



<u>Decision Ref:</u>	2020-0013
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Whole-of-Life
<u>Conduct(s) complained of:</u>	Delayed or inadequate communication
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The complaint concerns two life insurance policies held by the Complainants with the Provider which are subject to different terms and conditions.

The Complainants' Case

The Complainants have two 'Whole of Life' policies with the Provider (originally taken out with its predecessor); one taken out in 1982 [92206****] and the other in 2000 [93907****]. The policies offer a basic guaranteed sum, as well as annual bonuses (not guaranteed) and a terminal bonus (not guaranteed). The Complainants pay premiums of €21.16 per month on policy 92206****, with an assured sum of €6,349. The monthly premiums on policy 93907**** are €65.98, with an assured sum of €6,984.

There are separate percentages used for calculating the terminal bonus applicable to each policy. The policy incepted in 1982 currently has a terminal bonus of 61% of the policy's annual bonuses. The policy incepted in 2000 currently has a terminal bonus of 259% of the policy's annual bonuses. The Complainants have queried this matter with the Provider which stated the following in its Final Response Letter of 7 July 2017:

*The final bonus percentages we declare are a percentage of your annual bonuses only. As 92206**** has a higher level of annual bonuses, then it has a lower final bonus percentage to reflect this. Conversely, as 92907**** has a lower level of annual bonuses, then the final bonus percentages is higher to reflect this.*

As correspondence from the Provider's predecessor in 2001 stated that *"the rate is determined by the number of years the policy has been in force"*, the Complainants feel that the Provider's current way of calculating the terminal bonus is unfair, and believe that the higher rate should also apply to policy 92206****.

*We see this matter as a fairness issue and we cannot envisage any acceptable grounds under which policy 92206**** is deemed to be less deserving of the higher percentage in question.*

The Complaint for Adjudication

The complaint for adjudication is that the Provider is incorrectly applying the lower percentage rate to policy 92206**** when calculating the terminal bonus. The Complainants want the Provider to calculate the terminal bonus on policy 92206**** using the higher percentage rate.

The Provider's Case

The Provider points out that the Complainants have been raising grievances as to the manner in which the terminal bonus is calculated since 2004 and that these have been addressed on multiple occasions. The Provider maintains that the policies held by the Complainants have not been subject to any changes following the Provider taking over the administration of the policies from its predecessor. The Provider contends as follows in respect of each policy:

"Both plans are whole of life contract and the basis of them continues to remain as stated in the original terms agreed in 1982 and 2000 with the complainants."

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.

/Cont'd...

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties 12 November 2019, outlining my preliminary determination 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 issue of my Preliminary Decision, the Complainants made a further submission under cover of their letter to this Office dated 29 November 2019, a copy of which was transmitted to the Provider for its consideration.

The Provider has not made any further submission.

Having considered the Complainants' additional submission and all of the submissions and evidence furnished to this Office, I set out below my final determination.

Prior to considering the substance of the complaint, it will be useful to set out certain relevant terms and conditions of the policy.

Policy Terms and Conditions

The Provider has expressly relied upon Rules 36, 55 and 94 of the policy, parts of which are reproduced below:

36

The Tables included in the Ordinary Branch Fund may provide for the premiums to include a policy fee. Such policy fee shall be of such amount as the Society's Actuaries may decide is appropriate for the Table in question from time to time. Assurances may be effected under the Tables included in the Ordinary Branch Fund by the payment of premiums and instalments of premiums at frequencies other than those specified or by the payment of a single premium and for sums assured other than those stated in such Tables.

/Cont'd...

On the application of any member or intending member the Committee of Management shall have power to commute all or any of the premiums payable under a policy issued or to be issued under any of the Society's Ordinary Assurance Fund Tables for a lump sum payment of such amount, or an increase premium payable for a fixed term of years of such amount as the Society's Actuaries may determine.

Analysis

As part of their complaint to this office, the Complainants provided a detailed letter dated 11 February 2018 setting out a comprehensive account of their grievance. In essence, the Complainants take issue with the fact that the more long-standing of their two policies (incepted in 1982) is subject to a less favourable 'terminal bonus' (61%) than the younger of their two policies (incepted in 2000) which attracts a terminal bonus of 259%. The Complainants invoke a "*strong fairness aspect*" in contending that the Provider's practice is manifestly unfair.

I propose to address this complaint from two separate points of view. In the first part, I will examine the conduct of the Provider from a legal or contractual point of view to establish whether the Provider is entitled to apply the terminal bonuses in the manner in which it has done so. Secondly, I will look at the practice employed by the Provider from an overall 'fairness' point of view.

The Complainant's complaint relates to the manner in which the older policy is operated. The Provider has furnished a copy of the "*rules and tables of the Society*". I have set out certain of the provisions relied upon by the Provider above. The position is that there is no legal or contractual obligation on the Provider to provide any particular 'terminal bonus'. The Rules of the policies provide a broad discretion to the Provider in terms of any bonus it may see fit to afford policy holders. The discretion is expressly stated to be exercisable by reference to the wisdom of the Provider's actuaries who must consider market vagaries and the best interests of the fund as a whole. There is no obligation whatsoever on the Provider to extend any terms that may be available on one policy to a different policy. In other words, there is no legal or contractual basis to support the Complainants' claim that their older policy should attract the same terminal bonus as the younger policy.

In the circumstances, it is clear that the calculation of the terminal bonus was, and is, a matter at the discretion of the Provider and I can find no wrongdoing, by reference to the terms of the policy, on the part of the Provider insofar as it has assigned a terminal bonus rate of 61% for the older policy.

That is not the end of the matter however. The Complainants have very clearly invoked a general 'fairness' principle in support of their complaint.

/Cont'd...

The Provider has provided various explanations and calculations explaining and elucidating the differing terminal bonus percentages applied to each policy. As a basic proposition, the Provider highlights that, in circumstances where terminal bonuses operate as a percentage of accumulated annual bonuses, and in circumstances where the older of the two policies generated significantly higher annual bonuses, it was entirely proper that the older policy would, conversely, generate a lower terminal bonus. More significantly, the Provider has furnished a calculation analysing the two policies over their respective lifetimes until 2017. This analysis reveals that the older policy has accumulated average annual gains of 3.6% whereas the younger policy has accumulated average annual gains of 2.3% only. This would seem to reflect that the older policy had the benefit of operating for much of its lifetime in the comparatively more favourable markets of the 1980s and 1990s, a benefit not shared by the younger policy.

The First Complainant, in a post Preliminary Decision submission dated 29 November 2019, expresses dissatisfaction with my proposed decision as set out in the Preliminary Decision. He stated that my Preliminary Decision *“seriously tarnished”* the reputation of the Complainants.

The Complainants appear to feel that the Preliminary Decision is in some way, placing blame on them:

“we are entirely innocent of any blame”

At no point in either my Preliminary Decision or this, my Legally Binding Decision, have I challenged the integrity of, or questioned the reputation of the Complainants, nor have I stated or otherwise inferred any blame or guilt to either party involved in this complaint.

The Complainants, in their post Preliminary Decision submission, further state that:

“It is evident that the Rejection decision on our case was not arrived at after a thorough examination of the full submissions...” (sic)

This is not correct. In my investigation and adjudication of the complaint I have fully considered the submissions made by both parties and have reached my Decision after careful consideration of all of the evidence and submissions supplied by both parties.

Having considered all of the evidence and submissions of both parties in detail, I find that the Provider has acted within the terms and conditions of the policy and I have not been provided with any evidence that the Provider has acted unfairly, unreasonably or improperly. Therefore, for the reasons set out above, I do not uphold this complaint.

Conclusion

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

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

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

7 January 2020

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.