An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2021-0314
Sector:	Insurance
Product / Service:	Whole-of-Life
Conduct(s) complained of:	Delayed or inadequate communication
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants incepted a life assurance policy with the Provider, against which this complaint is made, during **2004** in accordance with the life assurance requirements of their mortgage loan agreement taken out with their bank. The policy was amended over time to reflect subsequent loan agreements entered into by the Complainants.

The Complainants' Case

In their Complaint Form, the Complainants explain that in **2010** they *"*[s]*old one house* [and] *purchased our current property."* The Complainants say that their mortgage loan provider arranged a life assurance policy through a mortgage adviser at that time. In **2017**, the Complainants say they met with the mortgage adviser who brought it to their attention that their life assurance premium seemed quite high. After this meeting, the Complainants say they contacted the Provider *"who informed us we were paying assurance on 2 houses."* The Complainants say this was the first time they were made aware of this.

In an email to this Office dated **28 March 2019**, the Complainants submit that:

> *"*[W]*e were charged an excessive premium of €171 monthly (based on two open mortgages, our previous mortgage which was closed out and our present mortgage) … The situation now is that our cover with* [the Provider] *have now been drastically reduced in accordance with our mortgage … and not the two mortgages as previously passed on by* [the mortgage loan provider] *and quoted on by* [the Provider]*."*

The Complainants continue this email by explaining that:

> *"*[A]*t the start of our new mortgage we noticed that we were being charged for 2 house insurances which we did notice as this was taking (sic) as two separate transaction from our account which we were subsequently reimbursed for by* [the mortgage loan provider]*. With* [the Provider] *payment it was under the one transaction so we thought was normal. It wasn't until we spoke to a mortgage advisor that she advised that we were paying an excessive premium …"*

In an email to this Office dated **26 August 2019**, the Complainants say they *"… find it inconceivable that we were covered for 1.2 million euros on a 220,000 euro mortgage and that there was no systems in place to flag this fact."*

The Complainants explain that their previous monthly premium payments were €171.00 and their current payments are €36.19 per month. The Complainants say that the difference between these two amounts over 8 years and 4 months (being the period of this complaint) equates to an overpayment of €13,481.00.

The Provider's Case

The Provider explains that the Complainants took out a reviewable unit linked protection policy with it on **16 August 2004** which was assigned to the mortgage loan provider. The Provider says the initial cover provided by the policy was life cover of €120,000 for a term of 21 years on a dual life basis. The Provider says the loan reference number ending 1004 was included on the application form (**Loan 1**).

The Provider says the policy conditions and policy schedule were sent to the Complainants by letter dated **20 August 2004**. Referring to condition 10 of the policy conditions, the Provider says the option was available to the Complainants to increase the premium to extend the period of cover that was chosen without medical underwriting in the following circumstances:

> *"You have applied for an increase in a mortgage associated with this policy because you have moved your principal private residence; or*
>
> *You have married; or*
>
> *You or your spouse has given birth to a child or legally adopted a child; or*
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> *Your salary has increased by means of promotion or changing jobs. The percentage increase in benefit in this case may not exceed the percentage increase in salary."*

The Provider explains that the policy is subject to periodic reviews as set out in condition 11 and provides for indexation under condition 7.

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The Provider says records show that a plan alteration form was received from the Complainants dated **30 May 2006** which requested an increase in life cover to €150,000 for a term of 20 years. The Provider says the Complainants indicated on the form that the increase in cover was due to an increase in the mortgage loan. The Provider advises that the revised premium to increase cover in accordance with this request was €41.00 and the policy was assigned to a further mortgage with the mortgage loan provider for loan reference number ending 8797 (**Loan 2**).

In accordance with the policy conditions, the Provider says the first scheduled review of the policy took place on the 5th policy anniversary. The Provider says it wrote to the Complainants on **25 June 2009** enclosing a quotation number and advised that the monthly premium of €47.46 being paid was insufficient to maintain the level of cover on the policy and that to maintain the current level of cover, the Provider would increase the monthly premium to €49.98 with effect from **16 August 2009** unless instructed otherwise. The Provider says a 'Policy Change Request Form' was enclosed with this letter which outlined the options available. The Provider says a response was not received from the Complainants and the monthly premiums therefore increased to maintain the level of cover.

The Provider advises that a further plan alteration form was received from the Complainants dated **27 August 2010** which requested an increase in life cover to €417,944 for a term of 20 years. The Provider says the Complainants indicated that the increase in cover was due to an increase in the mortgage loan. The Provider states that the revised monthly premium to increase cover in accordance with this request was €120.46. The Provider states that the policy was assigned to a third mortgage held with the mortgage loan provider with loan reference number ending 6548 (**Loan 3**).

The Provider advises that a release of assignment was received from the mortgage loan provider in **October 2010** in respect of Loan 1.

On **8 July 2013**, the Provider explains that a request to encash the policy was received from the Complainants by email. The Provider says it advised the Complainants on **9 July 2013** that confirmation of the request would be required from the mortgage loan provider as the policy was still assigned. The Provider says it contacted the mortgage loan provider which advised that it was still relying on the policy. The Provider says it advised the Complainants that the policy could not be encashed as it was still assigned. The Provider advises that it did not hear back from the Complainants.

The Provider says the second scheduled review took place in **June 2014**. The Provider says it wrote to the Complainants on **24 June 2014** to advise that the premium being paid at that time was not sufficient to maintain the level of cover on the policy and that the Provider would increase the monthly contribution to €146.61 with effect from **16 August 2014** unless instructed otherwise. The Provider advises that a Policy Change Request Form was enclosed with the letter which outlined the options available.

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The Provider says its records show that the Complainants had a telephone conversation with an Insurance & Investment Manager on **12 December 2017**. The Provider advises that there is no recording of this call, however, there is a record from Insurance and Investment Manager to the Provider requesting quotations if the sum assured were to be reduced. The Provider says the quotations were sent to the Complainants by email on **12 December 2017** but a response was not received.

The Provider says it received a plan alteration from the Complainants dated **30 November 2018** which requested a decrease in life cover to €166,000. The Provider says the life cover amount was reduced to €166,000 and the revised monthly premium was €35.83.

The third scheduled review, the Provider says, took place in **June 2019**. The Provider says it wrote to the Complainants on **24 June 2019** and advised that the premium of €36.19 being paid at that time was sufficient to maintain the level of cover on the policy.

The Provider submits that it administered the policy in accordance with the policy conditions and the instructions received from the Complainants. The Provider says there is only one policy held by the Complainants which is flexible in nature and that changes in the sum assured were made at the request of the Complainants which gave rise to changes in premiums paid during the term of the policy. The Provider submits that there were no duplicate or excess payments made by the Complainants over the term of the policy.

The Provider says that the Complainants received benefit statements from time to time which outlined the amount of cover in place. The Provider states that the First Complainant also has access to view the policy online since **2015**. The Provider states that the policy review letters which issued to the Complainant in **June 2009**, **2014**, and **2019** outlined the level of cover that applied at those times.

The Complaint for Adjudication

The complaint is that the Provider wrongfully charged the Complainants for life cover in respect of redeemed mortgage loan facilities.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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In arriving at my Legally Binding Decision, I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 18 August 2021, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

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

The Complainants' Policy

The Complainants incepted a life assurance policy on a dual life basis in the amount of €120,000 with the Provider in respect of Loan 1 in **August 2004**. Section 6 of the policy conditions explains, in essence, how the policy premium payment is calculated and states, as follows:

> *"Every month the Actuary will calculate the cost of protection benefits, the administration fee, the premium related charge and the policy value charge. …"*

Section 6 states in respect of 'Cost of protection benefits', as follows:

> *"This is determined by the actuary, taking into account the level of protection benefits, the Company's charges for protection benefits, the fund value and all the information concerning the life/lives assured which has been provided to the Company and forms the basis of the policy. …"*

The Complainants' policy also appears to have been subject to indexation and their policy schedule states: *"Section B.(7) Indexation of Benefits Section applies to this policy."* Indexation is set out at section 7 of the policy conditions, as follows:

> *"Provided premiums have been paid we will increase the premium and the protection benefits … on each policy anniversary by the greater of:*

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- *5%, OR*
- *the percentage increase, if any, in the Consumer Price Index for the previous year.*

…

If you want to decline an indexation increase you must notify us in writing within 30 days of the date of the increase. If you do not pay an increased premium within 30 days of a date of increase we will take this as notice that you have declined the increase.…"

Section 10 of the policy conditions also allows the Complainants to increase the level of benefits under the policy. This was also stated on the policy schedule.

Policy reviews are provided for at section 11. The purpose of such reviews is stated as follows:

"The Actuary carries out the policy review in order to determine whether the protection benefits currently being provided by the policy can continue to be provided until the next policy review is carried out. In doing this the Actuary takes account of the following:

- *The level of protection benefits being provided by the policy and the charges which will be made for them;*
- *The premium being paid; and*
- *The fund value.*

If the Actuary determines that the current level of protection benefits cannot be maintained until the next policy review, you will be informed in writing …"

The Complainants completed an application form dated **30 May 2006** to increase the life cover amount under the policy to €150,000. The reason selected from the Provider's list of options was: *"An increase in the mortgage due to moving house, renovations or home improvements."* The policy amendment was confirmed by the Provider by letter dated **14 June 2006**. This amendment appears to have been in respect of Loan 2.

Some years later, the Complainants completed a 'life assurance plan change request form' dated **27 August 2010** in respect of Loan 3. In the revised benefits section on page 2 of the form, the life cover amount is stated as €417,944 for a 20 year term. However, I note that a reason for the change request was not selected by the Complainants. The amendment to the policy was confirmed by the Provider by letter dated **30 September 2010**.

By letter dated **1 October 2010**, the mortgage loan provider wrote to the Provider in respect of Loan 1, as follows:

"Please note that the Bank has no further interest in this policy.

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We would advise that you now contact the customers to ascertain whether or not they wish to maintain this policy. *…"*

Policy Reviews

Following a review of the Complainants' policy, the Provider wrote to the Complainants on **25 June 2009**, to inform them that their current premium payments was not sufficient to sustain the current benefits under the policy, as follows:

"When you first took out your [policy] *we undertook to review your policy on a regular basis.*

The purpose of this regular review is to help ensure that the contribution you are paying continues to be on course to meet the cost of providing your chosen benefits until the end of the period of cover that you requested.

Enclosed is a quotation that shows the revised position of your policy …. Market conditions and fund performance to date indicate that your current contribution will not sustain your chosen benefits to the end of the period of cover. In accordance with your Policy Conditions, we will increase your monthly contribution to €49.98 with effect from 16/08/2009 unless instructed otherwise by you. Based on current assumptions it should continue to provide valuable protection benefits until the end of the period of cover.

If you do not wish to increase your contribution to the revised amount, please let us know as soon as possible. …

If you do not come back to us by 02/08/2009 we will automatically increase your contribution to €49.98. *…"*

Following a further policy review, the Provider wrote to the Complainants on **24 June 2014** to advise them that the current premium payments were not sufficient to maintain their current level of benefits. This letter is identical in terms to the **June 2009** policy review letter, however, on this occasion a premium increase to €146.61 was required and would automatically apply to the policy unless the Provider heard otherwise from the Complainants.

Annual Benefit Statements

It appears that the Complainants began to receive Annual Benefit Statements from around **August 2005**. Statements received between **2005** and **2014** contained the following information in the 'Plan 'Details' section:

*"**Current Premium:*** *… Your premium and benefits increase each year by the higher of 5% or inflation.*

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Period of Cover:	*… Your plan will be reviewed, every five years, to help ensure that your premium is sufficient to pay for the benefits you have chosen until the end of your period of cover. …"*

The format of Annual Benefit Statements changed around **2015** but contained a statement in very similar terms to the above cited Period of Cover statement. However, from **2015**, statements expressly stated that the policy was subject to indexation.

Indexation Letters

From **June 2005**, the Complainants began to receive indexation letters which outlined the increases that would apply to the Complainants' monthly premium and policy benefits.

The first such letter appears to have been issued to the Complainants on **22 June 2005** and stated as follows:

> *"When we set up the above* [policy]*, you asked that it be protected from the effects of inflation. To ensure this, your premiums and your benefits will increase on 16/08/2005, your policy anniversary date. Your new policy details are:*
>
Premium	***€33.36 per Month***	
…		
	1st Life Insured	***2nd Life Insured***
Benefits	[Name]	[Name]
Life Cover	*€126,000*	*€126,000*
>
> *…"*

It appears that from **2010**, indexation letters began to include the following paragraph:

> *"If you would prefer your premiums and your benefits to remain unchanged, please contact* [the Provider] *…."*

The format of these letters changed from around **2015**. However, they continued to convey essentially the same information as previous indexation letters.

Formal Complaint

The Complainants wrote to the Provider on **15 December 2017**, advising that they were recently informed they were paying life assurance in respect of three mortgages and that they had previously closed two of their mortgage loan accounts. The Complainants also requested that a formal complaint be logged.

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In respect of this complaint, the Provider wrote to the Complainants on **6 February 2018**, advising that the Provider had no record of the Complainants seeking to reduce the level of the sum insured by the policy. The Provider also advised that the life policy operated independently of the Complainants' mortgage loan accounts.

Analysis

When the Complainants entered the mortgage loan agreement with the mortgage loan provider in respect of Loan 1 it appears, and it is not disputed, that it was a requirement of this loan that the Complainants have a life policy in place to cover the amount due on foot of the loan. This resulted in the Complainants incepting the policy the subject of this complaint. The evidence indicates that the Complainants entered two further mortgage loan agreements with the mortgage loan provider and amended their policy to provide cover for these loans in line with their mortgage loan conditions.

It appears that, over time, the Complainants discharged certain of their borrowings with the mortgage loan provider and reached a point where there was only one outstanding loan, meaning that the policy was required to provide cover for this loan only. Following a financial review around **December 2017**, the Complainants believed their policy premiums were excessive and that the Provider was charging them for cover in respect of a loan(s) that had been cleared.

The evidence shows that the Complainants were the ones who chose the level of benefits under the policy. For instance, when the policy was incepted in **August 2004**, the Complainants chose the sum insured, and did so again in **May 2006** and **August 2010** when they instructed the Provider to increase the sum insured.

Further to this, from inception, the Complainants chose an indexation option. The effect of this was that premium payments and protection benefits would increase on an annual basis. Indexation letters were sent to the Complainants each year advising them of the upcoming increase in premium payments and protection benefits.

The Complainants were also provided with Annual Benefit Statements which advised the Complainants of the increases in their premium payments and policy benefits. These statements also advised that policy reviews would take place to ensure that the premium payments were sufficient to cover the Complainants' chosen level of benefits.

Prior to their formal complaint to the Provider in **December 2017**, two plan reviews had taken place. In each of the letters sent to the Complainants following these reviews, it was clear that premium payments were dictated by the level of benefits provided by the policy. These letters expressly recommended an increase in premium payments which would be applied to the policy unless the Complainants instructed otherwise. I note that following both policy reviews, there is no evidence to suggest that the Complainants did not agree to the increase in premium payments.

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The Complainants' complaint is that the Provider was providing cover and as a result, charging for cover, in respect of redeemed mortgage loans. This position would appear to be based on the position that the Complainants' premium payments were calculated by reference to the number of loans covered by the policy and the value of those loans. However, there is no evidence to suggest that the Complainants' premium was calculated according to the number or value of their loans. In this respect, I note that section 6 of the policy conditions outlines how premiums are calculated. As can be seen, this is done by reference to level of protection benefits (in this case, the sum insured), the Provider's charges, the fund value and information regarding the lives assured. Further to this, the fact that that the premium payments were driven by the policy benefits/sum insured (and not the Complainants' loans) is also clear from the passages cited above from the Annual Benefit Statements and the plan review letters.

While the Complainants incepted the policy in accordance with their loan requirements and assigned it to the mortgage loan provider, this does not mean that the loans were incorporated into the policy. The evidence indicates that the Complainants' policy was a separate, standalone financial product and operated independently of their loans.

The sum insured under policy and the amount of the Complainants' loans are two separate and distinct things, and the number/value of the Complainants' loans does not influence the benefits provided by the policy or the policy premium unless the Complainants instruct the Provider to implement a policy change. Simply because the Complainants' loan balances decreased or their loans were redeemed, does not mean that the sum insured should have automatically reduced in line with this or that the Provider was required to reduce the sum insured.

As can be seen, when the Complainants increased their borrowings, they increased the policy benefits. The evidence would indicate that they did this because they knew this was required by the mortgage loan provider. Therefore, when the Complainants began to repay or redeem their loans, I believe it was reasonable to expect the Complainants to have been aware that they no longer required the same level of cover under the policy. Although the Complainants appear to have had only one policy related loan to repay sometime after **October 2010**, there is no evidence to show that they took steps to reduce the level of cover under the policy. However, it was at all times open to the Complainants to make whatever policy changes they considered necessary, including reducing the sum insured.

Decisions regarding the level of cover were a matter for the Complainants. The Complainants chose the level of benefits to be provided by the policy and, from the Provider's perspective, the Complainants were free to choose whatever level of cover and policy options they wished. While the Complainants' mortgage loan provider is likely to have required that a minimum level of cover be put in place, I do not consider that this is a matter for the Provider, nor do I consider that this imposes any obligations on the Provider to enquire into or review the level of benefits under the policy. Furthermore, simply because one or more of the Complainants' loans were cleared does not mean the Provider was required to reduce, or advise the Complainants to reduce, the level of policy benefits.

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Over the course of the Complainants' policy, there was an increase in the level of protection benefits and premium payments. As noted above, the Complainants chose to increase the policy benefits in **2006** and **2010**. The Complainants also chose the indexation option which had the effect of increasing policy benefits and premiums each year. Further to this, following the two plan reviews in **2009** and **2014**, the Complainants did not decline the recommended increases. Therefore, I accept that any increases in policy benefits and policy premiums were the result of the decisions taken by the Complainants.

I have not been furnished with any evidence that the Provider wrongfully charged the Complainants for life cover in respect of redeemed mortgage loan facilities. Therefore, I do not uphold this complaint.

Conclusion

My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

13 September 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.