



<b><u>Decision Ref:</u></b>	2019-0115
<b><u>Sector:</u></b>	Investment
<b><u>Product / Service:</u></b>	Personal Pension Plan
<b><u>Conduct(s) complained of:</u></b>	Maladministration Dissatisfaction with customer service Failure to process instructions in a timely manner Failure to advise on tax implications/tax relief
<b><u>Outcome:</u></b>	Rejected

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

**Background**

This complaint is made by the employer and trustee of a pension scheme against the Provider who administered the pension scheme. The Complainant is a consumer that is an incorporated body and a customer of the Provider.

The complaint is that the Provider treated an employee (the sole employee of the company and only member of the scheme) unprofessionally and unfairly leading to significant distress for the employee.

While the Provider has admitted that it made an error in the administration of the employee's benefit, it claims that the employee has not suffered any financial loss because of the error and it has offered a sum of €2,500 in compensation to the employee as a gesture of goodwill for the poor service experienced by the employee.

The employee (who is also the Complainant) is dissatisfied with the level of compensation offered by the Provider because he feels that it does not reflect the level of stress and upset that the Provider caused him.

### **The Complainant's Case**

The Complainant states that he has been treated unprofessionally and unfairly by the Provider in its handling of his pension. He claims that his whole life savings are tied up in his pension but he will have to put back his retirement date because of the incompetence of the Provider.

The Complainant is upset and annoyed at what he considers to be a paltry amount of compensation offered to him by the Provider for the mistake it made when it notified him of his retirement benefits. The Complainant is angry at what he claims is the Provider's lack of consideration for the stress he suffered which he alleges was caused by the Provider's incompetence.

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

The Provider states that the complaint relates to the general service the Complainant received from the Company and specifically to retirement options produced on 12 April 2017 that were provided to the Complainant on 18 April 2017 by his Financial Advisor. The Provider claims that the options did not fully take into account the provisions of a Pension Adjustment Order (PAO) that had been made by the Circuit Court on 27 March 2012 in the context of Judicial Separation proceedings between the Complainant and his wife.

The Provider states that it was served with a copy of the PAO in November 2016 but claims that due to an administrative oversight the tax free lump sum figure quoted in the Complainant's options letter did not take into account the entitlements of the Complainant's wife under the PAO. The Provider claims that it identified the matter and revised options were produced on 25 April 2017 and provided to the Complainant by his Financial Advisor on 27 April 2017.

The Provider states that it offered the Complainant the sum of €2,500 in full and final settlement of his complaint. The Provider claims that it took into account that the error had been brought to the Complainant's attention within a period of 9 days, that he suffered no financial loss and that he was aware of the existence of the PAO. The Provider also apologises to the Complainant for any inconvenience caused during the processing of his retirement options.

The Provider states that it is obliged to take into account the provisions of a PAO and in light of the PAO the Complainant would not have been able to take options other than as set out in the final options letter provided to him on 27 April 2017.

The Provider states that the Complainant did not accept its offer.

### **The Complaint for Adjudication**

The Complainant argues that the amount offered by the Provider in compensation for making a mistake when it notified the Complainant of his retirement benefits is insufficient for the stress and annoyance caused to the Complainant by the Provider's mistake.

### **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 29 March 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.

Following the issuing of my Preliminary Decision, the Complainant made a further submission to this Office by e-mail dated 8 April 2019, a copy of which was transmitted to the Provider for its consideration. The Provider confirmed to this Office by e-mail dated 29 April 2019 that its offer of compensation will remain available to the Complainant.

Having considered the additional submissions from the parties, together with the evidence submitted, I set out below my final determination.

The Complainant put in place an executive pension plan for himself as his own employee on 1 April 1998 at an initial rate of £433 per month.

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The Annual Benefit Statements issued by the administrator for the years 2010 to 2017 put the following value on the fund:

Year	Value (€)
2010	97,118.44
2011	97,180.81
2012	101,767.00
2013	113,499.56
2014	116,189.01
2015	127,737.99
2016	121,982.25
2017	127,242.00

On 27 March 2012 the Family Court issued a PAO relating to the Complainant's pension scheme in favour of the Complainant's wife. The PAO stated that the Complainant's wife was to receive 50% of the benefits accrued by the Complainant during the period 1 April 1998 to 27 March 2012. In November 2016 the Provider was notified about the PAO.

On 12 April 2017 the Provider produced a Retirement Options Statement for the Complainant. Taking into account the PAO the value of the fund that remained for the Complainant was €63,566.01. The options in the statement were as follows:

**Option A:** Take a tax free lump sum of €51,866.15 and purchase an annuity with the remaining €11,699.86

**Option B:** Use all the fund to purchase an annuity. Annuity quotes were provided ranging from €118.36 per month to €194.10 per month depending on factors such as escalation rate and guarantee period.

**Option C:** Take a tax free lump sum of €15,891.50 (25% of the fund) and invest the remainder in an ARF/AMRF.

**Option D:** Take a tax free lump sum of €51,866.15 and take the balance of €11,699.86 as a trivial cash payment subject to income tax. This option is only available where the balance after taking the tax free lump sum is less than €20,000.

The options are based on 16.97 years of service, a final salary of €52,000 per annum and a Normal Retirement Age of 65.

The formula for calculating the maximum tax free lump sum for an individual who is retiring before Normal Retirement Age (the Complainant was 60 at the time that the Retirement Options Statement was issued and the Normal Retirement Age stated in the scheme is 65) is specified in Chapter 9 of the Revenue Pensions Manual (Retirement Before Normal Retirement Age).

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The formula is:

$$\text{number of actual years of service} \times \frac{\text{maximum lump sum receivable had the employee served until NRA}}{\text{number of years of total potential service to NRA had service continued until then}}$$

In the Complainant's case this was:

$$16.97 \times \frac{(52,000 \times 3/2)}{25.52} = \text{€}51,866.15$$

The Retirement Options Statement was given to the Complainant at a meeting he had with his Financial Advisor on 18 April 2017. The Complainant completed a Claim Form at the meeting on 18 April 2017 indicating that his preferred option was Option D, a tax free lump sum of €51,866.15 and the balance of €11,699.86 as a trivial cash payment subject to income tax.

The treatment of a pension scheme benefit that is the subject of a PAO is specified in Chapter 22 of the Revenue Pensions Manual. It states:

*“Any benefit which is the subject of a PAO is regarded as part of the member’s benefit for the purposes of calculating maximum benefits for the member.*

*It follows, that the maximum benefit payable to the member is the amount calculated using the normal rules, less any amount which is the subject of a PAO”.*

*“This principle applies equally to pension and lump sum benefits”.*

While the Provider had taken into account the terms of the PAO to determine that the overall fund available for the Complainant's benefit was €63,566.01, it failed to apply the principle specified in the Pensions Manual to the Complainant's lump sum benefit. The Provider had calculated that the maximum lump sum available to the Complainant was €51,866.15 but this amount was also subject to the PAO so the Complainant was entitled to a portion of this amount as a tax free lump sum under the terms of the PAO.

The documentary evidence submitted by the parties does not specify exactly when the Provider realised its error but it is possible to establish that it was very soon after the Complainant had received the incorrect Retirement Options Statement on 18 April 2017.

An internal email from one division of the Provider to another dated 20 April 2017 states "*I think the [lump sum] figure that you have quoted is incorrect. If the figure of €51,866.15 is the max based on [the Complainant's] salary and service then it has to be split between the parties in line with the terms of the PAO*". An email dated Monday 24 April 2017 from the Complainant's Financial Advisor to the Provider indicates that the Financial Advisor had informed the Complainant about the error the previous week.

The Provider produced a revised and corrected Retirement Options Statement on Tuesday 25 April 2017. The corrected statement indicated that the overall fund available for the Complainant's benefit was still €63,566.01 but the maximum tax free lump sum available to him was €30,493.59 when the PAO was taken into account. The options in the revised statement were as follows:

**Option A:** Take a tax free lump sum of €30,493.59 and purchase an annuity with the remaining €33,072.42.

**Option B:** Use all the fund to purchase an annuity. The revised statement did not quote annuity prices.

**Option C:** Take a tax free lump sum of €15,891.50 (25% of the fund) and invest the remainder in an ARF/AMRF.

**Option D:** In the revised option statement there is no option to take a tax free lump sum and the balance as a cash payment subject to income tax because the balance after the tax free lump sum is above the Revenue Commissioner threshold of €20,000.

Unfortunately for the Complainant the balance of his €63,566.01 fund that remains after he has taken his tax free lump sum of €30,493.59 is above the threshold of €20,000 for trivial pensions (the threshold for trivial pensions was increased to €30,000 in March 2019) and he cannot take it in the form of a cash payment subject to income tax. Revenue Commissioner regulations require the Complainant purchase an annuity with the balance of €33,072.42.

The revised and corrected options are much less attractive to the Complainant than the incorrect options he was originally given and he has expressed his extreme dissatisfaction with the Provider's handling of his benefit drawdown.

The error made the Provider was a significant error given that it gave the Complainant an expectation that he could draw down pension benefit in the form of a once off cash payment and if the error had not been noticed in time and the benefit had been paid in that form it could have put the Complainant in the position of being in breach of Revenue Commissioner regulations. It was careless conduct on the part of the Provider to make this error.

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However, I note that the Provider appears to have recognised almost immediately that it had made an error and moved very quickly to rectify the matter. The Complainant was notified within days that an error had occurred and nine days after he had been given the incorrect benefit options statement he was given a revised and corrected statement.

I also note that there was no financial loss to the Complainant. The overall benefit amount of €63,566.01 that was originally notified to the Complainant took into account the effect of the PAO and was always correct.

The Provider offered €2,500 in compensation to the Complainant for the mistake that it had made. The Complainant is dissatisfied with the Provider's offer and before making his complaint he informed the Provider that he would not accept the offer.

I understand the Complainant's sense of anger and annoyance at the mistake that was made by the Provider. Nevertheless, given the speed with which it acted to rectify the mistake and that there was no financial loss to the Complainant I think that the Provider's offer represents a reasonable amount of compensation to the Complainant for what has happened.

The Provider has confirmed that its offer of €2,500 to the Complainant will remain available to him for a period of 14 days following the issue of my Legally Binding Decision.

On that basis, I do not uphold this complaint and it is a matter for the Complainant to contact the Provider if he wishes to accept the €2,500.

### **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**

30 April 2019

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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.

