Decision Ref:	2019-0192
Sector:	Insurance
Product / Service:	Whole-of-Life
Conduct(s) complained of:	Results of policy review/failure to notify of policy reviews Dissatisfaction with customer service Failure to advise on key product/service features
Outcome:	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns a Whole of Life Policy, incepted in **1983**. The Complainants submit that the policy was mis-sold to them at that time and that they were unaware the premiums could increase significantly in later years.

The Complainants' Case

The complaint is that the Provider has acted incorrectly and unreasonably in relation to the administration of the policy from 2011 onwards, in particular in relation to the provision of Annual Benefit Statements and policy review communications, and in seeking to implement a substantial premium increase in 2017.

The Complainants submit that the policy was sold to them by a Provider representative, however, the Provider states that the policy was sold to the Complainants by an independent intermediary. The Complainants have raised specific grievances in relation to the sale of the policy in 1983. The policy was incepted in 1983, some 34 years before the complaint was made to this office. Consequently, the complaint of suggested mis-selling will not be examined as part of this adjudication due to the passage of time. The Complainants were advised of this on **30 July 2018**.

The Complainants submit that when their Whole of Life policy was sold to them in 1983, there was *"no mention [of] premium increases as [the Complainant] got older or investments in units, shares or bonds"*. They further submit that they were not furnished with copies of all Annual Benefit Statements from 2006 to 2017, and that had they received statements from 2010, 2011 and 2012 that this *"would have set [off] alarm bells"*. The Complainants contend that the Provider did convey to them after policy reviews that their life cover would become *"more expensive"* in later years. However, the Complainants also contend that:

> *"The first [they] became aware of what [the Provider] meant by more expensive was in June 2017 when [it] informed [the Complainants] that the monthly premium €38.91 would need to increase to €216.72 to maintain the policy and could be reviewed at [the Provider's] discretion"*.

The Complainants state that they did not receive all of their annual benefit statements, submitting that they did not receive statements in 2010, 2011 and 2012. They also state that *they "only have reviews [from] 2015, 2016, 2017"*. The Complainants assert that if they had received all due communications, they might have become aware earlier that their premium would increase significantly in 2017. The Complainants submit that they telephoned the Provider *"several times seeking an explanation [for] the increase"* and that they found the experience *"frustrating"*. The Complainants contend that their premium *"has been insufficient for a number of years and has been subsidised from what [they] now know was the surrender value of the policy"*.

The Complainants submit that they encashed their policy in December 2017. They want the Provider to *"make a settlement"*, given that they paid *"€15,044.08"* into the policy since its inception.

<u>The Provider's Case</u>

Regarding the sale of the policy, the Provider states:

> *"With respect to the advices given at the time of the sale of this [Plan] and whether there was adequate warning of the Plan Review process in the latter years, the Provider points to the fact that this whole of life assurance plan was sold to the Complainants by an independent financial adviser….. On that basis the Provider cannot make any comment as to what was discussed at the point of sale".*

The Provider submits that the Complainants' Whole of Life policy is a unit-linked, open-ended protection plan, designed to provide flexibility in relation to the ability to vary the level of life cover on the plan:

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> *"For example, people might require more life cover when they are raising a family, however then wish to reduce this level of cover in later years when they have fewer commitments."*

The Provider explains that in the earlier years of the Complainants' plan, the Provider used the Complainants' premiums to purchase units in their chosen fund and *"then surrendered sufficient units to cover the cost of [their] plan's life cover and plan fee every month*".
The Provider states that the cost of Life Cover is linked to the mortality rate, which increases substantially at older ages. It further states that the cost of life cover reflects this, and so the level of payment increases required to maintain such cover *"can be extremely substantial"* into older age. The Provider submits that when the Complainants' premium was *"no longer sufficient"* to cover the cost of maintaining their plan and life cover, the value which had built-up in the fund attached to the plan, was used to pay the difference between the actual cost of the life cover and the monthly premium, leading to a gradual reduction in the fund value until there was no longer a value attached to it. The Provider states that once the fund value is nil, the premium payable must be reviewed.

The Provider submits that it *"ensured that the possibility of Plan Reviews and their impact was outlined in its Product Literature (Additional Information Section), as well as in the Terms and Conditions of the Policy"*. The Provider contends that these items were issued to the Complainants in August 1983 when the policy was incepted. It further contends that it reviewed the Complainants' plan *"on a regular basis and [communicated] the outcome of those reviews annually from 2006 on"*. The Provider states that none of the Annual Benefit Statements issued to the Complainants from 2006 to 2014 were returned as undelivered by An Post, and therefore the Provider *"has no reason to doubt that all of these correspondences were delivered successfully to the Complainants' correct address… between 2006 and 2017"*.

The Provider submits that the Complainants surrendered their plan on 1st December 2017 and that the Provider credited the Complainants' nominated bank account with the sum of €1,589.14 which was *"the full value of [the] plan which, following this payment, is now finished"*.

<u>The Complaint for Adjudication</u>

The complaint is that the Provider acted incorrectly and unreasonably in its administration of the Complainants' policy, in particular in relation to the provision of annual statements and policy review correspondence, and in seeking to implement a substantial premium increase in 2017. The Complainants are unhappy that in order to maintain their joint life benefit of €25,000, a significant premium increase would have been required in 2017. The issue for investigation and adjudication is the Provider's alleged failure to correctly and

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reasonably administer the policy, as well as its suggested failure to communicate in a clear and transparent way with the Complainants regarding their annual statements, policy reviews and the cost of maintaining benefits.

Evidence

Policy Document

Paragraph 2 – DEFINITIONS

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

Paragraph 16 – POLICY REVIEW

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

(b) Determine the maximum Guaranteed Minimum Death Benefit and Ancillary Benefits 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 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 of both if he deems necessary.

PROVIDED THAT if at any Policy Review date the relevant Fund-Link has been superseded by a new series the Company shall have the power to change the Fund-Link to the most recent series on the basis of paragraph 12 but without the charge specified therein."

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'Savings and Protection [Policy]' Leaflet

"The progress of your policy is reviewed initially after 10 years and subsequently every 5 years (yearly after age 70). For dual cover, a review also takes place on first death. As a result of this review, you may need to either increase your contribution or reduce your protection benefits".

Annual Statements

Statement issued to the Complainants in July 2006

"If you would like some help reviewing your financial needs, please call [*********] to set up an appointment with your financial adviser. The financial review takes just one hour, is completely free and there is no obligation. We will send you a detailed report of your review within one week"

"Current value of your fund €8,982.74"

"If your plan does not have a separate savings element we may show your protection plan to have built up a value. We will use this value to fund our protection benefits in the more expensive later years of your plan"

"We estimate your payments will maintain your benefits for at least the next ten years. We will then review your plan to make sure that your payments and any value built-up in the plan are enough to support the benefits applying at that time"

*"**Important notes for your plan:** Your benefits are provided in line with the terms and conditions booklet, and any special conditions or endorsements agreed with us and as outlined in your plan schedule"*

"Your payment every month €38.52"

Statement issued to the Complainants in June 2007

"If you would like some help reviewing your financial needs, please call [***********] to set up an appointment with your financial adviser. The financial review takes just one hour, is completely free and there is no obligation. We will send you a detailed report of your review within one week"

"Current value of your fund €10,303.44"

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"If your plan does not have a separate savings element we may show your protection plan to have built up a value. We will use this value to fund our protection benefits in the more expensive later years of your plan"

"We estimate your payments will maintain your benefits for at least the next ten years. We will then review your plan to make sure that your payments and any value built-up in the plan are enough to support the benefits applying at that time"

*"**Important notes for your plan:** Your benefits are provided in line with the terms and conditions booklet, and any special conditions or endorsements agreed with us and as outlined in your plan schedule"*

"Your payment every month €38.52"

Statement issued to the Complainants in June 2008

"If you would like some help reviewing your financial needs, please call [***********] to set up an appointment with your financial adviser. The financial review takes just one hour, is completely free and there is no obligation. We will send you a detailed report of your review within one week"

"Current value of your fund €8,486.22"

"If your plan does not have a separate savings element we may show your protection plan to have built up a value. We will use this value to fund our protection benefits in the more expensive later years of your plan"

"We estimate your payments will maintain your benefits for at least the next ten years. We will then review your plan to make sure that your payments and any value built-up in the plan are enough to support the benefits applying at that time"

*"**Important notes for your plan:** Your benefits are provided in line with the terms and conditions booklet, and any special conditions or endorsements agreed with us and as outlined in your plan schedule"*
"Your payment every month €38.52"

Statement issued to the Complainants in June 2009

"If you would like some help reviewing your financial needs, please call [***********] to set up an appointment with your financial adviser. The financial review takes just one hour, is completely free and there is no obligation. We will send you a detailed report of your review within one week"

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"Current value of your fund €6,074.07"

"If your plan does not have a separate savings element we may show your protection plan to have built up a value. We will use this value to fund our protection benefits in the more expensive later years of your plan"

"We estimate your payments will maintain your benefits until 1 August 2016. We will then review your plan to make sure that your payments and any value built-up in the plan are enough to support the benefits applying at that time"

*"**Important notes for your plan:** Your benefits are provided in line with the terms and conditions booklet, and any special conditions or endorsements agreed with us and as outlined in your plan schedule"*

"Your payment every month €38.52"

Statement issued to the Complainants in June 2010

"If you would like some help reviewing your financial needs, please call [**********] to set up an appointment with your financial adviser. The financial review takes just one hour, is completely free and there is no obligation. We will send you a detailed report of your review within one week"

"Current value of your fund €6,474.28"

"This is a protection plan, so the [fund] value is not extra savings. The value will be used, in addition to your regular payment, to fund your protection benefits in the late, more expensive years of your plan"

"We will review your plan at the next scheduled review date 1 August 2013. At that stage we will tell you what payment you need to cover the cost of your benefits at that time. If you prefer, you can extend the period of cover by increasing your payment now. For example, we estimate that to sustain Benefits until 1 June 2024, you would need to increase your current payment to €116.25"

*"**Important notes for your plan:** Your benefits are provided in line with the terms and conditions booklet, and any special conditions or endorsements agreed with us and as outlined in your plan schedule"*

"Your payment into your plan every month €38.52. Government levy 1.00% €0.39. Your total payment every month €38.91"

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Statement issued to the Complainants in June 2011

"If you would like some help reviewing your financial needs, please call [***********] to set up an appointment with your financial adviser. The financial review takes just one hour, is completely free and there is no obligation. We will send you a detailed report of your review within one week"

"Current value of your fund €6,334.33"

"This is a protection plan, so the [fund] value is not extra savings. The value will be used, in addition to your regular payment, to fund your protection benefits in the late, more expensive years of your plan"

"We will review your plan at the next scheduled review date 1 August 2013. At that stage we will tell you what payment you need to cover the cost of your benefits at that time. If you prefer, you can extend the period of cover by increasing your payment now. For example, we estimate that to sustain Benefits until 1 September 2024, you would need to increase your current payment to €132.44"

*"**Important notes for your plan:** Your benefits are provided in line with the terms and conditions booklet, and any special conditions or endorsements agreed with us and as outlined in your plan schedule"*

"Your payment into your plan every month €38.52. Government levy 1.00% €0.39. Your total payment every month €38.91"

Statement issued to the Complainants in June 2012

"If you would like some help reviewing your financial needs, please call [***********] to set up an appointment with your financial adviser. The financial review takes one hour to complete. This service is provided to help you plan for your financial needs. There is no charge for this service and you are under no obligation to buy or change your plan. We will send you a detailed report of your review within one week"

"Current value of your fund €5,374.68"

"This is a protection plan, so the [fund] value is not extra savings. The value will be used, in addition to your regular payment, to fund your protection benefits in the late, more expensive years of your plan"

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"We will review your plan at the next scheduled review date 1 August 2013. At that stage we will tell you what payment you need to cover the cost of your benefits at that time. If you prefer, you can extend the period of cover by increasing your payment now. For example, we estimate that to sustain Benefits until 1 March 2024, you would need to increase your current payment to €149.04"

*"**Important notes for your plan:** Your benefits are provided in line with the terms and conditions booklet, and any special conditions or endorsements agreed with us and as outlined in your plan schedule"*

"Your payment into your plan every month €38.52. Government levy 1.00% €0.39. Your total payment every month €38.91"

Statement issued to the Complainants in June 2013

"If you would like some help reviewing your financial needs, please call [***********] to set up an appointment with your financial adviser. The financial review takes one hour to complete. This service is provided to help you plan for your financial needs. There is no charge for this service and you are under no obligation to buy or change your plan. We will send you a detailed report of your review within one week"

"Current value of your fund €5,512.30"

"This is a protection plan, so the [fund] value is not extra savings. The value will be used, in addition to your regular payment, to fund your protection benefits in the late, more expensive years of your plan"

"A review of your plan payments and benefits confirms that your payments are sufficient to cover the cost of your benefits at this time….. Your next plan review will be on 1 August 2014 when we will again check that the payments to your plan are sufficient to cover the costs of your benefits"

*"**Important notes for your plan:** Your benefits are provided in line with the terms and conditions booklet, and any special conditions or endorsements agreed with us and as outlined in your plan schedule"*

"Your payment into your plan every month €38.52. Government levy 1.00% €0.39. Your total payment every month €38.91"

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Statement issued to the Complainants in June 2014

"If you would like some help, please call [*********] to set up an appointment with your financial adviser. The financial review takes just one hour. We provide this service to help you to plan for your financial needs. There is no charge for the service and you do not have to buy. We will send you a detailed report of your review within one week"

"Total fund value at 4 June 2014 €5,203.40"

"If your plan does not have a separate savings element we may show your protection plan to have built up a value. We will use this value to fund our protection benefits in the more expensive later years of your plan"

"A review of your plan payments and benefits confirms that your payments are sufficient to cover the cost of your benefits at this time….. Your next plan review will be on 1 August 2015 when we will again check that the payments to your plan are sufficient to cover the costs of your benefits"

*"**Important information for your benefits and payment details:** We provide your benefits in line with the terms and conditions booklet, and any special conditions or endorsements agreed with us and as outlined in your plan schedule"*

"Your payment into your plan every month €38.52. Government levy 1.00% €0.39. Your total payment every month €38.91"

"The current value represents a reduction in your plan of €308.90 since your last statement"

"Payments received since 5 June 2013 €462.25. Protection benefit charges €1,395.23"

Statement issued to the Complainants in June 2015

"If you would like some help, please call [*********] to set up an appointment with your financial adviser. The financial review takes just one hour. We provide this service to help you to plan for your financial needs. There is no charge for the service and you do not have to buy. We will send you a detailed report of your review within one week"

"Total fund value at 3 June 2015 €4,953.28"

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"If your plan does not have a separate savings element we may show your protection plan to have built up a value. We will use this value to fund our protection benefits in the more expensive later years of your plan"

"A review of your plan payments and benefits confirms that your payments are sufficient to cover the cost of your benefits at this time….. Your next plan review will be on 1 August 2016 when we will again check that the payments to your plan are sufficient to cover the costs of your benefits"

*"**Important information for your benefits and payment details:** We provide your benefits in line with the terms and conditions booklet, and any special conditions or endorsements agreed with us and as outlined in your plan schedule"*

"Your payment into your plan every month €38.52. Government levy 1.00% €0.39. Your total payment every month €38.91"

"The current value represents a reduction in your plan of €250.12 since your last statement"

"Payments received since 4 June 2014 €462.25. Protection benefit charges €1,552.45"

Statement issued to the Complainants in June 2016

"If you would like some help, please call [*********] to set up an appointment with your financial adviser. The financial review service takes just one hour. We provide this service to help you to plan for your financial needs. There is no charge for the service and you do not have to buy. We will send you a detailed report of your review within one week"

"Total fund value at 2 June 2016 €3,476.91"

"If your plan does not have a separate savings element we may show your protection plan to have built up a value. We will use this value to fund our protection benefits in the more expensive later years of your plan"

"A review of your plan payments and benefits confirms that your payments are sufficient to cover the cost of your benefits at this time….. Your next plan review will be on 1 August 2017 when we will again check that the payments to your plan are sufficient to cover the costs of your benefits"

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*"**Important information for your benefits and payment details:** We provide your benefits in line with the terms and conditions booklet, and any special conditions or endorsements agreed with us and as outlined in your plan schedule"*

"Your payment into your plan every month €38.52. Government levy 1.00% €0.39. Your total payment every month €38.91"

"The current value represents a reduction in your plan of €1,476.37 since your last statement"

"Payments received since 3 June 2015 €462.25. Protection benefit charges €1,782.87"

Statement issued to the Complainants in June 2017

"If you would like some help, please call [*********] to set up an appointment with your financial adviser. The financial review takes just one hour. We provide this service to help you to plan for your financial needs. There is no charge for the service and you do not have to buy. We will send you a detailed report of your review within one week"

"Total fund value at 2 June 2017 €2,099.19"

"If your plan does not have a separate savings element we may show your protection plan to have built up a value. We will use this value to fund our protection benefits in the more expensive later years of your plan"

"The next scheduled review for your plan is due now. This is when we check that the payments are enough to cover the cost of your benefits. We will write to you separately with full details of this review and your options"

*"**Important information for your benefits and payment details:** We provide your benefits in line with the terms and conditions booklet, and any special conditions or endorsements agreed with us and as outlined in your plan schedule"*

"Your payment into your plan every month €38.52. Government levy 1.00% €0.39. Your total payment every month €38.91"

"The current value represents a reduction in your plan of €1,377.72 since your last statement"

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"Payments received since 2 June 2016 €462.25. Protection benefit charges €2,077.59"

Policy Review Communications

Policy Review Letter issued to the Complainants on 2 June 2017

"We've carried out your latest review and your current payments and any fund value you've built up are no longer enough to keep your current level of cover…. To continue with your current plan you will have to make changes to your payments or level of cover"

The Provider stated in this letter that the Complainants' plan needed to change, and presented them with two options:

- To continue with their existing [Plan]
- To change to a Guaranteed Whole of Life cover plan with no reviews

If the Complainants chose to continue with their existing [redacted] Plan, they had three benefit/premium options:

- Keeping the same level of cover and increasing their payments to €216.72 until 1 August 2018
- Reducing the level of cover to €10,513 for each life and keeping their payments the same until 1 August 2018
- Aiming to keep the same level of cover for the rest of their lives. The premium (€334.91) was not guaranteed for this option, and the Provider stated that the premium could change as it continued to review the Complainants' plan

Policy Review Letter issued to the Complainants on 1 August 2017

"As previously advised, your current payment is insufficient to maintain the current level of benefits under [your] plan from 1 August 2017 to 1 August 2018. To prevent your plan for terminating, with effect from 1 August 2017 your revised benefits will be as set out in the table below."

Covered	*First Named Complainant*	*Second Named Complainant*
Life Cover	*10,513.00*	*10,513.00*

Effective date of reduction	*1 August 2017*
Your payments	*38.92 per month (inclusive of 1.00% Govt Levy)*

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> *"The next scheduled review of your plan is due on the 1 August 2018. This review date may happen sooner if there are changes in any of the factors that affect the cost of your cover. These are described in your terms and conditions."*

Telephone calls

Recordings of telephone calls between the Complainants and the Provider were submitted by the Provider as part of its formal response to this Office.
The First Named Complainant telephoned the Provider in 2014 and 2016 to ascertain whether his life cover of *"€25,000"* was still in place. In both calls, the Provider stated that life cover of "*€25,000"* was still in place. The Provider also stated the policy fund value during these calls. In the 2016 call, the Provider stated that encashment could increase the policy premiums later.
The First Named Complainant again telephoned the Provider in March 2017 to check that his life cover was still in place as he had received a letter from the Provider's financial adviser. He also asked for clarification on the *"plan"*. The Provider stated that both Complainants had life cover of €25,191 under their policy. The Provider also conveyed the (then) current policy fund value and explained that this could be cashed in, stating that encashment could trigger a policy review and that premiums could increase as a result. The First Named Complainant stated that *"the life cover [was] the only thing [he was] interested in"*.

The remainder of the calls between the First Named Complainant and the Provider took place during June and July 2017, after the Complainants had received details of their policy review from the Provider and the options available to them going forward with regard to their policy benefit and premiums. The First Named Complainant conveyed his unhappiness with:

- The substantial premium increase required in order to maintain the life cover under the policy;
- Not being informed about policy reviews and premium increases;
- The sale of the policy;
- The Provider's Final Response to the Complainants' complaint.

The Provider gave the First Named Complainant contact details for his designated (Provider) financial adviser, but the First Named Complainant in a subsequent call referred to *"getting the runaround"* and not being able to get the information he wanted from the adviser. In several of the calls during June and July 2017, the Provider explained how the Complainants' Whole of Life policy operated, including: policy reviews, the increasing cost of life cover in later years, and the fact that the increasing cost would be supplemented by

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the policy fund value when the premiums no longer covered the cost of the life benefit. The First Named Complainant was clearly dissatisfied and stated that this information was not previously communicated to the Complainants at the point of sale.

Submissions from the parties

The Complainants made a number of submissions after receiving a copy of the Provider's formal response. These submissions, and the Provider's responses, are largely concerned with the parties' differing versions of events occurring around the time that the Complainants' policy was incepted. As outlined above, this investigation does not include any conduct that occurred at the time of the sale of the policy. The Complainants stated in their submission dated **15 June 2018** that they *"assumed"* their premium would remain the same until one of them passed away.

During the course of this adjudication, further information was requested from the Provider. In its submission dated **22 March 2019**, the Provider stated that:

> *"In practice the annual reviews would occur at the end of the 6 year review cycle during which the eldest life assured passed their 70th birthday. In this case that would mean that the annual reviews would start from 2014 onward as the First Named Complainant had reached the age of 70 years in 2011 but their next, scheduled, 6 year cycle, review was not due until 2013. On that basis, the Complainant's policy was not formally reviewed in 2011 or 2012"*

And:

> *"The option to voluntary (sic) increase [the Complainants'] premium in 2011 (and 2012) in advance of the next scheduled review in 2013 was designed to minimise the impact of future reviews by acting earlier with a more modest increase than any potentially higher increase at subsequent reviews"*.

Decision

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

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally

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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 **20 June 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, within the period permitted, the final determination of this office is set out below.

The policy which is the subject of this complaint was incepted on **1 August 1983** and is a unit-linked, open-ended protection plan. The policy has the benefit of being a 'whole of life' policy, 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.

I accept that the policy document provides for ongoing policy reviews in order to establish if the premium being paid is sufficient to maintain the policy benefits to the next scheduled review date.

I 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 to support the cost of the policy.

It is also 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 largely/completely exhausted, the level of the premium increase required may be significant. It is for the Provider's actuaries to calculate

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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.

The Provider submits that it reviewed the Complainants' plan *"on a regular basis"* and communicated the outcome of the reviews annually from **2006** onwards. 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.

In this regard I note that each annual statement issued to the Complainants from 2006 onwards includes:

- The current policy fund value
- The monthly premium amount
- Policy review information
- Information regarding the Complainants' financial adviser and the Provider's financial review service
- The Provider's statement that it will *"use [the plan's] value to fund [the] protection benefits in the more expensive later years of your plan"*
- Under *"**Important information for your benefits and payment details**"*, the Provider's statement that the policy benefits were provided in line with the terms and conditions booklet

From **2014** onwards, under the heading *"How your plan value has changed since your last statement"*, annual statements sent to the Complainants by the Provider included the cost of life cover for the previous year, along with the total amount received in premiums during that time. Also included under the same heading, was the calculated reduction in the Complainants' plan value from year to year (from **2013** onwards).

I accept that there was a reasonable level of transparency of communication by the Provider in respect of the annual statements issued to the Complainants from 2006 to 2012. The information conveyed annually during this period included policy review

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updates, a reminder that the policy benefits were provided in line with policy terms and conditions, information about the financial review service available to the Complainants and the fact that the Provider would use the policy/plan's value to fund the Complainant's life cover in more expensive later years.

However, it is my view that from 2013 to 2017, the annual statements issued to the Complainants did not clearly state that the monthly premium no longer met the cost of the Complainants' life cover, which was the case. The Provider states each year that it *"will use [the plan's] value to fund [the] protection benefits in the more expensive later years of [the Complainants'] plan"*, indicating that this would happen at some time in the future.

The fact that the Complainants' premiums were no longer meeting the cost of their life cover was key information, and in my opinion, should have been brought to their attention by the Provider. The Consumer Protection Code states explicitly that *"the method of presentation must not disguise, diminish or obscure important information"*. The Provider's statement that it would use the Complainants' plan value to fund the protection benefits in the more expensive *"later years"* of their plan masked the important information that those expensive *"later years"* had already arrived, and that the Complainants' premiums were no longer sufficient to maintain their life cover benefit.

I take the view that the wording used by the Provider in the annual statements issued to the Complainants in 2014, 2015 and 2016 was ambiguous. On one hand, for example, it stated that the policy fund value would be used to fund the protection benefit in *"later years"*. Conversely, the fact that the amount received in payments during the abovementioned years was less than the *"protection benefit charges"* during that time was also included in each statement. However, the fact that the Provider also advised in these statements that a review of the Complainants' plan payments and benefits confirmed that their *"payments"* were "*sufficient to cover the cost of [their] benefits at [that] time"* resulted in the overall impression that the Complainants' premiums were meeting the cost of their life cover under the policy.

The fullest disclosure of information on a policy is particularly required where the cover being provided is life assurance cover. The importance to the Complainants of fully appreciating – at the earliest opportunity – that their policy fund value was supplementing the cost of their life cover, was that they would have had the choice at an earlier date, as to whether to continue with the policy or to withdraw from it, and perhaps make alternative arrangements.

I note that the First Named Complainant reached the age of 70 years early in 2011, and that under the terms and conditions of the policy, annual reviews should have been carried out from 2011 onwards. The Provider's submission to this office dated 22 March

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2019 states that *"in practice…. the annual reviews would occur at the end of the 6 year review cycle during which the eldest life assured passed their 70th birthday"*. The policy's terms and conditions do not stipulate this *"practice"*. Rather the policy makes it clear that the Provider should have carried out annual reviews of the Complainants' policy in 2011 and 2012. I acknowledge that the policy was reviewed in 2013, that no increase in premiums was necessary to maintain the Complainants' life benefits at that point, and that therefore the Complainants did not suffer any financial loss, expense or inconvenience as a result of the missed policy reviews in 2011 and 2012.

The Provider offered the Complainants an opportunity in 2011, 2012 and 2013 to *"extend the period of cover"* by increasing their monthly premiums. In its submission to this office dated 22 March 2019, the Provider states that these offers were *"designed to minimise the impact of future reviews by acting earlier with a more modest increase than any potentially higher increase at subsequent reviews"*. I note that the Provider did not however convey this information to the Complainants at the time when these offers were made, and I consider that making these offers without clearly explaining the reasoning behind them, obscured the fact that a significant premium increase was expected in the next few years.

The Complainants state that they *"only have reviews [from] 2015, 2016, 2017"* and *"certainly did not receive 2010, 2011, 2012"*. The Provider submits that it communicated the outcome of its regular reviews to the Complainants annually from 2006 on, and states that:

> *"As none of the Annual Benefit Statements issued to the Complainants from 2006 to 2014 were returned as undelivered by An Post, the Provider is satisfied that it made every reasonable effort to update the Complainants annually on the progression of their Plan and the outcome of those reviews……[and] has no reason to doubt that all of these correspondences were delivered successfully to [the Complainants]"*.

The Complainants, in their submission to this office dated 18 June 2018, state:

> *"Now I did say I had only received updates [regarding the policy] from 2015 onwards, but [seeing] as I made a call to [the Provider in 2014] I must have had an update for that year. On the other hand, had I received earlier updates why would I not have made enquiries earlier than 2014"*

The Provider has submitted copies of all the annual statements issued to the Complainants from 2006 to 2017 inclusive, and contends that none of the statements dating from 2006 2014 were returned *"undelivered"*. The Complainants have stated that they received annual statements in 2015, 2016 and 2017, and, as per their submission above, acknowledge that they *"must have"* received a statement in 2014. I note that all of the statements issued to the Complainants' at their current address. In the absence of any evidence to the contrary, I believe that it is reasonable to accept that the Provider issued

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these statements to the Complainants and that it thus made *"every reasonable effort"* to update them annually.

The Complainants submit that they were not aware that their policy would be reviewed in later years and that the premiums could increase. I find that this information was stated by the Provider in the Policy Document, and in the 'Savings and Protection [Policy]' leaflet. The Complainants should have received a copy of the policy terms and conditions at the time of sale in 1983. As stated previously, however, any grievance particularly relating to the sale of the policy fall outside the scope of this adjudication due to the passage of time. If it was the case that the Complainants did not receive a copy of their policy terms and conditions in or around 1983, it would have been prudent of them to have sought a copy at the time. It is incumbent on any insured to be familiar with his/her policy terms and conditions. I further note that each of the annual statements issued by the Provider to the Complainants from 2006 to 2017 set out that the Complainants' benefits were provided in line with the terms and conditions booklet. It was incumbent on the Complainants to ensure that they were familiar with their policy's terms and conditions.

I note that the Provider telephoned the First Named Complainant on **6 July 2017** regarding the complaint. During the call, the First Named Complainant stated that he had been *"getting the runaround"* from the designated Provider Advisor, who could not clarify when the cost of monthly premiums no longer met the cost of the life cover. Though this information was conveyed to the Complainants in the annual statements issued by the Provider from 2014 to 2017 inclusive, and the First Named Complainant acknowledges that he *"must have"* received the 2014 annual statement from the Provider, the designated Provider Advisor should have clarified this with the Complainants in 2017 when asked about it.

Having examined the matter, I believe that there was a failure by the Provider to inform the Complainants clearly and transparently, at certain times, as to how their policy was being administered, in particular with regard to the fact that the Provider was using the Complainants' policy fund value to supplement the cost of their life cover. The method of presentation, i.e. the Provider's statement that it would use the Complainants' plan value to fund the protection benefits in the more expensive *"later years*" did not clearly communicate that the policy fund value was already being used in this way. Furthermore, the Provider offered the Complainants the opportunity to increase their premiums in 2012, 2011 and 2013 in order to *"minimise the impact of future reviews"*, without clearly conveying to the Complainants that a significant premium increase was expected at a near future date. While I acknowledge that the Complainants had the protection of the policy for many years, I consider that the identified lapses merit a compensatory payment in this instance.

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While I acknowledge that the Complainants are unhappy that a significant premium increase would have been required in 2017 in order to maintain their joint life benefit of €25,000, I note that the policy terms and conditions provide for policy reviews to be carried out at prescribed intervals, and advise that at the time of such reviews, the amount of premium payable in the future may be increased *"to such amount at the Company's Actuary shall determine"*.

Having regard to the particular circumstances of this complaint, and in particular the failings that have been noted above, I propose to partially uphold this complaint and I direct the Provider to make a compensatory payment of €5,000 to the Complainants.

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) (g).***

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

- The Provider is also required to comply with ***Section 60(8)(b)*** of the ***Financial Services and Pensions Ombudsman Act 2017.***

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

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

12 July 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,

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and
ensures compliance with the Data Protection Regulation and the Data Protection