



<u>Decision Ref:</u>	2021-0181
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Term Insurance
<u>Conduct(s) complained of:</u>	Failure to provide correct information Dissatisfaction with customer service Refusal to insure - failure to renew policy
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns a 10 year term assurance policy purchased by the Complainant from the Provider on **6 July 2010**..

The Complainant's Case

The Complainant submits that the policy included a conversion option. He says that on **25 May 2020**, he received a letter from the Provider with regard to the conversion option which stated that the option had to be exercised prior to him turning age 65. The Complainant says that he had already turned 65 in May 2019 so he was surprised and disappointed to be informed that he could not exercise the conversion option.

The Complainant submits that when he took out the policy, the main purpose of the policy was critical illness cover and particularly the conversion option in relation to the critical illness cover which he believed, provided him with the option of exercising it any time before the policy expiry date in **July 2020**.

While the Complainant accepts that the policy terms and conditions provide that to exercise the conversion option, a policy had to be available from the Provider to convert to, he submits that the policy schedule and details that he received at inception in July 2010, made no reference to the conversion option expiring at age 65.

He further states that the Provider will have been aware, prior to his 65th birthday, that they had no product available where he could use his conversion option for critical illness, after his 65th birthday. The Complainant states that accordingly, he would have thought it would have been reasonable to expect the Provider to notify him of this, prior to his 65th birthday so that he would have had the option of converting to their product which provides critical illness cover to the age of 70 years of age.

The Complainant submits that it appears to him that paying for the conversion option for critical illness was unnecessary in this instance as a critical illness term policy for 10 years with no conversion option, would have provided the same critical illness benefit.

The Provider's Case

The Provider, in its final response letter dated **8 July 2020**, submitted that having investigated the complaint, it confirmed that the conversion option is not available beyond the age of 65 and as of this time, the Provider only issues correspondence on maturity of a policy.

However, the Provider has now conceded that its position stated in the final response letter was not strictly correct. The Provider's position is now that the policy conditions provide that the Complainant can exercise his conversion option at any stage before the expiry date of the policy, subject to the conditions set out.

The Provider states that the policy was sold to the Complainant by an independent broker and the Provider did not advise the Complainant on the policy terms at the time of inception, which set out the conversion terms, expressly stating that the conversion option can be exercised prior to the expiry of policy. The Provider notes however that the conversion must be exercised from the options available from the Provider. As a result, the options for cover available on conversion will depend on what is generally available from the Provider, at the time.

The Provider accepts that when enquiries were made by the Complainant and his broker regarding the conversion option, incorrect information was provided. However, the Provider makes the point that these enquiries were only made by the Complainant and/or his broker after the Complainant had already turned 65 years of age. The Provider asserts that the conditions of the conversion option under the policy, expressly provide that the new policy can be from any of the company's range of non-unit linked policies which would normally be available to the relevant policyholder at the time she/he decides to exercise the option.

The Provider explains that as the critical illness cover is not available from the Provider to anybody applying who is 65 years or over (and even for under 65 applicants, it is only available to the age of 70), the critical illness cover was not available to the Complainant unless he had exercised the conversion option before turning 65.

While the Provider has accepted shortcomings in respect of incorrect information supplied, it submits that the Complainant had already turned 65 at the time of the first enquiry to the Provider, regarding exercising the conversion option. The Provider has offered to restore the Complainant to the position he would have been in, had it not communicated incorrectly the fact that he was entitled to exercise the conversion option up to the expiry of the policy and to that end, it offered to allow the Complainant to convert his life cover and to waive the premiums that would have been due from the date the policy lapsed, until the offer made in January 2021 which the Provider estimates to equate to a value of €600.

In addition, the Provider is prepared to offer the Complainants an amount of €1,000 in light of the incorrect information provided and this offer is not conditional on the Complainant exercising his conversion option.

The Complaint for Adjudication

The complaint is that the Provider failed to inform the Complainant before his 65th birthday that the conversion option available to him under his policy, must be exercised prior to this date.

The Complainant wants the Provider to either restore the conversion option, or to pay compensation to him in lieu.

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 **13 May 2021**, 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

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

The Complainant incepted a term assurance policy with the Provider in **July 2010** via his independent broker. The policy was taken out on a single life basis with life cover and critical illness benefit of €100,000 over term of 10 years, for a monthly premium of €191.08. The policy also provided children's protection benefit. The conversion option was selected by the Complainant at the time the policy was incepted, and this is confirmed in the policy schedule.

On **29 November 2019**, the Complainant's broker telephoned the Provider and queried whether the policy was convertible. The Provider informed him it was convertible but this was no longer available because the Complainant would have had to have exercised the option before turning 65. This has subsequently been acknowledged by the Provider, to have been incorrect information. I note in that regard that in a letter to this office of 8 January 2021, the Provider advised that:-

"[The Provider] could exercise the conversion option at any stage before the policy expiry on 6 July 2020, when he would have been 66 years of age."

I note however, that although this appears to be clear information, the Provider went on to add a caveat to the effect that although the Complainant could exercise conversion up to the expiry date, nevertheless

"any new non-unit linked policy taken out must be one that is normally available to any person taking out such a policy at that time and the same criteria and assessment applies to [the Complainant] as would apply to any new policyholder applying for such a policy, with the exception that [the Complainant] would not have to go through medical underwriting."

Thereafter, the Provider issued a letter to the Complainant dated **25 May 2020** informing him that the policy was due to expire on 6 July 2020. The letter stated that he had a medical free conversion option on the policy which allowed him to extend the terms of this policy or take out a new policy, without having to provide up-to-date medical details. The letter went on to state as follows:

You may exercise the option before the earlier of:

- *the life insured turning age 65 (or if there are 2 lives insured in your policy, before the older of the 2 lives turned 65) and*
- *6 July 2020 when your policy is due to end.*

Again, the Provider has acknowledged that this information was not strictly correct.

On **11 June 2020**, the Complainant telephoned the Provider and explained that he received a letter dated 25 May 2020 regarding his policy. The Provider's employee on the telephone acknowledged that the letter had been sent in error.

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He explained that the letter was normally sent out towards the end of the policy, but went on to explain that the conversion option was not available to the Complainant any longer, because he was over 65 years of age. Again, this was incorrect information supplied by the Provider, though it seems clear that the practical effect of the correct information was in fact the same. I note that the Provider then repeated information in its final response letter on **8 July 2020**, which was not accurate.

Section B, condition 3 of the policy conditions provides as follows:

3. Conversion Option

Conversion Option only applies if stated in the Schedule, for both Life Cover Benefit and Critical Illness Benefit.

If the Schedule states that Conversion Option applies, then at any stage before the Expiry Date you may cancel this policy and take out a new policy with the Company without giving any additional medical evidence. This option is subject to the following:

- The new policy may be any of the Company's range of non-unit linked policies which would normally be available to you at the time you decide to exercise this option.*
- The amount of any Life Cover and/or Critical Illness Benefits, provided by the new policy cannot be greater than the amount of any Life Cover and/or Critical Illness Benefits provided by this policy at the time or such lesser amounts as the Company at its discretion shall decide having taken into account evidence as to the extent of any financial loss you would incur in the death or diagnosis of a Critical Illness of the Life/Lives insured and any other financial evidence that the Company may require;*
- The premium charged for the new policy will be determined by the Company based on its premium rates for that policy at the time. However, any special terms which apply to the Life Cover and/or Critical Illness Benefits provided by this policy will also apply to the benefits provided by the new policy.*

[My emphasis]

As appears from the foregoing terms in relation to the conversion option, the option applies "any stage before the expiry date". In this case, the policy commenced on 6 July 2010 and the expiry date was 6 July 2020, so that the option was available to the Complainant until July 2020. The Complainant's date of birth however was in May 1954 and accordingly, he reached the age of 65 in May 2019, 10 months before the scheduled expiry of the option available. The crux of the issue in this case is that the Complainant incepted a critical illness policy with a conversion option in relation to the critical illness cover, which effectively had to be exercised before turning 65, because of the absence of critical illness cover normally available from the Provider for those over 65.

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The Provider points out that the conditions of the conversion option, expressly state that the new policy selected or taken out under the conversion option can only be one of the Provider's policies which "*would normally be available*" to the policyholder at the time the conversion option is exercised. Critical illness cover however is not normally available from the Provider once a policyholder is over 65 years of age. The Complainant accepts that the terms and conditions provide that in order to exercise the conversion option, there had to be a policy available to convert to.

The Complainant's core complaint therefore is not that the Provider is not offering critical illness cover because he is over 65, but rather that it failed to inform him before he turned 65 that in order to secure ongoing critical illness cover by exercising the conversion option within his policy, that he must do so before turning 65.

I note that the various incidences of incorrect information provided to the Complainant by the Provider, occurred after he had already turned 65. These disappointing communications were not however responsible for the Complainant not exercising the conversion option at a time when he could have converted to another critical illness policy.

The Complainant however believes that the Provider should have written to him before he turned 65. The Provider acknowledges that it would have been more helpful to have written to the Complainant to remind him of his conversion entitlement prior to his 65th birthday, but it points out that it did not commit to doing so, at any time. Whilst there may have been no specific commitment on the part of the Provider at the time of the policy inception in **July 2010**, to notify the Complainant of conversion options prior to his 65th birthday, I take the view that the Provider was best placed to ensure that, in the context of the Complainant's date of birth which the Provider was aware of, the Complainant would understand his conversion options.

Bearing in mind the utterly confusing situation in which the Complainant found himself, ie that he was entitled to exercise his conversion option until July 2020, but by July 2020, he was ineligible to qualify for any of the conversion options for cover generally available from the Provider, I am satisfied that it was unreasonable for the Provider not to have put in place a mechanism whereby clear information would be made available to the Complainant, as policyholder, in appropriate time to enable him to meaningfully consider the conversion options available to him.

In my opinion, this situation was of the Provider's making, insofar as it was satisfied to supply this policy cover to the Complainant, including the conversion option, over a 10 year term, although his date of birth put him outside the Provider's acceptance criteria for critical illness, during the final 10 months of the policy term, thereby effectively eliminating his ability to exercise the conversion option within those final months. In such particular circumstances, it is my opinion, that the Provider's failure to provide the relevant information to the Complainant, in the months before he turned 65 years old, in a manner which was clear and put him in a position whereby he could make a fully informed decision as to how to proceed, was unfair, and indeed it was unreasonable and unjust within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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I also take the view that in its approach to the administration of this policy, the Provider has failed to adhere to the general principle of the Consumer Protection Code 2012, requiring that in all its dealings with its customers and within the context of its authorisation, it acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market. Whilst I believe that the Provider acted honestly, I do not believe that its approach to the provision of information to the Complainant before he turned 65, was fair or professional in the particular circumstances.

The various errors in the provision of information to the Complainant with regard to his conversion rights prior to the expiry of the policy in July 2020, have been acknowledged and the Provider has apologised. This error of communication however, in my opinion, is not the Provider's greater failing. I am of the very firm opinion that the Provider ought to have communicated with the Complainant in the months before he turned 65 years old, so that his conversion option could have been considered by him, at a time when it was still meaningfully available.

In recognition of its errors, the Provider had offered to restore the Complainant to the position he would have been in had it not communicated incorrectly (the fact that he was entitled to exercise the conversion option up to the expiry of the policy). To that end, it has offered to allow the Complainant to convert his life cover and to waive the premiums that would have been due from the date the policy lapsed in July 2020, until the offer was made in January 2021 which the Provider estimates to equate to a value of €600.

The Provider had made this offer available for a month but I now consider it appropriate to direct the Provider to re-offer this option to the Complainant for him to accept within a period of 1 further month, with the Provider waiving the premiums that would have been due from the date the policy lapsed in July 2020, until this offer was made in January 2021 (which the Provider estimates to equate to a value of €600) but with appropriate premiums to be payable by the Complainant, from January 2021 when the original offer was made, if the Complainant elects to accept that offer of continued life cover on that basis.

I also consider it appropriate to direct the Provider to offer the Complainant a conversion option for critical illness from July 2020, until the Complainant turns 70 years of age, with all relevant premiums to be paid by the Complainant for that period, should he elect to exercise that conversion, such option to also remain open for acceptance by the Complainant for a period of one month.

I note that the Provider also offered the Complainant an amount of €1,000 in light of the incorrect information provided, not conditional on the Complainant exercising the conversion option offered in January 2021. In the circumstances outlined, I am not satisfied that the proposed compensatory payment of €1,000 is adequate for the Provider's failures in this matter. A policyholder is entitled to rely on the information supplied by a regulated financial service provider, and indeed should be able to rely on its expertise, so that appropriate guidance is available at any point in time when a policyholder is seeking to determine a desirable course of action.


In those circumstances, I consider it appropriate to direct the Provider, in addition to the direction referred to above, to make a compensatory payment to the Complainant in the sum of €2,000, in order to conclude. This compensatory payment is to be paid by the Provider to the Complainant, irrespective of whether or not the Complainant elects to accept any conversion option which will be available to him, as outlined above.

I have a concern that there may be other policyholders who have found themselves in the same situation as the Complainant did, and in such circumstances of a potentially systemic issue, I intend to refer this decision to the Central Bank of Ireland, for such action as it may consider to be appropriate.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld on the grounds prescribed in **Section 60(2)(b)**.
- 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 an offer to the Complainant, to remain open for one month from the date of the offer, of:
 - a conversion option in respect of his life cover (as the Provider previously offered in January 2021) to include the waiver of premiums that would have been due from the date the policy lapsed in July 2020, until January 2021, the premium payment to be made by the Complainant from January 2021 onwards.
 - a conversion option for critical illness from July 2020, until the Complainant turns 70 years of age, with all relevant premiums to be paid by the Complainant for that period.
- I also direct the Provider to make a compensatory payment to the Complainant in the sum of €2,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider (such compensatory payment to be made whether or not the Complainant elects to exercise any conversion option which will now be available to him for one month). 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**

4 June 2021

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.