



<b><u>Decision Ref:</u></b>	2019-0256
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Whole-of-Life
<b><u>Conduct(s) complained of:</u></b>	Lapse/cancellation of policy (life)
<b><u>Outcome:</u></b>	Partially upheld

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

**Background**

The Complainants incepted policy xxxx95V with the Provider on **17 June 1991**. This was a unit-linked whole of life insurance policy on a joint life first death basis with a life cover benefit at that time of IR £30,000 (€38,093) for a then monthly premium of IR £30 (€38.09). Prior to this policy being fully encashed on **26 February 2016**, the life cover benefit was €34,972 for a monthly premium of €41.99.

In addition, the Complainants also incepted policy xxxx43Y with the Provider on **14 March 2000**. This too was a unit-linked whole of life insurance policy but on a dual life basis with a life cover benefit on each life at that time of €95,231 for a then monthly premium of €72.38. Prior to this policy being fully encashed on **24 February 2016**, the life cover benefit on each life was €134,000 for a monthly premium of €101.84.

**The Complainants' Case**

The Complainants wrote to the Provider on **16 February 2016**, as follows:

*“We are contacting you in relation to cashing in the Value of our Policies, they are dropping in value every year, our accountant has advised us to Cash the Policies in.*

*Our first Policy Number – xxxx43Y*

*Our second Policy Number – xxxx95V”.*

The Provider proceeded to encash these policies and sent the Complainants a cheque in the amount of €7,284.26 in respect of the full encashment value of policy xxxx43Y on 24 February 2016 and a second cheque in the amount of €3,356.74 on 26 February 2016, this representing the full encashment value of policy xxxx95V. Both cheques were subsequently cashed by the Complainants.

The Complainants set out their complaint, as follows:

*“We now refer you to our letter 16<sup>th</sup> February 2016 and as you can see there is no mention whatsoever to terminate these policies and we were at all times in the view the head office and the Official were aware of our intentions.*

*So you can imagine to our shock that no insurance payments were being deducted by direct debit, no one informed us of the direct debits being stopped and was then informed by the Insurance company that they had interpreted without any consultation that [our] intentions were to terminate these two policies”.*

In this regard, the Complainants advise that, *“The kernel point of our complaint is [the Provider] terminated our two life insurance policies without our consent or knowledge, instead of an encashment partially of the policy as previous agreed”.*

In addition, the Complainants submit that when they incepted policy xxxx43Y on 14 March 2000 it was *“never adequately explained”* to them that this was a whole of life assurance policy. In this regard, policy xxxx43Y is noted to be a *“long-term financial service”* within the meaning of the **Financial Services and Pensions Ombudsman Act 2017**. However, Section 51 of the Act, ‘Time limits for complaints to Ombudsman’, prescribes that for a complaint relating to a *“long-term financial service”* to be investigated by the Ombudsman (in the absence of the Ombudsman taking the view that there are reasonable grounds for requiring a longer period, and that it would be just and equitable to do so) *“the conduct complained of”* must have occurred *“during or after 2002” (Section 51(3)(a))*. As a result, the elements of the Complainants’ complaint relating to the sale of policy xxxx43Y to them in 2000, do not form part of this investigation.

The Complainants advise that, *“The kernel point of our complaint is [the Provider] terminated our two life insurance policies without our consent or knowledge, instead of an encashment partially of the policy as previous agreed”* and submit that *“in the view of the [Provider]’s reckless behaviour and the acting in bad faith to aggravate matters the full life cover of each policy should be paid to the Complainants”.*

The Complainants’ complaint is that the Provider wrongly or unfairly cancelled the Complainants’ two life insurance policies in February 2016.

### **The Provider’s Case**

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Provider records indicate that the Complainants incepted policy xxxx95V with the Provider on 17 June 1991. This was a unit-linked whole of life insurance policy on a joint life first death basis with a life cover benefit at that time of IR £30,000 (€38,093) for a then monthly premium of IR £30 (€38.09). Indexation was a feature on this policy when it commenced, however it was cancelled at the request of the Complainants in July 1995.

The Complainants made a partial encashment from this policy in the amount of €7,000 on 12 April 2006 and were advised at that time that the life cover benefit would reduce by this amount. Prior to this policy being fully encashed on 26 February 2016, the life cover benefit was €34,972 for a monthly premium of €41.99, with a sustainability date of 17 June 2030.

In addition, Provider records indicate that the Complainants also incepted policy xxxxx43Y with the Provider on 14 March 2000. This too was a unit-linked whole of life insurance policy but on a dual life basis with a life cover benefit on each life at that time of €95,231 for a then monthly premium of €72.38. Indexation was a feature on this policy when it commenced, however it was cancelled at the request of the Complainants in 2007. Prior to this policy being fully encashed on 24 February 2016, the life cover benefit on each life was €134,000 for a monthly premium of €101.84, with a sustainability date of 14 November 2025.

The Provider received on 17 February 2016 a letter signed by both Complainants and dated 16 February 2016, as follows:

*“We are contacting you in relation to cashing in the Value of our Policies, they are dropping in value every year, our accountant has advised us to Cash the Policies in.*

*Our first Policy Number - xxxx43Y  
Our second Policy Number - xxxx95V”.*

The Provider took this letter as an instruction from the Complainants to fully encash policies xxxx43Y and xxxx95V. In order to do so, the Provider wrote to the Complainants on 17 February 2016 requesting identification documents. In addition, the Provider sent a second letter to the Complainants on 17 February 2016, this one advising that they had other options available to them, apart from a full encashment of their policies, as follows:

*“The **options** open to you include:*

- 1. A Partial Encashment amount and continue to maintain the benefits of your policy.*
- 2. Amending your premium to a level that is comfortable to you subject to your policy remaining sustainable (please note our policy minimum is €50)*

*Should you wish to proceed with any of these options please contact your associate, [Mr P.] ...*

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*Should you still wish to proceed with your original instruction please sign the enclosed Full Encashment form and return to [the Provider] at the above address, otherwise, your policy will continue as normal”.*

The Provider then received on 23 February 2016, a letter signed by both of the Complainants and dated 19 February 2016, as follows:

*“Enclosed are the documents requested from your 17<sup>th</sup> February 2016 letter, and we wish to bring to your attention our last correspondence dated 16<sup>th</sup> February 2016 refers to two mentioned policies xxxx43Y and xxxx95V”.*

The Provider understandably took the receipt of this correspondence and the Complainants’ enclosed identification to be confirmation of their request to fully encash both policies and it therefore proceeded to do so. In this regard, the Provider wrote to the Complainants on 24 February 2016 enclosing a cheque in the amount of €7,284.26 in respect of policy xxxx43Y and advising,

*“Enclosed please find a cheque for €7,284.26 in respect of the full encashment value”.*

In addition, the Provider wrote to the Complainants on 26 February 2016 enclosing a cheque in the amount of €3,356.74 in respect of policy xxxx95V and advising,

*“Enclosed please find a cheque for €3,356.74 in respect of the full encashment value”.*

The Provider notes that these cheques were cashed on **3 March 2016**.

On 2 March 2016 The Provider received a letter from the Complainants dated 29 February 2016, as follows:

*“We again are contacting your Office regarding Policy Number xxxx95V, which has not been replied to. We have contacted the Financial Regulator who advised us to contact yourself this last time before he can take up the issue for investigation by his Office”.*

It would appear that this letter was sent by the Complainants on 29 February 2016 prior to their receipt of the encashment cheque that issued to them on 26 February 2016 in the amount of €3,356.74 in respect of policy xxxx95V. In this regard, the 26<sup>th</sup> February was a Friday and the 29<sup>th</sup> February a Monday. The Provider attempted to contact the Complainants on the telephone number it held on record for them, but there was no answer. The Provider then received further correspondence from the Complainants dated **8 March 2016**, as follows:

*“We are contacting you in relation to cashed Policy Numbers – xxxx43Y and xxxx95V, if you could explain why these Policies were each approximately 200 Euros less as Valued in 2015 before encashed, much appreciated”.*

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As a result, the Provider wrote the Complainants on **10 March 2016**, as follows:

*"I refer to your recent correspondence.*

*I have tried to contact you both a few times in relation to the initial letter received on the 2<sup>nd</sup> March. It advises that policy xxxx95V 'has not been replied to'.*

*I note the plan has been encashed since this letter was sent. If you have any further questions on this plan please contact me on the number below.*

*In relation to your second letter regarding encashment values. There has been significant market volatility over the last 12 months and unit prices have reduced as a result. For example the Managed Growth Fund had unit values of 1,078.000 on the 10<sup>th</sup> March 2015 and had a unit value of 960.600 on the 18<sup>th</sup> February 2016 (the date the policies were encashed)".*

The Provider had no further contact from the Complainants until **15 September 2016**, when it received the following email:

*"We have been advised by the Financial Services Ombudsman to contact you regarding the Status of the above policies.*

*One of the above policies is connected to the Mortgage with [a mortgage provider], you were to get back to us a number of months ago with the previous requested information".*

Despite the Complainants stating that it was *"to get back to us a number of months ago"*, the Provider notes that there were no actions outstanding, as it had responded to all queries from the Complainants as they were received and that their policies had been fully encashed, as they had requested.

The Provider telephoned the Complainants on **16 September 2016** to establish the details of the email. During this call, the First Complainant referred to a conversation that the Complainants had had with Mr M., a Financial Advisor with the Provider in 2013, where they discussed a partial encashment and continuing with the policy and Mr M. had confirmed that they could do this and that they may have done so before. The First Complainant then advised that the Complainants had thought (following their previous conversations with Mr M.) that they were taking a partial encashment in February 2016; it was only when they noticed that no direct debits were being collected from their bank account that they looked into this further. The First Complainant advised that he was not fully understanding of these matters and asked that the Provider write its response to his email. In this regard, the Provider emailed the Complainants later on 16 September 2016, as follows:

*"I refer to your email and my phone conversation with [the First Complainant] earlier this afternoon.*

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[The Provider] received a written instruction from you both on the 17<sup>th</sup> February 2016 stating that you wishes to cash in these policies based on talking to an accountant. This was your written instruction which [the Provider] implemented and 2 cheques were posted to you on 24<sup>th</sup> & 26<sup>th</sup> February 2016.

By cashing in both your policies, you terminated the Protection Benefits that had applied and no more Direct Debits were deducted as you has requested to cash in both policies.

I attach confirmation of your letter sent, 2 x advice of Full Encashment Letters and a response letter posted to you both on the 10<sup>th</sup> March 2016 as my colleague, [Mr D.], had been unsuccessful in contacting you by phone”.

The Provider received the Complainants email dated 15 September 2015 in letter format on 19 September 2016, which it then treated as a complaint. Following a review of this matter, the Provider wrote a Final Response letter to the Complainants on **29 September 2016**, as follows:

*“I am writing in response to your letter received in our Head Office on 19<sup>th</sup> September 2016 and your telephone conversation with my colleague on the 16<sup>th</sup> September 2016*

*...*

*We have investigated this matter and as part of our investigation we reviewed your file. On the 17<sup>th</sup> February 2016 we received a letter form you stating the following:*

*“We are contacting you in relation to cashing in the Value of our Policies, they are dropping in value every year, our accountant has advised us to Cash the Policies in”.*

*Based on this instruction we believed you wanted to full encash the policy. We wrote to you on the 17<sup>th</sup> February 2016 requesting identification from you which we received on the 23<sup>rd</sup> February 2016. The policies were subsequently encashed and the cheques were sent to you.*

*We received a letter from you on the 2<sup>nd</sup> March 2016, dated 29<sup>th</sup> February 2016. As we didn't understand the query you had, we tried to ring you on the 2<sup>nd</sup>, 4<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> March. These calls went unanswered and we could not leave a voicemail. We note the full encashment cheques were cashed on the 3<sup>rd</sup> March 2016.*

*We received a letter from you on the 10<sup>th</sup> March 2016, dated 8<sup>th</sup> March 2016 where you were querying why the value had dropped since 2015. We responded to this letter on the 10<sup>th</sup> March 2016 and also referred to our attempts to contact you by phone.*

*On the 15<sup>th</sup> September 2016 you emailed us regarding the status of the two policies. You stated one of the policies were connected to a mortgage and that we were to get back to you a number of months ago. We phoned you on the 16<sup>th</sup> September and responded to your email on the 16<sup>th</sup> September and logged the matter as a complaint.*

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*I have checked both files and we have never received any notification from a bank that either of these policies were being used as cover for a mortgage.*

*I refer to correspondence with you in 2006. Our letter clearly explains the two options available to you – fully encash which would result in the policy ceasing or partial encashment where you advise of the amount you wish to take.*

*In your letter dated 17<sup>th</sup> February 2016 you advised that you wanted to cash in the policies and did not state a specific amount.*

*The policies are now fully encashed and the benefits have ceased. As advised previously the cheques have been cashed by you. We attempted to ring you numerous times following your letter received on the 2<sup>nd</sup> March 2016 but our calls went unanswered.*

*I have completed the investigation of your complaint. I wish to confirm that your complaint has not been upheld”.*

The Provider notes that the Complainants previously made a partial encashment from policy xxxx95V in **2006**. In this regard, the Complainants had written to the Provider on 30 March 2006, as follows:

*“We want to cancel this policy how much money would we receive in total?*

*We have been in contact with Insurance Ombudsman, we were informed it is within our rights to end this policy”.*

The Provider wrote to the Complainants on **6 April 2006** to establish their request as in this instance it was not clear if they wanted to fully encash at this time as they had posed a question within the letter. The Provider confirmed in this correspondence the policy value and advised that the billing had been stopped on the policy, until such time as the Complainants confirmed how they wanted to proceed. In addition, the Provider outlined the options regarding taking an encashment, as follows:

*“ ... below are option that are available to you at this point:*

*Option 1*

*You can choose to fully encash this policy. This would mean that the surrender value would be sent to you and this policy would cease and cannot be restarted again. The current surrender value is €7,507.08 as of today’s date. Please note that prices fall as well as rise ...*

*Option 2*

*You can choose to partially encash this policy. You could take any amount but always have to leave €500 in the fund to keep the life cover active. If you choose this option*

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*the life cover will reduce by the amount you withdraw, for example if you take €7,000 from the policy, life cover would reduce by that amount.*

***To do a partial encashment we require a letter signed by both stating how much you want to withdraw”.***

The Complainants then requested a partial encashment of €7,000, which was duly processed and a cheque was sent to them on 12 April 2006 and policy xxxx95V continued.

In their complaint, the Provider notes that the Complainants submit, *inter alia*, as follows:

*“The kernel point of our complainant is [the Provider] terminated our two life insurance policies without our consent or knowledge, instead of an encashment partially of the policy as previous agreed”.*

The Provider states that this is manifestly untrue. Having received the Complainants’ written request to encash their policies, the Provider requested identification documents and upon receipt of same, processed the request and sent written confirmation of same, along with two full encashment cheques, which the Complainants then cashed.

The Provider notes that the Complainants made reference to a conversation that they had with one of its Financial Advisors, Mr M., in 2013 wherein they advised that they may need to take funds from their policy but instructed that any such encashment would be a partial encashment. In this regard, the Complainants did not request a partial encashment at that time of contact with Mr M. in 2013, which was three years prior to their request to encash in February 2016. The Provider submits that this demonstrates however that they were aware that there was a difference between making a full encashment and a partial encashment. In this regard, the Provider received a letter from the Complainants dated 16 February 2016, as follows:

*“We are contacting you in relation to cashing in the Value of our Policies, they are dropping in value every year, our accountant has advised us to Cash the Policies in”.*

There is no reference to, or mention of, a partial encashment in this letter and it is clear that the Complainants made this request to *“Cash the Policies in”* on advice received from their Accountant. As noted earlier, following on from receipt of the encashment cheques, the Complainants wrote on 8 March 2016 to query *“why these Policies were each approximately €200 Euros less as Valued in 2015 before encashed”*. In this regard, notwithstanding that they had not indicated an amount for withdrawal, as the Provider had previously advised in its letter of 6 April 2006 would be required, in order to choose a partial encashment, the Provider submits that a partial encashment, had the Complainants thought this is what they had requested and/or received, would have been significantly lower than the policy fund value previously advised, and certainly not by only *“approximately €200 Euros”*.

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The Provider notes that regrettably, records for policy xxxx43Y prior to June 2007 cannot be found, and could not be found at the time the complaint was initially investigated. When the encashment request was received on 17 February 2016, the Provider did not have a record that this policy was assigned for mortgage purposes. The Notice of Assignment was not on file and only came to the attention of the Provider when the complaint was referred to this office and the Complainants submitted documentation which included the Notice of Assignment.

The Provider notes that it had received this Notice of Assignment from the mortgage provider in May 2000. As a result, the Provider accepts that policy xxxx43Y should not have been encashed without the authorisation of the Assignees. In addition, the Provider apologises to the Complainants for it not holding accurate records in respect of policy xxxx43Y.

In their complaint, the Provider notes that the Complainants submit, *inter alia*, as follows:

*“In the view of the [Provider]’s reckless behaviour and the acting in bad faith to aggravate matters the full life cover of each policy should be paid to the Complainants”.*

The Provider does not consider the Complainants’ request for a payment equal to the amount of life cover benefit on each policy, in any way a reasonable request and there is no basis to pay a life cover benefit amount in any event other than on the death of a life assured.

The Provider accepts that it should not have encashed and cancelled policy xxxx43Y without the authorisation of the Assignees, and that it did so as a result of its failure to record the assignment of the policy correctly. Consequently, it sought to offer the Complainants the option to reinstate this policy. This reinstatement would be processed without the requirement of medical details and without a return of the full encashment amount of €7,284.26 that the Complainants previously received. In this regard, the Provider offered the Complainants five options to reinstate policy xxxx43Y on a dual life, whole of life basis, as follows:

1. Life cover in the amount of €37,300 for a monthly premium of €65.58
2. Life cover in the amount of €46,300 for a monthly premium of €79.99
3. Life cover in the amount of €59,800 for a monthly premium of €101.84
4. Life cover in the amount of €69,250 for a monthly premium of €123.28
5. Life cover in the amount of €75,000 for a monthly premium of €136.12

These options assumed that payment of the premium would resume from 14 December 2018. The premiums quoted were sufficient to continue cover until 14 November 2025, meaning that the policy would be subject to review at the start of 2025, before its 25<sup>th</sup> anniversary in March 2025.

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There is no offer to reinstate policy xxxx95V as there was no assignment attaching to this policy and thus the Provider is satisfied that no error was made, and that it acted correctly in processing the Complainants' request to fully encash it in February 2016. In this regard, the Provider submits that from their previous partial encashment from this policy in April 2006 and from details of their conversations with one of its Financial Advisors, Mr M. in 2013, the Complainants were aware that there was a difference between making a full encashment and a partial encashment.

In conclusion, the Provider acknowledges that there was an error in processing the Complainants' request to fully encash policy xxxx43Y insofar as this policy should not have been encashed without the Assignees' authorisation and it apologises for this. To remedy this error, the Provider would like to put the Complainants in the position they were in prior to the error being made and the policy being encashed.

The Complainants have the option to reinstate policy xxxx43Y, without the requirement of medical details and without a return of the full encashment amount of €7,284.26, so that they may continue with their protection benefits which may be required, for mortgage purposes. The Provider is satisfied that this is just and fair in acknowledgement of its error made, in not recording the Assignment of this policy correctly.

### **The Complaint for Adjudication**

The complaint is that the Provider wrongly or unfairly cancelled the Complainants' two life insurance policies in February 2016.

### **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 Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

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A Preliminary Decision was issued to the parties on 9 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 an additional submission from the Complainants, the final determination of this office is set out below. In reaching this decision I have given consideration to the Complainants' suggested 4 additional points of fact, 18 errors of fact and 10 errors of law.

It is clear that the Complainants take issue with the contents of certain communications, which the evidence confirms, are held within the records of the Provider. In November 2018, they had suggested in that regard that an Oral Hearing was necessary for the adjudication of the complaint, in circumstances where they "*noticed a number of conflicting arguments*". I was satisfied however, based upon the evidence made available, and given the precise complaint for adjudication, that an oral hearing was not necessary for a fair adjudication of the issues arising. I remain satisfied in that respect, though the Complainants have, since the Preliminary Decision issued, contended that the absence of an oral hearing in the course of the adjudication represents an error of law.

The Complainants also suggested that the Preliminary Decision was flawed because "*The decision not to decide that concealment of Documents/Fraud/Mis-selling should unravel any decision requiring time limitations*". Issues of fraud are not however a matter for the FSPO and rather, given the criminal nature of any such issues, are a matter for the Courts or for An Garda Síochána.

The Complainants have also raised a number of issues surrounding the inception of the policies on 17 June 1991 and 14 March 2000 respectively. When this complaint was submitted to the Financial Services Ombudsman in October 2016, the details furnished by the Complainants on the Complaint Form included the following confirmation:

*"The kernel point of our complaint is the said named insurance company terminated our two life insurance policies without our consent or knowledge. Instead of an encashment partially of the policy as previous agreed."*

No complaint regarding any suggested mis-selling of these policies has been investigated by the FSPO in the course of the adjudication of this complaint that the Provider wrongfully or unfairly cancelled the two life insurance policies in question, in or about February 2016.

The Complainants have also made a number of comments regarding Society's view that policies of the type which are the subject of this complaint, are unacceptable, and they say

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that *“We submit that such criticism of this product that the industry itself has ceased selling the product.”*

Whatever the evolution of thinking regarding the structure of life cover products, since these policies were sold respectively in 1991 and 2000, and indeed notwithstanding the similarly evolved regulatory landscape for providers, since the first of the Complainants’ policies was incepted in 1991, this complaint concerns the suggested wrongful conduct of the Provider many years later, in February 2016, when it wrongly or unfairly cancelled the Complainants’ two life insurance policies.

In this regard, the Complainants incepted policy xxxx95V with the Provider on 17 June 1991. This was a unit-linked whole of life insurance policy on a joint life first death basis. In addition, they also incepted policy xxxx43Y with the Provider on 14 March 2000. This too was a unit-linked whole of life insurance policy but on a dual life basis with a life cover benefit on each life.

I note from the documentary evidence before me that the Complainants wrote to the Provider on 16 February 2016, as follows:

*“We are contacting you in relation to cashing in the Value of our Policies, they are dropping in value every year, our accountant has advised us to Cash the Policies in.*

*Our first Policy Number -xxxx243Y  
Our second Policy Number - xxxx95V”.*

Following receipt of this instruction, I note that the Provider wrote to the Complainants on 17 February 2016 requesting identification documents, in accordance with the ***Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.***

In addition, the Provider advises that it also sent a second letter to the Complainants on 17 February 2016, this one informing them that there were other options available to them apart from a full surrender of their policies, as follows:

*“The **options** open to you include:*

- 1. A Partial Encashment amount and continue to maintain the benefits of your policy.*
- 2. Amending your premium to a level that is comfortable to you subject to your policy remaining sustainable (please note our policy minimum is €50)*

*Should you wish to proceed with any of these options please contact your associate, [Mr P.] ...*

*Should you still wish to proceed with your original instruction please sign the enclosed Full Encashment form and return to [the Provider] at the above address, otherwise, your policy will continue as normal”.*

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In their correspondence to this Office dated **26 November 2018**, I note that the Complainants advise that they only received one letter from the Provider dated 17 February 2016, that is, the letter requesting identification documents.

The Complainants submit that not only did they not receive the second letter from the Provider advising them of the other options available, but that this letter *“was never included in the bundle of papers the Provider supplied to [them] at the commencement of the Investigation but only surfaced with the most recent bundle of papers from the Office of the Ombudsman dated 19<sup>th</sup> November 2018”*.

In any event, the Complainants submit that as they did not sign and return the Full Encashment form referred to at the end of this second letter - that is, *“Should you still wish to proceed with your original instruction please sign the enclosed Full Encashment form and return to [the Provider] at the above address, otherwise, your policy will continue as normal”* - that the Provider did not then have the Complainants’ authorisation to proceed with the full encashments and that in doing so, the Provider was in breach of its own processes.

I am however mindful In this regard, that at the outset, the Complainants wrote to the Provider on 16 February 2016, as follows:

*“We are contacting you in relation to cashing in the Value of our Policies, they are dropping in value every year, our accountant has advised us to Cash the Policies in.*

*Our first Policy Number -xxxx243Y  
Our second Policy Number - xxxx95V”.*

The Provider then wrote to the Complainants on 17 February 2016 requesting identification documents and I note that this letter references policy xxxx43Y only. In this regard, I note that the Complainants wrote to the Provider on 19 February 2016, as follows:

*“Enclosed are the documents requested from your 17<sup>th</sup> February 2016 letter, and we wish to bring to your attention our last correspondence dated 16<sup>th</sup> February 2016 refers to two mentioned policies xxxx43Y and xxxx95V”.*

The Complainants enclosed the identification documentation requested by the Provider in its letter of 17 February 2016 and advised the Provider that their request of 16 February 2016 referred to both policy xxxx43Y and xxxx95V.

I am satisfied from the wording of the Complainants’ letters dated 16 February and 19 February 2016, that it was reasonable for the Provider to take these letters together, as a written instruction, signed by both of the Complainants and on the advice of their Accountant, to fully encash the two policies referred to and that this, along with the identification documentation it received, was sufficient for the Provider to proceed with the full encashment process, without the need for a Full Encashment form to be completed.

I am also mindful that the Provider then wrote to the Complainants on **24 February 2016**, as follows:

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*“Policy xxxx43Y*

***Advice of Full Encashment***

*Enclosed please find a cheque for €7,284.26 in respect of the full encashment value...*

*If you have any further queries in relation to your policy, please do not hesitate to contact me ...”*

In addition, the Provider also wrote to the Complainants on **26 February 2016**, as follows:

*“Policy xxxx95V*

***Advice of Full Encashment***

*Enclosed please find a cheque for €3,356.74 in respect of the full encashment value...*

*If you have any further queries in relation to your policy, please do not hesitate to contact me ...”*

I am satisfied that these letters clearly confirmed that policy xxxx43Y and xxxx95V had been fully encashed. If a full encashment was not what the Complainants had sought at that time, it would have been prudent of them to have contacted the Provider immediately to return the enclosed cheques and reinstate the cover, and they could then have advised of the partial encashment amount that they wanted to make instead. In this regard, I note from the documentary evidence before me that the Complainants had previously made a partial encashment from policy xxxx95V and thus I am satisfied that they were aware of the difference between a partial encashment and a full encashment.

As I have already stated, I am satisfied from the wording of the Complainants’ letters dated 16 February and 19 February 2016 that it was reasonable for the Provider to take these letters together as a written instruction, signed by both of the Complainants and on the advice of their Accountant, to fully encash policy xxxx43Y and xxxx95V.

I note however that the Provider did not hold records for policy xxxx43Y prior to June 2007. As a result, when it received the Complainants’ correspondence dated 16 February 2016, the Provider did not have a record that policy xxxx43Y was assigned for mortgage purposes, as it did not hold the Notice of Assignment on file. In this regard, I note that the Provider accepts that policy xxxx43Y should not have been encashed without the authorisation of the Assignees and that it has apologised to the Complainants for not holding full records in respect of this policy.

In their correspondence to this Office dated **26 November 2018**, I note that the Complainants submit, *inter alia*, as follows:

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*“The Provider’s actions [to full encash the policies] were a knee jerk reaction, reckless, breached contracts with ourselves and the Mortgage Supplier, ended any Life Insurance Benefits and at our age will now probably never obtain Life Insurance or will pay a huge premium and the Mortgage Supplier is also concerned ...*

*We submit that by the Provider’s actions of a lack of Duty of Care and breach of trust between the Complainants and the Provider now exists. That all monies paid by the Complainants to the two policies be returned to take up alternative Life Insurance and Protections with a Reputable Provider that will take our age into consideration”.*

I note that policy xxxx95V provided the Complainants with life cover benefit on a joint life first death basis from 17 June 1991 to 18 February 2016, and that they had paid premiums totalling €12,376.46 whilst this policy was in force and made encashments amounting to €10,356.74 (including the final full encashment).

In addition, policy xxxx43Y provided the Complainants with life cover benefit on a dual life basis from 14 March 2000 to 24 February 2016 and they had paid premiums totalling €18,069.96 during this time and made a full encashment amounting to €7,284.26. I accept that whilst these policies were active, they provided the Complainants with valuable life cover in return for the premiums paid.

I also note that the Provider accepts that it should not have cancelled policy xxxx43Y without the authorisation of the Assignees, and that it did so as a result of its failure to record the assignment of the policy correctly.

As a result, I note that the Provider has offered the Complainants the option to reinstate this policy, and to do so without the requirement of medical details and without the return of the full encashment amount of €7,284.26 that they previously received. In this regard, the Provider has offered the Complainants five options to reinstate policy xxxx43Y on a dual life whole of life basis, as follows:

1. Life cover in the amount of €37,300 for a monthly premium of €65.58
2. Life cover in the amount of €46,300 for a monthly premium of €79.99
3. Life cover in the amount of €59,800 for a monthly premium of €101.84
4. Life cover in the amount of €69,250 for a monthly premium of €123.28
5. Life cover in the amount of €75,000 for a monthly premium of €136.12

I note that each of these options are based on the assumption that the payment of premiums would resume from 14 December 2018, that the policy unit account at that date will be €0 and that there will be no outstanding premiums.

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As a result, I do not consider these options to be a reinstatement of policy xxxx43Y per se, but rather, each option offered provides the Complainants with new life cover without the need to provide up-to-date medical details for underwriting purposes, and without the return of the full encashment amount of €7,284.26 that they had previously received. In my opinion this is a reasonable offer for the Provider to make in the circumstances.

However, prior to the full encashment of policy xxxx43Y on 24 February 2016, the life cover benefit on each life was €134,000 for a monthly premium of €101.84. In this regard, I note that the Provider has advised this Office that it *"would like to put the Complainants in the position they were in prior to the error being made and the policy being encashed"*.

In order to allow for this, I consider it appropriate to direct that the Provider also make available to the Complainants a sixth option, ie, that the Complainants be given the option to

6. return the full encashment amount of €7,284.26 to the Provider in return for the reinstatement of policy xxxx43Y from 24 February 2016, on a dual life, whole of life basis, with a life cover benefit on each life of €134,000 for a monthly premium of €101.84. In that event, the Provider should deduct the premium due from 24 February 2016 to the date of reinstatement, from the policy unit value, and the policy can then continue, with the Complainants making monthly premium payments and the Provider administering the policy in accordance with its terms and conditions.

It is a matter for the Complainants if they now wish to accept one of these options for life cover and for them to advise the Provider accordingly.

Finally, as stated above, I am satisfied from the wording of the Complainants' letters dated 16 February and 19 February 2016, that it was reasonable for the Provider to take these letters together as a written instruction, signed by both of the Complainants and on the advice of their Accountant, to fully encash policy xxxx43Y and xxxx95V.

That said, the Provider did not hold records for policy xxxx43Y prior to June 2007 and thus it had no record that the policy had been assigned for mortgage purposes as the Notice of Assignment was not on file, as it ought to have been. Accordingly, and notwithstanding the Complainants' request to fully encash policy xxxx43Y, the Provider should not have encashed this policy without the authorisation of the Assignees. In this regard, though they themselves ought to have known that policy xxxx43Y had been previously assigned to their mortgage provider, the Complainants ought to have been able to rely on the Provider's expertise and administration in this matter and errors of this nature, where incomplete records are maintained, are unsatisfactory and can cause considerable confusion, as in this instance.

It is my Decision therefore, on the evidence before me that this complaint is partially upheld. As a result of its failure to maintain complete records in respect of policy xxxx43Y, and notwithstanding the 5 reasonable options detailed above which are now open to the Complainants, the majority of which will permit them to retain the encashment value they received in 2016, I now mark this decision by directing the Provider as outlined below.

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## **Conclusion**

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld on the grounds prescribed in **Section 60(2)(g)**.
- 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 available to the Complainants the 6 options outlined above, for reinstatement of whole of life cover.
  - pay the Complainants a compensatory payment in the amount of €300, to an account of their 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.**

**MARYROSE MCGOVERN  
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES**

14 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.

