An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2022-0311
Sector:	Insurance
Product / Service:	Whole-of-Life
Conduct(s) complained of:	Failure to process instructions Delayed or inadequate communication
Outcome:	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants are customers of the Provider, which offers a financial advice and independent intermediary service. They hold a life insurance policy with a third-party insurer ('the Insurer') that was incepted in **1984**.

This complaint concerns the instructions suggested to have been given by the Complainants to the Provider, to amend the terms of their insurance policy.

The Complainants submit that, in **August 2019**, the first Complainant contacted the Provider to instruct it to seek a quote from the Insurer, with a view to reducing the Complainants' premiums. The Provider wrote to the Insurer on **13 August 2019** stating that the first Complainant was seeking to reduce the premium for his policy. The first Complainant was copied into this email.

The Complainant contacted the Provider two weeks later, to query whether or not the Insurer had responded to this email. The Complainants say that the Provider replied that there had been no response and that the Insurer was working through a back-log. The following month, on **10 September 2019**, the Provider emailed the Complainant and stated:

> *"Hi [first Complainant], following on from our recent conversation please see response below from [Insurer] – apologies for the delay in getting this to you.*
>
> *Let me know if you are happy to proceed on this basis and we will finalise."*

The Complainants say that the thread of this email contained a quote from the day before, (9 September 2019) of a premium for **€187.66** (one hundred and eighty-seven Euro and sixty-six Cent) for life cover of **€50,000** (fifty thousand Euro). The Complainants state that they did not approve the quote sent to them by the Provider. However, they subsequently learned that their policy terms had been changed.

The Complainants submit that they did not instruct the Provider to request this change to their policy. The Complainants state that the fact that the Provider supplied them with a quote, supports their submission that they did not provide instructions for the Provider to seek to have the policy changed. Further, they state their understanding, that the Insurer required signed instructions from the Complainants, for any changes to be applied to the policy. The Complainants submit that the Provider should have ensured that the Insurer's rules regarding signed written consent, were complied with.

The Complainants note that the Insurer wrote to the assignee of their policy, and to the Provider, on **12 September 2019** to outline the change to the policy. They note that the Provider may not have received the letter until **January 2020**. However, the Complainants submit that the Provider should have informed the Complainants when it became aware of the letter. They state that the Provider should have communicated with them, regarding the implementation of changes to their policy.

The Complainants state that they became aware of "*the problem*" on **6 December 2019**, but only learned on **24 February 2020,** that their policy with the Insurer could not be reinstated to its original position. The Complainants submit that the Provider acted "*very slowly*" when informed of the issue and that it should have known on **6 December 2019,** that the policy could not be reinstated.

In response to the Provider's submissions, the Complainants submit that they have now learned that the Provider's email of **10 September 2019** was sent in error and did not in fact relate to them. The Complainants submit that this was confusing.

The Complainants reiterate their understanding of the Insurer's policy, that written and signed consent was necessary for changes to be applied to their policy. They state that this situation was distinct from the situation in which the Insurer increased their premium, as they were the ones making the proposal to the Insurer, and the Insurer "*did not come back to check this was ok with us*".

The Complainants note that the Provider has not answered a question raised by this Office, as to whether it contacted them, to confirm their new premium details, as recommended by the Insurer's correspondence of **12 September 2019**.

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The Provider's Case

The Provider states that the first Complainant contacted it by telephone on **13 August 2019.** During this phone call, the first Complainant gave specific authority to the Provider to instruct the Insurer to reduce the Complainants' premium and cover on their policy.

The Provider states that it never makes changes to its customers' policies without specific authority to do so, and in this situation the authority was given verbally. The Provider says that this is supported by a recording of the phone call from **13 August 2019**.

The Provider states that:

> *"The complainant goes on to say that he was aware the policy could not be changed without his written consent. This is factually incorrect, all we needed was a verbal instruction and you will note that this is contained within the contents of the call transcript. I would point out that the complainant has had this plan in force over 35 years and would have had numerous interactions with the previous broker and direct with* [the Insurer]. *It is beyond question that he would have given verbal instructions to both of these parties on many occasions over these thirty-five years."*

The Provider states that the Complainant was copied into the email to the Insurer of **13 August 2019**, and never challenged the instructions that were communicated in that email.

The Provider was asked by this Office whether it contacted the Complainants to confirm their new premium details, as recommended by the Insurer's correspondence of **12 September 2019**. In response, the Provider states that the first Complainant gave the instruction for the changes to be made, and that the Complainant understood the effect of the reduced premium on the available cover. The Provider relies on the phone call of **13 August 2019** in this respect.

In relation to the letter from the Insurer of **12 September 2019**, the Provider states that this letter was sent to the assignee of the policy, and not to the Provider. The Complainants challenge this, referring to a letter of **12 September 2019** that was addressed to the Provider, which confirms the change to the policy and requests the Provider to confirm the new details with the Complainants.

The Provider submits that the first Complainant advised the Provider on **3 January 2020** that he did not want to proceed with his original instruction. The Provider refutes the submission that it acted slowly upon the first Complainant's updated instructions.

The Provider states that it replied to the first Complainant, two working days after this email, to clarify instructions, and communicated the new instructions to the Insurer on the same day. The Provider says it received a reply from the Insurer on the following day, stating that the changes could not be reversed. In its submission to this Office, the Provider has included such correspondence between it and the Insurer, following this communication.

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The Complaint for Adjudication

The complaint is that the Provider, in **August 2019**, wrongfully instructed the Insurer to alter the terms of the Complainants' policy cover. The Complainants also say that the Provider, in **2019** and **2020**, failed to advise them in relation to the implications of the alterations made to their policy, and proffered poor customer service to them following the alteration made to their policy in **2019**.

In resolution of their complaint, the Complainants seek the re-instatement of the original policy value and premium rate as it was, before **August 2019,** and they submit: "*if as suggested the policy cannot be reinstated then I wish to have the estimated loss value paid to me*." The difference in cover following the change to the policy is **€124,071** (one hundred and twenty-four thousand and seventy-one Euro).

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 the following extract from a call between the first Complainant and the Provider's Agent on **13 August 2019**.

C:	*"I want to reduce the payments by about half."*
Agent:	*"Right ok."*
C:	*"And whatever will be will be after that, you know."*

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Agent:	*"I'll email [the Insurer] and I'll tell them that you want to bring the premium down to about €215 a month, there or thereabouts?"*
C:	*"Yeah"*
Agent:	*"Yeah?"*
C:	*"Yeah"*
Agent:	*"and that the cover can reduce proportionately. It's generally better if we give them a figure [first Complainant], it makes things a bit easier."*

[Mobile phone rings and interrupts call]

…

Agent	*"So what we'll do is I'll email them. Can I suggest that we bring the cover down to a level that you're comfortable with, rather than letting them do that. It's better if we do it. So at the moment it's 224 grand, so if we said 100,000 for yourself, would that be sufficient?"*
C:	*"Yeah"*
Agent:	*"Ok, so I'll say reduce the cover to 100,000 for you, leave* [second Complainant's] *cover unaltered. And we need a premium of €215 per month approximately."*
C:	*"Ok."*

I note that on the same day, an email from the Provider to the Insurer dated **13 August 2019**, (with the first Complainant copied in) stated:

> *"Further to the above we have been requested by* [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 <u>have been made</u> & confirm sustainability of cover based on these adjustments"*
>
> [My underlining for emphasis]

A subsequent letter from the Insurer to the Provider dated **12 September 2019** states:

> *"Thank you for your recent request in respect of the above policy.*
>
> *In accordance with your instructions, we have decreased the life cover on the first life to €100,000. The revised monthly premium is €215 with effect from 01/09/2019.*
> *…*
> *Please contact your client to confirm the above premium details."*

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The Complainants submit that they did not instruct the Provider to request the Insurer to change their policy. I do not accept this.

Given the contents of the discussion during the phone call between the Provider's Agent and the first Complainant of **13 August 2019,** I am satisfied that during this phone call, the first Complainant did not ask the Provider to seek a quote for a change in the policy. Rather, the first Complainant clearly authorised the Provider to instruct the Insurer to change the policy. This is confirmed by the Provider's Agent during the phone call.

I take the view that the Provider's Agent informed the Complainant of the next steps that he would take, and the Agent subsequently took those steps. I also note that the first Complainant was copied into the relevant email of **13 August 2019** and was fully aware of the instructions made to the Insurer at that time, to change the policy terms, and the confirmation sought by the Provider, from the Insurer, that the changes had been made.

The Complainants submit that the Provider failed to advise them in relation to the implications of the alterations made to their policy. I do not accept this. It is clear to me from the phone call of **13 August 2019**, that the first Complainant understood that the reduction in his premium would result in the proportionate reduction of his life cover, just as he had sought.

The Complainants also submit that the Provider gave them poor customer service. I note the Provider's submissions that it responded to, and acted on, the first Complainant's emails promptly. I also note the Complainants' submissions that the first Complainant contacted the Provider in late **August 2019** to query whether the Insurer had responded.

The Complainant notes that the Insurer sent a letter to the Provider dated **12 September 2019,** to confirm the change in the policy. Although the Complainants may have understood the implications of the change in the cover on their policy, it is clear that in late August 2019, they were seeking confirmation of the Insurer's position, and this request was communicated to the Provider. It was also echoed in the advice of the Insurer in its letter of **12 September 2019**. In my opinion, the Provider should have confirmed the changes to the policy directly to the Complainants, on receipt of this information, but it did not do so, which is disappointing.

In the event, it was a number of months later when the Complainants made contact. I note in that regard that the Complainants' email on **6 December 2020** advised:

> "*Last August I asked* [Provider] *for a quote to reduce the premia by half*
> *The approx. situation was as follows.*
> *Life sum insured 1st life €224071*
> *Life sum insured 2nd life €49531*
> *Premium €437.6*
>
> [Provider] *requested a quote for reduced life cover of €100,000 for first life only and a premium of €215.00/month (e-mail 13th August).*

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> [Insurer] *submitted a quote on 09 September for Sum insured of €50,000 each.*
> *The premium was quoted at €187.66.*
> *Today I discovered that the actual premium has been changed to €217.15.*
> *I do not know when the premium was reduced.*
> *I do not recall authorizing this.*
> *The policy is retained by my bank.*
> *I do not understand how you changed the premium without the bank's approval.*
>
> *Clearly there are some communication problems."*

I do not accept that during the telephone call on 13 August 2019, the First Complainant sought only a quote. I am satisfied that he gave instructions to apply the changes, and that he was on clear notice of those instructions being sent to the Insurer, as he was copied in on the email that was sent by the Provider later that day.

I accept however that there was indeed some miscommunication surrounding the level of premium (given that the email thread from 10 September 2019 gave details of a premium for **€187.66** for life cover of €50,000) and there was also considerable confusion around the process for applying those changes to the Complainants' cover. Having been instructed verbally by the Complainants, to apply certain changes, and having sent those instructions to the insurer to implement those alterations, the Provider caused considerable confusion by:

(i) asking the Complainants on 10 September, to let it know if they were *"happy to proceed on this basis and we will finalise"*, when forwarding a quote, the details of which did not represent what the Complainant had asked for (because the quote was intended for a different customer). This was particularly confusing, in my opinion, given that the changes had already been instructed, and

(ii) failed to confirm to the Complainants, the precise changes applied, on receipt of the insurer's communication of 12 September 2019.

On the basis of the evidence available, I cannot accept that the Provider acted without instructions or that it failed to explain the consequences of changes to the Complainants' policy. I accept however, that after the Provider followed the Complainants' instructions of 13 August 2019, to apply certain changes to cover, it then failed to confirm the changes to the Complainants' policy, in September 2019, even though it had received an email from the first Complainant, which sought an update on the Insurer's position, and it had also received a communication from the insurer suggesting that the relevant details should be shared with the Complainants.

I take the view that the Provider's confusing actions and its failure as outlined above, were wrongful, within the meaning of ***Section 60(2)(g)*** of the ***Financial Services and Pensions Ombudsman Act 2017*** and for that reason, I consider it appropriate to partially uphold the Complainants' complaint. To mark this decision, I intend to direct the Provider to make a compensatory payment to the Complainants, as directed below.

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Conclusion

- My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is partially upheld, on the grounds prescribed in ***Section 60(2)(g).***

- Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €500 (five hundred Euros) to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider. 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
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.

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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.