An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2022-0310
Sector:	Insurance
Product / Service:	Whole-of-Life
Conduct(s) complained of:	Maladministration (life) Delayed or inadequate communication
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the Provider's implementation of instructions from the Complainants' financial broker.

The Complainants' Case

The Complainants hold a life assurance policy with the Provider, since **1984**. This policy is assigned to a lender, and the Complainants have engaged the services of a financial broker ('the Intermediary') to communicate with the Provider.

In **August 2019**, the Complainants' premium for the policy was **€437.60** (four hundred and thirty-seven Euro and sixty Cent) per month, with life cover of €224,071 (two hundred and twenty-four thousand and seventy-one Euro) and €49,531 (forty-nine thousand, five hundred and thirty-one Euro) for the first and second Complainants, respectively.

The Complainants submit that, in **August 2019**, they contacted the Intermediary for a quotation in relation to a reduction in their premium. Following this, the Intermediary wrote to the Provider to instruct it to reduce the total premium and the life cover for the first Complainant and copied the first Complainant into this email.

The Complainants submit that they did not instruct the Intermediary to request this change to their policy. Further, they state their understanding that the Provider required signed instructions from the Complainants themselves, for any such changes to be applied to the policy.

The Complainants submit that they contacted the Intermediary after two weeks, to seek an update on their quotation. The Intermediary responded in **September 2019**, with a quote from the Provider and asked the Complainants if they were happy to proceed. The Complainants submit that this correspondence was confusing, and they did not approve the quote. (The Intermediary has since clarified that this correspondence was sent to the Complainants in error, and in fact, related to different clients, who were not identified or identifiable).

The Complainants state that the Provider changed their policy without their consent, and without informing them. They submit that the value of the policy has been reduced by approximately €125,000 (one hundred and twenty-five thousand Euro).

The Complainants submit that the Provider's policy is set out on its website, and this information states that changes to insurance policies require the written consent of all policyholders. They state that the Provider has not complied with its own policy in this regard. The Complainant states that the Provider "*assumed*" that the Intermediary had the authority to alter their policy and did not check with the Complainants to see if the changes had been authorised.

The Complainants note that the Provider issued a letter to the lender, the assignee of the policy, on **12 September 2019** to confirm the change in policy. The Complainants state that the assignee did not receive this letter, and the Complainants did not receive a copy of the letter until **February 2020**. This letter gave the assignee an opportunity to object within 30 days of the policy change.

The Complainants rely on correspondence from the Provider to the Intermediary of **24 July 2017**, stating that "*the assignees must be agreeable to the proposed reduction*". They submit that the lender did not agree to the change in policy.

The Complainants also rely on correspondence from the Provider dated **22 May 2018**, which states:

> *"If you wish to amend your current policy details, we will require written instructions signed by all policyowners."*

The Complainants further submitted that the following text was an extract from the Provider's website:

> ***"Can I increase/decrease monthly contributions to my regular premium pension policy?***
>
> *Yes, to do this we just need a clear signed instruction detailing the new premium amount you wish us to collect. This must be signed by the polic (sic) owner…"*

/Cont'd…

The Complainants submit that they did not realise that their policy had been changed, until they reviewed the debits from their account, in **December 2019**.

The Complainants note that the Provider refuses to reinstate their previous policy cover, due to new gender-neutral laws. The Complainants question the relevance of this law to their situation.

The Provider's Case

The Provider states that the Complainant's independent intermediary, is separately regulated by the Central Bank of Ireland. The Complainants selected an intermediary at the inception of their policy, and this intermediary firm was subsequently acquired by the Complainant's current intermediary. The Provider notes that the ***Consumer Protection Code 2012*** ('CPC'), as amended, placed the burden on their intermediary to inform the Complainants of that transfer.

The Provider states that it received confirmation from the Complainants' original intermediary in relation to the transfer, and it noted that there were no objections from the Complainants within 2 months, in compliance with the CPC. The Provider states that there was no subsequent objection from the Complainants in relation to their new intermediary.

The Provider states that:

> *"As the Financial Advisor on this policy is an Independent Advisor who is regulated by the Central Bank and acts on behalf of the Customer, we do take many instructions such as alteration of cover and premium directly from them. In this case, we received a legitimate instruction via email from the Financial Advisor to reduce the Complainant's cover and premium. The Complainant was also copied on this email instruction. There was nothing to indicate that the Complainant disagreed with the instructions provided by the Financial Advisor or wished to revoke the Financial Adviser's authority to act on his behalf."*

The Provider notes its policy that where there is no independent financial advisor acting on behalf of a customer, changes to the policy require a written instruction signed by all policy holders.

The Complainants have noted that their previous experience and the Provider's website indicate otherwise. The Provider responds that its website does not set out its requirements for changing cover on every type of policy. The Provider notes that the extract from its website quoted by the Complainants, concerns pension policies. It does not have a section on its Frequently Asked Questions page about decreasing cover on a living insurance policy.

/Cont'd…

The Provider notes that if the assignee had written to the Provider within 30 days of the change, to object to it, then the Provider could have reinstated the original policy. The Complainants have submitted that the Provider has 'ignored' a fundamental requirement from the lender in this respect. They state that the Provider should have contacted the assignee to check that its letter had been received. The Provider submits that it is not part of its procedure to do this, and that it received no return post, to state that its letter was not delivered.

The Provider submits that there have been no changes to the terms and conditions of the Complainant's policy. It notes that the ***2012 EU Gender Directive*** requires that where cover has been lapsed on a policy for more than three months, reinstatement of cover must be issued under a new policy and is subject to further medical evidence. The new policy must be issued on the basis of gender-neutral rates, and to reinstate the Complainants' policy cover, more than three months after it was reduced, would result in a breach of this Directive. The Provider notes that this is one reason why it did not reinstate the Complainants' policy.

The Provider submits that, because it received a valid instruction to reduce the Complainants' cover, it was not obligated to increase it again. It notes that the Complainants did not make the request for reinstatement of cover until **7 January 2020**, and that this instruction, came via the Intermediary.

The Provider states that its procedure does not include a follow up with intermediaries to ensure that they have confirmed alterations with their clients. The Provider's customers are able to contact it, through a number of avenues, to seek an update on their policies. The Complainants chose to communicate directly with the Intermediary in seeking updates on the alteration to their policy.

The Complaint for Adjudication

The Complainants' complaint is that the Provider maladministered the Complainants' policy in **2019**, wrongfully reduced the policy premium and cover amounts, failed to adhere to the Provider's own policy of alteration procedures, failed to reverse the changes made to the Complainants' policy when requested to do so in **2020**, and proffered poor communication to the Complainants in the period from **2019** to **2020**.

In resolution of the complaint, the Complainants seek "*the original policy to be re-instated*."

Further, the Complainants set out: "*if as suggested the policy cannot be reinstated then I wish to have the estimated loss value paid to me*".

/Cont'd…

Decision

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

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

A Preliminary Decision was issued to the parties on **16 August 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. In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

I note that an email from the Intermediary to the Provider dated **13 August 2019**, with the first Complainant copied in, states:

> *"Further to the above we have been requested by* [the first Complainant] *to make the following changes to this plan:*
>
> - *Reduce Life cover for* [the first Complainant] *to €100,000*
> - *Reduce total premium to €215.00 per month*
>
> *Can you please confirm that these alterations have been made & confirm sustainability of cover based on these adjustments."*

A letter from the lender dated **23 April 2020** states:

> *"Please be informed that we have not received any correspondence from* [the Provider] *since 09/12/2014"*

The Complainants submit that the Provider acted in contravention of its own internal policy, by accepting instructions to change the details of their insurance policy without their signed consent.

/Cont'd…

The Provider has submitted that its internal policy is to require the signatures of the policy holders for changes of this nature or, alternatively it may, as in this instance, receive instructions directly from an independent financial adviser, which is regulated by the Central Bank of Ireland.

In support of their complaint, the Complainants rely on the Provider's letter to them of **22 May 2018,** which states that signed instructions would be required to change policy terms. I note that because this letter was addressed to the Complainants, it explained how they could directly contact the Provider, in their own capacity. I do not consider this to be inconsistent with the Provider's submission that its policy is to additionally accept instructions, through an appointed Intermediary.

The Complainants also rely on an extract from the Provider's website that details its protocol on changing the premiums of a pension policy. I note that this does not relate to the type of policy held by the Complainants. Additionally, this extract does not state that written signed instructions are the only method by which the Provider accepts instructions. Although I accept that the Provider could have been clearer in communicating its protocol on accepting instructions, I don't accept the Complainants' contention that the Provider's protocol in that regard, was to only accept instructions to change policy details, with signed consent from the policyholder/s themselves, even when an intermediary was appointed.

In relation to the additional elements of the Complainant's complaint, I note that the assignee of the policy states that it did not receive the 30-day notification letter. I accept the Provider's submissions that it sent this letter, and that it is not obligated to double-check that every piece of correspondence it sends has been thereafter received by the intended recipient. The Provider has been consistent in its communications that the assignee may object during this 30-day period, but it does not require the assignee to give positive consent to the change. Consequently, I take the view that there is no contradiction with the terminology of 'agreeable' being used in this context.

In relation to the Complainant's submissions that the Provider did not check to see if the Intermediary had authority to act on the Complainants' behalf, I have had regard to the Provider's submissions on the lack of objection from the Complainants during the period of transition from their previous intermediary to their current intermediary.

I note that the Complainants do not dispute that they contacted the Intermediary to communicate with the Provider in **August 2019**, or that the first Complainant was copied into the email which transmitted their instructions, or indeed that subsequently, in January 2020, that they instructed the Intermediary to attempt to reinstate their policy.

The essence of what the Complainants are suggesting, is that the Provider must check with the clients of an independent intermediary which gives instructions, each time, to ensure that those instructions are correct. In my opinion, such a practice would undermine the purpose and role of the independent intermediary and would not be practical.

/Cont'd…

I additionally note that the Complainants were aware of the instructions that were given to the Provider, as the first Complainant had been copied into the Intermediary's email in **August 2019**. It was clear that this email was not simply seeking a quote but rather, was giving instructions to change the terms of their policy with the Provider. The Complainants could have replied to this email chain directly to clarify if they were not giving these instructions, or if those instructions had somehow been misunderstood. At the very least, they could have contacted the Intermediary expeditiously in early **August,** to address the situation, if the email contents did not represent their instructions.

I do not therefore accept that the Provider acted in breach of its own policy in accepting the Intermediary's instructions, on behalf of the Complainants, and in that context, I accept that the policy details were validly changed. As a result, I am satisfied that the Provider is under no obligation to reinstate the Complainants' previous policy cover, or to implement new cover akin to their original policy terms.

On the basis of the evidence available, I do not consider it appropriate to 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.

MARYROSE MCGOVERN
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN (ACTING)

7 September 2022

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.

/Cont'd…

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.