An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0177
Sector:	Insurance
Product / Service:	Mortgage Protection
Conduct(s) complained of:	Maladministration Delayed or inadequate communication
Outcome:	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns a life assurance policy incepted with the Company on 1 October 1997 for a term of 20 years. The Insurance Certificate lists the Complainants as the *"Insured Customer(s)"* and the Complainants' mortgage provider as the *"Grantee(s)"*. The policy provided life cover in the event of the first death of either of the Complainants and was originally assigned as mortgage protection on the Complainants' then existing mortgage loan, with the monthly premium deducted at that time from a bank account the Complainants held with the mortgage provider. The Complainants repaid their mortgage loan in full in February 2003 but the policy remained in force until January 2015, when the Complainants' mortgage provider notified the Company that it no longer had an interest in the policy.

The Complainants' Case

The Complainants set out their complaint, as follows:

> *"We had a life insurance policy on a mortgage we took out on house in 1997…We sold the house in 2003 and the mortgage was cleared and there was no requirement for the life insurance as a result. It was my understanding once the mortgage was redeemed the policy would be cancelled…But the policy was continued and* [the mortgage provider] *continued to receive written communication* [regarding the

policy] *from* [the Company]. [The mortgage provider] *were obliged to inform me to cancel the policy and no such action was taken.*

[The Company] *maintain they were in contact with* [the mortgage provider] *and informing them of the changes as* [we, the Complainants] *were not deemed the legal holders of the policy. But the policy was continued and* [the Company] *continued to increase the premium year on year and we were never contacted to be informed that there would be an increase. In Feb 2015,* [the mortgage provider] *informed* [the Company] *there was no longer interest in the policy and the policy was cancelled. We received notification from* [the Company] *and that was the first contact we had received from* [the Company] *since 2003"*.

In this regard, the Complainants question why the policy was not cancelled when they repaid their mortgage loan in full in February 2003, as they no longer required mortgage protection.

The Complainants also note that though the policy was index linked, they never received any notification from the Company advising of the annual increase in premium and cover. In this regard, in their email to this Office dated 18 June 2018, the Complainants submit, as follows:

"Direct Debit Mandate dated the 29/10/1997: With regards to our direct debit mandate, "I understand [the Company] *may change amounts and dates only after giving me prior notice". We have an issue with this, as it clearly states we should have received prior notification to the changes on a yearly basis to the amount being debited from the account. This was an agreement made between* [the Company] *and us, not with* [the mortgage provider]. [The Company] *have failed to provide us with notification of the yearly increases to our policy…*[instead] *they provided the information to* [the mortgage provider]. *However, it was not* [the mortgage provider]*'s finances they were continually debiting …*

With regards to the Indexation on the policy, firstly, we have asked [the Company] *on several occasions for the* [notification] *letters of indexation prior to 2011, none of which can be provided. We strongly dispute the sending of these letters to* [the mortgage provider] *in the first instance. Where are the letters from 2003 to 2011? "You may refuse these* [indexation] *increases when they are offered subject to you advising us of such refusals in writing within 10 days of an effective date of any such increases. However, if two successive increases are refused you will not be offered any further increase. Any subsequent increases may be subject to medical evidence". On the 29th September 1997, the* [previous] *provision regarding indexation is stated…the letter is addressed to* [the Second Complainant]. *"You" on this statement nowhere refers to* [the mortgage provider]. *How would it be possible to refuse such charges when* [the Company] *did not forward on these letters of indexation to us?*

We have issue with [the Company] *continually debiting our account with no correspondence with us at any stage"*.

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Similarly, in its correspondence to the Company dated 27 May 2016, the Complainants' solicitors advised, as follows:

> *"In or around October 1997* [the Complainants] *commenced a life assurance plan with* [the Company] *as a condition of a loan they had secured with* [the mortgage provider]. *The plan was a level cover joint life first claim plan for a term of 20 years.*
>
> *The policy was originally assigned as mortgage protection on their existing loan. The loan was redeemed in full…in February 2003, however* [the mortgage provider] *the policy owner failed to instruct* [the Company] *in writing to cancel the policy in circumstances where the loan for which the policy acted as mortgage protection was redeemed in full.*
>
> *In total* [the Complainants] *paid the sum of €9,433.22 in premium payments for a policy owned by* [the mortgage provider] *despite the fact the loan for which this policy was effected had been repaid in full.*
>
> *It was only in January 2015 that* [the Company] *received notice from* [the mortgage provider] *to confirm they had no further interest in the policy and* [the Company] *cancelled the policy with effect from the 1st January 2015.*
>
> *Throughout the lifetime of the policy* [the Complainants] *received no correspondence from* [the Company] *of any nature.*
>
> *No annual statement of account was sent to them confirming the level of cover and the amount of the premium which was indexed linked and increased from an initial premium amount of €27.86 in the first year to €104.17 in October 2014. It is extraordinary that throughout the life of the policy* [the Company] *did not at least annually write to* [the Complainants] *to advise them of the revised indexed premium each year and…why from October 1997 to January 2015 no correspondence was issued directly to the insured* [Complainants] *in respect of this plan"*.

As a result, the Complainants seek from the Company a *"full refund of the* [premium] [the Company] *withdrew from our account without our knowledge or consent"* since the time they repaid their mortgage loan in full, which they calculate to be in the amount of €9,405.75.

The Company's Case

The Company notes that this complaint concerns a life assurance policy incepted with the Company on 1 October 1997 for a term of 20 years. The Insurance Certificate lists the Complainants as the *"Insured Customer(s)"* and the Complainants' mortgage provider as the

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"Grantee(s)". The policy provided life cover in the event of the first death of either of the Complainants and each year the sum insured increased due to indexation (it did not decrease as the Complainants' mortgage loan decreased with repayment). The policy was originally assigned as mortgage protection on the Complainants' then existing mortgage loan, with the monthly premium deducted at that time from a bank account the Complainants held with the mortgage provider. The Complainants repaid their mortgage loan in full in February 2003 but the policy remained in force until January 2015, when the Complainants' mortgage provider notified the Company that it no longer had an interest in the policy.

The Company states that it is satisfied that the policy application form signed by both of the Complainants on 8 September 1997 made clear that the Grantee, that is, the legal owner of the policy, was the Complainants' mortgage provider and thus all policy correspondence was between the Company and this mortgage provider. In addition, the Company notes that the policy application stated that the application was for *"Group Life Insurance Cover"*. In this regard, the application form provides, among other things, as follows:

> *"**Please note carefully***
>
> *This Application is on behalf of* [the Complainants' mortgage provider] *and should only be completed if the following conditions are met.*
>
> ***1.*** *The insurance is being effected by way of security for the benefit of the Bank in connection with a qualifying loan as defined in the Group Policy.*
>
> ***2.*** *The Bank will be named as grantees under the Group Policy and Certificate of Insurance.*
>
> ***3.*** *The total sum insured…does not exceed the lesser of £125,000 for ages up to 35; £100,000 for ages between 36 and 55 or the amount of the loan plus 10%.*
>
> ***4.*** *Each life to be insured will be a borrower or a Guarantor named in a Bank loan deed or agreement and be under age 55 when the insurance commences"*.

The Company states that it is satisfied that the policy application signed by both of the Complainants on 8 September 1997 clearly demonstrates that the Complainants' mortgage provider were the *"grantees under the Group Policy and Certificate of Insurance"* and submits that if the Complainants did not agree to the basis of this proposal then they should not have signed the application and instead raised their concerns with their mortgage provider.

In this regard, the policy application is a legal document and forms part of the basis of the contract with the Company. In signing the application form, the Complainants agreed that their mortgage provider would be named as grantees under this group policy.

In addition, the Company wrote to the Second Complainant on 29 September 1997 confirming cover and provided the Complainants therein the opportunity to cancel the

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policy within 15 days if they were not satisfied with it. The enclosed Insurance Certificate clearly listed the *"Grantee(s)"* as the Complainant's mortgage provider and in turn as also the *"Payee(s)"*, with the Complainants listed as *"Insured Customer(s)"*. This Insurance Certificate set out the policy term as 20 years, until 1 October 2017, with conversion options. It also detailed that *"Indexation applies"*, meaning that the sum insured would increase annually to keep in line with inflation while the associated premium would increase in line with the Consumer Price Index for each year. The Company states that it is therefore satisfied that the Complainants were fully aware from inception that their premiums would increase each year as a result of indexation.

As a result, the Company says it believes that the contract from the outset was fully clear and that the Complainants agreed to the policy terms and conditions.

The Company states that it received a policy cancellation notice from the Complainants' mortgage provider on 7 October 2002. However, the Complainants' mortgage provider subsequently sent a fax message to the Company on 18 October 2002 instead seeking to change the direct debit bank account details for the premium payments, providing account details for a bank account held by the Complainants with a different bank. A further fax message was sent from the Complainants' mortgage provider on 22 October 2002 again seeking to change the direct debit bank account details for the premium payments, providing again account details for a bank account held by the Complainants with a different bank, and advising *"Re above, as per t/c with* [the First Complainant]*, policy is not to be cancelled, just the account with* [the bank] *is cancelled"*. The attached direct debit mandate was signed by the Second Complainant on 3 October 2002. The Company received the same details and attachment from the Complainants' mortgage provider bank by fax dated 31 October 2002. The Company made the amendment requested and the policy remained in force.

In this regard, whilst they repaid their mortgage loan in full some months later in February 2003, the Company contends that the Complainants ought to have known since that they were continuing to pay premiums each month for over a decade and that this would have been clear from their own personal bank transactions from 2003 to 2015.

The Company has located Indexation Letters it sent to the Complainants' mortgage provider in September 2011, 2012, 2013 and 2014 advising of the increased cover and premium amounts, however it is unable to locate any such letters prior to 2011. In this regard, in general it is Company practice to issue these letters on a yearly basis. The Company notes that these Indexation Letters were sent to the Complainants' mortgage provider as the policy grantee.

The Company states that it received notice from the Complainants' mortgage provider on 16 January 2015 that it no longer held an interest in the policy. As a result, the Company wrote to the Complainants on 16 January 2015, as follows:

> *"We received a request from* [the mortgage provider] *(policy owners stating that they have no further interest in your policy. We have cancelled this policy from 1 January 2015.*

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However if you wish to continue the policy, please sign (below), date and return this letter. You will also need to complete a direct debit mandate, which is enclosed".

A cheque in the amount of €104.17 followed on 24 February 2015 as a result of the premium that was due to be refunded in light of the lapsing of the policy.

The Company first received notice in January 2015 from the Complainants' mortgage provider confirming that it no longer had an interest in the policy. The Company submits that it cannot in this regard be held accountable for the actions of a third party.

The Company states that it guarantees to honour the terms and conditions of its insurance policies and in return expects all its customers to do the same. A customer pays a premium in return that one day, in the event of a valid claim the Company will make a payment as promised. In this case, if a valid claim had occurred throughout the life of the policy, the Company asserts that it would have correctly stood by the policy terms and conditions and paid out the claim, which shortly prior to the policy lapsing in January 2015 would have been a sum in excess of €170,000. The Company submits that just because a claim does not occur during the lifetime of a policy does not mean that a customer has an entitlement to get a full refund of premiums paid. In this regard, the Company considers that the Complainants' expectations of a refund of premiums for a period of nearly 12 years, from 2003 to 2015, to be unreasonable and unjust, bearing in mind that it had maintained cover on this policy throughout that period.

As a result, the Company states that it is satisfied that it administered the policy at all times in accordance with its terms and conditions.

The Complaint for Adjudication

The Complainants' complaint is that the Company maladministered a life insurance policy that listed the Complainants as the insured persons insofar that it failed to cancel the insurance policy once the Complainants had repaid their mortgage loan in full in 2003 and failed to communicate with the Complainants throughout the life of 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.

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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 17 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.

This complaint concerns a life assurance policy incepted with the Company on 1 October 1997 for a term of 20 years. The Insurance Certificate lists the Complainants as the *"Insured Customer(s)"* and the Complainants' mortgage provider as the *"Grantee(s)"*. The policy provided life cover in the event of the first death of either of the Complainants and was originally assigned as mortgage protection on the Complainants' then existing mortgage loan, with the monthly premium deducted at that time from a bank account the Complainants held with the mortgage provider. The Complainants repaid their mortgage loan in full in February 2003 but the policy remained in force until January 2015, when the Complainants' mortgage provider notified the Company that it no longer had an interest in the policy.

The complaint at hand is that the Company maladministered a life insurance policy that listed the Complainants as the insured persons insofar that it failed to cancel the insurance policy once the Complainants had repaid their mortgage loan in full in 2003 and failed to communicate with the Complainants throughout the life of the policy.

I note from the documentary evidence before me that the Complainants completed and signed an application for *"Group Life Insurance Cover"* on 8 September 1997. I accept that this application form made clear that the Grantee, that is, the legal owner of the policy, was the Complainants' mortgage provider. In this regard, I note that the application form provides, among other things, as follows:

> *"**Please note carefully***
>
> *This Application is on behalf of* [the Complainants' mortgage provider] *and should only be completed if the following conditions are met.*
>
> ***1.*** *The insurance is being effected by way of security for the benefit of the Bank in connection with a qualifying loan as defined in the Group Policy.*

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2. *The Bank will be named as grantees under the Group Policy and Certificate of Insurance.*

3. *The total sum insured…does not exceed the lesser of £125,000 for ages up to 35; £100,000 for ages between 36 and 55 or the amount of the loan plus 10%.*

4. *Each life to be insured will be a borrower or a Guarantor named in a Bank loan deed or agreement and be under age 55 when the insurance commences"*.

In addition, I also note from the documentary evidence before me that the Company wrote to the Complainants on 29 September 1997 confirming cover and that the enclosed Insurance Certificate clearly listed the *"Grantee(s)"* as the Complainants' mortgage provider and in turn as also the *"Payee(s)"*, with the Complainants listed as *"Insured Customer(s)"*. I thus accept that the Complainants were provided with appropriate notice that the Complainants' mortgage provider was the Grantee of the policy. I note the Company position that it corresponded on all policy matters with the Complainants' mortgage provider, as it was the Grantee (owner) of the policy. I also accept that the Company would not have been in a position to cancel the life insurance policy without instruction from the Complainants' mortgage provider to do so.

In this regard, the documentary evidence before me indicates that the Company first became aware that the Complainants had repaid their mortgage in full when it received notice from the Complainants' mortgage provider, the policy owners, on 16 January 2015 advising that it no longer held an interest in the policy. The Company then wrote to the Complainants the same day, 16 January 2015, to advise that it had received notice from their mortgage provider advising that it had no further interest in this policy and it provided the Complainants with the opportunity to maintain cover should they wish to do so.

In the absence of documentation to the contrary, I accept that the Company received no previous direction to cancel the life insurance policy on the basis that the Complainants had repaid their mortgage loan in full in 2003 and/or that the Complainants' mortgage provider had no further interest in this policy. As a result, the policy remained in force until January 2015 and I note that the Complainants continued to pay the monthly premium in order to maintain the policy benefits, notwithstanding that they themselves had repaid their mortgage loan in full in 2003.

In this regard, I accept the Company position that it had maintained cover on this policy throughout in return for the monthly premium and that if a valid claim had occurred throughout the life of the policy, the Company would have correctly stood by the policy terms and conditions and paid out the claim, which shortly prior to the policy lapsing in January 2015 would have been a sum in excess of €170,000, regardless that the Complainants had repaid their mortgage loan in full. As it continued to receive monthly premiums from the Complainants and had received no direction to the contrary, I accept that the Company correctly maintained cover and kept the policy in force and that no refund of premium is due in this regard.

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In addition, I note that the application for *"Group Life Insurance Cover"* that the Complainants completed and signed on 8 September 1997 indicates that they had opted for indexation, as follows:

> *"Indexation Yes ✓"*

I also note that the Company wrote to the Second Complainant on 29 September 1997 confirming cover and the enclosed Insurance Certificate clearly detailed that *"Indexation applies"*, meaning that the sum insured and the associated premium charged would increase annually to keep in line with inflation. In this regard, the enclosed 'Insurance Certificate Provisions' document provides, among other things, as follows:

> *"**INDEXATION OPTION***
>
> *If indexation of life cover is indicated in the policy schedule then on each policy anniversary the benefit will be increased by 5% automatically up to the policy anniversary prior to the age 65 or the policy anniversary prior to the expiry date if earlier.*
>
> *The premium will increase in line with the amount required to pay for the extra 5% Sum Insured. The rate payable in respect of each extra Sum Insured will be the current rate applicable at the time of indexation. No medical evidence is required in respect of this automatic indexation.*
>
> *You may refuse these increases when they are offered subject to you advising us of such refusals in writing within 10 days of an effective date of any such increase. However if two successive increases are refused, you will not be offered any further increase. Any subsequent increases may be subject to medical evidence".*

Therefore, I accept that the Complainants were provided with appropriate notice that the indexation option that they had chosen at application applied to the policy from the outset and thus that the monthly premium they were being charged would increase each year.

I note from the documentary evidence before me that the Company notified the Complainants' mortgage provider, as the policy owners, in September 2011, 2012, 2013 and 2014 of the Indexation changes to the policy benefit and premium. I also note the Company is unable to locate similar notifications for previous years.

In this regard, I note that in their email to this Office dated 18 June 2018, the Complainants submit, as follows:

> *"*[The Company] *have failed to provide us with notification of the yearly increases to our policy…* [instead] *they provided the information to* [the mortgage provider]*. However, it was not* [the mortgage provider]*'s finances they were continually debiting …*

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> *How would it be possible to refuse such charges when* [the Company] *did not forward on these letters of indexation to us?*
>
> *We have issue with* [the Company] *continually debiting our account with no correspondence with us at any stage"*.

Similarly, in its correspondence to the Company dated 27 May 2016, the Complainants' solicitors advised, as follows:

> *"Throughout the lifetime of the policy* [the Complainants] *received no correspondence from* [the Company] *of any nature.*
>
> *No annual statement of account was sent to them confirming the level of cover and the amount of the premium which was indexed linked and increased from an initial premium amount of €27.86 in the first year to €104.17 in October 2014. It is extraordinary that throughout the life of the policy* [the Company] *did not at least annually write to* [the Complainants] *to advise them of the revised indexed premium each year and…why from October 1997 to January 2015 no correspondence was issued directly to the insured* [Complainants] *in respect of this plan"*.

I note the Company position that it corresponded directly with the Complainants' mortgage provider on all policy matters as it was the Grantee (policy owner) and that it was a matter then for the Grantee to disseminate any such information to the Complainants.

In this regard, I note that during the lifetime of the policy the Company wrote to the Complainants just twice; the first time on 29 September 1997 to confirm cover, the second time on 16 January 2015 to advise that it had received notice from their mortgage provider advising that it had no further interest in this policy and to provide the Complainants with the opportunity to maintain cover should they wish to do so.

While the Complainants' mortgage provider were the Grantees of the policy, it was the Complainants who were paying the policy premium by direct debit. I note that the premium increased from €27.86 per month in the first year to €104.17 by October 2014.

I note that the direct debit mandate signed by the Complainants states "*I understand that [the provider] may change the amounts and dates only after giving* ***me*** *prior notice*". [My emphasis].

Accordingly, whatever about the Company communicating with the Complainant about the indexation of the policy, which I believe would have been good practice, I believe it had an obligation to inform the Complainants, at the very least, of its intention to increase the direct debit year on year.

I note the direct debit form makes no mention of the Grantees and specifically states the Company will only increase the amount taken by direct debit only after giving "me" [the policyholder] notice

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It is clear that the Company did not at any stage, through the life of the policy, inform the Complainants of its intention to increase the monthly premium/direct debit taken from their bank account. I believe a sum of compensation is merited for this lack of communication and the inconvenience caused as a result.

I consider also that it would have been prudent of the Complainants to have checked their bank transactions and statements regularly and that if they had done so, they would have identified that not only did they continue to pay the monthly premium for the policy despite having repaid their mortgage loan in full in 2003, but that this premium amount was increasing annually. In addition, I also note that the Complainants changed the account from which the policy premium was being collected in October 2002, so at that time, just some months before they repaid their mortgage loan in full, the Complainants were clearly mindful of the premium payments.

As it continued to receive monthly premiums from the Complainants and had received no direction to the contrary, I accept that the Company correctly maintained cover.

In relation to the redemption of the mortgage and the potential cancellation of the policy at that stage, I note a separate complaint has been made against another financial service provider (the Grantee).

As I have outlined above, I believe it was unreasonable and wrong of the Company to increase the amount it debited each year from the Complainants' bank account without any advance notification or communication. For this reason, I propose to partially uphold this complaint and direct the Company to pay a sum of €500 to the Complainants in compensation.

Conclusion

My Decision is that this complaint is partially upheld, pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, on the grounds prescribed in ***Section 60(2) (b) and (g).***

I intend to direct pursuant to ***Section 60(4)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** that the Respondent Company make a payment of €500 to the Complainants in compensation.

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

17 June 2019

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

(a) ensures that—

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

(ii) a provider shall not be identified by name or address,

and

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