



<u>Decision Ref:</u>	2018-0212
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Personal Pension Plan
<u>Conduct(s) complained of:</u>	Fees & charges applied Fees & charges applied
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant incepted with the Company Personal Pension Bond 14011050 on 24 July 2001, Investment Bond 14015070 on 1 June 2006 and Approved Retirement Fund 14019405 on 26 June 2008. At the Complainant's request, on 21 March 2017 the Company transferred €37,139 of the maturity proceeds of his Personal Pension Bond 14011050 to his Investment Bond 14015070 and the balance of €111,417.09 to his Approved Retirement Fund 14019405.

The Complainant's Case

The Complainant is retired and in the latter part of his 70s, states that due to legislation, namely, the Finance Act, 2016, he took his funds out of his Personal Pension Bond 14011050, in advance of his 75th birthday. In this regard, the Complainant transferred €37,139 of the maturity proceeds of his Personal Pension Bond to his Investment Bond 14015070 and the balance of €111,417.09 to his Approved Retirement Fund 14019405 on 21 March 2017.

The Complainant's Personal Pension Bond policy would have become eligible for a 0.5% reduction in the Fund Management Charge from 24 July 2017, that is, when the policy would have been in force for 16 years, in accordance with its terms and conditions. The Complainant considers that the aforementioned transactions carried out 21 March 2017 were "*just a reallocation of existing...funds*" and as such submits that the reduction in the Fund Management Charge should "*transfer also, as same funds just different plans*".

In this regard, in his correspondence to the Company dated 25 April 2017, the Complainant sets out his complaint, as follows:

“Recent tax legislation and Age 75 specific requirement necessitates the Funds be moved from the ‘Pension’ category into the ARF and Investment category.

It seems reasonable and fair to me that this should be done without penalty of losing the year 16 administration fee reduction benefit...as there is no change to the overall amount of type of Funds [the Company] are managing ...

There is no significant money difference in [the Company] methodology of selling and buying shares versus just transferring from one plan to another.

My concern is that this is leading to [the Company] interpretation of this purchase situation as a new beginning with my loss of my 16 year reduction in administration charge.

This is unfair as [the Company] will be managing essentially the same Funds after 16 years in July 2017 even though [the Company] are now saying [the Company] have had to sell and buy same to comply with some regulations.

Also, the ARF (existing Plan 14019405) and Investment funds (existing Plan 14015070) [the Company] are transferring to are the same type as that managed by [the Company] in the Pension (Plan 14011050).

For ‘Administration Charge’ purposes this transfer situation of the funds from the Pension Plan to my existing ARF Plan and Investment Plan seems to me to mean a continuation of the existing Funds”.

In addition, in his correspondence to the Company dated 28 March 2017, the Complainant states *“the Funds to be transferred from the [Company] Pension Bond 14011050 will be 16 years with you on 24/07/2017 thus qualifying for a reduction in ‘Administration Fee’ from 1.2% to 0.7% on that date. This reduction needs to be retained in the new situation as the Funds have not changed, just in different existing Plans”.*

The Complainant seeks for the Company to apply the 0.5% reduction in the Fund Management Charge that would have applied to his Personal Pension Bond 14011050 from 24 July 2017 to the monies that he transferred from this policy into his Investment Bond 14015070 and his Approved Retirement Fund 14019405 on 21 March 2017, from 24 July 2017 onwards.

The Complainant’s complaint is that the Company wrongly or unfairly administered the Fund Management Charges in relation to his policies.

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The Provider's Case

Company records indicate that the Complainant incepted with the Company Personal Pension Bond 14011050 on 24 July 2001, Investment Bond 14015070 on 1 June 2006 and Approved Retirement Fund 14019405 on 26 June 2008. The Company notes that one of the features of these policies is that once the policy remains in force for 16 years, the Fund Management Charge would then be reduced by 0.5%. In this regard, the Complainant's Personal Pension Bond would have become eligible for this lower rate of Fund Management Charge from 24 July 2017, with the Investment Bond becoming eligible for this lower rate from 1 June 2022 and the Approved Retirement Fund from 26 June 2024.

It is the Company's position that in order to qualify for this 0.5% reduction there must be a continuous, unbroken investment in the given fund for 16 years or more.

On 21 March 2017, the Complainant exited his Personal Pension Bond 14011050 and at his request the Company transferred €37,139 of the maturity proceeds to his Investment Bond 14015070 and the balance of €111,417.09 to his Approved Retirement Fund 14019405. In this regard, the Company notes that as the monies that were in the US Freeway and EU Freeway Funds were disinvested from the Complainant's Personal Pension Bond 14111050 and reinvested entirely in the US Freeway Fund under the Complainant's Investment Bond 14015070 and Approved Retirement Plan 14019405 on 21 March 2017, there was therefore a break of investment before the 16th anniversary, when the reduced Fund Management Charge would apply. As a result, there was no continuous, unbroken investment in the given fund for the required 16 years or more under the same policy and so the Complainant's investment in the US Freeway Fund from 20 March 2017 is not eligible for the 0.5% Fund Management Charge reduction at this time.

The Company notes that the offer to reduce the Fund Management Charge was a generic offer and is not specific to any particular customer's circumstances and as such could not take into account the age of any given customer at the time they either took the decision to commence the investment in any of the Freeway Funds or the timing of their exit from such funds. In this regard, whilst the Company recognises the unfortunate timing of the Complainant's exit from his Personal Pension Bond 14011050, this was not in the control of the Company and in the interest of fairness and equitability to all other investors in the Freeway Funds, the Company states that it is obliged to adhere to the necessary time constrained requirement in relation to the Fund Management Charge reduction.

The Company position is that once the Complainant had taken the retirement benefits from his Personal Pension Bond 14111050 on 20 March 2017, then that policy had ended and the impending benefit of the reduced Annual Management Charge ended with it. When the funds were transferred to the Complainant's Investment Bond 14015070 and his Approved Retirement Plan 14019405 on 21 March 2017, such funds become subject to the terms and conditions of those policies. In this regard, whilst the Investment Bond product also has the benefit of a reduced Fund Management Charge after 16 years, as the Complainant incepted his Investment Bond on 1 June 2006 it will not be eligible for the lower management charge until 1 June 2022. Similarly, whilst the Approved Retirement Fund product also has the benefit of a reduced Annual Management Charge after 16 years, as the Complainant

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incepted his Approved Retirement Fund policy on 26 June 2008 it will not be eligible for the lower management charge until 26 June 2024.

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.

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 18 July 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.

The following additional submissions were received from the parties:

1. Letter from the Complainant to this Office dated 26 July 2018,
2. Letter from the Provider to this Office dated 13 August 2018,
3. Letter from the Complainant to this Office dated 16 August 2018,
4. Letter from the Complainant to this Office dated 17 August 2018,

I have considered those submissions and my final determination is set out below.

The complaint at hand is, in essence, that the Company wrongly or unfairly administered the Fund Management Charges in relation to the Complainant's policies.

The Complainant incepted with the Company Personal Pension Bond 14011050 on 24 July 2001, Investment Bond 14015070 on 1 June 2006 and Approved Retirement Fund 14019405

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on 26 June 2008. The Complainant, a 76 year old retiree, states that due to legislation, namely, the Finance Act, 2016, he took his funds out of his Personal Pension Bond 14011050, in advance of his 75th birthday on 17 June 2017. In this regard, the Complainant transferred €37,139 of the maturity proceeds of his Personal Pension Bond to his Investment Bond 14015070 and the balance of €111,417.09 to his Approved Retirement Fund 14019405 on 21 March 2017.

The Complainant's Personal Pension Bond policy would have become eligible for a 0.5% reduction in the Fund Management Charge from 24 July 2017, that is, when the policy would have been in force for 16 years, in accordance with its terms and conditions. The Complainant considers that the aforementioned transactions carried out on 21 March 2017 were "*just a reallocation of existing...funds*" and as such submits that the reduction in the Fund Management Charge should "*transfer also, as same funds just different plans*".

Similarly, in his correspondence to the Company dated 28 March 2017, the Complainant submits, as follows:

"...regarding closure of the...[Company] Personal Pension Bond and transfer in full to my existing [Company] ARF and [Company] Investment Plan ...

the Funds to be transferred from the [Company] Pension Bond 14011050 will be 16 years with you on 24/07/2017 thus qualifying for a reduction in 'Administration Fee' from 1.2% to 0.7% on that date. This reduction needs to be retained in the new situation as the Funds have not changed, just in different existing Plans".

I note from the documentary evidence before me that the Company wrote the Complainant on 19 April 2017, as follows:

"To clarify, plan number 14011050 was a Personal Pension which is a pre-retirement product where retirement benefits were paid to you as a tax-free lump sum and the balance to an ARF. In order to move funds from a pre-retirement product to a post retirement product, units need to be sold and then new units purchased in a post-retirement product. In this case ARF number 14015070. Your tax-free sum was used to invest in your Investment Bond number 14019405.

As this is a different type of product, units were purchased on receipt of the lump sum on 20 March. It is not simply a matter of moving units between your [Company] plans as they are all different types of investments.

I have outlined the movement of the units in the tables below:

[Personal Pension Bond] 14011050				
<i>Date</i>	<i>Fund</i>	<i>Amount</i>	<i>Units Sold</i>	<i>Unit Price</i>
20-Mar-17	North American QLD Pension	-119321.21	-57615.26	2.071
	Euro QLD Pension	-22680.29	-22680.29	1.289

[Investment Bond] 14015070				
<i>Date</i>	<i>Fund</i>	<i>Amount</i>	<i>Units Sold</i>	<i>Unit Price</i>
20-Mar-17	North American QLD Pension	36771.32	17893.59	2.055

[ARF Pension Plan] 14019405				
<i>Date</i>	<i>Fund</i>	<i>Amount</i>	<i>Units Sold</i>	<i>Unit Price</i>
20-Mar-17	North American QLD Pension	11417.09	53798.69	2.071

Annual Management Charges

Plan 14011050 would have been invested for 16 years this year and the charges would then have reduced accordingly. Unfortunately, due to legislation it was necessary to claim your Personal Pension prior to reaching the age of 75. This was in line with Pension legislation so it was not possible to leave your plan invested until the 16th anniversary in July as this would have been after you reached age 75. When your two existing plans are invested for 16 years, they will have their charges reduced at that time if they are still invested, as per the Terms and Conditions”.

I must accept that the Company position that once the Complainant had taken the retirement benefits from his Personal Pension Bond 14111050 on 20 March 2017, that that policy then ended and the impending benefit of the reduced Annual Management Charge ended with it. In order to close the Complainant’s Personal Pension Bond, the funds were disinvested from the US Freeway and EU Freeway funds on the day, generating a closing value, that is, the retirement benefits. Whilst the Complainant then used his retirement benefits to reinvest in the US Freeway Fund, he did so by way of his Investment Bond 14015070 and Approved Retirement Plan 14019405, which I accept are different products and product types from his Personal Pension Bond and as such any monies invested by way of these policies become subject to the terms and conditions of those policies.

While I accept that the timing was unfortunate and I understand the Complainant’s disappointment, I do not believe that the conduct of the Provider was unreasonable in the circumstances when the Complainant moved the funds before the 16th anniversary date.

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In this regard, whilst the Investment Bond product also has the benefit of a reduced Fund Management Charge after 16 years, as the Complainant incepted his Investment Bond on 1 June 2006 I note that it will not be eligible for the lower management charge until 1 June 2022. Similarly, whilst the Approved Retirement Fund product also has the benefit of a reduced Annual Management Charge after 16 years, as the Complainant incepted his Approved Retirement Fund policy on 26 June 2008 I note that it will not be eligible for the lower management charge until 26 June 2024.

For the reasons set out above, I do not uphold this complaint.



Conclusion

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

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

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

10 October 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.