



<u>Decision Ref:</u>	2019-0243
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Whole-of-Life
<u>Conduct(s) complained of:</u>	Maladministration (life) Failure to process instructions
<u>Outcome:</u>	Upheld

**LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

Background

This complaint relates to a life insurance policy and maladministration.

The Complainants' Case

The Complainant had a life assurance policy in relation to his wife, which was incepted in **1986**. The Complainant's wife passed away in late 2017 and he received a payment for the life cover benefits of that plan in the sum of €419,415.00 in February 2018.

At that time, however, the Complainant also received a further payment of €17,675 by way of a refund for overpayments that had been made on this policy since its inception. It transpired that the reason for the overpayments was that the Complainant's wife was a non-smoker and this had been specified on the application form for the plan. However, due to an administrative error, the Provider had noted her as a smoker, and therefore had charged a higher premium since the start of the policy. The Complainant explains that he contacted the Provider seeking compensation for this error. He states that he was offered a sum of €150 as a customer service award. He rejected this, as he believed that it did not adequately compensate him.

The Complainant states that there was an overpayment of premiums for a period in excess of 30 years and that the offer of compensation is inadequate in those circumstances. The

Complainant is unhappy that the Provider refused to provide him with adequate compensation to reflect the error made by the Provider and the amount of monies that he had been deprived of, over the period of overcharging.

The Provider's Case

The Provider accepts that it erred in the manner explained and it accepts that the compensatory amount offered was wrong and contrary to its normal practices.

In November 2018, the Provider advised that it wished to make an increased offer to the Complainant in recognition of the loss he may have incurred as a result of the overcharge. The Provider advised that, having reviewed the complaint in its entirety, it accepted that the failure to offer an additional compensatory payment, for the incorrect imposition of smoking rates for the Complainant's late wife's policy, was wrong and contrary to the Provider's normal practice when refunding overcharges.

The Provider explained that it is its normal practice to offer a 1% compounded interest rate on the sum total of the discrete overpayment amount, which in this instance were annual premiums, indexed by 5% each year.

The Provider advised that its Actuarial Team had calculated the total compounded interest amount to be €1,516.67 and as a further gesture, the Provider was happy to add an additional customer service award to bring this figure up to a figure of €2,000.

The Complaint for Adjudication

The complaint is that the Provider failed to provide the Complainant with adequate compensation to reflect the error made by the Provider over a period of many years and the amount of monies that he had been deprived of, over the period of overcharging.

Decision

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

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

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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 12 July 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.

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

The initial complaint of wrongdoing is that the Complainant was continuously overcharged on the policy since its inception, as his late wife was charged a higher “smoker” premium from inception of the policy. The Provider has confirmed that the death of the Complainant’s late wife was first notified to it on 27 “December” 2017 (subsequently corrected to November 2017) but that the error with the application of the smoking status and the full extent of the refund due, only became apparent in February 2018. The Provider has explained, and it is accepted by this office, that the amount of €17,675 represents the exact amount of overpaid premiums due to the incorrect application of smoker rates on the plan from 1986 to 2017. The Provider also explained in November 2018, that it recognised that its initial offer of compensation was insufficient and it increased its offer of compensation to €2,000.

The Provider subsequently accepted, and it has to be said only on foot of the Complainant’s awareness and attention to detail, that in addition to the original wrongdoing and insufficient compensation, due to further oversights on the Provider’s part, no allowance had been made for the 1% Government levy when calculating the amount of the refund due for the overcharging of the smoker rates and it also accepts that there should have been a refund of the balance of the annual premium paid in May 2017 following the payment of the death claim and the cessation of the policy with regard to the clawback of premium. This is indeed regrettable.

Due to these subsequent errors that came to light, the Provider in March 2019, advised as follows:

“ Under normal circumstances with unit linked life assurance policies, that are paid on a more regular basis than annually, the balance of any monthly payment due following a claim and termination of the policy is automatically calculate it by our systems and a refund generated.

Unfortunately due to the very rare incidents of annual premiums for sole life policies on our books, our systems were not programmed to cater for this eventuality and therefore a manual intervention would have been required to identify the need for a refund of the balance of the annual premium in this case.

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The Provider regrets that the need for a refund was overlooked at the time the policy was been cancelled off our systems and offers a sincere apology to [the Complainant] for this oversight.

It is our intention to refund the balance of the annual premium with effect from the date of notification of [the Complainant's wife's] passing in November 2017. We would also like to offer a further Customer Service Award in token of our regret over this additional administrative error and thank [the Complainant] for bringing this to our attention.

It is therefore our intention to issue a refund and Customer Service Award amounting to €2,728.52. This can be issued separately from the previous refunds and compensatory offers, or combined, to bring the total amount offered to date to €5,000.

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When the Preliminary Decision was issued to the parties in July 2019, it was noted that the Provider has reasonably accepted its wrongdoing and shortcomings, when they have been pointed out to it by the Complainant, and it had significantly increased its initial offer of compensation from €150 (which was offered as a customer service award) to a total amount referred to above of €5,000.

The Complainant has since pointed out and indeed I accept, that this total "compensation" figure of €5,000, offered by the Provider, includes amounts that are in fact due and owing to him from the Provider, because the refund due to him was never properly or correctly calculated by the Provider.

In addition, in response to the query posed by this office to the Provider, as to whether the Provider had considered any changes in the inflation rate (or interest rates during the 30 year period of overpayment) when considering what sum to refund to the Complainant, the Provider did not in fact address the question put.

Rather, the Provider advised that *"as has been stated...the refund of the overpayment was not processed by the appropriate team, who would normally deal with these types of incidents and as such the normal refund and compensatory process was not followed correctly in this case, for which the Provider sincerely regrets. The increased offer [€2,000] conforms to the Provider's normal compensatory offer under similar circumstances."*

In my opinion, this response suggests that this aspect of the matter was not considered or taken into account. Whatever the usual practice, in light of the extremely significant sum of money which the Complainant was deprived of over a period of three decades, I believe that it would have been appropriate for the Provider to have considered that aspect of the matter, in its approach to calculating adequate compensation.

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It is indeed disappointing that it was only because the Complainant pursued every aspect of the errors made by the Provider, that the Provider then acknowledged the errors in the approach to calculating the correct compensation. It is clear, in that regard, that certain additional monies fell due by the Provider to the Complainant, as follows:

- the Government Levy refund (to include interest compounded at 1%) of **€271.08**
- the interest appropriately due on the refunded premiums, which were overcharged by a total of €17,675, calculated at **€1,516.67** (to include interest compounded at 1%)
- any refund of the balance of the annual premium paid by the Complainant in May 2017, if not already refunded to the Complainant.

It does not appear that those payments have yet been made by the Provider, to the Complainant.

In addition, whatever additional payment might have fallen due to the Complainant, if any, taking into account interest rate changes over the 30 year period, I take the view that the Provider did not adequately address to need to compensate the Complainant for the regrettable overcharging which occurred, either when the matter first came to its attention, or indeed at the various times since, when the Provider has given the matter further consideration.

Accordingly, I take the view that it is appropriate to uphold this complaint, and separate from the monies due to the Complainant, as outlined above, I am satisfied that a compensatory figure of €5,000 should also be paid by the Provider to the Complainant to provide appropriate redress to him regarding these events.

Conclusion

- My Decision pursuant to **Section 60(1)** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is upheld on the grounds prescribed in **Section 60(2) (b) and (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 rectify the conduct complained of, by making the refunds to the Complainant which are detailed at the top of this page (if those payments have not yet been made) and in addition, to make a compensatory payment to the Complainant in the sum of €5,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider. I also direct that interest is to be paid by the Provider on the said refunds and compensatory payment, at the rate referred to in **Section 22** of the ***Courts Act 1981***, if the amounts are not paid within that period.

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- 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.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

27 August 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.