



<u>Decision Ref:</u>	2018-0122
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Pension
<u>Conduct(s) complained of:</u>	Failure to advise on key product/service features
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant was a member of his Employer's Contributory Pension and Death Benefits Pension Scheme. In **November 2013**, the Complainant contacted the Broker of this Scheme with a view to drawing down his retirement benefits early due to ill health. The Broker liaised with the Trustee of the Scheme on behalf of the Complainant, and in June 2014 the Trustee permitted the Complainant to avail of ill health early retirement. The Complainant took a portion of his retirement benefits as tax free cash and the balance was to be used to purchase an annuity, a type of pension that provides a regular income to a policyholder for life in return for a lump sum payment at the outset.

The Broker requested an annuity quotation from the Company on **13 January 2015**, which it provided that day. The Broker then emailed the Company on 19 January 2015 to request that the annuity rate quoted of 3.81% per annum be booked as it had been determined that the annuity was to be purchased. The Trustee of the Scheme completed a proposal form to take out the annuity with the Company on 22 January 2015. This proposal form, along with the necessary supporting documentation, was submitted to the Company by the Broker on **27 January 2015** and the purchase money for the annuity was received by the Company on **2 February 2015**.

The Company wrote to the Complainant on 11 February 2015 to the contact address in [Asia] provided on the proposal form, enclosing the annuity policy schedule and conditions, with a copy sent to the Broker. The policy schedule confirmed that the gross amount to be paid to the Complainant was €7,380.34 per annum, payable monthly in

advance. The first monthly annuity payment was to be made on 2 March 2015, with the payments to be backdated to 5 June 2014.

The Complainant's Case

The Complainant received an email from the Broker on 30 January 2015 advising that the Company would commence payment of the annuity from 2 March 2015, backdated to 5 June 2014. The Complainant received no communication from the Company at that time.

The Complainant then received a lodgment to his bank account in [Asia] on 3 March 2015 in the amount of €3,152.52 *"that I could not make sense of and fell well short of what was expected"*. The Complainant contacted the Company and was advised that *"I was paying emergency tax and universal service charge. I had to contact Irish Revenue to get a Certificate of Taxes...This problem was resolved by the 22/4/2015"*. The Complainant submits that the Company failed to advise him in advance of his annuity payments commencing in March 2015, of the information it required from Revenue to ensure that tax would not be applied to these payments and he now seeks a refund of *"any monies and interest lost because of lack of contact and information"*.

In addition, in September 2015, the Complainant first noticed *"an undocumented short fall per month of about 15 Euro in the transfers from [the Company] to my bank account ...It is now known to me that it is a third party bank fee that [the Company] denied any knowledge of and now denies any responsibility for. I disagree"*. The Complainant notes that the policy schedule, statements and monthly payslips make no reference to bank fees. In this regard, the Complainant now seeks from the Company a *"refund of 15euro per month plus interest backdated to 2/3/2014 and [for this charge] to be paid going forward"*.

The Complainant's complaint is, firstly, that the Company failed to advise him in advance of his annuity payments commencing, of the information it required from Revenue to ensure that tax would not be applied to these payments and secondly, that the Company wrongfully deducts or lets be deducted from his monthly annuity payments, a €15 bank fee.

The Company's Case

Company records indicate that the Company wrote to the Complainant on 11 February 2015 to the contact address in [Asia] provided by the Broker on the proposal form, enclosing the annuity policy schedule and conditions. This policy schedule confirmed that the gross amount to be paid to the Complainant was €7,380.34 per annum, payable monthly in advance. The first monthly annuity payment was to be made on 2 March 2015, with the payments to be backdated to 5 June 2014. A copy of this correspondence was also sent to the Broker.

As annuity payments are treated by Revenue as income and may therefore be subject to tax, this correspondence also enclosed a Revenue information leaflet containing important

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tax information in respect of annuities. The Company correspondence dated 11 February 2015 advised that if it did not receive a tax credit certificate from the Complainant, deductions would be made from each annuity payment at a rate of 40% for PAYE and 8% for USC. The Complainant's attention was also drawn to the fact that if his annual income was less than €12,012 he would be eligible to apply to Revenue for a USC exemption. Both the Company correspondence and the Revenue information leaflet advised the Complainant that if he required a tax credit certificate he should apply for the certificate through his local tax office. The Company submits it is in all cases the responsibility of an annuitant to provide a tax credit certificate to an insurer to avoid tax being deducted where no tax is due.

The first annuity payment was transferred to the Complainant's bank account abroad on 2 March 2015, with the payment backdated to 5 June 2014. As a result, a net amount of €3,152.52 was transferred, which reflected a gross amount of €6,062.62 less deductions for PAYE of €2,424.25 and USC of €484.85. Details of the amount transferred and the deductions made were provided on the payslip issued to the Complainant's contact address in [Asia] on 2 March 2015.

Upon receipt of this payment, the Complainant contacted the Company as the payment was not what he had expected. The Company provided the Complainant with a breakdown of the payment and advised that as it was not in receipt of a tax credit certificate in his name, it had to apply PAYE and USC deductions to his payments. The Company confirms that following receipt of the Complainant's tax credit certificate in April 2015, a refund of €2,206.16 was paid to the Complainant in respect of tax deducted to that date which was due back to him. The refund was applied on 1 May 2015 and was reflected in the May 2015 payslip. The Complainant has accepted that the refund was received by him and as a result the Company does not accept that he suffered any financial loss as a result of tax being deducted from the monthly annuity payments made in March and April 2015.

The Company is satisfied that it issued the Complainant with his policy documents and a Revenue information leaflet on 11 February 2015 to the contact address provided for him on the proposal form, and a copy of same issued to the Broker. It appears from the Complainant's email correspondence that the Company may have been provided with an incorrect postal address on the proposal form, though the Company notes it cannot be held responsible if the address provided was incorrect. In addition, even if the correct address had been provided, it can take a considerable time for post to reach the Complainant in [Asia], though the Company notes that postal delivery times are outside of its control.

The Company sends policy documents to its policyholders by post and not by electronic means. It accepts, however, that the Broker did request for the policy documents to be emailed to the Complainant. As it is Company procedure to send policy documents by post and not by electronic means, the Company was unable to email the Complainant these documents. The Company acknowledges however that it does not have a record of whether this was confirmed to be the case to the Broker and in this regard it confirms that it would like to offer the Complainant a payment of €250 should he wish to accept it in full and final settlement of this element of his complaint.

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With regard to the second element of his complaint, the Company confirms that it has not been deducting bank charges from the Complainant's monthly annuity payments. In order for the Company to transfer annuity payments to the Complainant's bank account in [Asia], it is necessary for the payments to be routed through an intermediary bank. The intermediary bank charges the Company a fee of €17.50 for each payment. The Company confirms that this charge has in fact been paid by the Company from its own resources each month and it has not been deducted from the Complainant's monthly annuity payments. The Company notes that the payslips issued to the Complainant each month reflect any deductions made from the annuity and it is clear from these that no intermediary bank charges have been deducted. In facilitating payments to his Asian bank account the Company notes that it has paid a total of €542.50 in intermediary bank charges since the commencement of the Complainant's annuity payments in March 2014, up to September 2017.

The Company believes that the charge referred to by the Complainant is a charge imposed by his own bank in [Asia]. Whilst it notes that the Complainant has suggested that there is no deduction from his bank account for the charge in question, the Company submits that it may be the case that the charge is deducted from the payment amount by his bank before the payment is credited to his account and thus the deduction is not visible. The Company respectfully suggests that the Complainant establishes with his bank what exactly is deducted from his annuity payments, and that any charges imposed by his own bank are a matter between him and his bank.

Accordingly, the Company is satisfied that the Complainant suffered no financial loss as a result of tax being deducted from the monthly annuity payments made in March and April 2015 as a refund of €2,206.16 was included in his annuity payment for May 2015 reflecting the tax deductions that were due back to him. In addition, the Company confirms that it has not been deducting any bank charges from his monthly annuity payments.

The Company accepts that the Broker asked it to email the Complainant his policy documents and though it does not send policy documents by electronic means, the Company acknowledges that it does not have a record of whether this was confirmed to be the case to the Broker and in this regard the Company would like to offer the Complainant a payment of €250, should he wish to accept it in full and final settlement of his complaint.

Decision

During the investigation of this complaint by this Office, the Company was requested to supply its written response to the complaint and to supply all relevant documents and information. The Company responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Company's response and the evidence supplied by the Company. 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 10 May 2018, 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.

The Company commenced payment of a monthly annuity to the Complainant's bank account in [Asia] in March 2015. The complaint at hand is that the Company firstly failed to advise the Complainant in advance of his annuity payments commencing, of the information it required from Revenue to ensure that tax would not be applied to these payments. Secondly, the Complainant is unhappy that the Company wrongfully deducts or lets be deducted from his monthly annuity payments a €15 bank fee.

With regard to the first element of the complaint, that the Company failed to advise the Complainant in advance of his annuity payments commencing, of the information it required from Revenue to ensure that tax would not be applied to these payments, I note that the first annuity payment was transferred to the Complainant's bank account in [Asia] on 2 March 2015. I accept that as the Company was not at that time in receipt of a tax credit certificate in the name of the Complainant, that it was appropriate for it to apply PAYE and USC deductions to this payment.

I accept the Company position that in all instances it is the responsibility of an annuitant to provide a tax credit certificate to an insurer to avoid tax being deducted, where no tax is due. In addition, I note from the documentary evidence before me that the Company wrote to the Complainant on 11 February 2015, as follows:

"We will issue your first annuity payment of 2 March 2015.

Attached is a Revenue information sheet that contains important information on PAYE and the Universal Social Charge.

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If you need a tax credit certificate you can apply to your local tax office...You will be deducted PAYE at 40% and Universal Social Charge at 8% until a tax credit certificate is made out to [the Company]”.

I am satisfied that the Company issued this correspondence to the address provided for the Complainant on the Pension Annuity Application. In this regard, I accept that the Company cannot be responsible for sending correspondence to a wrong address where one was provided, nor is it responsible for the postal delivery times to [Asia].

In any event, I note from the documentary evidence before me that following receipt of the Complainant’s tax credit certificate in April 2015, a refund of €2,206.16 was paid to the Complainant in respect of tax deducted to that date which was due back to him. This refund was applied on 1 May 2015. Accordingly, I am satisfied that once the Complainant provided the Company with his tax credit certificate, he received a refund of €2,206.16 included in his annuity payment for May 2015, reflecting the tax deductions that were due back to him. As a result, I do not accept that the Complainant suffered any financial loss as a result of tax being deducted from the monthly annuity payments made to him in March and April 2015 and I am satisfied that the Company promptly refunded the Complainant the tax deductions that were due back to him, in the next payment made after it received his tax credit certificate.

With regard to the second element of this complaint, that is, that the Company deducts or lets be deducted from the Complainant’s monthly annuity payments a €15 bank fee, the Complainant first noticed in September 2015 *“an undocumented short fall per month of about 15 Euro in the transfers from [the Company] to my bank account ...It is now known to me that it is a third party bank fee that [the Company] denied any knowledge of and now denies any responsibility for. I disagree”*. The Complainant notes that the policy schedule, statements and monthly payslips make no reference to bank fees.

I note from the documentary evidence before me that the Company wrote to the Complainant in respect of this matter on 16 November 2015, as follows:

“The Company acted in good faith on your instructions to make payments of your annuity to the account you nominated. If you remain dissatisfied with the charges taken by a third party bank on the international payment, you need to address this issue with the bank in question.

As you may be aware, in order to deliver an international payment service an Irish Bank relies on the services of Intermediary Banks to provide access to the local payment system in each country. You will appreciate that it is not possible to simply transfer money direct from an Irish Bank to a Bank in [Asia]. It is our understanding that your payment to [Asia] must be routed by [the Irish Bank] through an intermediary bank before being credited to your [foreign] account.

Due to the complexity involved in delivering payments to a receiver’s bank outside the SEPA payment system and the extent the intermediary bank network, it is not always possible for the Bank to indicate the amount of any intermediary bank charges that may be deducted

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from a payment. There is no requirement for [the Company] to disclose these charges in an annuity quotation or in the payment advice statements you receive. These charges are beyond the control of the Company”.

I note that the Company confirms that it has not been deducting bank charges from the Complainant's monthly annuity payments and that it is itself paying the intermediary bank charges of €17.50 a month that it is charged for transferring the annuity payment to his bank account in [Asia]. In this regard, I note that there are no bank charge deductions itemised on the payslips the Company issues to the Complainant monthly. In addition, since the Preliminary Decision was issued to the parties, the Company has submitted documentation which clearly shows that in order to facilitate a payment of €615.03 to the Complainant, a total sum of €632.53 is debited from the Company's bank account. The differential is the figure of €17.50 which the Company has confirmed it pays to the intermediary bank in order to facilitate the payment to the Complainant, given that he lives in Asia.

I note too that the Company suggests that the charges referred to by the Complainant are charges imposed by his own bank in [Asia] and that it may be the case that his bank deducts this charge before the payment is credited to his account and thus the deduction is not visible. The Company has suggested that the Complainant should establish with his bank in [Asia] what exactly is deducted from his lodgments, which seems to me a reasonable course of action for the Complainant to now take. I note that the Company meets the bank charges which it believes are incurred for transferring, routing and presenting the monthly annuity payment to the Complainant's bank in [Asia] and I am satisfied that any charges imposed by his own bank in [Asia] for receiving and processing such a payment is a matter between the Complainant and his bank. It also seems possible that the additional deduction which is the source of the Complainant's discontent, is a further deduction imposed by the intermediary bank on the receiver of the monthly payment, in addition to the fees discharged by the Respondent Company in its capacity as the initiator of the monthly payment. There is simply however, a dearth of evidence in order to confirm whether the deduction made from the payment of €615.03 which the Company transfers to the Complainant is a deduction made by the intermediary bank or by the Complainant's own bank in Asia. Whatever the answer to that question, I am satisfied that the charge in question is not a charge which the Respondent Company deducts for making the payment and rather, it is clear from the evidence that the Company pays charges of €17.50 a month in order to facilitate the periodic payment to the Complainant arising from him holding an Asian bank account.

Finally, I note that the Company has offered the Complainant a payment of €250 as it cannot confirm that it notified the broker that the protocol it operates, requires policy documentation to be issued by post. I consider this payment to be a reasonable one, which was offered by the Company at an early stage, and on the basis that this payment remains open to the Complainant to be accepted by him, I don't believe that any specific direction is required in that regard. This is a matter between the Complainant and the Company and as the offer is reasonable, it is for him to advise the Company whether he now wants to accept this offer or not.

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Insofar as the substantive elements of the complaint are concerned however, for the reasons outlined above I do not believe that it would be reasonable to uphold those elements of the 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
DIRECTOR OF INVESTIGATION, ADJUDICATION
AND LEGAL SERVICES**

9 August 2018

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.