



<b><u>Decision Ref:</u></b>	2019-0066
<b><u>Sector:</u></b>	Investment
<b><u>Product / Service:</u></b>	Additional Voluntary Contribution (AVC)
<b><u>Conduct(s) complained of:</u></b>	Maladministration Delayed or inadequate communication
<b><u>Outcome:</u></b>	Rejected

**LEGALLY BINDING DECISION  
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

**Background**

The Complainant incepted an Individual Personal Retirement Savings Account (PRSA) with the Provider on **27 October 2005**.

**The Complainant's Case**

The Complainant sets out her complaint, as follows:

*"The contribution to the PRSA (Personal Retirement Savings Account) comes out of my [current] account usually at the end of the month. Unfortunately in March 2014 I had insufficient funds to meet it. Apparently [the Provider] tried 2 weeks later and again I could not meet it. The payments were then ceased without my knowledge. I am a GP and do not spend time checking upon my bank. I see what money is in my account and spend what I have. I received no written contact to notify the payments had been ceased. It finally came to my attention in early September 2015...I enclose the 6 monthly updates [half-yearly Statement of Accounts] which if studied does show 0 additions but in recession I had long since stopped looking at the miserable figures. At no time was a written confirmation sent to say payments had been ceased".*

In addition, in her correspondence dated 7 November 2015, the Complainant submits, as follows:

*"It came to my attention, via my Accountant, that there had been no withdrawal from my [bank] account since March 2014 ...*

*Most importantly I did not receive any paper notification of cessation of the monthly payment.*

*I was not aware of its cessation and unfortunately I am not someone who checks my statements or accounts regularly ...*

*I was aware over time that I appeared to have more cash available at the end of the month but presumed this to be a sign of coming out of recession and austerity. On the back of this I purchased a new car and signed the documentation...before becoming aware of what had happened with my monthly PRSA contributions. Naturally being 900-1000 euro down a month, would have stopped me buying a brand new car, which I could obviously not afford. A decision I now regret, but have to maintain payments ...*

*I feel very aggrieved at what has happened...I cannot understand how such a large sum, and a monthly fixed payment can just be stopped with no notification to an individual".*

The Complainant did not make any contributions to her PRSA from March 2014 until September 2015 and she now seeks *"compensation for the payments missed to the PRSA and subsequent loss in tax benefits. I also ordered a car and made a life choice on the false basis that I actually could afford it. I now owe a large sum monthly on an unnecessary luxury"*. As a result, the Complainant seeks *"cost lost to PRSA €17,286.30 - loss in tax - current monthly cost of car x 3 yrs"*.

### **The Provider's Case**

Provider records indicate that the Complainant incepted a Personal Retirement Savings Account (PRSA) with the Provider on 27 October 2005 on an execution basis only. It provided the Complainant with the PRSA terms and conditions on 29 October 2005. The initial monthly contribution selected by the Complainant was €650, to be paid by way of direct debit. Her PRSA is subject to indexation, meaning that the contributions can increase yearly. As a result, the monthly contribution at October 2018 was €1,111.32. The total sum paid into her PRSA by 17 October 2018 was €129,443.50, with a policy value of €157,940.58.

The Complainant's complaint relates to the fact that the Provider did not notify her of the non-collection of her monthly PRSA contributions from March 2014 until she herself realised this in September 2015. She says that, as a GP, she does not have the time to spend checking her bank account statements to ensure that these monthly contributions are paid.

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Provider records reflect that prior to the Complainant's monthly contributions ceasing in March 2014, there were three previous occasions in November 2013, January 2014 and February 2014 when the direct debits for her then monthly contribution amount of €960.35 were returned unpaid by her nominated bank on the first attempt. Whilst it is not obliged by the PRSA terms and conditions to do so, it is Provider protocol that where a direct debit for a monthly contribution is returned unpaid due to insufficient funds, it will present the direct debit again. On each of these three previous occasions the contributions were collected when the Provider presented the direct debit to the Complainant's bank account for a second time.

When the monthly contribution that fell due on 27 March 2014 was returned unpaid due to insufficient funds, the Provider made a second attempt to collect the contribution on 11 April 2014, but on this occasion the second attempt was also returned unpaid by the bank. Following these two unsuccessful attempts to collect the contribution due, the Provider did not make any further attempts to collect monthly contributions from the Complainant's bank account.

The Provider acknowledges that it did not notify the Complainant in writing of the non-payment of the March 2014 contribution but it is satisfied that it had no obligation to do so. It did however send the Complainant a half-yearly statement on 1 August 2014 in respect of the period 1 January to 30 June 2014, which detailed that only two monthly contribution amounts of €960.35 had been paid within the statement period, that is, on 27 January and 27 February 2014. This statement also highlighted that contributions to the PRSA had been suspended. In addition, two further half-yearly statements sent to the Complainant on 5 February 2015 and 3 August 2015 also specified contributions had been suspended.

The Provider also respectfully submits that it ought to have been clear to the Complainant from her own personal bank statements that there were no payments being made to the Provider during the period March 2014 to August 2015. In this regard, the payment of contributions is the Complainant's responsibility and it was a matter for her to ensure that there were sufficient funds in her bank account, to meet the intended direct debit payments.

The Provider does as a matter of practice notify certain policyholders in writing of direct debit dishonours across certain product ranges, such as protection policies that rely on the payment of premiums to continue to provide, for example, life or illness cover for the policyholders. However, the Provider does not notify a customer in the event that it is unable to collect a PRSA contribution from their bank account, as a PRSA is not dependent upon contributions continuing to be paid in order for it to remain in force. In this way, a customer can decide to increase, decrease or indeed cease paying contributions into their PRSA at any time.

The Provider notes that the Complainant recommenced paying monthly PRSA contributions with effect from 27 September 2015. In this regard, it may be open to her to pay the sum of the missed contributions by way of a lump sum, provided that Revenue rules are met. The Provider would be happy to arrange for a meeting between the Complainant and a financial advisor to discuss the options open to her.

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In conclusion, the Provider is satisfied that it was the responsibility of the Complainant to ensure that there were sufficient funds in her account to pay her monthly PRSA contributions, as outlined in her PRSA terms and conditions, which also clearly state that the Provider obligation is to make one attempt at collecting contributions payable by direct debit. Accordingly, the Provider is satisfied that it administrated the Complainant's Personal Retirement Savings Account in accordance with both its terms and conditions, and the PRSA regulations.

### **The Complaint for Adjudication**

The Complainant's complaint is that the Provider did not notify her in March/April 2014 that it had ceased collecting the monthly Personal Retirement Savings Account contributions from her current account, as a result of which she sustained loss, inconvenience and expense.

### **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 28 February 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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The complaint at hand is that the Provider did not notify the Complainant in March/April 2014, that it had ceased collecting the monthly Personal Retirement Savings Account contributions from her current account, as a result of which she sustained loss, inconvenience and expense. In this regard, the Complainant incepted a Personal Retirement Savings Account (PRSA) with the Provider on 27 October 2005. The Complainant sets out her complaint, as follows:

*“The contribution to the PRSA comes out of my [current] account usually at the end of the month. Unfortunately in March 2014 I had insufficient funds to meet it. Apparently [the Provider] tried 2 weeks later and again I could not meet it. The payments were then ceased without my knowledge. I am a GP and do not spend time checking upon my bank. I see what money is in my account and spend what I have. I received no written contact to notify the payments had been ceased. It finally came to my attention in early September 2015”.*

The Provider states that when the monthly contribution that fell due on 27 March 2014 was returned unpaid by the Complainant’s nominated bank due to insufficient funds, it made a second attempt to collect the contribution on 11 April 2014 but that this second attempt was also returned unpaid by the bank. Following these two unsuccessful attempts to collect the contribution due, the Provider did not make any further attempts to collect monthly contributions from the Complainant’s bank account. The Provider acknowledges that it did not notify the Complainant in writing of the non-payment of the March 2014 contribution but in this regard it is satisfied that it had no obligation to do so under the terms and conditions of the Complainant’s Personal Retirement Savings Account.

I note that in its correspondence to the Complainant dated **29 October 2005**, the Provider enclosed, *inter alia*, the Personal Retirement Savings Account Policy Document and advised, *“You should read them carefully”*.

**Section B, ‘Details of the Policy’,** of this Policy Document provides, at pg. 8

***“1. CONTRIBUTION PAYMENT ...***

*If contributions are payable by direct debit the Provider shall not be required to make application for the payment of any such contribution by presenting a direct debit upon the nominated bank account, unless all contributions previously due have been paid, or to make more than one such application for the payment of any contribution. **The Provider does not accept any responsibility to ensure that a particular amount of Total Regular Contribution/Single PRSA Contribution is remitted to it.** We allow one calendar month for late payment of Total Regular PRSA Contributions ...*

*If a Total Regular PRSA Contribution is not paid by the end of the period allowed for late payment, the Policy will remain in force and any charges applicable prior to the discontinuation of contributions will continue as appropriate”.*

***[Emphasis added]***

I am thus satisfied that the Provider was obliged under the terms and conditions of the Complainant’s PRSA to present a direct debit request to her bank account only once, for the

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collection of any one contribution. In this regard, however, I note that the Provider presented the direct debit to her bank account twice, on 27 March 2014 and again on 11 April 2014, and both were returned unpaid by the bank in question.

The terms and conditions of the Complainant's PRSA do not oblige the Provider to advise the policyholder that a direct debit has been returned and these terms and conditions also clearly and specifically state that the Provider does not accept any responsibility to ensure that any particular contribution is remitted to it. I acknowledge the Provider position that it does write out to policyholders who miss premiums where the continuation of the policy is dependent upon the receipt of the premiums, such as life or illness insurance policies, however I note that the Complainant's PRSA was not dependent upon contributions continuing to be paid in order for it to remain in force.

In any event, I note from the documentary evidence before me that the Provider wrote to the Complainant on **1 August 2014** enclosing a half-yearly statement of account. This Statement of Account provided, as follows:

***"Details of Contributions invested between 1 January 2014 and 30 June 2014***

	<b><i>Investment Date</i></b>	<b><i>Total Contributions</i></b>
<i>Regular Contribution(s)</i>	27/01/2014	€960.35
	27/02/2014	€960.25
<b><i>Regular Total</i></b>		<b><u>€1,920.70</u></b>

***Contributions have been suspended".***

I am satisfied that this Statement of Account provided the Complainant with clear notice that her then most recent PRSA contribution had been received on 27 February 2014 and that contributions had since been suspended.

In addition, I note that the Provider wrote to the Complainant on **5 February 2015** and the enclosed half-yearly Statement of Account states, "***Contributions have been suspended***". Similarly, the Provider wrote to the Complainant on **3 August 2015** and the enclosed half-yearly Statement of Account also stated, "***Contributions have been suspended***".

I note that the Complainant acknowledges that she received these half-yearly Statement of Accounts "*which if studied does show 0 additions but in recession I had long since stopped looking at the miserable figures. At no time was a written confirmation sent to say payments had been ceased*".

It would have been prudent of the Complainant to have read the correspondence issued to her by the Provider. If she had done so, she would have identified that she was no longer making contributions to her PRSA. Similarly, it was the responsibility of the Complainant to ensure that she had sufficient funds in her nominated bank account to meet her direct debits and it would have been prudent of her to have checked her bank statements regularly to

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ensure that this was the case and that her direct debits were not being returned unpaid. The onus rested at all times on the Complainant to ensure that she was paying the contribution to her PRSA, if she wished to make contributions at that time.

Based on the documentary evidence before me, I am satisfied that the Provider administered the Complainant's Personal Retirement Savings Account in accordance with its terms and conditions and there is no evidence before me which in my opinion, would ground a basis for this complaint to be upheld against the Provider. During the period when the payments were suspended, the Complainant was notified 3 times by the Provider of the status of those suspended payments, but it seems that nevertheless, she did not read those details and continued to be unaware of the position. The failure of the Complainant to make contributions to the PRSA over that period did not however, result in its termination, and I note that contributions were subsequently commenced.

It is my Decision therefore, on the evidence before me that this complaint is rejected.

### **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**

25 March 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.**