



<u>Decision Ref:</u>	2019-0048
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Personal Retirement Savings Accounts (PRSA)
<u>Conduct(s) complained of:</u>	Maladministration
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant's complaint relates to the Provider's administration of a Personal Retirement Savings Account (PRSA).

The complaint is that the Provider is (i) not correctly and reasonably applying contributions to the PRSA in a timely manner (ii) is delaying communicating the application of those contributions and (iii) delayed in its responses to the Complainant.

The Complainant's Case

The Complainant states that in February 2015, he submitted a separate complaint to the then Financial Services Ombudsman in relation to maladministration by the Provider in relation to his PRSA. The Complainant says that in the investigation that concluded, the Provider had stated that it would endeavour to ensure that no further delays occur and that contributions are applied in a timely manner. The complaint was upheld by the Financial Services Ombudsman who directed the Provider to pay the compensatory payment of €800 (eight hundred euro) for the stress and worry that the delays caused to the Complainant.

The Complainant states that later in 2015, he noticed similar delays in applying contributions and he contacted the Provider. The Complainant says that he accepted the Provider's explanation.

The Complainant submits that on 31st March 2017, he received his annual statement to 31st December 2016 (the statement was dated February 2017) which did not contain 2 x €1,000 contributions which were remitted to the Provider prior to 31st December 2016. The Complainant emailed and queried the Provider about this on 3rd & 4th April 2017 with follow up emails on 19th April and 9th May 2017.

The Complainant says that on 23rd June 2017, he checked his PRSA online and noticed that there was a further contribution of €1,000 missing from his account. The Complainant sent an email to the Provider about this, requesting a reply to his unanswered emails and notifying the Provider of a formal complaint of maladministration.

The Provider issued its Final Response Letter to the complaint on 12th July 2017.

The Complainant states that he was not satisfied with the response from the Provider. The Complainant submits that the Final Response lacks credibility as did prior responses including the Provider's commitments under his previous complaint.

The Complainant's complaint of maladministration includes:

- (i) Persistent failure by the Provider to apply contributions in a timely manner and without delay despite its undertakings under his previous complaint
- (ii) Failure to respond to emails of 4th April and subsequent reminders of 19th April and 9th May.

The Complainant submits that on its website the Provider states: *"Our service guarantee: we will reply to an email enquiry by email within 24 hours"*.

The Complainant says further claims of commitment to Enhanced Service and commitment to provision of excellent service were also made.

The Complainant says he was very open about his prior complaint to the Financial Services Ombudsman.

- (iii) Delay in furnishing the statement of 31st December 2016, dated February 2017 and received on 31st March 2017 with missing contributions of 2 x €1,000.

The Complainant states that in contrast, his wife has a PRSA with a different service provider and she receives her 6 monthly statement within a matter of days following the reporting period with all contributions accounted for.

- (iv) Disregard for him as a customer who had previously raised this matter with the Financial Services Ombudsman and a failure by the Provider to honour its commitments following that complaint.
- (v) The Complainant states that he considers that the Provider is in breach of Section 8 of the - the Communication Standard PRSA Contract Document in relation to Statement of account – as follows:

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- “a. A Statement of Account does show the total contributions paid since the last Statement of Account.*
- b. The Provider is not sending a Statement of Account at least every six months. It is pre-dating statements with non-specific dates (i.e. February 2017, above) although it was not received until 31st March 2017”.*

The Complainant says that in his previous complaint he cited incidences (which he says were not contested) where statements for 31st December were received in the following April.

Having previously complained in 2015 and referred the matter to the Financial Services Ombudsman, the Complainant says that he had a reasonable expectation that the Provider would have rectified the situation. The Complainant submits that not alone did the Provider not do this, but it further exacerbated the situation by not replying to his emails of 4th & 19th April and 9th May 2017. The Complainant says that the Provider seemed casual about the matter and misjudged both his concerns and the seriousness of the issue. The Complainant's position is that he now considers that the Provider has shown disregard for him and its prior commitments to the Financial services Ombudsman. The Complainant says he still holds the view that it would be surprising if such maladministration did not result ultimately in financial loss. The Complainant submits that it is not sufficient to take the Provider's word – in that it did not deliver on its commitments under the previous complaint.

The Complainant says that he reiterates his view that the Provider should not accept premiums from clients if it is not in a position to apply them in a timely manner and the Central Bank of Ireland/Financial Regulator should not allow the Provider to do so. The Complainant states furthermore, that as the Provider did not deliver on its commitments under the previous complaint, Independent Assurance is required that he has not suffered financial loss. The Complainant says it is, furthermore, highly unlikely that his account is the only account subject to this maladministration.

The Complainant states that the first complaint was a source of stress and worry to him. The Complainant says that having now discovered that the Provider did not deliver on its commitments and exacerbated it by not replying to his queries, his and his wife's concern has increased significantly.

By way of resolution the Complainant requests Independent Assurance that he has not suffered financial loss.

The Complainant says that he wants confirmation that this matter, which he says was a recurrence on his previous complaint has been brought to the attention of the Central Bank of Ireland / Financial Regulator. The Complainant states that he cannot conceive that such administration/maladministration is remotely acceptable.

The Complainant states that the Provider charges 3.5% Contract Charge on Contributions made (12 x €1,000 per annum) and a 1% Management Charge on Fund value (currently €230,000). The Complainant states that this gives a current approximate Charge/Fee of

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€2,720 per annum. The Complainant states that he first brought these concerns to the Provider in early February 2015 and now, almost 2.5 years later, the Provider's Final Response is and remains unacceptable.

The Complainant states that obviously, the €800 compensatory payment in 2015 was inconsequential for the Provider and he now requests a further compensatory payment of €6,800 ($€2,720 \times 2.5$) being the approximate Charges/Fees gained by the Provider on his account since he first raised this matter with the Provider and the Ombudsman. The Complainant's position is that the Provider should not profit and apply such charges where known and acknowledged persistent maladministration is not corrected. The Complainant also considers that a further punitive penalty should be imposed on the Provider by the Central Bank of Ireland/Financial Regulator.

The Provider's Case

The Provider notes that there are 3 aspects to this dispute:

A) Initial delay in response to the Complainant's communications.

In this regard the Provider states that the Complainant contacted it initially on 03/04/2017 to query contributions on his most recent PRSA statement. The Provider says that this communication was referred to its Group Business Department however a response was not issued until 23/06/2017 at which point the Complainant had followed up 3 times.

B) Delay in application of contributions to the Complainant's PRSA contract.

The Provider says that 6 of 29 applications were applied outside of its 10 day target time frame. The Provider states that this is since the Complainant's previous complaint in 2015. The Provider states that the Complainant was seeking reimbursement of the charges levied throughout the period November 2015 to date.

C) Half yearly benefit statements.

The Provider states that the Complainant is unhappy with the issue of his Statement of Accounts and noted that his statement for 31st December 2016 was received on 31st March 2017 and dated within February, while his statement as at 30th June 2017 was received on 8th August 2017 and dated within July.

The Provider's explanation of the conduct complained of.

A) Initial delay in response to the Complainant's communications to the Provider.

The Provider states that it acknowledges that a response was not issued to the Complainant's emails within the time frame that it should have been. The Provider says that unfortunately, due to an administrative oversight, the Complainant's email query was not recorded appropriately within the team and as a result a response was not issued in

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advance of his follow up communications. The Provider says it apologised for this in its Final Response letter which was issued to him on 12th July 2017.

B) Delay in application of contributions to the Complainant's PRSA contract.

The Provider states that it invests all contributions from the date of receipt. The Provider submits that while it aims to apply contributions within 10 working days of receipt, the unit price date which is used is the actual receipt date and not the application date. The Provider's position is that there is no financial disadvantage to the Complainant in the instances where his contributions were not applied within the 10 day targeted time frame. The Provider explains that a unit transaction statement was issued to the Complainant which detailed all unit purchases to his policy and that this verified the practice of units being purchased on the receipt date as opposed to the application date. The Provider states that there have been 6 instances of late application (where contributions have been applied outside of the 10 day target time frame) since the Complainant's previous complaint in 2015. The Provider states that the Complainant sought reimbursement of the charges levied throughout the period November 2015 to date.

The Provider submits that for information purposes, charges levied relate to many administrative services and not solely to the application of contributions within an expected time frame. The Provider says that other services to which charges relate include the production of documentation, provision of web services, day to day administration and fund management charges.

The Provider makes reference to significant investment in technology specifically relating to contribution application. The Provider explains technology had been rolled out to the Complainant's employer with effect from 01/05/2017 and as a result contributions were, for a period, automatically applied on receipt of the relevant member schedule and payment from the employer. The Provider states that this led to improved application times for contributions to the Complainant's policy. The Provider says however that the Complainant's employer has since chosen to cease use of this technology which led to the delay in application of contributions for February and March 2018, this it says was notified to the Complainant on 16th March 2018.

Half yearly benefit statements.

The Provider's position is that it issues Statements of Account at intervals of not greater than 6 months, as required in the Pensions Act. The Provider explains that due to the logistics involved in issuing these Statements they are normally issued within 6 weeks, assuming no delays are encountered with extremal providers. The Provider states that in the examples listed it experienced a number of unusual issues which resulted in a longer than normal time to dispatch the documentation. The Provider states that it reassured the Complainant that all statement data is a snapshot as at 30/6 and 31/12 each year, and any delays in dispatching statements have no effect on the PRSA values. The Provider says that it also pointed out to the Complainant that he has access to its Client Centre.

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The Provider states that within its Client Centre the Complainant has direct access to a large amount of information relating to his policy "live" and on an ongoing basis.

The Provider highlights some of the most relevant information which would otherwise be detailed in his statement, as follows:

1. Premiums

- Total amount of contributions paid to the policy
- Breakdown of contributions since inception (including due date, collection date, employer/employee split and amount).

11. Current values

- Current value
- Current transfer value
- Estimated future values and monthly pension at various ages (60, 65 etc.).

111. Funds

- Confirmation regarding default investment strategy
- Fund factsheet and chart
- Fund breakdown (including units, AMC and fund value).

The Provider states that the Complainant has the ability to obtain any of the above information which is contained within his statement on an ongoing basis and this is updated daily. The Provider says that this information is available from the date the statement is produced to the date on which it is received by the Complainant and also at any date throughout the year.

Product. Premium Allocation

The Provider states that the percentage of regular premiums used to purchase units at the ruling offer price is 96.5%. And that this is the rate specified in the original policy certificate.

Management Charges

The Provider states that investment expenses relating to fund management are recouped by means of a 1% per annum management charge.

The management charge is based on a percentage of the relevant unit account as opposed to being a fixed monetary amount.

Policy Fee - There is no policy fee deducted.

The Provider states that it has invested significantly in technology specifically relating to contribution application. The Provider says that this technology had been rolled out to the

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Complainant's employer with effect from 01/05/2017 and as a result contributions were, for a period, automatically applied on receipt of the relevant member schedule and payment from the employer. This led to improved application times for contributions to the Complainant's policy. The Provider submits however that the Complainant's employer has since chosen to cease use of this technology which led to the delay in application of contributions for February and March 2018, this was notified to the Complainant on 16th March 2018.

Evidence

A number of submissions were received by this office and exchanged between the parties, which concluded with the following:

The Complainant's submission of 17th July 2018

As regards the Provider's response that: *"We endeavour to apply these within 10 working days..."*, the Complainant states that he cannot imagine that such a target is remotely acceptable for a financial institution or any other organisations handling client monies.

As regards the Provider's submission that: *"The contribution received on 19/12/2017 was applied within 7 working days, on 03/01/2018. The Statement of Account, as confirmed, is a snapshot of the policy as at 31/12/2017..."*, the Complainant states that later in their response, the Provider claims *"During the period that the technology was being used by the employer, the average time it took to apply the monthly premium was 3 days."*. The Complainant states that this seems to be at odds with portraying *"7 working days"* as acceptable, within *"the period that the technology was being used by [his] employer"*.

The Complainant submits that furthermore, given that it was year-end and the Provider knew that it would be preparing Annual statements, one would expect that a reasonable organisation would have endeavoured to apply all contributions received prior to the statement date – particularly as the Provider had a known record of not having done so previously. The Complainant states that the comment by the Provider is in relation to 31/12/17, that is, additional evidence provided by him in relation to the complaint which relates to 31/12/16, which it has not commented on.

As regards the Provider's submission that: *"It takes approximately 6 weeks to have the PRSA statements printed, packed and dispatched, assuming no problems are encountered..."*, the Complainant's response is that once again, he cannot imagine that 6 weeks is in any way acceptable for a financial institution or similar organisation to dispatch statements. The Complainant says that the date of dispatch is not reflected on these communications and is misleading. The Complainant states that the Provider did not achieve 12+ weeks delivery for year-ends (for at least) 2014, 2016 & 2017.

As regards the Provider's comment that it: *"has shown how the use of the new technology for uploading premiums benefited the scheme and remedied the issues of the previous complaint During the period that the technology was being used by [the Complainant's] employer, the average time it took to apply the monthly premium was 3 days. This solution*

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was put in place by [the Provider] to improve the application of premiums. Currently, 84% of pension schemes eligible to use this technology are doing so, which equates to over 850 schemes.”, the Complainant states that by implication, 16% or approximately 160 schemes are experiencing difficulties/maladministration similar to those he complained of. The Complainant says that this should be of concern to FSPO and the Financial Regulator.

As regards the Provider’s comment that its: *“Client Centre presents live information for what is currently applied to each policy. Within this there is normal turn around times for different requests/contributions to be processed and applied. The statements, as mentioned previously, are a snapshot of what has been applied to each policy as at the prescribed dates, 31/12 and 30/06 of each year”*, the Complainant states that the: *“Normal turn around times”* are not specified (10 working days? would not be acceptable) and *“currently” thus is not reliable as evidenced*”, the Complainant states that the Statements have been arriving 3 months after the year end.

As regards the Provider’s comment that: *“Attached is a policy overview of [the Complainant’s] other policy, 1264***4. This had not previously been included as it is a single premium policy and is not affected by late application of premiums or premiums not showing on the PRSA statement of Accounts.”*, the Complainant’s response is that this policy has been subject to the inordinate delays in receiving statements, i.e. maladministration and is relevant to the dispute.

The Complainant states that he notes that the Provider does not contest his assertion that it is in breach of its Standard PRSA Contract.

As regards the Provider’s comment that: *“In relation to [the Complainant’s] point on the [Provider’s] on-line system for uploading contributions, his feedback is at odds with feedback we have received from other customers, with the vast majority of eligible schemes currently using this system on a monthly basis, and have done so for up to two years in some cases”*, The Complainant states: *“This was not my “point” or “feedback”. [The Provider] provided FSPO with this information under Point 25, i.e. email from [TF from Employer] to PRSA Support Team on 14 February 2018 and according to [the Provider], some 160 schemes are not using this “on-line system for uploading contributions”.*

The Provider submitted that: *“In relation to the point surrounding [the Complainant’s] complaint of March/April 2018, this was replied to with a final response issued to [the Complainant] on the 16th March 2018 and this was referred to in our initial response to this complaint.”*

The Complainant’s response is that: *“No one would accept that “[the Complainant’s] complaint of March/April 2018” could have had “a final response issued to [me] on the 16th March 2018” which was, at best, “initial response to this complaint”. Incredible response by [the Provider], once again”.*

As regards the Provider’s response that: *“[the Complainant’s] complaint, for which we issued final response on 12th July 2017, has been recorded and reported to both the FSPO and the Central Bank as per the normal procedures. All complaints we receive are fully*

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logged internally for recording and reporting purposes”, the Complainant states that the FSPO requested “17. A copy of all internal communications/documentations (correspondence, file notes, memos, event history logs, emails etc. arising from the providers investigation into the complaint.”. The Complainant states that these were not initially provided and have not been furnished and the Provider has not complied with the FSPO’s request.

The Provider submitted that: *“[It] is compliant with the Consumer Protection Code, especially in relation to section 10: Errors and complaints resolution. This has been highlighted above ... as all necessary recording and reporting obligations in relation to complaints reporting have been fulfilled.”*

The Complainant’s comment is that the FSPO requested *“21. Evidence of compliance by the provider with the provisions of the applicable consumer protection code, relevant to/pertaining to the complaint. (Please highlight all provisions relevant to/pertaining to the dispute and provide evidence of compliance with each provision).”* The Complainant states that no such evidence has been provided and that the Provider has not complied with the FSPO request. The Complainant states that the Provider’s claim cannot be accepted.

The Provider states that in relation to the Pensions Act, section 114: *“The contribution received on the 19/12/2017 for [the Complainant’s] policy was invested on the 03/01/2018, seven working days since receipt. As the contribution had not been applied as at the 31/12 when the statement is prepared for, this contribution was not included. The contribution will be included on the statement which is ran for the 30/06.”*

The Complainant’s response is that *the complaint under investigation by FSPO relates to 31/12/2016.* That by its response, the Provider seems to contend that because *“The contribution received on the 19/12/2017 for [the Complainant’s] policy was invested on the 03/01/2018, seven working days since receipt”,* it complied with The Pensions Act. The Complainant says however, the Provider makes no such defence or contention in relation to 31/12/2016 – the basis of the current complaint.

As regards the Provider’s contention that it has reviewed all correspondence and communications in relation to the complaint from the outset and has provided responses to all of the points raised by the Complainant. And that it does not see this complaint or any other customer complaint as *“a mere inconvenience with little consequence.*

The Complainant’s comment is that the Provider’s actions/long-term inactions do not support its contention.

As regards the Provider’s submission that it has presented the evidence requested and confirmed all compliance with obligations where necessary, the Complainant’s comment is that that the Provider has not presented the evidence requested.

As regards the Provider’s position that: *“In the analysis and conclusion of [first complaint], the adjudicator noted “I am satisfied that the company is correctly adhering to its requirements on the communication of receipt of contributions.” It is also noted that*

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“application of the contributions is in line with the plan provision, that is: “Units are bought at the ruling price(s) on the date each contribution is received”.

The Complainant’s response is that in the first complaint, it was found: *“...the complaint is upheld and the Company (the Provider) is to pay the compensatory payment of €800 (eight hundred euro) for the stress and worry that the delays caused to the Complainant” (25th August 2015).*

The Complainant says that in this complaint and his two responses to the Provider’s submissions, he had provided evidence of ongoing and unrectified maladministration by the Provider that requires urgent intervention.

As regards the Provider’s assertion that: *“We have presented above in point 4 and point 22, compliance with the regulatory obligations in respect of Section 114 of the Pensions Act as queried by the complainant”*, the Complainant states that the Provider makes a poor defence in relation to its compliance/non-compliance with Section 114 of the Pensions Act and no defence in relation to the breach of its Standard PRSA Contract Document. The Complainant states that the Provider does not comment on established practice/Industry norms.

The Complainant states that it is of great concern to him and his wife that this has been ongoing for much too long without corrective action by the Provider. The Complainant states that it must be fairly certain that many other PRSA holders are affected – whether they know it or not. The Complainant submits that the Provider’s handling of the situation has been appalling and he believes that he has been most/too reasonable with the Provider since the Financial Services Ombudsman’s initial ruling in August 2015.

The Complainant states that the Provider presents as a chaotic organisation lacking in credibility and that he has provided evidence of this. The Complainant says that the Provider does not have the systems or personnel to effectively manage its PRSAs in accordance with the Pensions Act, its own Standard PRSA Contract or established practice/Industry norms. The Complainant says that the scale of maladministration by the Provider is too great to accept or ignore.

Provider’s response of 25 July 2018 to the Complainant’s submission:

The Provider states that the 10 day application period is based on manual application of premiums, which is relevant on the Complainant’s policy. The Provider states that it has made clear efforts to improve this with the Group Payroll Management Service and the average time when using the newly developed technology was 3 days, which improved significantly on the ten day target.

The Provider states that Premiums were applied in accordance with its turn around times/targets and the statements that issued are a snapshot of what has been applied at the specific date. The Provider states that all information is available on a daily basis to the Complainant on the client centre.

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The Provider states that the 16% of schemes not currently using the payroll system are schemes it is targeting and looking to sign up to the system and that there is no such issue with the technology. The Provider says as stated previously this technology was developed to deal with the issues of premium application the Complainant has complained of. The Provider submits that during the period the Complainant's policies were on the system, there were no such delays.

The Provider says that the remaining 16% of schemes are currently being contacted and signed up to the group payroll management system.

As regards the initial response to the complaint the Provider states that in its previous submissions, e-mail's between the Provider and the Complainant are included in the submissions which show the Complainant requesting final response and the Provider confirming the email of 16/03 was its final response.

As regards the Provider's submission of Complaint Logs the Provider states they have been submitted as per normal procedure to the FSPO.

The Provider concludes that it is satisfied that it has fully reviewed and responded to all points raised by the Complainant and queries raised by the FSPO.

The Provider reiterates that all complaints of any nature are treated equally and it has reviewed all correspondence and submissions submitted by both the Complainant and the FSPO.

The Provider states that as an organisation it is confident that it meets the required standards/obligations in administering PRSA's and all other products for which it provide. The Provider submits that continuous efforts are made (Group Payroll Management System being an example) to enhance the service it provides to its customers and ensure that it is always meeting its obligations as provider.

Policy Provisions

"Section Eight – Communication

Statement of Account

3. A Statement of Account shows the total contributions paid since the commencement of this contract and the total contributions paid since the last Statement of Account, if any, was issued. The contributions paid are split between those paid by you and those paid by your employer, if any. Each Statement of Account also shows the current value of your Unit Account.

4. [The Provider] will send you a Statement of Account at least every six months.

Report on Investment Performance

5. *A Report on Investment Performance details the performance of each PRSA Fund that your PRSA contract is invested in.*

6. *[The Provider] will send you a Report on Investment Performance at least every six months."*

The Complaints for Adjudication

The complaints for adjudication are (i) whether the Provider is correctly and reasonably applying contributions to the PRSA in a timely manner (ii) whether the Provider is delaying in communicating the application of those contributions and (iii) whether the Provider has delayed in its responses to the Complainant.

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 on 21st January 2019, 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, the final determination of this office is set out below.

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Analysis

The evidence submitted shows that the Complainant experienced delays in response from the Provider as follows: On receipt of his Statement of Account the Complainant contacted the Provider on 3rd and 4th April 2017. From 4th April to 23rd June 2017 the Complainant was left waiting for a response to his correspondences. On 23rd June 2017 the Provider apologised for the delay and explained that the two payments not recorded on the Statement were not applied due to their late application. The Provider advised of the new Group payroll Management System which would directly upload contributions and which would improve matters.

The letter of 23rd June 2017 was not clear on whether it constituted a Final Response. The letter did not advise the Complainant of right to contact the Financial Services Ombudsman.

The Complainant contacted the Provider on 10th July 2017 seeking a formal response.

On 12th July 2017 a formal response letter issued which included the contact details for the Financial Services Ombudsman.

On 14th February 2018 the Complainant's employer confirmed to the Provider that it would no longer be using its new technology and would be reverting to old contribution application process.

The Complainant raised the complaint issues again with the Provider on 14th March 2018.

The Provider responded on 16th March 2018 – advising of a 10 working day for completing applications. This e-mail response did not indicate that it was a final response or direct the Complainant to the Financial Services Ombudsman.

On 20th March 2018 the Complainant queries whether an e-mail of 16th March 2018 constitutes a final response for referral of his complaint to the Ombudsman.

On 4th April 2018 the Provider confirms that its e-mail of 16th March 2018 was final response.

From the above I accept that the Provider could have been more timely in its responses to the Complainant and should have correctly communicated that its response was the formal final response and provided the contact details for this office. I would also have expected the Provider to have earlier communicated to the Complainant that his Employer was no longer using its new technology and of any consequences of this for him.

As regards the Provider's delay in application of contributions, the Provider has stated that the unit price date which is used is the actual receipt date and not the application date and as a result there is no financial disadvantage to the Complainant in instances where there was a late application of his contributions. While I accept that recurring delays are unacceptable, I find no evidence to indicate any financial disadvantage to the Complainant,

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nor has the Complainant produced such evidence of a financial disadvantage. I accept that the Provider has introduced measures to improve the timing of the application of the contributions, but that the Complainant's Employer has expressed dissatisfaction with this and is no longer using the new measures. I note the Employer had suggested that the Provider could "*get employees on direct debit to suit their systems*" and I do consider that that the Provider should explore alternative ways going forward for the speedier application of the contributions.

Overall I consider that this is a communication failure and while noting that the Complainant could access information from the Provider's Client Centre, the communication of same by way of the half yearly benefit statements could and should be improved upon by the Provider, going forward. I consider that where delays are expected, these should reasonably be communicated to the Complainant.

As regards the provision of information to a consumer the Consumer Protection Code states that:

A regulated entity must ensure that all information it provides to a consumer is clear and comprehensible, and that key items are brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information.

And that:

A regulated entity must supply information to a consumer on a timely basis. In doing so, the regulated entity must have regard to the following:

- a) the urgency of the situation; and*
- b) the time necessary for the consumer to absorb and react to the information provided.*

For the above issues of complaint I partially uphold the complaint on those issues.

While the Complainant has sought a return of charges, I accept the Provider's position that charges are applied for many administrative services and not solely the application of contributions. I consider that the more appropriate remedy here is a compensatory payment.

The Provider has stated that the complaint, for which it issued a final response on 12th July 2017, has been recorded and reported to both the Financial Services and Pensions Ombudsman and the Central Bank as per the normal procedures. I also intend to bring my Legally Binding Decision to the Central Bank's attention for its consideration and any action it considers is necessary.

Having regard to all of the above, it is my Legally Binding Decision that the complaint is partially upheld and I direct that that (i) the Provider endeavours to apply the contributions in a timelier fashion and where it envisages delays that it communicates this

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to the Complainant and (ii) the Provider pays the Complainant the compensatory payment of €1,500 (one thousand and five hundred euro).

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 (i) endeavour to apply the contributions in a timelier fashion and where it envisages delays that it communicates this to the Complainant and (ii) the Provider pays the Complainant the compensatory payment of €1,500 (one thousand and five hundred euro). The payment is to be made to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant 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.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

14th February 2019

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.