An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0154
Sector:	Investment
Product / Service:	Annuities
Conduct(s) complained of:	Failure to inform of drop in value Dissatisfaction with customer service Failure to provide correct information
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant's late husband died in **May 2012**, at which time he held two Approved Retirement Fund Policies with the Provider. At the date of death, his Approved Retirement Fund (ARF) policy xxxxxx26 was valued at €130,893, whilst his Approved Managed Retirement Fund (AMRF) policy xxxxxx27 was valued at €59,896.

The Complainant's Case

The Complainant met with Mr G., a Financial Advisor with the Provider, at her home in **September 2012** and understood from his advice that, as her husband was deceased, his two Approved Retirement Fund Policies would be *"frozen"* and thus that their values would remain the same, or at least not decrease. However, when the death claims in respect of these policies were later settled in **October 2015**, the Complainant received €119,903 in respect of ARF policy xxxxxx26, a decrease of €10,990, and €57,665 for AMRF policy xxxxxx27, a decrease of €2,231.

In her email to this Office dated **11 October 2018**, the Complainant submits, as follows:

> *"*[The Provider] *were notified and the* [Agent] *dealing with my policy* [Mr G.] *called to my house to discuss the policy, but it was discovered I needed to have Probate carried out before proceeding, which in turn I was assured the Policy was frozen until this was complete. This is where all the issues arose from, the policy was not frozen and activity had been carried out on the plans, in my husband's name without authorisation … after which I had the policy transferred into a cash fund with* [another named Provider]*"*.

In this regard, the Complainant sets out her complaint, as follows:

> *"I contacted* [the Provider] *in June 2012 regarding correspondence addressed to* [my husband] *in April 2012, just weeks before his death, regarding changes to his plans. On notifying* [the Provider] *of his sudden demise, I was advised to contact* [Mr G.] *regarding* [my husband's] *ARF and AMRF. On doing so, I arranged for* [Mr G.] *to meet with me at my home in September 2012.* [Mr G.] *advised me on my options and encouraged me to transfer the plans into my own name. I completed a Statement of Suitability while he was at the house even though I was not in a frame of mind to undertake any major decisions.*
>
> *I later informed* [Mr M.] *that I could not go ahead with transferring the plans at that point as I was still in a very low state of bereavement and was not capable of making such major decisions. When I enquired if my delay in making a decision would incur any losses,* [Mr G.] *informed me that the funds would be frozen at the policy values at date of death. This reply left me feeling quite safe and less anxious about making an immediate decision.*
>
> [Mr G.] *contacted me a few days later to inform me that Probate must be sought before any further progress could me made on the pension plans. I explained…I would be taking some time before I could proceed on applying for Probate and would be in contact with him when I had it completed. I had supplied all other necessary documents to* [the Provider]*, i.e. copy of Will (indicating me as the sole inheritor and Executor to the Will); copy of Death Certificate …*
>
> *In September 2015, I notified* [Mr J.] *of* [the Provider] *that I was ready to proceed with dealing with* [my late husband's] *ARF & AMRF.* [The Provider] *had notified me previously that* [Mr G.] *was no longer with the company.* [Mr J.] *called to my home and went through the Pension Plans. It was at this time that I noticed a significant drop in the figures from the time* [Mr G.] *had called. I informed* [Mr J.] *I had been assured by* [Mr G.] *that the funds would be frozen in time until I was in a position to proceed.* [Mr J.] *instantly notified his office to convey my findings and made an official complaint on my behalf.*
>
> *I then received a call from [Ms K.] in the complaints department to inform me that the Pension Plans had not been frozen and as* [Mr G.] *was no longer with the company they could not verify what was said. The situation that developed between [Ms K.] and myself was in my opinion not good company practice, I found her to be very aggressive and arrogant in dealing with the situation. Several letters passed between [Ms K.] and myself, with no success on what* [Mr G.] *had promised.*

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Issue One

I was eventually informed that some of the losses on the policies related to imputed distributions (as required by law). Please see attached letter from [the Provider]*, dated 4 February 2016 and addressed to my Accountants. You will see from the letter that;*

- *There was an imputed distribution in 2011 and* [my late husband] *received the net payment due to him after tax was deducted. This was before he passed away.*
- *There was no imputed distribution in 2012.*
- *There was an imputed distribution for 2013 and 2014. However, I did not receive the net payments due to* [my late husband's] *estate after the tax was deducted or any correspondence relating to same …*

The balance of the imputed distribution after tax deductions was as far as I can resolve reinvested back into the funds without consent from me or the acting Solicitors on [my late husband's] *behalf. This I would have thought to be proper procedure in this case. The net amounts due to* [my late husband's] *estate cannot be paid out now without tax being applied again.*

Issue Two

During my dealings with [Ms K.] I requested copies of all documents and letters on file for [my late husband's] *ARF & AMRF. I received one letter dated 21 February 2015. It stated that* [my late husband] *had requested a withdrawal and the sum was lodged to his bank account ending 8600…I find this unusual bearing in mind* [my late husband] *had passed away almost three years previous. I have checked through all our bank accounts and no such lodgement was received. There was no bank account ending in 8600 in either* [my late husband's] *or my name. On questioning this letter with* [the Provider]*, I was informed that all communication going forward would be by letter only.*

On numerous occasions I have requested full annual statements showing all transactions into and out of the funds. However to date I have not received same.

I am seriously aggrieved in the manner I was both spoken to and treated in general. [The Provider] *in my opinion did not carry out their duties of care as expected and my dealings with them have caused me great stress and anxiety. It has been a shocking experience to try to deal with* [the Provider]*, on a matter that should have been straight forward. Due to the way I was treated by* [the Provider] *since I first made contact last September* [2015]*, I have now moved the policies* [to another company]*".*

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In this regard, the Complainant submits, as follows:

> *"To my mind it would appear that the policies were not dealt with correct in that;*
>
> - [My late husband's] *estate did not receive the imputed distributions after tax was deducted,*
> - *My solicitor nor I received any correspondence regarding the policies until I made contact in September* [2015]*,*
> - *There was a withdrawal; in February 2015 totalling €3,238.80 that I am not aware of"*.

The Provider's Case

Provider records indicate that the Complainant's late husband incepted his Approved Retirement Fund (ARF) Policy xxxxxx26 in March 2011. The value of this policy in May 2012, had it been processed as a death claim on the date when he died, was €130,893.34. The value of this policy on 13 November 2015, the date that the proceeds were transferred to the Complainant's ARF Policy that she held with a different Provider, and using the unit pricing date of 29 October 2015, was €119,903.38, as follows:

Policy	***Number of Units***	***Unit Price***	***Transfer Value***
ARF xxxxxx26	89,147.494	€1.345	€119,903.38

Two obligatory deductions, known as imputed distribution payments, took place on this policy after the policyholder died. Pension legislation requires a minimum annual withdrawal of 5% of the fund value (known as imputed distribution payments) in respect of all ARF policies where the policyholder is age 61 or over. In this regard, for any ARF policies still in administration at 30th November in any given year, the Provider is required to deduct a certain minimum amount of PAYE (income tax), USC (universal social charge) and PRSI (pay-related social insurance) from the policy as if the policyholder had actually taken the minimum withdrawal of 5%. These PAYE, USC and PRSI deductions are submitted to Revenue under the policyholder's PPS number and is deemed as income. The legislation also applies where the policyholder has died and the death claim has not been settled by the 30th November in any given year. In such cases, the taxes due on the minimum withdrawal amount of 5% is calculated, deducted from the fund and passed to Revenue, with the balance of this minimum withdrawal amount retained within the fund. These deductions in respect of ARF policy xxxxxx26 were, as follows:

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Date	*Imputed Distribution Payment*	*PAYE*	*USC*	*PRSI*	*Total Payment to Revenue*
31 December 2013	€6,115.67	€2,507.42	€428.10	€244.63	€3,180.15
31 December 2014	€6,228.47	€2,553.67	€435.99	€249.14	€3,238.80

The balance of the reduction in fund value between May 2012, when the policyholder died, and 29 October 2015, the unit pricing date used to close the policy, was due to negative returns from the fund and the applicable policy charges.

Fund Growth Details			
Start Price Date	***End Price Date***	***Total Growth***	***Annualised Growth***
xx May 2012	29 October 2015	-4.68%	-1.37%

Provider records indicate that the Complainant's late husband also incepted his Approved Managed Retirement Fund (AMRF) Policy xxxxxx27 on 2 March 2011. The value of this policy in May 2012, had it been processed as a death claim on the date when he died, was €59,896.44. The value of this policy on 13 November 2015, the date when the proceeds were transferred to the Complainant's ARF Policy that she held with a different Provider, and using the unit pricing date of 29 October 2015, was €57,665.72, as follows:

Policy	*Number of Units*	*Unit Price*	*Transfer Value*
AMRF xxxxxx27	44,532.669	€1.345	€59,896.44

There was no imputed distribution payments associated with this AMRF Policy as the Complainant's late husband had not reached age 75 prior to his death. The reduction in fund value between May 2012, when the policyholder died, and 29 October 2015, the unit pricing date used to close the policy, was due to negative returns from the fund and the applicable policy charges.

Fund Growth Details			
Start Price Date	***End Price Date***	***Total Growth***	***Annualised Growth***

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xx May 2012	29 October 2015	-4.68%	-1.37%

The Provider was first notified of the death of the Complainant's late husband by the Complainant herself, by way of letter dated **14 June 2012**, which included a copy of the Interim Certificate of Fact of Death, from the Coroner's Office.

The Provider understands that Mr G., the appointed financial advisor on the Complainant's late husband's ARF policies, agreed to meet with the Complainant to assist her with the death claim on these policies. The standard options available to spouses who are entitled to the proceeds of their deceased spouse's ARF policies would be to either

(i) draw down the balance of the value of the policies as cash, subject to income tax at the higher rate, PRSI and USC, or

(ii) transfer the proceeds to an ARF policy in their own name.

Both these options are predicated on the requirement for the spouse to provide proof of title over their late spouse's policies, by way of a certified will and a grant of probate. Whilst the Complainant furnished the Provider with a copy of her late husband's will in June 2012, the grant of probable was not produced until late in 2015, some three years later. From its records, the Provider notes that it would appear that the Complainant's preferred option at that time she met with Mr G. was to set up an ARF policy in her own name with the Provider, once the application for the grant of probate had been completed.

The Provider has not been able to obtain comment from Mr G. as to exactly what was discussed regarding how secure the fund was, which the Complainant's late husband's ARF policies were invested in, as he left his position in 2013. However, on the basis of his record and past experience, the Provider is reasonably confident that Mr G. would have advised the Complainant as to what fund both policies were invested in, and would continue to be invested in, until such time that the death claim was finalised and the proceeds transferred to her. The Provider also has no doubt that Mr G. would have advised the Complainant that whilst this fund was the most secure fund available for these policies, there was no guarantee that their value would not fall, or for that matter rise, over the medium to long term.

As Mr G. would have been familiar with the particular terms and conditions of the policies, he would have known that all monies invested would have remained in the particular fund until the application for grant of probate had been completed and all requirements needed to allow the proceeds of the death claim to be paid to the Complainant, were received in the Provider Head Office.

The Provider has no reason to doubt that Mr G. would have communicated this lack of capital guarantee to the Complainant during their meeting. Similarly, the Provider cannot envisage any circumstance under which Mr G. would have described the investments to the Complainant as *"frozen"*, as she asserts she was so advised, as clearly the monies would continue to be invested in a cash fund until such time that the death claim was finalised; as

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a result, the policies could potentially fall in value over time, albeit that they were invested in the lowest risk fund available for these type of policies.

Notwithstanding what may or may not have been discussed during the meeting between Mr G. and the Complainant in September 2012 regarding how secure the capital invested in the two policies was, the Provider notes that the Complainant has accepted that on **19 June 2012,** the Provider wrote to her, following the notification of her late husband's death, to advise what requirements were needed in order for the death claim to be processed and the monies transferred from both policies to her. This letter also clearly advised, *inter alia*, at pg. 1, as follows:

> *"Subject to admission of the claim, the amounts payable will be 100% of the value of the fund, the units being valued at the bid price ruling on the day after receipt by the Company of its requirements, the payment being reduced by any tax payable.*
>
> *The values of the policies on the date of death was €130,893.34 and €59,896.44 respectively.* ***Please note, however, that these values are provided for probate purposes only and are not guaranteed, as unit prices can fall as well as rise****"*.

The Provider notes the admission by the Complainant during her telephone call on **10 September 2015** to Ms K. of the Provider's Complaint Management Team that she did not fully read this important communication, and the Provider cannot now be held responsible for this oversight on the part of the Complainant.

The Provider also wrote to the Complainant on **22 April 2014** to bring to her attention the pending imputed distribution payment of tax liability that the Provider was obliged to pay from her late husband's ARF Policy xxxxxx26 to Revenue at that time.

Contrary to the Complainant's assertion that she was never, during the three years since the notification of her late husband's death, informed of the falling value of the funds, the Provider's letter of **22 April 2014,** set out that the surrender value of ARF Policy xxxxxx26 had fallen to €122,313.37 and would reduce further once the tax liability payment of €3,180.15 had been deducted and passed to Revenue.

The Provider is satisfied that it is clear from its correspondence dated 19 June 2012 and 22 April 2014 that the Provider did make the Complainant aware of the fall in value of these policies both potentially and in fact since May 2012. As a result, the Provider submits that the Complainant should have been aware that the surrender value of her late husband's two policies could potentially fall in value due to a possible fall in the unit price of the fund they were invested in, and also that for each year that ARF Policy xxxxxx26 remained unclaimed, a deduction to Revenue would further reduce the value.

The Provider notes that regardless of what assumptions the Complainant may have had regarding how secure the funds were, during the death claim process, there was nothing that the Complainant, nor for that matter the Provider, could have done to switch the

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investment to any other arrangement that would have *"frozen"* the monies. Legally speaking, only the policyholder (or following his death, his appointed executors, if any) could have given such an instruction to the Provider.

As it was more than three years before the Complainant was able to produce the grant of probate, the entitlement of the Complainant to instruct the Provider as to how to settle the late policyholder's ARF arrangements, occurred only after the payment of the obligatory imputed distribution payment tax liabilities in 2013 and 2014 and the fall in the value of the fund over that period.

The Provider ceased issuing Annual Statements after May 2012 as it had been given notice that the policyholder had passed away. In this regard, it is not the Provider's practice to knowingly issue correspondence in the name of a deceased customer and the Provider was not in a position to communicate with the beneficiaries of the Complainant's late husband's policies until receipt of grant of probate, which was not made available to it, until late 2015, some three years after the Provider was notified of his death.

Although it stopped issuing annual statements in the name of the deceased, the Provider did notify the Complainant of the value of her late husband's ARF Policy xxxxxx26, on 22 April 2014 when it advised her of the pending imputed distribution payment of tax liability deduction to Revenue. The Complainant was thus made aware of the reduction in the value of at least one of the two policies in question and she could presumably have made efforts to expedite the application for grant of probate in 2014, which may have mitigated further falls in the surrender values due to negative fund performance.

Having reviewed the recording of the telephone call between Ms K. of its Complaint Management Team and the Complainant on 10 September 2015, the Provider notes that the conversation between the two parties became somewhat heated in that the Complainant was not prepared to accept the Provider's position regarding her complaint, as communicated to her by Ms K.

The Provider regrets if the Complainant formed the opinion that Ms K. appeared to her to have been aggressive or arrogant in her responses. However, the Provider notes that Ms K. was attempting to explain the fact that she was in possession of written evidence which would verifiably demonstrate that the Provider had written to the Complainant on 19 June 2012, following notification of her late husband's death, to advise her of the requirements needed to process the death claim and which also clearly advertised the fact that the value of the two policies were not guaranteed, namely, *"**Please note, however, that these values are provided for probate purposes only and are not guaranteed, as unit prices can fall as well as rise".***

In response to this demonstration of the Provider's position, the Complainant dismissed the importance of the referenced notice by stating that she did not read the entirety of the letter and suggested that the Provider was at fault for including such important pieces of information in a communication issued to her so close after her husband's death. The Provider notes that this obviously led to an element of frustration on the part of Ms K. however, notwithstanding this, the Provider accepts that the Complainant was dissatisfied

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with the way the telephone call on 10 September 2015 was handled and on that basis it wishes to offer a Customer Service Award of €250 to her, as a token of its regret.

The Complainant makes reference in her complaint to a letter addressed to her late husband, in respect of ARF Policy xxxxxx26, dated **21 February 2015**. This letter stated, as follows:

> *"You recently asked to withdraw funds from your plan.*
>
> *I am pleased to confirm that your account number ending 8600 will be credited with €3,238.80 and available to you in 4 working days from the date of this letter"*.

It is important to clarify that this letter was not posted to the Complainant's late husband on 21 February 2015. A copy of this letter was, however, provided to the Complainant at a later date as part of a 'Copy File' request made by the Complainant on 23 September 2015, which included a copy of all documents on file for her late husband's two policies.

This letter dated 21 February 2015 was an auto-generated template encashment letter that was produced during the processing of the tax liability payment due to Revenue in February 2015, in respect of the imputed distribution payment for the tax year ending on 31 December 2014. As this payment to Revenue was a deduction from the Complainant's late husband's ARF Policy xxxxxx26, this generated an automated encashment letter in the name of the deceased, with the standard opening template line that is contained in all Provider Encashment Confirmation Letters, and which assumes that the policyholder requested the encashment.

The physical printout of this letter was pulled from the daily print run of postal correspondence and destroyed. However, the computer generated copy remained on the Provider's systems linked to this policy and unfortunately a copy was inadvertently printed off and included in the 'Copy File' request in September 2015. The account number ending in 8600 referred to in the letter is one of the Provider's internal accounts, used to process all Revenue-related payments. The Provider obviously regrets that a copy of this letter was issued to the Complainant in error in September 2015, and would like to offer a customer service award of €250 in recognition of this failure.

The Provider is satisfied that it administered the Complainant's late husband's ARF policies xxxxxx26 and xxxxxx27 in accordance with their terms and conditions at all times. The Provider is also fully satisfied that in the majority of its interactions with the Complainant, it provided her with complete and correct information. However, the Provider accepts that the Complainant was unhappy with the way the telephone call of 10 September 2015 was conducted and offers a customer service award of €250 in recognition of this. In addition, the Provider accepts that the copy of the internally produced letter dated 21 February 2015 describing the withdrawal of the imputed distribution tax liability that was provided to the Complainant as part of her 'Copy File' request, led to obvious confusion and some distress

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which it unreservedly apologies for and again, as a token of it regret, the Provider offers the Complainant a further €250 customer service award in this respect.

The Complaint for Adjudication

The Complainant's complaint is that the Provider:

(i) gave her incorrect advice and information in September 2012 regarding the status of her late husband's policies,

(ii) proceeded to maladminister these policies, and

(iii) provided her with poor customer service throughout its handling of her dealings with it.

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 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 18 March 2020, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

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The Complainant's late husband died in May 2012, at which time he held two Approved Retirement Fund Policies with the Provider. At the date of his death, his ARF policy xxxxxx26 was valued at €130,893 and his AMRF policy xxxxxx27 was valued at €59,896.
The Complainant met with Mr G., a Financial Advisor with the Provider, in September 2012 and states that she understood from his advice that as her husband was deceased, his two ARF Policies would be *"frozen"* and thus that their values would remain the same, or at least not decrease. However, when the death claims in respect of her late husband's policies were settled in October 2015, the Complainant received €119,903 in respect of ARF policy xxxxxx26, a decrease of €10,990, and €57,665 for AMRF policy xxxxxx27, a decrease of €2,231.

In addition, the Complainant advises, as follows:

> *"I am seriously aggrieved in the manner I was both spoken to and treated in general.* [The Provider] *in my opinion did not carry out their duties of care as expected and my dealings with them have caused me great stress and anxiety. It has been a shocking experience to try to deal with* [the Provider]*, on a matter that should have been straight forward. Due to the way I was treated by* [the Provider] *since I first made contact last September* [2015]*, I have now moved the policies* [to another company]*".*

I note that Mr G., the appointed financial advisor on the Complainant's late husband's ARF policies, met with the Complainant in September 2012 to assist her with the death claims on these two policies. In this regard, in her email to this Office dated **11 October 2018**, the Complainant submits, as follows:

> *"*[Mr G.] *called to my house to discuss the policy, but it was discovered I needed to have Probate carried out before proceeding, which in turn I was assured the Policy was frozen until this was complete. This is where all the issues arose from, the policy was not frozen and activity had been carried out on the plans, in my husband's name without authorisation"*.

Similarly, in her correspondence to this Office dated **July 2019**, the Complainant submits, *"*[Mr G.'s] *clear and unambiguous response, as the representative of the Provider, was that the funds would be "frozen in time" … For my part, I stand over what I said as being a truthful account of our conversation"*. I note, however, that the Complainant is unable to rely upon any documentation confirming the advice and information that she says Mr G. gave to her during their meeting in September 2012.

I note that the Provider has advised that it has been unable to obtain comment from Mr G. as to what exactly was discussed with the Complainant in September 2012, as he left his position of employment in 2013. As it is therefore not possible for this Office to precisely ascertain what was discussed during the meeting between the Complainant and Mr G. in September 2012, I am guided by the documentary evidence before me to assist in my investigation.

In this regard, following her notification to the Provider by way of letter dated 14 June 2012 of her late husband's death, I note that the Provider wrote to the Complainant to advise

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what requirements were needed in order for the death claims to be processed and the monies transferred from both of her late husband's policies to her, and I note that this letter dated **19 June 2012**, clearly advised, *inter alia*, at pg. 1, as follows:

> *"According to our records the proceeds of the above policies will become payable to the Personal Representatives of your late husband's estate and I set out hereunder a note of our requirements for settlement.*
>
> 1. *The original State Death Certificate*
> 2. *The original State Birth Certificate*
> 3. *The original Grant of Probate & Will*
> 4. *The attached Discharge and Notification of Death Claim Form fully completed by the Personal Representative(s) with the signature(s) witnessed by an independent party.*
> 5. *The Policy Documents for cancellation.*
>
> *Subject to admission of the claim, the amounts payable will be 100% of the value of the fund,* ***the units being valued at the bid price ruling on the day after receipt by the Company of its requirements, the payment being reduced by any tax payable****.*
>
> *The values of the policies on the date of death was €130,893.34 and €59,896.44 respectively.* ***Please note, however, that these values are provided for probate purposes only and are not guaranteed, as unit prices can fall as well as rise****".*
>
> [Emphasis added]

Having listened to a recording of the telephone call that took place on 10 September 2015 between the Complainant and the Provider, I note that when Ms K. of the Complaint Management Team reminded the Complainant of this item of correspondence, the Complainant replied, *"I probably didn't look at it at the time"*.

Whilst I appreciate that the Complainant would have received this letter just four weeks after the death of her husband, I am nevertheless satisfied that the Provider furnished the Complainant with appropriate notice that the policy values were not guaranteed and that such values could fall as well as rise, whilst the death claims remained in progress. I am conscious that it was open to the Complainant to refer to this letter at any time thereafter, when she was better placed to turn her attention to these matters.

In addition, the Complainant's late husband's policies were at all times subject to the policy terms and conditions.

In this regard, Section 6, '**Death Benefit'**, of the Approved Retirement Fund / Approved Minimum Retirement Fund Policy Conditions booklet, which is applicable to both of his policies, provides amongst other things, as follows:

> *"Subject to the terms of this Policy, on the death of the Life Assured…the Company shall:*

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(i) Cancel all Units on the Policy and terminate the Policy, and

(ii) *Pay 100% of the value of Benefit Fund of the Policy, the Units being valued at the Bid Price ruling on the day after receipt by the Company at its Head Office of its requirements as specified in Section 19, the payment being reduced for any tax payable under Section 14."*

Section 14, **'Tax'**, of this Policy Conditions booklet provides, as follows:

"A. The Company shall be entitled to deduct from the assets and/or the proceeds of the Policy any tax or duty which, in its opinion, is payable and to account for such tax or duty to the Revenue Commissioners.

B. The Company shall be entitled to deduct any charge or fee payable to it, from any monies whatsoever payable under the Policy, resulting from the partial or full surrender of the Policy by the Policyholder".

Section 19, **'Claim'**, of this Policy Conditions booklet provides, *inter alia*, as follows:

"No money shall be payable by the Company under the Policy, whether by Death Benefit or Surrender or otherwise until the following requirements have been complied with at Head Office:

(i) Delivery of the Policy Schedule and deposit for inspection of any documents necessary to show the title of the claimant to the Policy"

I am therefore satisfied that the Complainant's late husband's two policies remained subject to market performance until such time that the Complainant satisfied the requirements for the death claims, in accordance with the policy terms and conditions. If the Complainant was not in possession of the terms and conditions of her late husband's policies, it would have been prudent of her to have obtained a copy of these from the Provider, for her reference.

In her email to this Office dated 11 October 2018, the Complainant submits that "*activity had been carried out on the plans, in my husband's name without authorisation"*. However, as her late husband's two policies remained subject to market performance until such time as the death claims were settled, I take the view that the activity on these policies that the Complainant refers to, namely, tax deductions, policy charges and changes in value due to negative fund performance, were transactions and activity that arose in accordance with the terms and conditions of the policies.

In addition, I note that the Complainant advises, *"*[my late husband's] *estate did not receive the imputed distributions after tax was deducted"* from ARF policy xxxxxx26. In this regard, as the policyholder was deceased and the death claim in respect of this policy had not yet

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been settled, I am satisfied that it was appropriate for the Provider to return the post-tax balance of the imputed distribution payments to the policy fund.

As part of this complaint, I also note that the Complainant advises, *"My solicitor nor I received any correspondence regarding the policies until I made contact* [with the Provider] *in September* [2015]*"*. In this regard, in her correspondence to this Office dated July 2019, the Complainant submits, *inter alia*, as follows:

> "*A statement of account for the years ending 31st December 2012, 2013 and 2014* [had] *never been received from the Provider. [Mr G.'s] assurances that the funds were "frozen in time" would have been found wanting at the end of 2012 if a statement of account has been issued, and I could have dealt with the situation at that point"*.

The Provider has advised that it did not issue any annual statements after May 2012 as it had been given notice that the policyholder had passed away. In its letter to this Office dated 2 September 2019, the Provider advises, *inter alia*, as follows:

> *"…it is not the Provider's practice to knowingly issue correspondence in the name of a deceased customer. The Provider was not in a position to communicate with the beneficiaries of the Complainant's late husband's policies until receipt of Grant of Probate, which was not made available until late 2015 some three years after the Provider was notified of the death of the Complainant's late husband"*.

I note, however, from the documentary evidence before me that some eighteen months prior to it receiving the grant of probate in question, that the Provider wrote to the Complainant on **22 April 2014** advising her of the pending imputed distribution payment tax liability it was obliged to pay from her late husband's ARF Policy xxxxxx26 at that time. In this regard, it's not evident to me why, on the one hand, the Provider was not in a position to issue the Complainant with annual statements in respect of her late husband's policies, whilst on the other hand the Provider was in a position to write to the Complainant directly to advise her of an imputed distribution payment tax liability that it was obliged to pay from one of his policies.

Be that as it may, I remain satisfied that the Provider previously furnished the Complainant with appropriate notice, by way of its correspondence dated 14 June 2012, that her late husband's policy values were not guaranteed and that such values could fall as well as rise whilst the death claims remained ongoing, in accordance with the policy terms and conditions. This letter also clearly advised the Complainant of the requirements for finalising the death claims, which I note she did not fully comply with until October 2015.

In addition, the Complainant also submits, as follows:

> *"I received one letter dated 21 February 2015. It stated that* [my late husband] *had requested a withdrawal and the sum was lodged to his bank account ending 8600…I find this unusual bearing in mind* [my late husband] *had passed away almost three years previous. I have checked through all our bank accounts and no such lodgement was received. There was no bank account ending in 8600 in either* [my late husband's]

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or my name … There was a withdrawal; in February 2015 totalling €3,238.80 that I am not aware of".

I note from the documentary evidence before me Provider correspondence addressed to the Complainant's late husband dated 21 February 2015, as follows:

"You recently asked to withdraw funds from your plan [ARF policy xxxxxx26]*.*

I am pleased to confirm that your account number ending 8600 will be credited with €3,238.80 and available to you in 4 working days from the date of this letter".

The Provider has advised that this letter was produced during the processing of the tax liability payment due to Revenue in February 2015, in respect of the imputed distribution payment for the tax year ending on 31 December 2014. As this payment was a deduction from his policy, the Provider notes that that this generated an automated encashment letter in the name of the deceased, with the standard opening template line that is contained in all Provider Encashment Confirmation Letters, which assumes that the policyholder requested the encashment (albeit that in this instance, the policyholder clearly had not.) The Provider also notes that the account number ending in 8600 referred to within this letter is one of its internal accounts, used to process all Revenue-related payments.

I note that the Provider has advised that this letter was not posted to the deceased on 21 February 2015 as it pulled the physical printout of the letter from its daily print run of postal correspondence and destroyed it. A copy of the letter was however provided in error to the Complainant at a later date as part of a 'Copy File' request the Complainant made to the Provider in September 2015, which included a copy of all documents on file for her late husband's two policies.

It is understandable that the contents of this letter caused confusion for the Complainant when she received it from the Provider as part of a copy of all documents it held on file for her late husband's two policies. In this regard, I note that the Provider accepts that the copy of this letter led to obvious confusion and some distress and it has offered the Complainant a customer service award of €250, which I am satisfied, given the particular circumstances, is fair and reasonable.

Finally, I note that the Complainant complains of her dealings with Ms K. of the Provider's Complaint Management Team and in particular, their dealings by telephone in September 2015. In this regard, the Complainant submits, *"The situation that developed between [Ms K.] and myself was in my opinion not good company practice, I found her to be very aggressive and arrogant in dealing with the situation"*.

I have listened to a recording of the telephone call that took place on 10 September 2015 between the Complainant and Ms K., as well as a recording of their subsequent call on 15 September 2015. Having done so, I am satisfied that Ms K. made repeated efforts throughout to explain to the Complainant both the workings of her late husband's policies and the Provider's position in relation to the matter at hand, and that she did so, in my opinion, in a calm and courteous manner. Nevertheless, I note that the Provider accepts that

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the Complainant was dissatisfied with the way the telephone call on 10 September 2015 was handled and on that basis it has offered the Complainant a customer service award of €250, which I am satisfied, given the particular circumstances, is fair and reasonable.
This brings the total customer service award offered by the Provider to the Complainant in respect of these matters to €500. I am satisfied that this sum, given the particular circumstances, is fair and reasonable and it will be a matter for the Complainant to communicate directly with the Provider if she now wishes to accept that gesture.

Insofar as the evidence before me does not however disclose any substantive wrongdoing on the part of the Provider, I take the view that this complaint cannot reasonably be upheld.

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.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

9 April 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.