An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref: 2020-0111

Sector: Insurance

Product / Service: Unit Linked Whole-of-Life

Conduct(s) complained of: Results of policy review/failure to notify of policy reviews
Premium rate increases

Outcome: Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants incepted a unit-linked whole of life assurance policy with the Provider on 23 October 1988, which initially provided them with joint life first death cover in the amount of IR£30,000 (€38,092) for a monthly premium of IR£25 (€31.74).

The Complainants' Case

As at 1 September 2018, the Complainants' policy was providing them with joint life first death cover in the amount of €133,159 for a monthly premium of €117.04 (including 1% Government levy). Following a policy review, the Provider wrote to the Complainants on 1 September 2018 to advise that in order to maintain this level of life cover until the next policy review date in October 2023, the monthly premium would need to increase to €321.36. Alternatively, the Provider also advised the Complainants that they could reduce the life cover to €97,646 for a monthly premium of €222.18, or reduce the life cover further to €55,475 for the current premium level of €122.89.

In this regard, the First Complainant sets out the Complainants' complaint, as follows:

> *"I was quite happy with the policy for 30 years & do not believe I was mis-sold the policy. My complaint relates to the absence of a review prior to receiving letter dated 1/9/18 advising I needed to treble the premium to maintain current cover. On viewing whole of life providers online, almost all do an annual review when policyholders reach 60 years.*

> *While letter dated 3/9/13 indicated there may be a problem in 2017, letters received in Aug & Sept 17 did not indicate any problems. Hence the shock at receiving letter dated 1/9/18. I feel* [the Provider] *are holding me to ransom & forcing me to pay exorbitant premiums now because it wasn't reviewed since my 60th birthday.*
>
> *If the policy had been reviewed in 2015 when I reached 60, I would have been given a warning about an issue which would arise in 2018. Annual reviews thereafter would have enabled me to avoid this impasse. I have now had to double my premium & reduce my life cover to keep the policy in force, an increase I cannot really afford. I now feel* [the Provider] *will probably do the same again in 5 years & I will be forced to cancel the policy".*

The Complainants' complaint is that the Provider maladministered their life assurance policy.

The Provider's Case

Provider records indicate that the Complainants incepted a unit-linked whole of life assurance policy with the Provider on 23 October 1988, which initially provided them with joint life first death cover in the amount of IR£30,000 (€38,092) for a monthly premium of IR£25 (€31.74). This policy allows for indexation, so both premium and benefits increase yearly to offset the effect of inflation, until such time that the policyholders attain the age of 65 or advise that they do not wish for indexation to apply.

The Provider notes that the Complainants' policy is subject to periodic reviews, in accordance with the policy terms and conditions. In this regard, section B3, 'Regular Policy Review', of the applicable Policy Conditions of Contract booklet that the Provider issued to the Complainants in October 1988 when they incepted their policy, provides, as follows:

> *"At such times as the Company shall determine, but not less frequently than once every five years, the Company shall review the amount of Benefits in force and the amount of regular Contributions payable, and shall notify the Policyholder of any increase in the amount of such regular Contribution such as may in the opinion of the Company be required to maintain the level of Benefits under this Policy".*

The Provider states that it is satisfied that since the policy was incepted in October 1988, a review has been carried out at least every five years.

In this regard, the Complainants took a partial encashment of their policy on 13 May 1993 in the amount of IR£935 (€1,187.21), which was the maximum partial encashment allowable under the policy at that time and in accordance with the Complainants instruction on the encashment form to *"Please leave £120 in the policy as I wish to keep the policy alive & monthly payments will be met"*. This partial encashment constituted a policy review.

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The Complainants took a further partial encashment of their policy on 4 August 1998 in the amount of IR£1,899 (€2,411.23), which was the maximum partial encashment allowable under the policy at that time. This partial encashment constituted a policy review, the outcome of which was that the life cover benefit was reduced to IR£39,520 (€50,180), in accordance with the policy terms and conditions.

Following the reviews in 1993 and 1998 that were associated with the partial encashments made at those times, the first scheduled policy review took place in August 2001. The Provider wrote to the Complainants on 15 August 2001 to advise that the policy value was IR£966.83 (€1,227.62) and that based on fund performance and assumptions at that time, the then monthly premium of IR£39.87 (€50.62) was sufficient to maintain the level of cover for the next ten years.

Following the second scheduled policy review in September 2003, the Provider wrote to the Complainants on 2 September 2003 to advise that the policy value was €1,814.05 and that based on fund performance and assumptions at that time, the then monthly premium of €55.80 was sufficient to maintain the level of cover for the next ten years.

Following the third scheduled policy review in September 2008, the Provider wrote to the Complainants on 8 September 2008 to advise that the policy value was €3,065.81 at that time and that market conditions and fund performance indicated that the then monthly premium of €71.19 was sufficient to maintain the level of cover until 2017. This review letter also provided the Complainants with the option to increase the monthly premium to €83.56, which based on assumptions at that time would help ensure that cover was maintained until 2018. The Complainants did not avail of this option.

Following the fourth scheduled policy review in September 2013, the Provider wrote to the Complainants on 3 September 2013 to advise that the policy value at that time was €3,450.58 and that market conditions and fund performance indicated that the then monthly premium of €90.82 should help maintain the level of cover until 2017. This review letter also provided the Complainants with the option to increase the monthly premium to €172.18, which based on assumptions at that time would help ensure that cover was maintained until 2023. The Complainants did not avail of this option.

The Provider later wrote to the Complainants on 29 September 2017 enclosing a 'Guide to your reviewable protection policy' and advising, among other things, as follows:

> *"I have enclosed a **guide to your reviewable protection policy** and recommend that you take some time to read this. It may be some time since you took out your protection policy and this guide is a reminder of how your policy works and what options are available to you at this point. This includes options to help manage the increasing cost of protection benefits as you get older"*.

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Following the fifth scheduled policy review in September 2018, the Provider wrote to the Complainants on 1 September 2018 to advise that the policy value at that time was €727.87 and that without a premium increase it was estimated that the policy benefits would cease on 22 February 2019. This review letter provided the Complainants with three options, namely, to increase the monthly premium to €321.36 from 23 October 2018 to maintain the then current level of cover until the next policy review date in October 2023, maintain the monthly premium at €122.89 for a reduced life cover of €55,475, or adjust the level of cover and premiums to meet their needs, with an example of increasing the monthly premium to €222.18 for a revised life cover amount of €97,646 given. The Complainants returned a completed plan change request form to the Provider on 15 October 2018, requesting *"Please increase the premium to €222.18pm from 23/10/18 & reduce the life cover to €97,646 for the next 5 years"*.

The Provider sent the Complainants an annual benefit statement on 25 October 2018 that stated the life cover and premium amounts that applied to the policy prior to the policy review in September 2018, as the policy review changes were still at that time being processed. The First Complainant telephoned the Provider on 8 November 2018 to enquire as to why the revised monthly premium of €222.18 had not been collected from his bank account and in a call back later that same day, he was advised that the review changes were still being processed and that the premium difference would be billed from his bank account when completed.

The Provider next wrote to the Complainants on 1 April 2019 to advise that following a reduction in rates charged in determining the cost of the life cover benefit, their monthly premium was being reduced from €222.18 to €213.08 (including 1% Government levy). This reduction in rates was applied for the benefit of the Complainants.

Following annual indexation applied on 23 October 2019 at the level of 5%, the Complainants' policy is currently providing them with joint life first death cover in the amount of €102,529 for a monthly premium of €223.73 (including 1% Government levy).

Whilst it understands that the level of premium increase required after 30 years is disappointing for the Complainants, the Provider points out that the cost of life cover increases with age and that further premium increases can be expected in the future if the Complainants wish to maintain cover. The Provider states that it is important to set out that the Complainants' policy has provided them with valuable protection benefits over the last 30 years and if they wish to maintain cover and are willing to pay the premiums due in the future, it can continue to provide them with whole of life protection cover, on a joint life first death basis.

The Provider notes that many policies available today provide cover for a fixed term only with no ability to extend the term of cover beyond that point. Taking out a new policy at that point will more than likely be costly as the lives insured will have aged, medical underwriting will apply and the health of the lives to be insured may have deteriorated by then.

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The Provider recommends that the Complainants meet with an Insurance and Investment Manager and has stated that it would arrange such a meeting for them. It states that an Insurance and Investment Manager will be able to assess the Complainants' present needs and in light of these, will provide them with the options open to them. It goes on to state that it is important to understand that the Complainants have a number of options available under their existing policy due to its flexible nature and they always have the option to take out a new life policy, though this would be subject to full medical underwriting.

The Provider points out that a further option that may be of interest to the Complainants, and which an Insurance and Investment Manager can explain fully, is a product that the Provider has developed for policyholders such as the Complainants. Whilst this product would only provide life cover up to age 85, up to date medical details will not need to be provided and it would give the Complainants certainty as to what premium will apply for the policy term. In this regard, the Provider would expect premium payments for such a new policy to be along the following indicative lines for cover on a joint life first death basis: a monthly premium of €500.16 (excluding 1% Government Levy) for a level life cover of €102,529 over 20 years, or a monthly premium of €219.33 (excluding 1% Government Levy) for a reduced level life cover of €44,312 over 20 years, or a monthly premium of €99.01 (excluding 1% Government Levy) for a reduced level of life cover of €19,370.

The Provider would require the Complainants to meet with an Insurance and Investment Manager to complete a review and application form, if they wish to pursue the option of a fixed term life policy. No medical information would be sought as part of the application process and instead the Provider would be relying upon the information provided by the Complainants in 1988. The Provider points out that this product is currently available, though it states that it will not be available indefinitely. The Provider notes that the term of such a policy would be strictly limited to 20 years, so the Complainants may prefer to retain their existing whole of life policy under which premiums and benefits would continue to be subject to reviews, and whereby they can amend the premium amount and/or level of life cover over time to reflect their changing needs.

The Provider states that it is satisfied that periodic reviews of the Complainants' policy took place in 2001, 2003, 2008, 2013 and 2018 and that there was no obligation for it to carry out a policy review at any other time. Accordingly, the Provider is satisfied that it administrated the Complainants' life assurance policy in accordance with its terms and conditions.

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.

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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.

A Preliminary Decision was issued to the parties 3 March 2020, 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.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

The complaint at hand is that the Provider maladministered the Complainants' life assurance policy. In this regard, the Complainants incepted a unit-linked whole of life assurance policy with the Provider on 23 October 1988, which initially provided them with joint life first death cover in the amount of IR£30,000 (€38,092) for a monthly premium of IR£25 (€31.74). This policy remains in force and is currently providing the Complainants with joint life first death cover of €102,529 for a monthly premium of €223.73 (including 1% Government levy).

Following a policy review in September 2018, the Provider wrote to the Complainants on 1 September 2018 to advise that in order to maintain this level of life cover until the next policy review date in October 2023, the monthly premium would need to increase to €321.36. The Provider also advised the Complainants that they could reduce the life cover to €97,646 for a monthly premium of €222.18, or reduce the life cover further to €55,475 for the current premium level of €122.89. In this regard, I note that the First Complainant complains that as a result of this policy review, *"I needed to treble the premium to maintain current cover"*.

The Complainants' policy is a unit-linked whole of life protection plan, providing life cover payable in the event of death. With policies of this nature, the cost of providing life cover increases according to the age of the policyholder(s). A positive policy value may be built up in the early years when the cost of the life cover is less than the premiums, but where the cost of life cover in later years becomes higher than the premium amount, the fund subsidies this difference. In due course, the fund is exhausted, resulting in the need for a policy review, which recommends either an increase in premium or a reduction in life cover.

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In this regard, policy reviews are an integral part of a unit-linked whole of life policy. The purpose of these reviews is to assess whether the value of the policy and the on-going premium payments will be sufficient to sustain the cost of life cover until the next policy review date. The premium calculation takes into account, among other things, the level of life cover and the age of the life assured, hence it may be necessary for the policyholder to make an additional provision for cover by way of an increased premium. The setting of a premium following a policy review falls within the commercial discretion of the Provider and is the prerogative of the Provider-appointed actuary and I will not interfere with its commercial discretion.

As a unit-linked whole of life assurance policy, the Complainants' policy is subject to periodic reviews, in accordance with the policy terms and conditions. In this regard, section B3, 'Regular Policy Review', of the applicable Policy Conditions of Contract booklet that I note from the documentary evidence before me that the Provider furnished to the Complainants in October 1988 when they incepted their policy, provides, as follows:

> *"At such times as the Company shall determine,* ***but not less frequently than once every five years****, the Company shall review the amount of Benefits in force and the amount of regular Contributions payable, and shall notify the Policyholder of any increase in the amount of such regular Contribution such as may in the opinion of the Company be required to maintain the level of Benefits under this Policy"*.
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> ***[Emphasis added]***

As they incepted their policy in October 1988 and in line with this policy condition, I note that the Complainants' policy was due to be reviewed no later than five years after, by October 1993 and again no later than October 1998. I note from the documentary evidence before me that the Complainants took a partial encashment of their policy in May 1993 and again in August 1998. In this regard, section W2, 'Partial Surrender', of the applicable Policy Conditions of Contract booklet provides, among other things, as follows:

> *"(a) At any time after this Policy has been in force for at least two complete years the Policyholder may, by giving notice in writing to the Company, surrender some of the Units then attributed to the Policy at the value on the date of receipt of such notice in exchange for a cash sum. The Units shall be cancelled and all subsequent calculations shall be by reference to the reduced number of Units remaining attributed to the Policy.*
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> *(b) On such surrender, the Company may require that the amount of minimum Benefits contingently payable under Clauses B5* ['Death of the Life Assured']*, B6* ['Accidental Death Benefit'] *and B7* ['Permanent Total Disablement Benefit'] *hereof be reduced by an amount equal to the value of Units surrendered"*.

I accept that the partial encashments which the Complainants made in May 1993 and August 1998 constituted policy reviews and thus negated the need for policy reviews in October 1993 and October 1998.

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In this regard, as a result of the latter partial encashment and associated policy review in August 1998, I note that the Complainants' life cover benefit was reduced to IR£39,520 (€50,180), in accordance with the policy terms and conditions.

In addition, I accept from the documentary evidence before me that the Provider conducted periodic reviews of the Complainants' policy in August 2001, September 2003, September 2008, September 2013 and September 2018, which satisfy the policy terms and conditions that require the Provider to carry out a policy review *"not less frequently than once every five years"*, and that it notified the Complainants in writing of the outcome of those policy reviews at that time.

I note that the First Complainant, who reached age 60 in August 2005, submits, as follows:

> *"My complaint relates to the absence of a review prior to receiving letter dated 1/9/18 advising I needed to treble the premium to maintain current cover. On viewing whole of life providers online, almost all do an annual review when policyholders reach 60 years. While letter dated 3/9/13 indicated there may be a problem in 2017, letters received in Aug & Sept 17 did not indicate any problems. Hence the shock at receiving letter dated 1/9/18. I feel* [the Provider] *are holding me to ransom & forcing me to pay exorbitant premiums now because it wasn't reviewed since my 60th birthday.*
>
> *If the policy had been reviewed in 2015 when I reached 60, I would have been given a warning about an issue which would arise in 2018. Annual reviews thereafter would have enabled me to avoid this impasse. I have now had to double my premium & reduce my life cover to keep the policy in force, an increase I cannot really afford. I now feel* [the Provider] *will probably do the same again in 5 years & I will be forced to cancel the policy"*.

The First Complainant is correct that some Insurers offer whole of life policies where the terms and conditions require for a policy review to take place when the policyholder reaches a specific age, and at specific stated times thereafter. However, each life assurance policy is governed by its own set of terms and conditions and in this regard, section B3, 'Regular Policy Review', of the Complainants' Policy Conditions of Contract booklet provides, as follows:

> *"At such times as the Company shall determine, but not less frequently than once every five years, the Company shall review the amount of Benefits in force and the amount of regular Contributions payable, and shall notify the Policyholder of any increase in the amount of such regular Contribution such as may in the opinion of the Company be required to maintain the level of Benefits under this Policy"*.

Therefore, I accept that the Provider was not required by the policy terms and conditions to carry out a review of the Complainant's policy when the First Complainant reached age 60.

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The Provider conducted periodic reviews of the Complainants' policy, which was incepted in October 1988, in May 1993, August 1998, August 2001, September 2003, September 2008, September 2013 and September 2018 and which satisfy the policy terms and conditions that require the Provider to carry out a policy review *"not less frequently than once every five years".* Accordingly, I accept that the Provider administrated the Complainants' policy in accordance with its terms and conditions.

I note from the documentary evidence before me that the Provider wrote to the Complainants on 29 September 2017, as follows:

> *"I have enclosed a* ***guide to your reviewable protection policy*** *and recommend that you take some time to read this. It may be some time since you took out your protection policy and this guide is a reminder of how your policy works and what options are available to you at this point. This includes options to help manage the increasing cost of protection benefits as you get older".*

In this regard, the enclosed 'Guide to your reviewable protection policy' set out what a reviewable protection policy is and the importance for a policyholder to review their protection benefits, as follows:

> *"Your protection needs may change at different times in your life. For example, your need for life cover may reduce when your children are financially independent and your mortgage is paid off. In this case, you may want to reduce the level of live cover as the cost of providing this benefit increases as you get older. You can reduce your benefits at any time".*

I note that the Provider has advised the Complainants that further premium increases can be expected in the future if they wish to maintain their policy at the level of cover it currently provides. In this regard, I note that the Provider has recommended that the Complainants meet with an Insurance and Investment Manager, who will be able to assess the Complainants' present needs and in light of these, will provide them with the life assurance options open to them and that it would be happy to arrange such a meeting for them. It is a matter for the Complainants to advise the Provider if they wish to meet with an Insurance and Investment Manager.

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.

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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

25 March 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.