



<u>Decision Ref:</u>	2022-0219
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Whole-of-Life
<u>Conduct(s) complained of:</u>	Premium rate increases Results of policy review/failure to notify of policy reviews Failure to explain/understand index linking
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant and her late husband incepted a **Life Inheritance Protection Policy** with the Provider on **14 March 1989**. At the time, this policy provided them with life cover benefit payable upon the death of the second life assured in the amount of **IR £200,000.00/ €253,948.00 (two hundred and fifty-three thousand nine hundred and forty-eight Euro)** for an initial annual premium of **IR £4,563.20 (€5,794.07)**.

The Complainant's late husband died on [date redacted].

The Complainant wrote to the Provider in **December 2014** instructing it to terminate the policy and it issued her with the policy surrender value of **€540.05** (five hundred and forty Euro and five cent) in **January 2015**.

The complaint is that in **2014** the Provider acted outside the original terms and conditions of the **Life Inheritance Protection Policy** by seeking to increase significantly the monthly premium or reduce significantly the level of life cover benefit and in so doing, the Provider wrongfully forced the Complainant to surrender the policy.

The Complainant's Case

The Complainant, now aged 89, says the Provider wrote to her on **24 March 2009** to advise that following a review of her **Life Inheritance Protection Policy**, the then monthly premium of **€482.84** would need to increase to **€2,063.35** in order to maintain the policy benefit of **€253,948.00**, or that she could reduce the sum insured to **€62,398.00** and keep the premium at **€482.84** per month.

The Complainant says she signed and sent a **Policy Review Response Form** to the Provider on **18 May 2009** to reduce the sum insured to **€62,398.00 (sixty-two thousand three hundred and ninety-eight Euro)** and to maintain the monthly premium at **€482.84 (four hundred and eighty-two Euro and eighty-four Cent)**, and the Provider amended the policy accordingly.

The Complainant says the Provider wrote to her on **18 March 2014** to advise that following a further review of her policy, the monthly premium of **€482.84** would need to increase to **€1,091.56** to maintain the policy benefit of **€62,398.00**, or she could reduce the sum insured to **€28,786.00** and keep the premium at **€482.84** per month. The Complainant signed and sent a **Policy Review Response Form** to the Provider on **29 April 2014** to reduce the sum insured to **€28,786.00 (twenty-eight thousand seven hundred and eighty-six Euro)** to maintain the monthly premium at **€482.84**, and the Provider amended the policy accordingly.

The Complainant wrote to the Provider on **4 December 2014** to terminate the policy. As a result, the Provider fully surrendered the policy and issued the Complainant with a cheque in the amount of **€540.05** on **13 January 2015**, representing the fund value at the date when the policy ceased.

In her letter to this Office dated **14 March 2019**, the Complainant submits that:

"... In 1985 my late husband and I took out [the] Inheritance Policy. The total combined premium payable was £4,563.20 per annum.

In [year] my late husband [name redacted] died. My understanding then was to continue to pay the premium to protect our policy.

I instructed some of my family to help me to meet my commitments. I was always of the view once my premiums were up to date all was ok. At this stage I need to clarify one thing. Letter dated 23 Aug 1989 from [the Provider] had been mislaid for a long number of years, in fact I only discovered it a few months ago, it had been put away with old farm papers etc etc. In subsequent years I could only rely on my memory to the terms of the original policy entered into with [the Provider].

In 2009, I began to receive correspondence from [the Provider], advising me of major alterations to my policy. I felt in the back of my mind they could not change the terms, but felt pressurised to have some value after all the monies paid, I had no option but to continue paying at much lesser cover.

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Throughout 2013 and 2014, I kept receiving letters stating less cover or more premiums. I could not continue to do this after paying over €150,000 into a policy [the Provider] were now leaving me in a situation I did not want to be. I was earmarking that policy for some of my children, and was now evaporating in front of me.

I had no option but to cancel the policy. This decision has upset me ever since.

Then [a] few months ago, as stated above, I discovered original document, I draw your attention to the third and fourth paragraph, on advice my understanding [the Provider] had no right to change my policy from the original one. I believe their insurance jargon is not relevant and is misleading?

I am calling on you to resolve this for me. At [age] years of age, this is causing me distress now that I realise my late husband's decision with the policy was watertight for my security".

In this regard, the Complainant refers to the original **Policy Schedules** and specifically the following clause:

"IN THE EVENT OF THE DEATH OF THE CONTINGENT LIFE DURING THE LIFETIME OF THE LIFE ASSURED THE PREMIUM WILL THEN IMMEDIATELY INCREASE TO £4563.20 PAYABLE YEARLY ('THE CONTINGENT PREMIUM') AND THIS AMOUNT WILL BE PAYABLE THROUGHOUT THE REMAINDER OF THE LIFETIME OF THE LIFE ASSURED".

In addition, the Complainant also refers to the letter she and her late husband received from the Provider on **23 August 1989** which provides, as follows:

"The total premium payable of £4,563.20 is split with €2,543.80 payable yearly by [the Complainant] on the life of [her late husband] and €2,019.40 per annum payable by [her late husband] on the life of [the Complainant]. Both lives are covered for a total of £200,000 payable on the death of the life assured subsequent to the death of the contingent life.

The premium will remain at £4,563.20 even if only one life assured survives.

There is no term on this policy, which commenced with effect from 14th March 1989 and premiums are currently paid to date".

Reading the **Policy Schedules** and the Provider's letter of **23 August 1989** together, the Complainant considers that the **Life Inheritance Protection Policy** premium should have been set at **IR £4,563.20** (four thousand five hundred and sixty-three Euro and twenty Cent) when her late husband died in **August 1995** and that the Provider should not have sought to increase the policy premium at any time thereafter.

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In her letter to the Provider dated **8 February 2019**, having located the original **Policy Schedules**, the Complainant submitted that the Provider “*had no authorisation to manipulate the terms and conditions*”.

The Complainant sets out her complaint in the FSPO **Complaint Form** she completed, as follows:

“My late husband and I commenced the said policy in good faith as per the terms of agreement on 23/8/89. Down through the years I continued to pay [the policy premium], with my family assistance. However having mislaid the original agreement, I was always unsure of [the Provider’s] changing terms & conditions, until I was forced to cancel the policy under financial duress ...

My issue, having discovered original agreement, [I] realise [the Provider] had no right to change the terms & conditions. I demand to be fully compensated for a policy no longer fit for purpose. No insurance jargon will hide the truth”.

In his email to this Office of **24 November 2020**, the Complainant’s son submitted, among other things, that:

“... [The Complainant] is very upset that having paid all that money into a policy that is now gone ...

[The Complainant] regrets the day [her late husband and herself] ever signed into a policy that gave her so much grief ...”

The Provider’s Case

The Provider says that the Complainant and her late husband applied for a **Life Inheritance Protection Policy** with the Provider on **9 November 1988** and that this policy was inception on **14 March 1989**.

The Provider says the policy was established under the provisions of **Section 60** of the **Finance Act 1985**, which relates to insurance policies that are expressly effected for the purposes of paying inheritance tax.

The policy initially provided life cover benefit payable upon the death of the second life assured in the amount of **IR £200,000.00 / €253,948.00** for an annual premium of **IR £4,563.20 / €5,794.07**. The policy was surrendered in **January 2015** with a surrender value of **€540.05**. The Provider notes that the policy premiums paid from **March 1989** to **January 2005** totalled **€149,453.44 (one hundred and forty-nine thousand four hundred and fifty-three Euro and forty-four Cent)**.

The Provider says that the **Life Inheritance Protection Policy** was an open-ended unit-linked protection plan, on which premiums were payable throughout the lifetime of the policy, and that it was subject to premium reviews in accordance with Section L, 'Review Date', of the original **Schedule of Policy Conditions** which applied since the commencement of the policy.

The Provider says that the review of the Complainant's **Life Inheritance Protection Policy** that took place in **September 2003** indicated that the policy was on target to sustain the benefit for the premium paid to the next review date.

The Provider says that the policy review that took place in **March 2009** indicated that the monthly premium of **€482.84** would need to increase to **€2,063.35** in order to maintain the policy benefit of **€253,948.00** until the next review date in **March 2014**. The other option was to reduce the sum insured to **€62,398.00** and keep the premium at **€482.84** per month.

The Provider says it issued a detailed policy explanation letter to the Complainant on **27 March 2009** following a telephone enquiry from her son after receipt of the March 2009 policy review outcome. The Provider notes that the Complainant subsequently signed a **Policy Review Response Form** on **18 May 2009** in order to reduce the sum insured to **€62,398.00** and maintain the premium at **€482.84** per month and the Provider confirmed this alteration by way of letter to the Complainant dated **27 May 2009**.

The Provider says that the policy review that took place in **March 2014** indicated that the monthly premium of **€482.84** would need to increase to **€1,091.56** in order to maintain the then policy benefit of **€62,398.00** until the next review date in **March 2019**. The other option was to reduce the sum insured to **€28,786.00** and keep the premium at **€482.84** per month.

The Provider says it issued a detailed policy explanation letter to the Complainant on **9 April 2014** following a telephone enquiry from her after receipt of the March 2014 policy review outcome. The Provider notes that the Complainant subsequently signed a **Policy Review Response Form** on **29 April 2014** to reduce the sum insured to **€28,786.00** and maintain the premium at **€482.84** per month and the Provider says it confirmed this alteration by way of letter to the Complainant dated **2 May 2014**.

The Provider says the Complainant wrote to the Provider on **4 December 2014** to cancel the policy and that it issued her with a cheque in the amount of **€540.05** on **13 January 2015**, representing the then current fund value. In this regard, the Provider says it would not be unusual for such policies to cease at older ages as the cost of the current risk premium increases to the level detailed in the policy reviews.

In response to the Complainant's comments that:

*"I was earmarking [the **Life Inheritance Protection Policy**] for some of my children, and was now evaporating in front of me.*

I had no option but to cancel the policy. This decision has upset me ever since",

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the Provider says that the purpose of the **Life Inheritance Protection Policy** was to pay inheritance tax upon the death of the second life assured and that it was not designed to build up a fund “*for some of my children*”, as stated by the Complainant, but instead was to provide a life cover benefit, which it did for 26 years from **March 1989** to **January 2015**.

In relation to the original **Life Inheritance Protection Policy Schedules** and specifically the following clause,

“IN THE EVENT OF THE DEATH OF THE CONTINGENT LIFE DURING THE LIFETIME OF THE LIFE ASSURED THE PREMIUM WILL THEN IMMEDIATELY INCREASE TO £4563.20 PAYABLE YEARLY (‘THE CONTINGENT PREMIUM’) AND THIS AMOUNT WILL BE PAYABLE THROUGHOUT THE REMAINDER OF THE LIFETIME OF THE LIFE ASSURED”,

the Provider says that the **Policy Schedules** and the **Schedule of Policy Conditions** that evidence the contract, need to be read together.

The Provider says that the Complainant’s **Life Inheritance Protection Policy** was a joint life second death policy with one policy, but two lives assured. For this reason, the policy was split in two schedules, namely, **Policy Schedule A** in the life of the Complainant for a premium of **IR £2,019.40** and **Policy Schedule B** in the life of her late husband for a premium of **IR £2,543.80**, with a total premium of **IR £4,563.20**.

The Provider says that what the original **Policy Schedules** is correctly and effectively letting the contingent life know, is that in the event of the death of the first life, the premium would then be **IR £4,563.20** in total for the second (remaining) life, in that the premium would “*INCREASE TO £4563.20*”, as the original **Policy Schedule A** and **Policy Schedule B** split this premium between each life.

The Provider also notes that the **Policy Schedules** both stated that:

“... THE POLICY SCHEDULE IS ISSUED SUBJECT TO THE SCHEDULE OF POLICY CONDITONS ...”

The Provider says that this **Schedule of Policy Conditions** included Section L, ‘**Review Date**’, which provided for the policy to be reviewed at specific intervals to ascertain if the value of the policy in addition to the premiums was sufficient to meet the cost of the benefits, and where the premium was no longer sustaining the cost of the benefits, to present the policyholder with the option to either reduce the benefit or to increase the premium. As a result, the Provider says that the policy premium of **IR £4,563.20** was always subject to review.

The Provider says that the **Policy Schedules** and the **Schedule of Policy Conditions**, if read together, would not be considered ambiguous or confusing. The Provider acknowledges that the standards and norms for policy documentation does change and evolve over a 33-year period, though it says that it is not that the policy documentation was wrong 33 years ago, but that new and better standards apply now and in another 33 years, one would expect these standards to be different again.

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In response to the Complainant's comments that,

"[the Provider] had no right to change my policy from the original one. I believe their insurance jargon is not relevant and is misleading",

the Provider says that the **Life Inheritance Protection Policy** was always subject to the **Schedule of Policy Conditions** that applied in **March 1989** and it confirms that there was no change to these policy terms and conditions during the lifetime of the policy. The Provider says that policy reviews were carried out as expected and in accordance with Section L, 'Review Date', of the **Schedule of Policy Conditions**.

The Provider says that as it was subject to policy reviews, the **Life Inheritance Protection Policy** did not provide for a level premium for the full term. The Provider says that this effectively meant that the policyholder obtained life cover benefit for their then age at each policy review. The premium would then increase as the policyholder got older and any encashment value built-up from the previous review period, was used in the calculation for the new review premium for the next review period.

The Provider says that the cost of life cover had increased to the extent it did, by the policy review in **March 2014**, due to the increasing age of the Complainant, who was age 81 at that time, and the fact that the fund value had significantly depleted by that point and was not able to successfully absorb the rising cost of the life cover. In this regard, the Provider says that in early **2014**, the risk costs had risen to over **€600.00** per month and were rising quickly, compared to the monthly premium of **€482.84**.

The Provider says that the policy fund was never intended to absorb the full cost of benefit cover as this would have necessitated a level term premium which would have been significantly more expensive than the initial premium charged in **March 1989**, which only provided for the cost of life cover for the then ages of the lives assured, until the next policy review date.

In relation to the Provider advising the Complainant in its letter of **18 March 2014** that *"Your cash in value as at 4th March 2014 was €0.00"* in circumstances where approximately **€148,000.00** had been paid into the policy since its inception in **March 1989**, the Provider says that as the Complainant was [in her 50s] and her late husband was [in his 60s] at the time they applied for the life cover of **IR €200,000.00 / €253,948.00**, the policy premium was always going to be relatively high.

While the policy can accrue a surrender value, the Provider says it is fundamentally a protection product and not a savings product. In this regard, the Provider says that the preliminary purpose of the policy was to pay out a sum assured on death and the premiums were therefore designed to cover the risk cost to the insurer in the long run of providing this death benefit.

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The Provider says it deducts charges monthly for the cost of this risk. Unlike a standard term assurance policy where premiums are fixed, premiums on this policy were reviewable and therefore open to change. Premiums typically start small in the early years and increase over time as the customer ages. In the early years of the policy, the premiums will usually be higher than the risk charges paid to the Provider. This means a fund value will start to accrue when the customer is younger, built up from the difference between the premiums paid and the risk costs.

The Provider says that the fund value in the long term is designed to help smooth premiums increases where possible, that is, when the premiums are no longer able to support the risk costs on their own, the fund value is used to cover the difference. As a result, the long-term expectation on this protection product is that the surrender value will be **€0.00**. The Provider says that in this instance, the fund began to supplement the cost of the life cover during the period **March 2000** to **March 2001**.

In relation to Provision 4.1 of Chapter 4, 'Provision of Information', of the Central Bank of Ireland's **Consumer Protection Code 2012 (as amended)** that,

"A regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information",

the Provider says that when the policy documentation that issued in **March 1989** and all correspondence issued since is reviewed, it is clear there was no breach of this provision. The Provider says it also has to be taken into account the improved standards and requirements brought in since **March 1989**.

The Provider reiterates that the premium and benefit payable under the policy was always subject to policy reviews in accordance with the policy terms and conditions and that this was also brought to the policyholders' attention at the various policy reviews in **2003**, **2009** and **2014**. The Provider says the very nature of the **Inheritance Protection Policy** was to pay a death benefit to offset the cost of possible inheritance tax. The basic premise of a life policy is usually to protect in the event of an early death. If a customer wants to insure a life cover benefit that is likely to be paid out in older ages, per actuarial average life expectancy tables, the Provider says that the customer is likely to pay a total premium near to or in excess of the sum insured. The Provider says there comes a time where, regrettably for all of us, an insured event becomes more imminent and most costly to insure.

In relation to whether or not the Provider designated the Complainant to be a "vulnerable customer" as defined at pg. 77 of the Central Bank of Ireland's **Consumer Protection Code 2012 (as amended)** as follows,

"vulnerable consumer" means a natural person who:

- a) *has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example,*

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hearing impaired or visually impaired persons); and/or

- b) *has limited capacity to make his or her own decisions and who requires assistance to do so (for example, persons with intellectual disabilities or mental health difficulties)",*

the Provider says it is not aware of any vulnerability, as so defined, for the Complainant. The Provider says that while elderly customers over age 80 would be considered under this definition of "vulnerable customer", this is not absolute, as younger customers may be more vulnerable and older customers may be less so, as each individual will be different. The Provider says a common-sense approach is applied when ascertaining a person's vulnerability. In any event, the Provider submits that the Complainant was not vulnerable in **March 1989**, when she was [in her 50s], when the policy was contracted for and that she has not indicated a vulnerability in any contacts since.

The Provider notes from a recording of the telephone call it made to the Complainant on **31 December 2014** relating to the encashment of the policy that the Complainant became quite frustrated with the Provider on its request for anti-money laundering requirements. The Provider empathises with this position for the amount involved, however it is obliged to comply with the legislation to the exact letter of the law. It is not a Provider requirement but a legislative requirement and in hindsight, the Provider acknowledges that this should have been better explained to the Complainant.

The Provider also notes that the Complainant's son was in contact with the Provider, with the Complainant's permission, in **March 2009** and again in **April 2014** regarding the policy reviews that took place at those times. In that regard, the Provider says that even if such a vulnerability had been identified in respect of the Complainant, the involvement of her son would have been the action taken to alleviate such a vulnerability.

The Provider reiterates that the **Life Inheritance Protection Policy** was always subject to the **Schedule of Policy Conditions** that applied in **March 1989** and it confirms that there was no change to these policy terms and conditions during the lifetime of the policy and that the policy premium and benefit were always subject to review.

The Complaint for Adjudication

The complaint is that in **2014**, the Provider acted outside the original terms and conditions of the Complainant's **Life Inheritance Protection Policy** by seeking to significantly increase the monthly premium or significantly reduce the level of life cover benefit and in so doing, that the Provider essentially and wrongfully forced the Complainant to surrender the policy.

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. Recordings of telephone calls have been furnished in evidence and these have also been considered.

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 **1 June 2022**, 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 additional submissions from the parties, the final determination of this office is set out below.

I note that the Complainant and her late husband incepted a **Life Inheritance Protection Policy** with the Provider on **14 March 1989**. At the time, this policy provided them with life cover benefit payable upon the death of the second life assured in the amount of **IR £200,000.00 / €253,948.00** for an initial annual premium of **IR £4,563.20 / €5,794.07**. The Complainant's late husband died in [date redacted].

I note that some 20 years later, following a policy review in **March 2009**, the Complainant signed and sent a **Policy Review Response Form** to the Provider on **18 May 2009** to reduce the sum insured to **€62,398.00** and maintain the monthly premium at **€482.84**.

Subsequently, following a policy review in **March 2014**, I note that the Complainant signed and sent a **Policy Review Response Form** to the Provider on **29 April 2014** to reduce the sum insured to **€28,786.00** and maintain the monthly premium at **€482.84**. Thereafter, some months later, the Complainant terminated her policy with the Provider with effect from **13 January 2015**.

The Complainant later located the original **Policy Schedules** and the Provider's correspondence of **23 August 1989**.

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In this regard, the Complainant refers to the original **Policy Schedules** and specifically the following clause:

“IN THE EVENT OF THE DEATH OF THE CONTINGENT LIFE DURING THE LIFETIME OF THE LIFE ASSURED THE PREMIUM WILL THEN IMMEDIATELY INCREASE TO £4563.20 PAYABLE YEARLY (‘THE CONTINGENT PREMIUM’) AND THIS AMOUNT WILL BE PAYABLE THROUGHOUT THE REMAINDER OF THE LIFETIME OF THE LIFE ASSURED”.

The Complainant also refers to the letter she and her late husband received from the Provider dated **23 August 1989** which provided, as follows:

“The total premium payable of £4,563.20 is split with €2,543.80 payable yearly by [the Complainant] on the life of [her late husband] and €2,019.40 per annum payable by [her late husband] on the life of [the Complainant]. Both lives are covered for a total of £200,000 payable on the death of the life assured subsequent to the death of the contingent life.

The premium will remain at £4,563.20 even if only one life assured survives.

There is no term on this policy, which commenced with effect from 14th March 1989 and premiums are currently paid to date”.

Reading these together, the Complainant considers that the policy premium should have been set at **IR £4,563.20** when her late husband died in **August 1995** and that the Provider should not have sought to increase the policy premium at any time thereafter.

Given the wording of the Provider’s correspondence of **23 August 1989** and the specific clause from the **Policy Schedules** that she refers to, I take the view that it is understandable how the Complainant might have formed the view that the policy premium should have permanently been set at **IR £4,563.20** when her late husband died.

I am conscious that this documentation came into existence, many years before the Central Bank of Ireland published its first Consumer Protection Code in 2006, placing obligations on regulated financial service providers regarding the provision of information to consumers, to ensure better clarity.

Nevertheless, the Complainant’s **Life Inheritance Protection Policy**, like all insurance policies, is subject to the terms, conditions, endorsements and exclusions set out in the policy documentation. In this regard, I note that the original **Policy Schedules** also state that:

“STANDARD PROVISIONS

- 1. THE POLICY SCHEDULE IS ISSUED SUBJECT TO THE SCHEDULE OF POLICY CONDITIONS CONTAINED IN THE COMPANY’S POLICY BOOKLET ENTITLED [Schedule of Policy Conditions] ...”*

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Section L, 'Review Date', of the **Schedule of Policy Conditions** provides that:

"The Policy will be reviewed by the Company on the earliest of the following dates

- A. The tenth anniversary of the Commencing Date.*
- B. The policy anniversary after either the Life Assured or the Contingent Life has attained age 65 if neither the Life Assured nor the Contingent Life has attained age 60 at the Commencing Date*
- C. The fifth anniversary of the Commencing Date if either the Life Assured or the Contingent Life has attained age 60 of the Commencing Date.*

The Company will at the Review Date specify the next Review Date.

At the Review Date the Company will decide whether the value of the Policy at that date in addition to the premiums expected to the next Review Date are sufficient to meet the cost of the Benefits and Supplementary Provisions. The Company is empowered to make such alterations as it alone shall see fit to the Benefits, Supplementary Provisions and Premiums to satisfy this condition.

A guarantee is given by the Company that, provided all policy conditions have been met and that the Policy has remained unaltered since the previous Review Date, the Policy will be maintained in force, until the following Review Date".

[underlining added for emphasis]

As a result, I am satisfied that when the Provider carried out a review of the Complainant's policy premium in **March 2009** and again in **March 2014**, it did so in accordance with the policy terms and conditions.

In addition, I note from the documentation before me that following its policy review in **March 2009**, the Provider wrote to the Complainant on **24 March 2009**, as follows:

"You hold a unit linked life policy with [the Provider] which has an inbuilt review clause.

The policy, which started on 14 March 1989, is a whole of life unit linked protection plan, on which premiums are payable throughout the lifetime of the policy and is subject to premium review. The policy was issued under the provisions of Section 60 of the Finance Act 1985, which relates to insurance policies which are expressly effected for the purpose of paying inheritance tax.

On reviewable whole of life policies, the cost of providing the benefit increases as the lives insured get older. The benefit is maintained by the premium being paid and the policy value. The policy is subject to review the purpose of which is to ensure that on

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an ongoing basis the premium being paid together with the policy value are sufficient to maintain the policy benefit to the following review date.

Your policy is currently providing €253,948 life cover benefit, which is payable on the second death of the lives insured, with the monthly premium being €482.84. At present the policy does not have a cash value.

A review has recently been carried out on your policy. In order to maintain the current life cover benefit until the next review date in March 2014, a revised monthly premium of €2,063.35 is required. Assuming you pay the revised premium and based on a future investment fund growth rate of 4.62% per annum, we guarantee that your life cover benefit will be maintained in force until the next review, which is due on 14 March 2014.

You may decide not to opt for the above increase. If you continue to pay the present monthly premium of €482.84, this will maintain a reduced life cover benefit of €62,398 to the next review date in March 2014. If you would like a quotation for a different level of life cover benefit please contact us”.

I take the view that in signing the enclosed **Policy Review Response Form** and sending it to the Provider on **18 May 2009** (to reduce the sum insured from **€253,948.00** to **€62,398.00** and to maintain the monthly premium at **€482.84**) the Complainant was aware of the need for and the outcome of the **March 2009** policy review and chose to maintain the policy at that time by reducing the policy benefit level.

The Provider's correspondence of **24 March 2009** also clearly put the Complainant on notice that the next policy review would take place in **March 2014**. Given the outcome of the **March 2009** policy review, I take the view that it was likely that the Complainant may have anticipated that the **March 2014** policy review would likewise necessitate her to make further changes to either the policy benefit or premium.

The Complainant's **Life Inheritance Protection Policy** was 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 policyholder(s). A positive policy value may be built up in the early years when the cost of the life cover is less than the premiums, but where the cost of life cover in later years becomes higher than the premium amount being paid, the fund subsidises this difference. In due course, the fund is exhausted, resulting in the need for a policy review, which recommends either an increase in premium, or a reduction in 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 and the on-going premium payments will be sufficient to sustain the cost of life cover until the next policy review date. The premium calculation takes into account, among other things, the level of life cover and the age of the life assured, hence it may be necessary for the policyholder to make an additional provision for cover by way of an increased premium. The setting of a premium following a policy review is the prerogative of the Provider-appointed actuary and this is not something which it would be appropriate for this Office to seek to modify.

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Accordingly, I am satisfied that the Provider, in carrying out the **March 2009** and **March 2014** review of her policy, was acting in accordance with the terms and conditions of the Complainant's **Life Inheritance Protection Policy**, in that the premium level was always subject to periodic review.

I am conscious that the Complainant is upset because she seeks to rely on the original policy summary, and she says that:

"Your decision puts NO significance on the simple summary from [Provider's predecessor] stating THERE ARE NO TERM TO THIS POLICY, ONCE PREMIUMS ARE PAID."

Whilst I note the terms of the summary sought to be relied on by the Complainant, I am satisfied that this information must be viewed in the context of the policy terms and conditions, and even the information itself to the effect that the policy would not end, and would continue with no end date, "once premiums are paid", did not provide a guarantee that the premium level would remain the same. The premium to be paid, to support the cover, was subject to review by the Provider, in accordance with the terms and conditions of the policy arrangement, referred to above.

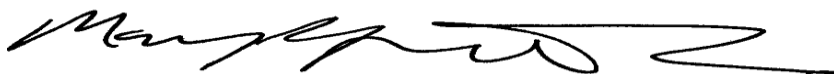
Having regard to all of the above, I take the view that the evidence does not support the complaint that the Provider acted outside the original terms and conditions of the Complainant's **Life Inheritance Protection Policy** by seeking to significantly increase the monthly premium or significantly reduce the level of life cover benefit and in so doing, that the Provider wrongfully forced the Complainant to surrender the policy.

Whilst I appreciate that this is very disappointing for the Complainant, I can find no evidence of wrongdoing by the Provider and accordingly, my decision is that this complaint cannot be upheld.

Conclusion

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

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



MARYROSE MCGOVERN
Financial Services and Pensions Ombudsman (Acting)1

29 June 2022

/Cont'd...

PUBLICATION

Complaints about the conduct of financial service providers

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.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.