An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0433
Sector:	Insurance
Product / Service:	Unit Linked Whole-of-Life
Conduct(s) complained of:	Premium rate increases Results of policy review/failure to notify of policy reviews
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants, who are husband and wife, incepted a unit-linked whole of life assurance policy with the Provider on **1 April 1987**. The First Complainant is now age 81 and the Second Complainant age 80.

The Complainants' Case

As at **1 February 2019**, the Complainants' unit-linked whole of life assurance policy with the Provider was providing each with life cover in the amount of €18,851 for a monthly premium cost of €107.29 (including 1% Government Levy).

The Complainants received correspondence from the Provider dated **5 February 2019** wherein the Provider advised that following the latest policy review no increase to the monthly premium of €107.29 was needed in order to maintain the level of life cover for each life at €18,851 until the next policy review date in 2020. The Complainants note that this letter also stated that *"it is likely that the cost of your cover will increase significantly in the future".*

In addition, a week or so later, the Complainants received further correspondence from the Provider dated **February 2019** wherein it offered the Complainants the option to cancel their current unit-linked whole of life assurance policy and instead take out with the Provider a guaranteed whole of life policy (with no future policy reviews) that would continue to provide each with life cover in the amount of €18,851 but for a monthly fixed premium of €301.94, without them having to provide medical details. The letter advised that this offer

was only available for them to accept until the end of August 2019 and that the premium quoted included a 10% discount.

In this regard, the Complainants set out their complaint in the Complaint Form they completed on 26 December 2019, as follows:

> *"Early Feb 2019, we received normal yearly statement which was ok, we pay €107 per month. A week later another letter from* [the Provider] *offering another policy costing €309 per month. In this letter the words "*[the cost of your cover] *will increase…significantly" re:* [our existing policy] *if we do not change to new policy - €309 per month and no reviews and no medicals.*
>
> *The word 'significantly' can mean very big increases and effects our health* [and] *was never used before and has caused a lot of sleepless nights.*
>
> [The Second Complainant's] *health…is not the best and* [she] *is very worried. We are old age pensioners…if I pass away first she will not be able to pay the premiums … Since* [the then Financial Services Ombudsman] *agreed that* [the Provider] *could review and increase our premium on our…policy 9 years ago, our premiums have increased from €48 to €107 per month for the same cover …*
>
> [The Provider] *now state in a letter 5/2/2019 the next increases will be significantly costing more.* [The Provider] *has offered us a new policy with no reviews but is far too expensive* [with] *10% discount €309 per month …*
>
> *Re* [our existing policy]*, we are State pensioners and cannot afford* [significant increases]. *We think someone in* [the Provider] *is playing mind games with us. Premium increases have been 30% every review. The word 'significantly' can mean as much as* [the Provider] *want to increase"*.

Following the more recent policy review in February 2020 and in order to maintain the level of life cover, the Complainants' monthly premium increased in **April 2020** by €19.39, from €107.29 (including 1% Government Levy) to €126.68 (including 1% Government Levy).

In their letter to this Office dated **9 July 2020**, the Complainants submit, *inter alia*, as follows:

> *"*[The Provider's use of the] *word 'significantly' caused us a daily and nightly worry and stress from Feb 2019 to April 2020 regards increases in our life insurance premiums. As it happened we could just about afford these increases and there was no reason* [for the Provider] *to use the words* ["increase significantly"]*".*

As a result, the Complainants advise that *"we are not looking for payment* [from the Provider]*, just a fair deal with the premium payments and* [for the Provider] *not to be using such words as 'significantly' with a year and one month to go to next* [policy] *review"*.

The complaint is that the Provider wrongfully used terminology regarding potential future premium increases in its life assurance policy review correspondence to the Complainants

/Cont'd…

in February 2019 causing them distress, and then proposed to the Complainants at that time an alternative policy with a fixed rate premium that they considered to be unaffordable.

The Provider's Case

Provider records indicate that the Complainants incepted a unit-linked whole of life assurance policy with the Provider on **1 April 1987**.

To **1 March 2020**, the Complainants have paid premiums totalling €20,458.96 to maintain this policy, inclusive of the applicable Government Levy.

The Complainants' policy is subject to periodic review, in accordance with its terms and conditions. In this regard, the Provider has issued significant correspondence to the Complainants over the years regarding the workings of policy reviews and why these reviews are necessary. In addition, the Provider notes that the Complainants' 2008 and 2013 policy reviews were both the subject of a Finding from the then Financial Services Ombudsman (complaint reference numbers 08/xxxx8 and 13/xxxx0).

The Provider says that as at **1 February 2019**, the Complainants' policy was providing each with life cover in the amount of €18,851 for a monthly premium of €107.29 (including 1% Government Levy).

On **5 February 2019**, the Provider sent the Complainants an Annual Plan Review letter which advised that their policy has passed its 2019 policy review, meaning that no premium increase was needed in order to maintain the same level of life cover until the next policy review date in 2020. This letter highlighted to the Complainants that though no change in premium was required at that time, it was likely that the cost of their life cover would increase in the future as the cost of providing life cover increases with age.

In addition, the letter also advised the Complainants of a newly introduced option available to them, whereby customers over the age of 65 can take out a new guaranteed whole of life policy without the need to provide medical evidence, which can provide up to €30,000 in lifelong life cover at a fixed premium that is not subject to policy reviews, with no requirement to cancel the existing policy.

The Provider says that on **26 February 2019**, it also wrote to the Complainants to advise that in accordance with the terms and conditions of their existing unit-linked whole of life assurance policy, that they could opt to take out a new guaranteed whole of life policy without the need to provide medical evidence, which can provide lifelong life cover up to a maximum of the life cover amount on their existing policy, which would be cancelled once the new policy commenced.

This offer, which was different from that referred to in its previous letter of 5 February 2019, was open to the Complainants to avail of until the end of August 2019 only, and was offered with a 10% reduction in cost. The illustrative example detailed that the cost of providing each with lifelong life cover in the amount of €18,851 was a monthly fixed premium of €301.94 (including 1% Government Levy).

/Cont'd…

In this regard, Paragraph 18, '**Conversion Option'**, of the applicable Life Assurance Provisions, Conditions and Privileges booklet for the Complainants' current policy, provides at pg. 13, as follows:

> *"Provided all premiums due have been paid under the Policy the Proposer(s) shall have the option to encash the Policy and to effect on the life of the Life or Lives Assured an Endowment Assurance of Whole-of-Life Assurance assuring a sum not greater than the amount by which the Death Benefit exceeds the encashment value. This option is available irrespective of the Life or Lives Assured then state of health. Any policy thus effected shall commence with effect from the date life assurance cover ceases under the Policy. To exercise this option, notice of intention to exercise the option must be given in writing to the Company not later than the date life assurance cover ceases under the Policy. Each new assurance so effected will be subject to the Company's normal Prospectus terms at the time the assurance in effected"*.

This conversion option is an additional feature in certain unit-linked whole of life policies that allows the policyholder(s) to convert up to a maximum of the life cover amount on their existing policy to a new non-reviewable lifelong insurance policy, with the existing policy being cancelled.

The Provider says that whilst this option was presented to the Complainants at their policy review in February 2019 (and again in February 2020), the Provider had not previously communicated the option to them other than it being recorded as a feature in the policy terms and conditions that were furnished to them at the outset of their life assurance policy in 1987. In this regard, the Provider notes that there is no obligation on it to regularly communicate each and every feature of a policyholder's terms and conditions.

The Provider advised the Complainants in its letter dated 26 February 2019, as follows:

> *"If you would like to choose this new plan you have to do so before the end of August 2019. You won't be able to convert your plan after this time"*.

The Provider says in that respect that the terms and conditions of the Complainants' unit-linked whole of life assurance policy allowed them to convert their policy to another whole of life product offered by the Provider *"subject to the company's normal prospectus terms at the time the assurance is effected"*. The whole of life product available to the Complainants under this option since its launch in May 2010 was the Provider's Life Long Insurance policy and the conversion option was subject to the rules of this product, which do not allow for it to be taken out after the age of 75. As it had not previously communicated this conversion option as an alternative in their policy reviews after May 2010, the Provider nevertheless offered it to the Complainants in February 2019, despite them exceeding the maximum age to take out this policy. They were given the option to do so by the end of August 2019 (with a 10% reduction in cost), after which this option could no longer be availed of as they exceeded the maximum age to take out this product type.

/Cont'd…

The Provider considers a six-month period (from 26 February to 31 August 2019) reasonable to allow the Complainants to consider their circumstances and options. In this regard, the correspondence dated 5 February and 26 February 2019 recommended that the Complainants contact their financial adviser to discuss further and a copy of both letters were sent to their nominated financial advisers, an independent intermediary regulated by the Central Bank of Ireland separately from the Provider.

The Provider is satisfied that it has at all times attempted to fully resolve the Complainants' complaint, which was raised through their financial advisers on 17 July 2019. In this regard, the Provider responded to the matters raised, by way of letter to the Complainants on 22 July 2019. As elderly customers, the Provider is satisfied that it has at all times treated the Complainants with the utmost care and respect in their interactions and dealings with it.

The Provider is very sorry to hear of the Complainants' upset with its use of the term *"increase significantly"* in its Annual Plan Review letter dated 5 February 2019. However this letter did correctly set the expectation that the cost of the Complainants' life cover was likely to increase significantly in the future, for they are a year older at each review date from when their policy was previously reviewed and this is always likely to impact the cost of their policy into the future, as the cost of life cover increases with age. In this regard, each year when the Complainants' policy is reviewed, the Provider calculates if the current premium is sufficient to keep the policy as is until the next review date, taking into consideration factors such as its current term rate mortality charges at the time of the review based on the ages of the lives covered at that time, in addition to the level of life cover being provided. This is how any increase in cost is calculated and it does not mean that the Provider can charge whatever it feels, as suggested by the Complainants. The Provider apologises for any upset caused but reiterates that the use of the term *"increase significantly"* correctly alerted the Complainants to the fact that the cost of their life cover was and is likely to increase in the future.

The Complaint for Adjudication

The complaint is that in **February 2019**, the Provider wrongfully used terminology regarding potential future premium increases in its life assurance policy review correspondence to the Complainants, causing them distress, and then proposed to the Complainants at that time an alternative policy with a fixed rate premium, that they considered to be unaffordable.

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.

/Cont'd…

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 **28 October 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.

I note that the Complainants incepted a unit-linked whole of life assurance policy with the Provider on 1 April 1987. As at 1 February 2019, this policy was providing each of the Complainants with life cover in the amount of €18,851 for a monthly premium of €107.29 (including 1% Government Levy).

The Complainants' life assurance policy is subject to periodic review. In this regard, Paragraph 20, 'Policy Review', of the applicable Life Assurance Provisions, Conditions and Privileges booklet for their policy provides at pg. 15, as follows:

> *"At each Policy Review Date the Company's Actuary will: ...*
>
> *(b) determine the maximum Guaranteed Minimum Death Benefits the Company is willing to allow under the Policy until the next following Policy Review Date and in determining the said maximum Guaranteed Minimum Death Benefits the Company's Actuary will inter alia have regard to the Accumulated Fund on the said Review Date future options and Premiums under the Policy and then current mortality rates. If on a Policy Review Date the Guaranteed Minimum Death Benefits under the Policy exceed the permitted maximum as determined by the Company's Actuary then the Guaranteed Minimum Death Benefits under the Policy will be reduced to the said maxima or at the option of the Proposers the amount of premium payable in the future will be increased to such amount as the Company's Actuary shall determine"*.

Following the 2019 policy review, I note from the documentary evidence before me that the Provider wrote to the Complainants on **5 February 2019**, as follows:

/Cont'd…

"As your [policy] *is a reviewable protection plan this means we regularly check that the amount you pay monthly and your fund value are enough to maintain your cover.*

We're carried out your latest review and we estimate that your current payments on your plan are enough to keep your current level of cover until your next review date 1 April 2020 …

The cost of your cover will increase in the future

The cost of providing cover increases as you get older. So although you do not need to make any changes to your plan now, it is likely that the cost of your cover will increase significantly in the future. This means you many need to increase your payments or reduce your level of cover.

We are offering you the choice to switch to a new life cover plan with no reviews

If you would like more certainty about the cost of your cover in the future you can switch up to €30,000 life cover (or your current life cover amount if it's less than €30,000) to a guaranteed plan. With this new plan you won't need to provide any medical details and your payments will be fixed for the rest of your life".

The Complainants submit that they found the Provider's comment therein, that *"it is likely that the cost of your cover will increase significantly in the future"*, to be distressing.

Whilst it is regrettable that the Complainants found the language used by the Provider in its letter of 5 February 2019 to be distressing, having considered the contents of this letter in full and mindful that the First Complainant is now age 81 and the Second Complainant age 80 and that the cost of life cover increases as the person ages, I am of the opinion that it was both reasonable and appropriate for the Provider to advise the Complainants that the cost of providing them with life cover will increase significantly in the future.

Such a warning enabled the Complainants to consider the likelihood of significant premium increases, when determining the best life assurance options open to them at that time. In this regard, I am of the opinion that it would be prudent for the Complainants to discuss their life cover options with their financial advisers, as recommended by the Provider in its correspondence to them.

In order to maintain their level of life cover following the February 2020 policy review, the Complainants had to increase their monthly premium from €107.29 to €126.68 in April 2020. They advise in their letter to this Office dated 9 July 2020 that *"as it happened we could just about afford these increases and there was no reason* [for the Provider] *to use the words* ["increase significantly"]*"*. Be that as it may, I note that this additional charge of €19.39 represented an 18% or approximately one-fifth increase in the premium rate. As the Complainants' policy is a unit-linked whole of life assurance policy, they should expect that the cost of providing life cover will continue to increase as they continue to age, and it is important that they understand that each such increase is likely to be by amounts greater than the last.

/Cont'd…

I note that the Provider provided the Complainants with two options in February 2019. In its correspondence dated 5 February 2019, the Provider advised the Complainants of a newly introduced option available to them, whereby customers over the age of 65 can take out a new guaranteed whole of life policy without the need to provide medical evidence, which can provide up to €30,000 in lifelong life cover at a fixed premium that is not subject to policy reviews, with no requirement to cancel the existing policy.

In addition, in its correspondence dated 26 February 2019, the Provider wrote to the Complainants to advise that in accordance with the terms and conditions of their existing unit-linked whole of life assurance policy, that they could opt to take out a new guaranteed whole of life policy without the need to provide medical evidence, which can provide lifelong life cover up to a maximum of the life cover amount on their existing policy, which would be cancelled once the new policy commenced.

I am satisfied that it was of benefit to the Complainants to have received these details, as potential alternatives, even if they ultimately chose not to accept either option. I note from the Complainants' recent submission that they now say that this option ought to have been offered to them a decade earlier when the first Complainant turned 70; they do not consider this fixed premium cover option to be a reasonable option for them in their current circumstances. Although this offer of 26 February 2019 was open to the Complainants to avail of until the end of August 2019, and was offered with a 10% reduction in cost, the Complainants submitted in their Complaint Form that it was *"far too expensive* [with] *10% discount €309 per month".*

It is unclear what level of premium might have been available to the Complainants if such a policy had been on offer in 2009/2010, but whatever level that may have been, this complaint was not made to the FSPO about any failure of the Provider to offer a product at that time. Rather the complaint was made by the Complainants regarding the Provider's conduct in 2019, when it used terminology regarding potential future premium increases in its life assurance policy review correspondence, thereby causing them distress,

It is important to bear in mind that any guaranteed whole of life assurance policy is a contract like any other, it is based on the legal principles of offer, acceptance, and consideration. The Provider may offer terms (which includes the premium it intends to charge for the cover offered) and these terms can be accepted or not, by those seeking insurance, who then elect to pay the premium requested.

The cost of providing lifelong life cover at a fixed rate depends on a number of factors, including age, current mortality rates and the level of life cover provided. Though the Provider's offer is no longer available to the Complainants to accept, I note that the setting of a policy premium is at the prerogative of the Provider-appointed Actuary and it falls outside the role of the FSPO to modify it.

/Cont'd…

Notwithstanding that this particular offer is no longer available to the Complainants, I remain of the opinion that it would be prudent for the Complainants to meet with their financial advisers to consider what life cover options are open to them at this time, given that the cost of maintaining their current unit-linked whole of life assurance policy will continue to increase as they age.

On the basis of the evidence available however, I do not consider that it would be reasonable to uphold the Complainants' complaint against the Provider.

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
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

25 November 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.