maintaining your plan and life cover…. we could then rely upon the value which had built up in the fund attaching to your plan. Rather than increasing your payment, we try to keep it as it is for as long as possible by taking the difference (that is the difference between the actual cost of the life cover and what you are paying for life cover) form the value of the fund each month. This process reduces the value of your fund, until there is no longer a value attached"

"[The Provider] would like to point out that when this plan was taken out in 1984 [Policy A], the plan had an automatic increase facility where your benefits and regular payment automatically increased each year, unless [the Complainants] chose to not go ahead with the increase…..(also known as Indexation)…..[The Provider has] informed [the Complainants] of this increase in [their] benefits and regular payments on [their] Annual Benefit Statements and advised [them] to contact [the Provider] if [they] did not want this increase to go ahead"

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"…. The Indexation Option on [the FNC's] plan is optional and [he] can decide not to have [his] benefit and regular payment increased in any year"

"…. [the Provider] has never set any expectation that [the Complainants'] life cover and payment would remain at the same level throughout the lifetime of [the] plan and that [the Provider has] advised [the Complainants] at all times of the certainty of a Plan Review occurring"

"As regards [Policy A, the Provider has] fully adhered to the Financial Services Ombudsman's ruling of 2003 which stated that this plan would not come due for review again until 2013. The payment increases that applied to this plan from 2003 were indexation increases which were always a feature of your plan"

Letter issued to the FNC by the Provider dated 6 February 2014

In this communication, the Provider responds to a letter from the Complainants that reiterated they would like to maintain their then current level of life cover under the policies:

"….. it is not possible to reduce [the Complainants'] current payments if [they] wish to maintain the same level of cover on [their] plans. In order to reduce [their] payments [they] will need to reduce [their] level of cover"

".....[the Provider] would strongly recommend that [the Complainants] speak with [their] financial adviser, [Mr P.D.], before making any decisions"

'Response Letter' issued to the FNC by the Provider dated 2 December 2014

In this communication, the Provider responds to concerns raised by the FNC with regard to indexation on Policies A and B, and to the amount paid into the policies *"compared to the amount of life cover"*:

"[The Provider] can confirm that there was some ambiguity in [its] correspondence which has led to confusion regarding the monthly payment and the current level of cover that [the FNC] had on both plans"

"[The Provider] received [the FNC's] Plan Review Acceptance Letter on 28 November 2013 [for Policy B], where [he] advised that [he] wanted to proceed with Option B, and that [he] wanted to have [his] indexation removed from [his] plan….. However…. [his] request to cancel [his] indexation was not processed"

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"….. [the Provider] can confirm that [it] removed the indexation from [the FNC's] plan in October 2014…. Before [his] monthly payment increased on the renewal date"

"In respect of [Policy A]….your request to cancel your indexation was not completed. This came to light during [a telephone call in September 2014]…. [The Provider] notes that [the FNC] was refunded the over payment of €30.36 on 23 September 2014. The indexation on this plan has also been removed"

"[The Provider] can confirm that the indexation has now been fully removed from both plans, therefore, going forward [the FNC] will not be given the option to increase [his] payments or benefits in line with the inflation, as [he has] requested"

'Response Letter' issued to the FNC by the Provider dated 24 October 2017

In this communication, the Provider responds to concerns raised by the Complainants with regard to plan reviews of Policies A and B:

"[The Provider appreciates] that [the FNC] is unhappy that the level of life cover in place on [Policy B] is now less than the total payments made. However….. it is necessary for payments to continue to be made; to cover the costs that [the Provider incurs] for providing [the FNC] with life cover…… as with any form of insurance we incur costs for providing the protection even if no claim is made"

Letter issued to the Provider by the Insurance Ombudsman of Ireland dated 27 June 2003 containing the Ombudsman's decision

With regard to Policy A, the Insurance Ombudsman stated the following:

"I am satisfied that there is a Review Provision in the policy and the Company are entitled to apply it"

"…. The Company have confirmed to this office that there will be no review on the policy before 2013 provided no changes are made to the policy….. [the Second Named Complainant] will continue to be covered until 2013 for a sum assured of €39,873 for the current premium of €75.96 per month".

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"As another option, I recommend that the Company offer you the following option: The Company to add a Fund Value in your favour or €3,159.99. This Fund can be taken immediately in cash. If you take the cash the Policy ends immediately. However, if you leave this fund value in your policy, in the year 2013, the Second Named Complainant can have whole of life cover of €12,116.00 for a premium of €75.96 for life. The Premium and Death Benefit (in 2013) can never be reviewed or never varied by the Company (no further reviews can take place)"

With regard to Policy B, the Insurance Ombudsman states the following:

"The policy has a nil value"

"Having examined [the] Policy Provisions and Conditions and the Brochure relating to it, I am satisfied that a Review Provision did apply"

"….. my Decision is that the Company offers you a further Option as follows: The Company to add a Fund Value in your favour of €2,645.11. This fund can be taken immediately in cash. If you take the cash the Policy ends immediately. However, in the event that you decide to leave the Fund Value of €2,645.11 in your Policy I have recommended that the Company guarantee at the review date in 2007: A Death Benefit in amount €5,739.22… At a fixed Premium of €82.07 per month…. The Premium and Death Benefit (as above) can never be reviewed or never varied of the Company (no further reviews can take place)"

Letter issued to the Provider by the Insurance Ombudsman of Ireland dated 7 August 2003

"[The FNC] has not accepted [the Insurance Ombudsman's] Decision in relation to [Policy B]. [The] file in relation to same is now closed"

Letter from the Complainants to the Insurance Ombudsman of Ireland dated 15 August 2003

"We have decided to accept the option that there will be no review on this policy until 2013" (Relating to Policy A)

"We reject the decision as set out in your letter dated the 27th June and note that it will not prejudice our legal rights in any way" (Relating to Policy B)

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Letter issued to the Provider by the Insurance Ombudsman of Ireland dated 18 August 2003

> *"[The Complainants] acknowledge that the decision in this case has been accepted in full and final settlement]"* (Relating to Policy A)

This referred to the Complainants' decision to accept the option that there would be no review on Policy A until 2013, as conveyed to the Insurance Ombudsman of Ireland on 15 August 20013. The Provider stated in its submission dated 16 November 2018 that the full fund value of Policy A was withdrawn in 2004, *"thus rendering the accepted ruling null and void"*. It is noted however, that Policy A was not reviewed again until 2013.

Policy Review Communications for Policy A

The Provider wrote to the FNC on **4 April 2013** to convey that a policy review had been carried out and that it anticipated that his payments would not be sufficient to maintain his (then) level of cover. The Provider offered three options and enclosed a 'Your Options and Consent Form' for the Complainants to sign and return, identifying their preferred option (see below):

Your Options and Consent Form

Your current plan details are as follows (includes your next indexation which is due 1 June 2013):

Life Covered	*SNC*	
Current Life Cover	*€34,890.00*	
Your current payments €131.24 per month (inclusive of 1.00% Govt Levy		*Current value €0.00*

Option A

If you would like to maintain your current level of cover, you will need to increase your monthly payment to €168.44 from 1 June 2013. This change will start from 1 June 2013 and will stay in place until your next review date on 1 June 2014.

Life Covered	*SNC*
Current Life Cover	*€34,890.00*
Revised payments €168.44 per month (inclusive of 1.00% Govt Levy)	

Option B

You can reduce your level of cover as set out in the table below and maintain your payment level. This change will start from 1 June 2013 and will stay in place until your next review date on 1 June 2014.

Life Covered	*SNC*
Current Life Cover	*€27,005.00*

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Revised payments €131.24 per month (inclusive of 1.00% Govt Levy)

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Option C

If you would like to maintain the level of cover outlined below, you will need to increase your monthly payment to €149.83 from 1 June 2013. This change will start from 1 June 2013 and will stay in place until your next review date on 1 June 2014.

Life Covered	*SNC*
Revised Life Cover	*€30,948.00*
Revised payments €149.83 per month (inclusive of 1.00% Govt Levy)	

Review – plan changes consent form

Please fill in and sign this consent form and send it back in the freepost envelope provided before 1 June 2013.

Plan B ***We authorise [the Provider] to proceed with: (please tick an option)***

Option A □ ***Option B*** □ ***Option C*** □

Your signatures: _____ _____

SNC ***FNC***

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The Complainants returned the signed 'consent form' dated **7 May 2013** to the Provider selecting Option A.

The Provider wrote to the FNC in May 2014 regarding Policy A and setting out their options in the same manner as in 2013.

In an email to the FNC from his Provider financial adviser dated **21 May 2014**, the adviser states:

> *"… attached are the new figures in relation to [the SNC's] plan showing the monthly cost when the indexation is removed"*

The Complainants returned the above to the Provider by post, having written the following on it by hand:

> *"We have opted for Option 'A'. Life cover €34,890 for monthly payment €176.03"*

This handwritten note is signed by both Complainants and date-stamped **28 May 2014** by the Provider. The Provider wrote to the Complainants on **13 June 2014** to convey that their premium and benefits would be as outlined above until the next review date on **1 June 2015.**

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In May 2015, the Provider wrote to the FNC to convey that his payments would not be enough to maintain the then current level of benefits from **1 June 2015** and to outline his options going forward. The Complainants returned a signed 'consent form' to the Provider dated **17 May 2015** choosing 'Option A' which maintained the life cover at €34,890 for an increased monthly premium of €192.57.

In April 2016, the Provider wrote to the FNC to convey that his payments would not be enough to maintain the then current level of benefits from **1 June 2016** and to outline his options going forward. The FNC returned a signed 'consent form' to the Provider dated **12 April 2016** choosing 'Option A' which maintained the life cover at €34,890 for an increased monthly premium of €208.34.

In June 2017, the Provider wrote to the FNC to convey that his *"current payments and any fund value…. built up"* would not be enough to maintain the then current level of benefits and to outline his options going forward, including a 'Guaranteed Whole of Life Cover plan with no reviews'. The FNC returned a signed 'authorisation' to the Provider dated **26 July 2017** choosing 'Option A' which maintained the life cover for an increased monthly premium of €242.98.

Policy Review Communications for Policy B

The Provider wrote to the FNC on 3 October 2012 to convey that a policy review had been carried out and that it anticipated that his payments would not be sufficient to maintain the then level of cover from 1 December 2012. The Provider offered three options and enclosed a 'Your Options and Consent Form' for the FNC to sign and return, identifying his preferred option (see below):

Your Options and Consent Form	
Your current plan details are as follows (includes your next indexation which is due 1 December 2012):	
Life Covered	*FNC*
Current Life Cover	*€37,395.00*
Your current payments €281.44 per month (inclusive of 1.00% Govt Levy	*Current value €0.00*

Option A

If you would like to maintain your current level of cover, you will need to increase your monthly payment to €350.37 from 1 December 2012. This change will start from 1 December 2012 and will stay in place until your next review date on 1 December 2013.

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Life Covered	*FNC*
Current Life Cover	*€37,395.00*
Revised payments €350.37 per month (inclusive of 1.00% Govt Levy)	

Option B

You can reduce your level of cover as set out in the table below and maintain your payment level. This change will start from 1 December 2012 and will stay in place until your next review date on 1 December 2013.

Life Covered	*FNC*
Current Life Cover	*€29,914.00*
Revised payments €281.04 per month (inclusive of 1.00% Govt Levy)	

Option C

If you would like to maintain the level of cover outlined below, you will need to increase your monthly payment to €315.71 from 1 December 2012. This change will start from 1 December 2012 and will stay in place until your next review date on 1 December 2013.

Life Covered	*FNC*
Revised Life Cover	*€33,654.00*
Revised payments €315.71 per month (inclusive of 1.00% Govt Levy)	

Review – plan changes consent form

Please fill in and sign this consent form and send it back in the freepost envelope provided before 1 December 2012.

Plan A ***I authorise [the Provider] to proceed with: (please tick an option)***

Option A □ ***Option B*** □ ***Option C*** □

Your signature: _____

FNC

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The FNC replied to the Provider by letter on **14 November 2012**, selecting Option C above, which increased his premium and reduced his cover. The FNC also stated in his letter that he was *"not very happy about it"* and *"disgusted to say the least"*.

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The Provider wrote to the FNC in **October 2013** regarding Policy B and set out the options in the same manner as in 2012 as the payments would not be enough to maintain the then current level of benefits from 1 December 2013. The Provider wrote again to the FNC on **2 November 2013** on foot of the Complainant's *"recent request for an additional policy review quote….. [with] no indexation"* and enclosed the following options:

Option A

If you would like to maintain your current level of cover outlined below with no indexation, you will need to alter your monthly payment to €305.07 from 01 December 2013. This change will start from 01 December 2013 and will stay in place until your next review date on 01 December 2014.

Life(s covered	***FNC***	
Current Life Cover	***€33,654.00***	
Revised Payments	***€305.07 monthly***	

Option B

If you would like to maintain the level of cover outlined below, you can alter your monthly payment to €308.00 from 01 December 2013 with no indexation. This change will start from 01 December 203 and will stay in place until your next review date on 01 December 2014.

Life(s covered	***FNC***	
Current Life Cover	***€33,891.00***	
Revised Payments	***€308.00 monthly***	

[redacted] ***Review – plan changes consent form***

Please fill in and sign this consent form, and send it back in the freepost envelope provided before 1 December 2013.

Plan A

I/We authorise [the Provider] to proceed with:

Option A □ *Option B* □

/Cont'd…

Signature(s): _____ _____ *Date:* _____
Name *Name*

****

The FNC returned the signed consent form to the Provider, dated **27 November 2013**, stating that he had selected Option B for life cover of €33,891 and revised payments of €308.00 monthly.

The Provider wrote to the FNC on 3 October 2014 and 1 November 2014 to convey that, from **1 December 2014**, his payments would not be enough to maintain his benefits, and to outline his options going forward. The Provider wrote again to the FNC on **1 December 2014**, stating that as it had not received a reply to the previous letters that it was setting out the FNC's revised benefits as below:

Life Covered	***FNC***
Life Cover	***31,122.00***

Effective date of reduction	***1 December 2014***
Your payments	***326.63 per month (inclusive of 1.00% Govt Levy***

The Provider forwarded an Annual Benefit Statement to the FNC in October 2015 which stated that his payments were sufficient to cover the cost of his benefits at that time. The Provider forwarded an Annual Benefit Statement to the FNC in October 2016 which, again, stated that his payments were sufficient to cover the cost of his benefits at that time. It is noted that no separate Policy Review communication issued to the Complainant

The Provider wrote to the FNC in October 2017 to convey that, from **1 December 2017**, his payments would not be enough to maintain his benefits, and to outline his options going forward. These options included a *"Guaranteed Whole of Life Cover plan with no reviews"*. The FNC returned his 'Option Choice' dated **10 November 2017** to the Provider, selecting Option A which maintained his then current level of cover and increased his monthly payment to €346.96.

The Provider wrote to the FNC in October 2018 to convey that his payments were no longer enough to keep his current level of cover, and to outline his options going forward, including a 'Guaranteed Whole of Life Cover plan with no reviews'.

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Email to the Provider from the Complainants' Financial Adviser dated 14 May 2014

> *"After discussing the options with [the Complainants] they have asked that the indexation be removed…. And that the figures be re done based on the fact that there will be no indexation in the future…. I would be grateful if this could be looked at promptly as [the Complainants] are very concerned and want to get it sorted".*

Audio Evidence

The Provider submitted recordings of three telephone calls with the FNC as part of its formal response.

Call 1: The FNC telephoned the Provider on **17 January 2012** to check the value of the monthly premium and sum assured for Policy B. The Provider furnished him with the requested information and asked if the FNC would like the Provider to send him a letter conveying this information; the Complainant stated that he would like to receive this letter.

Call 2: The FNC telephoned the Provider on **26 January 2012**, having received the letter from the Provider. He again asked what the monthly premium was on his policy (Policy B), and also asked about the premium for Policy A. As the FNC was and is the policyholder for both policies, the Provider furnished him with the requested information. The FNC stated that he had previously contacted the Ombudsman, but *"got nowhere"*.

The FNC asked the Provider how often *"big increases"* happen, and stated that he was aware of *"indexation"*. The Provider stated that reviews happen each year, but that it only writes to policy holders if a change is required. The Provider also stated that *"as one gets older…. it gets more expensive"*. The Provider stated that *"€31,273.18"* had been paid into the policy since its inception, and that the amount a policyholder *"pays in"* may eventually be more than the benefit under the policy, due to the long life lived. The FNC discussed Policy A with the Provider and mentioned that indexation for this policy takes place *"in June"*. The Provider asked the FNC if he had spoken with a financial adviser, and the FNC replied that his financial adviser was *"himself"*. The Provider set out the role of the Provider's designated financial adviser and stated that it might be helpful to speak with the adviser when the FNC was considering his options. The Provider gave the FNC the financial adviser's name and stated that the service was free of charge and was *"there to be used as a resource"*.

The FNC then asked the Provider to pass on his details to the financial adviser so that he might telephone the FNC. The Provider stated that he would arrange for the financial adviser to call the FNC, and that if the FNC wished to meet with the adviser that the adviser could *"call to [the FNC's] house"*.

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Call 3: The FNC telephoned the Provider on **2 November 2017** to discuss both Policy A and Policy B, and stated that he was *"struggling to keep up [the] payments"*. The FNC stated that he didn't know *"at the beginning"* about premium increases occurring later and asked if there were *"any savings"*. The Provider explained that the fund value was used to supplement the life cover in later years. The FNC stated that he met with his financial adviser and received a letter in July which offered the option of reducing the life cover on Policy A to ten thousand euro for a reduced premium; the FNC asked why the premium on Policy B cannot be reduced by a similar amount. The Provider asked if the FNC wished to meet with a financial adviser to discuss Policy B, and conveyed that it was not possible to keep premiums at the (then) current level and maintain the (then) current level of life cover. The FNC stated that this was *"absolutely ridiculous"*.

Further information was sought from the Provider in the course of this adjudication. The Provider's submission dated **1 April 2019** stated that:

> *"Both policies are in force and paid up to date".*
>
> *"The Current Benefits and Premiums are as follows:*
> *[Policy A]: €34,890 for a monthly Premium of 242.98*
> *[Policy B]: €27,579 for a monthly Premium of €346.96".*

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Analysis

The policies which are the subject of this complaint are unit-linked, open-ended protection plans. Policy A was incepted on **1 June 1984 and** Policy B was incepted on **1 December 1989**. The policies have the benefit of being 'whole of life' policies, as long as the premiums continue to be paid and the Complainants can support the cost of the policy benefits.

The main benefit of a unit-linked protection contract is that it affords the policyholder the opportunity to pay a premium in the early years that more than covers the cost of the life cover benefit, with the balance of the premium remaining invested in the designated investment fund. This allows the policyholder to build up a fund that is accessible at all times, or can help to supplement the cost of the premium paid in future years, allowing the policy benefits to be maintained. On this basis, the policy document provides for ongoing 'reviews' in order to establish if the premium being paid is sufficient to maintain the policy benefits to the next scheduled review date.

I would note that even though a unit-linked whole of life policy allows the policyholder, in the early years, to build up a fund value over and above what is needed to pay for the life insurance, this is generally dependent on the performance of the fund. It can be the case that, after a number of years, the policy will have little or no cash value. Such policies are not intended to be savings plans. Where withdrawals are made from the fund by the Policyholder, this will have an impact on what fund value is available thereafter.

It is appropriate to point out that the cost of providing the policy benefits increases as the life assured gets older. Usually, the accumulated fund diminishes the impact of the increasing premium required at each review date. However, if the premium level and the fund value together cannot maintain the policy benefits until the next review date, some action needs to be taken (either the premiums are increased or the sum assured is reduced). If the fund value has been completely exhausted, the level of the premium increase required may be significant. It is for the Provider's actuaries to calculate in each such instance, the correct level of premium which must be paid to sustain the level of cover in place.

A policy review provides the Provider with an opportunity to realistically assess how the policyholder's needs are being met. Furthermore, a policy review should give the Provider the information to furnish the policyholder with an up to date picture of the level of cover chosen and provide an indication as to how long the premium and policy fund is likely to sustain that cover. Such reviews are important, as they allow the Provider to liaise with the policyholder with regard to what, if any, action needs to be taken. This is important for the policyholder. A decision of the Insurance Ombudsman of Ireland in 2003 regarding

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the two policies that are the subject of this complaint, found that Policy Reviews were provided for in the policy documents and that the Provider was entitled to apply these provisions and carry out reviews as per the terms and conditions of the policies. This decision was conveyed to the Complainants in 2003, and thus the Provider's right to apply the policy provisions with regard to reviews will not be examined as part of this adjudication.

The Complainants contend that the Provider has wrongfully increased the premiums for both policies A and B several times in recent years. I note from the evidence submitted that the Provider conveyed to the FNC (who is the policyholder for both policies) that the cost of cover increases as the life assured gets older in its letters dated **11 December 2012** and **23 January 2014**. The Provider also conveyed this information to the FNC during a telephone call on **26 January 2012**, after the FNC had received the Provider's letter dated **18 January 2012** outlining Policy B's benefits and premiums. As the FNC was the policy holder for both policies, I am satisfied that he was made aware by the Provider on a number of occasions in 2012 and 2014 that the cost of life cover increases as the life assured gets older.

It is important to note that the cost of life cover at any age is linked primarily to the mortality rate, i.e. the proportion of people expected to die at those ages. While I appreciate that the Complainants feel that they are being *"penalised for living too long"*, I would point out that they have had the benefit of life cover since the inception of their policies each of which provides for a payment to the designated beneficiary, in the event of the death of one or both of the lives assured. As the probability of this happening increases with the advancing age of the lives assured, the Provider bears an increased cost for insuring this risk of death and is entitled to pass this cost on to the policyholder.

With regard to the issue of indexation, I note that both Policy A and Policy B were subject to this *"automatic increase facility"*, the purpose of which was to protect policy benefits against the effects of inflation. Such increases were provided for in the terms and conditions of both policies, and the FNC stated that he was *"aware"* of indexation in his telephone call with the Provider on **26 January 2012.** The Complainants complained to the Provider about the *"yearly increases"* in their premiums in their letter dated **3 December 2013**, and in its response dated **23 January 2014** the Provider clarified that indexation was separate from the policy review process. The Provider also stated in this letter that indexation was optional, and that the FNC could elect not to have his policy benefits and premiums increased in any year.

The Provider's advisor, having liaised with the Complainants, conveyed to the Provider on 14 May 2014 that *"[the Complainants] have asked that the indexation be removed".* The Provider acknowledges in its formal response to this Office that *"there was a delay with*

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acting on the Complainants' instruction to cancel all future indexations on both plans" and states that the *"oversight was recognised and corrected five months later in October 2014"* after the FNC telephoned the Provider to query the level of premium he was paying regarding policy A. The Provider acknowledges that indexation had not been removed from Policy A as requested and *"refunded the overpayment of €30.36 on 23 September 2014"*.

With regard to the indexation on Policy B, the Provider states that the FNC had requested new premium and life cover quotations on foot of the 2013 policy review, asking that the indexation be removed, and that it forwarded these additional options to him on **2 November 2013.** The Complainant forwarded the signed and dated *"Plan Changes Consent Form"* to the Provider on **27 November 2013**, selecting the Provider's 'Option B' which comprised life cover of €33,891 for a monthly premium of €308. This was a miscalculation on the part of the Provider as the benefit was presented without the indexation being removed. The FNC believed he was choosing cover of almost €34,000 when in actual fact it was less than €30,000. The Provider wrote to the FNC again on **12 May 2015** to convey that when the FNC had requested that indexation be removed from his policy in October 2014, the benefits on the Provider's system *"did not adjust accordingly in conjunction with [the] request"*. The Provider stated that it had adjusted the benefits to the *"correct"* amount, namely €29,622. In its letter to the FNC dated **2 December 2014**, the Provider stated that it *could "confirm that there was some ambiguity in [its] correspondence which has led to confusion regarding the monthly payment and the current level of cover that [the Complainants] had on both plans*". While I agree that there was *"ambiguity"* in the Provider's communications with the Complainants regarding the indexation on their policies, I do not believe that there was any significant loss, expense or inconvenience to the Complainants due to the Provider's acknowledged error, and, in fact, the FNC had the benefit of an increased level of life cover for the premium charged on Policy B from December 2014 to May 2015 due to the Provider's error.

Finally, the Provider has submitted that the Complainants' policies are currently *"in force and paid to date".* The Complainants must decide what they wish to do in relation to the cover and premium options that will be offered by the Provider at the next scheduled policy reviews. I note that the Provider has submitted that it is *"willing to offer the Complainants the Guaranteed Whole of Life Option again but with a 10% discount"* and also that *"if the Complainants wish to nominate a different level of premium or cover amount the Provider would be more than happy to provide an appropriate quotation with the 10% discount"*. In considering the options presented to them at the next policy review, it would be prudent for the Complainants to seek independent financial advice in this respect.

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For the reasons set out above, there is no evidence before me to show that the Provider is wrongfully seeking to increase the Complainants' premium level payable regarding life cover. I am satisfied that the fact that the cost of life cover increases with age has been conveyed to the policyholder (the FNC) on a number of occasions. Though there was some *"ambiguity"* in the Provider's communications with the Complainants regarding the indexation on their policies, there would appear to be no loss or expense to them due to the Provider's acknowledged delay in acting on the Complainants' instruction to remove the indexation:

1. The Provider subsequently refunded of every overpayment amount for Policy A; and
2. The Provider subsequently adjusted the benefit amount to the correct level for Policy B.

In light of this, I do not believe it would be appropriate to uphold this complaint.

Conclusion

My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is rejected.

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.

MARYROSE MCGOVERN,
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

5 June 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.