**Decision Ref:** 2020-0342

**Sector:** Insurance

**Product / Service:** Whole-of-Life

**Conduct(s) complained of:** Premium rate increases
Dissatisfaction with customer service

**Outcome:** Partially upheld

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

The Second Complainant and her late husband, who died on [date redacted], incepted a unit-linked whole of life assurance policy with the Provider on **14 June 1999**, based on an initial single premium of GBP £29,177 for joint life last death cover in the amount of GBP £109,430, payable to a trust set up by the lives assured. The First Complainant, a daughter of the Second Complainant, now age 94, has lasting Power of Attorney for her mother's affairs.

The Second Complainant's policy 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)).***

Accordingly, the element of the Complainants' complaint relating to the sale of the policy by the Provider to the Second Complainant and her late husband in 1999, does not form part of this investigation.

**The Complainants' Case**

The Complainants set out their complaint in the Complaint Form, as follows:

> *"Product was sold as single premium of £29,177 to give whole of live cover of £109,430. There have been numerous reviews with substantial payments made.*

> [The] *requested premiums appear extortionate, bearing in mind the original premium was intended to be one off and* [the Provider] *have not given adequate explanation, merely answer the plan was reviewed".*

In this regard, the Complainants notes that additional premiums were made in the amount of £9,242.33 in August **2009**, £5,000 in April **2015** and £5,000 in September **2016**.

In addition, on **29 July 2016**, the Second Complainant mistakenly selected the option on the policy review Options Form to reduce the level of life cover from £109,430 to £5,030, which the Provider confirmed by letter dated 10 August 2016 that it had actioned on 9 August 2016.

The Second Complainant's Financial Advisor telephoned the Provider on **15 August 2016** to advise that the Second Complainant had mistakenly selected the wrong option when returning the Options Form.

In addition, the Second Complainant wrote to the Provider on **31 August 2016**, as follows:

> *"I refer to* [my policy] *and my recent payment of £5,000. I confirm this was to be made as a top up to the* [policy]*. I believe I ticked the incorrect box on the form".*

The Second Complainant's Financial Advisor also wrote to the Provider on **2 September 2016**, as follows:

> *"I enclose a signed letter from* [the Second Complainant] *confirming she ticked the wrong box on the review form and the £5,000 contribution should have been applied as a top up to the bond"*.

The Second Complainant expected the Provider to reinstate the original level of life cover of £109,430 to her policy, however the Complainants note that the Provider failed to update its records accordingly and that the level of life cover has remained at £5,030, notwithstanding that further top-up premium payments have since been requested in order to sustain this reduced level of life cover.

In this regard, in its correspondence to this Office dated **4 September 2019**, the Second Complainant's Financial Advisor submits, *inter alia*, as follows:

> *"I also enclose a copy of the* [policy] *review* [dated 20 June 2019] *and again this is incorrect as it shows the death benefit as being £9,381.58 rather than £109,620 which* [the Provider] *had reverted to after it was incorrectly changed. Therefore* [the Provider's] *statement that the finds are sufficient is incorrect as the life cover is substantially higher than* [its] *records indicate"*.

As a result, the Complainants submit in the Complaint Form that *"…poor administration has resulted in changes to the amount of cover".*

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In its email to this Office dated **30 January 2020**, the Second Complainant's Financial Advisor states, *inter alia*, as follows:

> *"The main complaint…*[the Provider] *still does not give any explanation as to how such high premiums are being requested to maintain the life cover.*
>
> [The Provider] *have stated that the original premium if it had grown at 8.5% pa would not have required any further premiums.*
>
> *Since this figure is not outlandish the results of* [the Provider's] *reviews with the further premiums requested seem unreasonable and as* [the Provider] *have admitted…they have made mistakes in administering the life cover and therefore they could have made mistakes in calculating the review premiums and there does not appear to have been any new checks to ensure that these were correct"*.

In resolution of this complaint, the Complainants state in the Complaint Form that they seek for the Provider to carry out *"a proper review of the policy to either show that requests for additional funds, in addition to those already paid, is unjustified".*

**<u>The Provider's Case</u>**

Provider records indicate that the Second Complainant and her late husband, by way of an independent financial adviser, incepted a unit-linked whole of life assurance policy with the Provider on 14 June 1999, based on an initial single premium of £29,177 for joint life last death cover in the amount of £109,430. The greater of the sum assured or the encashment value of the policy is payable on the death of the last to die of the lives assured, to a trust set up by Second Complainant and her late husband, who died on [date redacted].

The Provider notes that the initial single premium of £29,177 was invested into the clients' chosen investment fund with an expectation that this would support the sum assured of £109,430 throughout the life of the lives assured, assuming that the units purchased with the premium grew by 8.5% per annum after the deduction of all charges, including the life cover cost, which are deducted each month by way of unit cancellation from the fund.

The Provider says that the Second Complainant's policy, in line with its terms and conditions, is reviewed on a regular basis by the Provider-appointed Actuary to assess the ability of the fund value to support the level of the sum assured throughout the life of the lives assured. If a policy review shows that the fund value is unable to support this, then the client is provided with options, which includes the investment of additional premiums, in order to make the sum assured sustainable throughout the life of the lives assured or until the next review date. There are a number of factors that influence the outcome of the reviews, including the current fund value, the amount and type of cover and the projected future charges.

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The Second Complainant's policy was reviewed by the Actuary on its 10th anniversary and every five years thereafter, in accordance with the policy terms and conditions, though these terms and conditions also allow for ad-hoc reviews to be carried out if the Actuary deems it necessary and in the best interest of the clients to do so. In this regard, the Provider conducted more frequent policy reviews, in order to monitor the policy performance and allow the lives assured to take action to ensure its sustainability going forward. For example, whilst the first policy review was scheduled to take place in June 2009, the Provider carried out a policy review in June 2007 due to the volatile market conditions at that time.
The Provider carried out policy reviews in June 2007, June 2009, June 2012, December 2014, February 2015, June 2016, June 2017, June 2018 and June 2019. Following each of these, the Provider wrote to the Second Complainant (and her late husband), as well as the Financial Adviser, with the results of each policy review at the time and provided them with options to choose from.

The Provider is satisfied that all policy review correspondence clearly outlined why the policy was being reviewed, what the current position of the policy was, what factors were considered during the review and why, where appropriate, additional premiums were needed to maintain the sum assured at that time. The additional premiums quoted at each of the policy reviews were the amounts that the Provider had calculated would support the sum assured throughout life, or until the next review date, based on its assumptions at the time of the review. The Second Complainant and her late husband were not under any obligation to invest additional premiums into the policy and could have chosen a different option, including, for example, to make no change to the policy where offered or to reduce the level of the sum assured.

The Provider regrets that the Complainants remain unhappy with the results of the policy reviews and the explanations provided regarding the sustainability of the sum assured. Nevertheless, the Provider is satisfied that the policy reviews carried out were done, in accordance with the terms and conditions of the Second Complainant's policy.

The Provider accepts, however, that its administration of the Second Complainant's policy during 2016 and 2017 was not of an acceptable standard and in this regard, it presents the following timeline of events:

*14 June 2016:* A policy review carried out by the Provider in accordance with the policy terms and conditions found that the sum assured of £109,430 was only sustainable until October 2016.

*22 June 2016:* The Provider sent the policy review results to the Second Complainant and her Financial Adviser advising that the policy was only sustainable until October 2016 and provided options to pay an additional premium or reduce the sum assured to extend the policy beyond that date.

*7 July 2016:* The Financial Adviser requested by telephone sustainability figures based on the Second Complainant making an additional premium of £5,000.

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*27 July 2016:* The Provider confirmed to the Financial Adviser in writing that the policy could remain sustainable for a further 9 months if an additional premium of £5,000 was paid.

*3 August 2016:* The Provider received the Options Form signed by the Second Complainant on 29 July 2016 requesting for the sum assured to be reduced to £5,030.

*10 August 2016:* The Provider wrote to the Second Complainant and her Financial Adviser to confirm that the sum assured had been reduced to £5,030 on 9 August 2016, as requested.

*15 August 2016:* The Financial Adviser telephoned to advise that the Second Complainant had mistakenly selected the wrong option on the Options Form. The Provider advised that it would require written confirmation from the Second Complainant in order to restore the sum assured to £109,430.

*7 September 2016:* The Provider received a letter from the Financial Advisor dated 2 September 2016, as follows:

> *"I enclose a signed letter from* [the Second Complainant] *confirming she ticked the wrong box on the review form and the £5,000 contribution should have been applied as a top up to the bond"*.

Enclosed was a letter from the Second Complainant dated 31 August 2016, as follows:

> *"I refer to* [my policy] *and my recent payment of £5,000. I confirm this was to be made as a top up to the* [policy]*. I believe I ticked the incorrect box on the form".*

There was, however, no cheque enclosed with this correspondence. The Provider accepts that it ought to have restored the sum assured to £109,430 at this time, but that it failed to do so.

*27 September 2016:* The Provider emailed the Financial Adviser to advise that no cheque was enclosed with its previous correspondence.

*7 October 2016:* The Provider received correspondence from the Financial Adviser dated 4 October 2016 enclosing a cheque from the Second Complainant dated 29 September 2016 in the amount of £5,000.

*22 October 2016:* The Provider emailed the Financial Adviser to advise that the additional premium payment could not be processed as the Second Complainant had not completed the requisite Additional Single Premium Application Form.

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*24 November 2016:* The Provider received correspondence from the Financial Adviser dated 11 November 2016 enclosing the Additional Single Premium Application Form signed by the Second Complainant on 21 November 2016.

*12 January 2017:* The Provider emailed the Financial Adviser to advise that the 'Source of Payment' section of the Additional Single Premium Application Form had not been completed by the Second Complainant and that as the cheque payment had been made from a bank account not in the name of the trust, the Provider required written confirmation from the Second Complainant confirming that the monies related to the trust.

*28 February 2017:* The Provider emailed the Financial Adviser to advise that the additional premium of £5,000 (paid by the Second Complainant by way of cheque dated 29 September 2016) had now been applied (the incorrect sum assured of £5,030 still applied).

*14 June 2017:* A policy review was carried out by the Provider, in accordance with the terms and conditions of the Second Complainant's policy.

*22 June 2017:* The Provider sent the policy review results to the Second Complainant and her Financial Adviser which detailed the sum assured as £5,030.01 and advised, *inter alia*, *"that based on current assumptions,* ***your Bond is at a level sufficient to support the chosen level of cover throughout life****"*.

*26 June 2017:* The Financial Advisor telephoned to explain that the Second Complainant had mistakenly selected the decrease benefit option following the policy review in June 2016 but had then sent written confirmation that this had been an error and made an additional premium payment of £5,000. She had expected the sum assured to revert to £109,430 after this additional premium had been applied. The Financial Advisor stated that the additional premium payment had been made on the basis that it would support the original sum assured of £109,430 and requested that this sum assured be reapplied to the policy and an endorsement issued.

*14 July 2017:* The Provider emailed the Financial Adviser to apologise for its error when processing the additional premium, advising that its records ought to have been updated to reinstate the sum assured of £109,430 but that it had failed to do so. If it had done so, the Provider advised that the additional premium paid of £5,000 would only have sustained the restored sum assured of £109,430 for nine months and that a further additional premium would therefore have been required in April 2017. As a result, the Provider noted on its records that the sum assured was £109,430, however the Second

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Complainant would need to pay an additional premium to make the policy sustainable from April 2017 onwards. The Provider confirmed that it would forward sustainability figures in due course.

*3 October 2017:* The Provider sent the sustainability figures it had received on 12 September 2017 to the new Financial Adviser confirming that an additional premium of £5,000 would sustain the sum assured of £109,430 for 1 month, whilst an additional premium of £10,000 would sustain this sum assured for 6 months.

*31 October 2017:* The Provider emailed the Financial Adviser to confirm that the sum assured remained at £5,030. The Provider advised that its letter to the Financial Adviser on 27 July 2016 had confirmed that the then sum assured of £109,430 could remain sustainable for a further 9 months if an additional premium of £5,000 was paid. As the sum assured was then reduced to £5,030 on 9 August 2016 at the Second Complainant's request and that the Provider failed to reinstate the original life cover following confirmation that she had mistakenly selected this option, the additional premium of £5,000 had been applied to the policy in February 2017 when the sum assured was £5,030 and thus the policy review correspondence in June 2017 was based on this level of cover. The Provider requested an additional premium payment of £10,000 for the policy to remain in force for another 6 months at the higher sum insured, but did not receive same.

*23 November 2017:* The Provider wrote to the Financial Adviser to respond to its complaint regarding the errors the Provider made. In order to ensure that it was treating the Second Complainant fairly, the Provider received revised sustainability figures to commence from 1 November 2017. The Provider confirmed that if an additional investment of £5,000 was to be made, this would sustain the sum assured of £109,430 for 13 months, from 1 November 2017. The Provider advised the Financial Adviser that if it would like to proceed on this basis, it would arrange for the required paperwork to be sent. As the Provider received no response from either the Financial Adviser or the Second Complainant, the sum assured remained at £5,030 in order to maintain the policy.

The Provider accepts that its administration of the Second Complainant's policy during 2016 and 2017, subsequent to her written confirmation that she had mistakenly selected the decrease benefit option following the policy review in June 2016, was not of an acceptable standard.

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It is evident that the Provider should have increased the sum assured from £5,030 back to the original amount of £109,430, following its receipt on 7 September 2016 of the Second Complainant's letter dated 31 August 2016. As a result of this error, the Second Complainant's policy continued on the basis that the sum assured was £5,030.

In addition, after the Financial Advisor brought this error to the Provider's attention by telephone on 26 June 2017, the Provider acknowledges that there was then a delay in furnishing the Financial Adviser with sustainability figures to restore and maintain the sum assured at £109,430, as it had previously promised in its explanatory email of 14 July 2017.

In this regard, in order to ensure that it was treating the Second Complainant fairly, the Provider confirmed in its correspondence to her Financial Advisor dated 23 November 2017 that if the Second Complainant made an additional premium payment of £5,000 at that time, that this would sustain the sum assured of £109,430 for 13 months from 1 November 2017. This letter advised that if the Second Complainant wanted to proceed with this option, then the Financial Advisor could contact the Provider and it would provide the necessary paperwork. The Provider did not receive any response to this offer.

As a result, the Provider notes that the sum assured on the Second Complainant's policy is £5,030 and the surrender value noted in the Yearly Statement dated 20 June 2019 was £9,381.58. This statement confirms that *"We will pay out the greater of the specified death benefit and the cash-in value of the bond"*. As the surrender value at that time was higher than the sum assured amount, the death benefit was correctly confirmed as £9,381.58.

The current sum assured remains at £5,030 and the surrender value as at 3 January 2020 was £9,723.76 (which is subject to change and is not guaranteed), therefore the death benefit payable in the event of the death of the remaining life assured is the surrender value, as this is higher than the sum assured.

The Provider is happy to carry out an ad hoc review of the Second Complainant's policy as requested by the Complainants. It would make clear however, that any such review would not support the Complainants' assertion that *"requests for additional funds in addition to those already paid is unjustified"*. Instead, any such review carried out by the Provider at this time is most likely to show that the policy is able to sustain the current sum assured of £5,030 throughout life, as confirmed in the most recent policy review carried out in June 2019.

The Provider regrets and apologises for its error in failing to restore the sum assured on the Second Complainant's policy to its original level in September 2016, following its receipt of her written confirmation that she had mistakenly selected the decrease benefit option following the policy review in June 2016. The Provider is committed to delivering the highest standards of customer service and it is important to recognise when this has not been achieved. In its effort to redress this error, the Provider did provide the Second Complainant and her Financial Adviser with an option in November 2017 to restore the sum assured to £109,430 on 1 November 2017 for 13 months for an additional premium payment of £5,000, but it received no response to this offer.

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**The Complaint for Adjudication**

The Complainants' complaint is that the Provider failed to administer the Second Complainant's 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.

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 **14 September 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.

Following the consideration of an additional submission from the Complainants, the final determination of this office is set out below.

The complaint at hand is that the Provider failed to administer the Second Complainant's life assurance policy in accordance with its terms and conditions. I note in this regard, that the Second Complainant and her late husband incepted a unit-linked whole of life assurance policy with the Provider on 14 June 1999, based on an initial single premium of £29,177 for joint life last death cover in the amount of £109,430, payable to a trust set up by the lives assured. This policy was purchased via an independent financial adviser when the Second Complainant was age 73 and her late husband was age 70. The Second Complainant's late husband died on [date redacted]. The First Complainant, a daughter of the Second Complainant, now age 94, has lasting Power of Attorney for her mother's affairs.

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There are two elements to the complaint at hand. The first is that the Provider carried out a number of reviews of the Second Complainant's policy and the Complainants consider that the additional premiums then requested by the Provider in order to maintain the sum assured *"appear extortionate"*. The second element of the complaint is that the Provider erred in failing to restore the sum assured to the original level of £109,430 in September 2016 after the Second Complainant had mistakenly indicated a number of weeks previously that she wished to reduce the sum assured to £5,030.

With regard to the first element of this complaint, that is, that the Provider carried out a number of reviews of the Second Complainant's policy and the Complainants consider that the additional premiums then requested by the Provider in order to maintain the sum assured *"appear extortionate"*, I note that as a unit-linked whole of life assurance policy, the Second Complainant's policy is subject to periodic reviews, in accordance with its terms and conditions.

In this regard, **Part 5, '*Protection Benefits*'**, of the applicable Bond Conditions Booklet (SAE/FPB/002) provides at pgs. 22 - 23, as follows:

*"**9. Bond reviews***

*9.1. Purpose*

*The Actuary will review the Bond on the 10th anniversary and on each 5th anniversary thereafter.*

*The purpose of each review is to assess the likelihood that the value of the units will be sufficient to sustain the current Sum Assured through to the next review date on whatever assumptions the Actuary considers appropriate. The review will take into account the charges we will be taking from the Bond, in particular our charges for the cost of the cover the Bond is providing, the current value of the units in the Bond and projected growth in the value of those units.*

*9.2 Review Recommendations*

*We will send you details of the review as soon as practical after the review date.*

*If we consider the Sum Assured is excessive at a review date, because the units seem unlikely to be adequate to sustain that Sum Assured to the next review date, we will make recommendations to help safeguard the continuation of the Bond. In particular, if a review reveals an unsatisfactory position, we will recommend that you:*

- *reduce the Sum Assured to a level we consider should be sustainable to the next review date;*

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*or*

- *pay an Additional Investment into the Bond to help sustain the current Sum Assured to the next review date*

*The review details we send you will tell you what reduced Sum Assured or Additional Investment we recommend. These recommendations will be based on the assumptions used in the reviews.*
*You will not be under an obligation to reduce the Sum Assured or pay an Additional Investment. However, you should hear in mind that the Bond will end and all protection cover will cease if at any time there are insufficient units in the Bond to meet our charges".*

The Second Complainant's policy is a unit-linked joint whole of life assurance policy. With policies of this nature, the cost of providing life cover increases according to the age of the life or lives assured. The initial single premium of £29,177 paid by the Second Complainant and her late husband at the commencement of the policy in June 1999, was invested into a fund and the cost of providing the then life cover of £109,430 was deducted from the positive policy value. In due course, however, the fund deceased in value as the increasing cost of life cover in later years was higher than the growth of the fund, resulting in the need for a policy review, which recommends either an additional premium payment or a reduction in the level of life cover.

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 will be sufficient to sustain the cost of life cover until the next policy review date. The premium calculation takes into account, *inter alia*, the level of life cover and the age of the life or lives assured, hence it may be necessary for the policyholder to make an added provision for cover by way of an additional premium. The Complainants say that they believe their complaint has not been addressed, regarding the absence of an explanation of "*how such high premiums are being requested to maintain the life cover*". However, the setting of a premium following a policy review is the prerogative of the Provider-appointed actuary and for that reason, this is not something with which this office will interfere. I am satisfied therefore that the Provider carried out the policy reviews in accordance with the terms and conditions of the Second Complainant's policy.

With regard to the second element of this complaint, that is, that the Provider failed to restore the sum assured to the original level of £109,430 after the Second Complainant had mistakenly indicated a number of weeks previously that she wished to reduce the sum assured to £5,030, I note that following a policy review carried out on 14 June 2016, the Provider wrote to the Second Complainant and her Financial Advisor on **22 June 2016**, as follows:

> *"We are writing to let you know that* [the Provider] *has carried out a review on your Flexible Protection Bond. As stated in your Bond Conditions, a review is carried out periodically to update you on how your Bond has performed in the past and how it is expected to perform in the future based on our review assumptions. This review is a*

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*valuable exercise as it provides you with an opportunity to look at your protection benefits and see if the product still meets your needs. In addition, it can be helpful to consider this product in the context of your wider financial planning needs.*

*The review indicates that the value of your Bond is expected to reduce to zero* ***within 4 months****. In accordance with your Bond Conditions, your Bond and all the protection cover will cease when there are insufficient units in the Bond to meet our charges.*

*The results of this review are given overleaf.* ***If you decide to do nothing your current level of cover is expected to cease on 14 October 2016****. Should you decide to continue with your cover under this Bond then please read the following review letter carefully which outlines the options available to you".*

The enclosed Options Form provided, *inter alia*, as follows:

***" We recommend that you consult your Financial Adviser before completing this form.***
***Please clearly indicate your instruction by ticking the box next to your preferred course of action.***

***ONLY ONE OPTION SHOULD BE CHOSEN. IF YOU REQUIRE ALTERNATIVE OPTIONS, PLEASE CONTACT YOUR FINANCIAL ADVISER OR ALTERNATIVELY OUR PLAN REIVEW HELPLINE*** **[contact details provided] …**

***Option 1: Please made no change to my Bond at this time.***
*I understand that the review indicates that based on the assumptions stated in section 3 of my review pack, the value of my Bond is expected to reduce to zero, assuming that the review assumptions are met. In accordance with the Bond Conditions, my Bond and all the protection cover will cease when there are insufficient units in the Bond to meet the charges.* ☐

***Option 2: Please accept an additional investment of:***

- *£46,115.31 into my Bond which should make my Bond sustainable, on the assumptions stated in section 3 of my review pack, for the next 5 years. I understand that it is likely that further action will be required to maintain cover after my next review* ☐

- *£84,167.52 into my Bond which should make my Bond sustainable, on the assumptions stated in section 3 of my review pack, throughout life* ☐

*I enclose a cheque made payable to* ['the Provider'].
*I understand that this investment will be invested in the same manner as my current funds.*
*I also confirm that this payment comes from a bank account in my own name.*

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*If you choose to make an additional investment, we will be unable to update your chosen option if we do not receive your payment with this form.*

***Option 3: Please reduce the insured benefit on my Bond to:***

- *£8,098.00 which should make my Bond sustainable, on the assumptions stated in section 3 of my review pack, for the next 5 years. I understand that it is likely that further action will be required to maintain cover after my next review.* ☐

- *£5,030.00 which should make my Bond sustainable, on the assumptions stated in section 3 of my review pack, throughout life.*
☐

***Please note:***

- *You can choose to pay an additional investment amount different to those in Option 2 or to reduce the level of benefit to a different amount than those in Option 3. In doing this the cover on your Bond could cease earlier than expected. If you wish to avail of this, please contact our Plan Review Team on* [contact details provided].

*We will write to you to confirm that we have received your instruction. If you decide to make a change, you will also receive a Bond Endorsement where the change to your Bond will be shown.*

*If you have any questions regarding this review or are uncertain about anything contained in this form, please do not hesitate to contact your* ***Financial Adviser*** *or alternatively our Plan Review Helpline* [contact details provided].

***IF YOU DO NOT NOTIFY US OF YOUR PREFERRED OPTION WITHIN 6 WEEKS OF THE ISSUE DATE ON THIS FORM, WE WILL ASSUME YOU WISH TO MAKE NO CHANGE TO YOUR BOND AT THIS TIME".***

I note that the Complainant ticked the option indicating that she wanted to reduce the sum assured to £5,030 and signed the Options Form on **29 July 2016** and returned it to the Provider.

The Provider then wrote to the Second Complainant and her Financial Adviser on 10 August 2016 to advise, *inter alia*, as follows:

*"Thank you for sending in your completed options form which indicates that you have chosen to reduce the current level of cover on your Bond to £5,030.00. We have now carried out this change to your Bond in accordance with your instructions and enclose an Endorsement to confirm this …*

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> *This revised benefit is the level of cover that, based on the results of the recent review of your Bond,* [the Complainant] *considers should be sustainable throughout life. This is not guaranteed. As with all investments, market and economic conditions will continue to affect the value of your Bond"*.

I note that the Financial Adviser then telephoned the Provider to advise that the Second Complainant had mistakenly selected the wrong option on the Options Form and the Provider advised that it would require written confirmation from the Second Complainant in order to restore the sum assured to £109,430.

I note from the documentary evidence before me that on 7 September 2016, the Provider received a letter from the Financial Advisor dated **2 September 2016**, as follows:

> *"I enclose a signed letter from* [the Second Complainant] *confirming she ticked the wrong box on the review form and the £5,000 contribution should have been applied as a top up to the bond"*.

I note that enclosed was a letter from the Second Complainant dated 31 August 2016, as follows:

> *"I refer to* [my policy] *and my recent payment of £5,000. I confirm this was to be made as a top up to the* [policy]*. I believe I ticked the incorrect box on the form".*

In this regard, I note that the Provider accepts that it ought to have restored the sum assured to £109,430 at that time but that it failed to do so, and that the policy continued on the basis that the sum assured is £5,030.

In addition, I note from the documentation before me that the Provider wrote to the Financial Adviser on 28 July 2016, as follows:

> *"Further to your recent enquiry, please find below the information as requested. The revised figures are as follows:*
>
> ***Additional Premium:*** ***£5,000.00***
> ***Current Life Cover Sum Assured:*** ***£109,430.01***
> ***Expected Sustainable Term:*** ***9 years from now.***
>
> *Please be advised that the above figures are for illustration purposes only and are not guaranteed. This quote is valid until 27 August 2016"*.

***[Emphasis added]***

In its response to this complaint, the Provider refers on a number of occasions to having advised the Financial Adviser in July 2016 that an additional premium of £5,000 would sustain the sum assured of £109,430.01 for 9 months. This may well be the actual sustainability figures that the Provider had intended to convey at that time, however I note that the letter clearly stated ***"9 years"***.

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Nevertheless, it is evident from the policy review results that the Provider sent to the Second Complainant and her Financial Adviser some four weeks previously on 22 June 2016 that based on the assumptions stated therein, the additional premium of £46,115.31 would be required to sustain the sum assured for the next five years whilst an additional premium of £84,167.52 would sustain the policy for the remainder of the Second Complainant's life.

As a result, the Provider's correspondence of 28 July 2016 contradicted the policy review notification of 22 June 2016 and it would have been prudent of the Second Complainant and/or her Financial Advisor to have contacted the Provider at that time to query the significant differences in the figures and sustainability terms provided.

It is clear that there were a number of errors made by the Provider in its administration of the Second Complainant's policy, insofar as its correspondence of 22 June 2016 contained incorrect information and that it subsequently failed to restore the sum assured to the original level of £109,430 in September 2016 after the Second Complainant had mistakenly indicated a number of weeks previously that she wished to reduce the sum assured to £5,030.

Administrative errors of this nature are unsatisfactory and can cause considerable confusion and frustration, as it clearly did in this instance. Policyholders ought to be able to rely on the expertise of the Provider in relation to the administration of a policy and it is regrettable that these errors occurred. I am mindful, however, that as the Second Complainant's policy remains in force, there has not yet been financial disadvantage as a result of these errors.

In this regard, the Second Complainant's policy continued on the basis that the sum assured is £5,030. Following the additional premium made in September 2016 of £5,000 and the policy review carried out in June 2017, the Provider advised the Second Complainant and her Financial Adviser in its policy review correspondence dated 22 June 2017 that the sum assured was £5,030.01 and *"that based on current assumptions, **your Bond is at a level sufficient to support the chosen level of cover throughout life**"*.

I accept the Provider's position that had the sum assured been restored to £109,430 in September 2016 as it ought to have been, that the additional premium payment of £5,000 made in September 2016 (and applied to the policy in February 2017) would only have sustained this sum assured until April 2017 and that a further additional premium would thus have been required at that time.

In an effort to resolve this matter, I note that the Provider confirmed in its complaint response letter to the Second Complainant's Financial Advisor dated 23 November 2017 that if an additional investment of £5,000 was made into policy at that time, that this would then sustain the sum assured of £109,430 for 13 months from 1 November 2017, as follows:

> *"…it is evident that due to an error on our part,* [the Provider] *failed to restore the sum assured from £5,030.00 to £109,430.00 in 2016 …*
>
> *Therefore, to ensure that we are treating* [the Second Complainant] *fairly, I have received a revised sustainability quotation to commence from 1 November 2017.*

/Cont'd…

*Therefore, I can confirm that if an additional investment of £5,000 was to be made, this would sustain the sum assured of £109,430.00 for 13 months (from 1 November). If you would like to proceed on this basis, please let me know and I will arrange for the required paperwork to be sent to you".*

I am satisfied that this was a reasonable position for the Provider to adopt, insofar as it offered to restore the sum assured on the Second Complainant's policy to £109,430 from 1 November 2017 to 30 November 2018 (for 13 months) for an additional premium payment of £5,000. In this regard, I am mindful that the Provider has advised that in July 2016 the same additional premium payment would only have sustained this level of cover for 9 months.
I am of the opinion that it would now be appropriate for the Provider to extend this offer and to further calculate the additional premium required to maintain the sum assured of £109,430 on the Second Complainant's policy from 1 December 2018 to 30 November 2020, assuming that the Second Complainant had made (or will now make) the additional premium payment of £5,000 quoted in November 2017 to restore the sum assured to £109,430 from 1 November 2017 to 30 November 2018.

It will then be a matter for the Complainants to determine if they wish to restore the sum assured to £109,430, by way of making the additional premium payments of £5,000 (to meet the cost of this cover from 1 November 2017 to 31 November 2018) and the additional premium sum to now be calculated by the Provider to meet the cost of such cover from 1 December 2018 to 30 November 2020, when the policy will fall to be reviewed again.

There are a number of factors that will pertain to this decision, including the total amount of premiums already paid by the Second Complainant to date, the amount of the sum assured and the significantly increasing cost of providing life cover for the Second Complainant in the amount of £109,430, now age 94, as she continues to age. It may well be that the Complainants decide to continue the Second Complainant's policy with the current sum assured of £5,030 for life. In any event, this is a decision for them to make, with the assistance of their Financial Advisor.

**Conclusion**

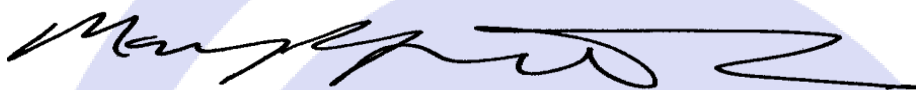
- My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is partially upheld on the grounds prescribed in ***Section 60(2)(g).***

- Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to rectify the conduct complained of, by making the offer referred to above, on the preceding page, again to the Second Complainant. In addition, I direct the Provider to make a compensatory payment to the Second Complainant in the sum of **Stg£1,000** to an account of the Second Complainant's choosing, within a period of 35 days of the nomination of account details by the Second Complainant 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**
**DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

7 October 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.**