



<u>Decision Ref:</u>	2019-0151
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Pension Transfers
<u>Conduct(s) complained of:</u>	Value of policy at surrender less than expected or projected
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

In 2016, the Complainant decided to transfer his benefits from one retirement fund ("RF1") to another ("RF2"). The transfer value notified by the Provider in November 2016 was €263,409. The application to transfer was then made by the Complainant in March 2017.

When the funds were eventually transferred on 27 April 2017, the transfer value had decreased to €256,100.

The Complainant's Case

In late 2016 the Complainant decided to transfer his benefits from RF1 to RF2. The transfer value of €263,409 was notified by the Provider on **14 November 2016**. The Complainant made an application to transfer the fund in March 2017, however, when the funds were transferred by the Provider on **27 April 2017** the fund had decreased to €256,100.

The Complainant maintains that the first time he was made aware that the transfer value had decreased was when the funds were transferred on **27 April 2017**. He sets out in his Complaint Form that *"the Provider wrote to the Complainant on the 24th April confirming that his benefits under the scheme would be fully discharged however, this letter did not contain the recalculated transfer value."*

The Complainant asserts that the decrease in the transfer value was not conveyed to him in advance of the fund transfer, and he is therefore unhappy that he did not get the opportunity to consider the revised value before the transfer took place and to thereafter make an informed decision.

The Complainant maintains that the Provider wrongfully failed to inform him of the decrease in the transfer value of his funds in advance of the transfer taking place, and as a result he feels that he was misled.

The Complainant submits that the situation is compounded by the fact that the Provider confirmed that they would issue the re-evaluation and then subsequently failed or neglected to do so. He submits that his agent requested the recalculated value in advance of the transfer by email dated **17 February**, wherein the Complainant's agent stated;

"Can I also please request the recalculated transfer value when it comes available."

The Complainant asserts that no recalculated transfer value was provided. The Complainant's agent spoke with the Provider on the phone on **28 March 2017** and submits that no transfer value was communicated to them on this call. The Complainant's agent has a time stamped electronic note on its file which states;

"...[Provider] has confirmed that the disinvestment of funds for [Complainant's] transfer should be completed by next week."

The Complainant's agent maintains that the transfer value was not conveyed verbally on the **28th March 2017**.

The Complainant's agent further states that immediately after this call it emailed the Complainant with an update and there is no mention of a recalculated transfer value in this email.

The Complainant accepts it received a letter dated **24 April 2017** from the Provider advising that his benefits would be fully discharged, however, this letter did not contain the recalculated transfer value.

By email dated **24 April 2017** to the Complainant's agent, the Provider advised that "There will be no recalculation of the transfer value", which, the Complainant took to mean the transfer value would be the value as furnished on **14 November 2016**.

The Complainant received a letter from the Provider dated **27 April 2017** confirming that the Provider had transferred the cheque to RF2 in the sum of €256,100. The Complainant submits that this is the first time he was advised of the transfer value, after the transfer had been completed, and should he have been made aware of this at an earlier stage he believes

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that he would have made a different decision in respect of the transfer, or he would have had the opportunity to re-consider his decision.

The Complainant seeks for the Provider to pay him the difference between the transfer value that was communicated to him in November 2016 and the amount actually transferred in April 2017, namely the sum of €7,309.

The Provider's Case

At the outset, the Provider submits that it conveyed to the Complainant that transfer values are not guaranteed and that the final value might have to be calculated again at the point of payment.

The Provider also submits that the new transfer value was conveyed to the Complainant's representative in advance of the funds transfer. The Provider states in its Final Response that *"the new recalculated amount was communicated during a phone call on the 28th March 2017 and again in writing to you in correspondence dated 27th April 2017."*

The Provider states that on **28th March 2017**, during a phone call between the Provider and the Complainant's agent, at 16.18, the Provider informed the agent that the transfer value was €256,100 and the Provider was advised by the Complainant's agent to proceed with the transfer. A handwritten note regarding this was made on the Provider's file.

On **27th April 2017**, the Provider sent the Complainant an email, copied to the Complainant's agent, outlining that a cheque representing the Complainant's transfer was being sent to the PRB Fund that day. The Provider maintains that the Complainant then sent the Provider an email on **2nd May 2017** thanking them for their help.

The Provider submits that, while the Consumer Protection Code 2012 (as amended) does not apply to Defined Benefit Pension Schemes, in its capacity as a Registered Administrator, the Provider maintains it acted in accordance with principles 2.1, 2.2 and 2.6, and the General Requirements, of the Code.

The Provider maintains that it was incumbent on the Complainant's agent to ensure that the Complainant understood in the first instance, that the transfer value needed to be recalculated, and to inform the Complainant of the new value after it was communicated to them by telephone on **28th March 2017**.

The Provider maintains that the Complainant's agent was aware that a transfer value from a Defined Benefit pension scheme would need to be recalculated before a transfer is undertaken and will not be valid for a 5 month period, and indeed that any transfer value calculated in **November 2016** would therefore not be guaranteed for a transfer in **March 2017**.

The Provider maintains that the Complainant's agent was advised of this on various occasions between November 2016 and March 2017 by the Provider, and that this is clear from the e-mail correspondence as follows:

1. Email dated **16 February 2017** from the Provider to the Complainant's agent stating *"the transfer values are not guaranteed so if [the Complainant] were to opt for a transfer value, the scheme actuary would need to recalculate in the first instance."*
2. Email dated **17 February 2017** from the Complainant's agent to the Provider requesting *"Can I also please request the recalculated transfer value when it comes available?"*

In response to the Complainant's submission regarding the email from the Provider to the Complainant's agent dated **24th April 2017** which outlines *"there will be no recalculation of the transfer value,"* the Provider submits that this email was sent on the basis that the recalculated transfer value was already communicated to the Complainant's agent on the **28th March 2017** by a phonecall and on the basis that the Provider was issuing letters to the RF2 and to the Complainant on the **27th April 2017** referring to the transfer value of €256,100.

The Provider also sent a copy of both letters to the Complainant's agent on the **27th April 2017**. Further, the Complainant sent an email on **2nd May 2017** to the Provider, thanking him for his assistance in the matter, which the Provider submits was after the Complainant received the letter dated **27th April 2017** referring to the transfer value of €256,100.

Ultimately, the Provider maintains that it would make no sense that this statement on **24th April** (*"there will be no recalculation of the transfer value,"*) reflected the old transfer value (of **November 2016**) as the new value was in the Provider's possession and was stated in a letter to the Complainant and Complainant's agent three days later on the **27th April 2017**.

The Provider maintains that the Complainant and the Complainant's agent failed to act upon receipt of the letters issued to them by the Provider on the **27th April 2017** referring to the transfer value of €256,100.

The Provider maintains that when the Complainant signed the PRB application form on **6th March 2017**, he was aware that the transfer value would require to be recalculated and was not guaranteed, and that therefore, the decision to transfer to a PRB was not predicated on the transfer value of €263,409.

The Complaint for Adjudication

The complaint for adjudication is that the Provider wrongfully failed to inform the Complainant of the decrease in the transfer value of his funds in advance of the transfer taking place, and as a result misled him and deprived him of the opportunity to make an informed decision about the transfer.

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 16 April 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, I set out below my final determination.

Analysis

I have outlined the relevant events below:

2016

- i. The transfer value notified by the Provider in November was €263,409
- ii. On **16 November**, the Provider wrote to the Complainant outlining that *"it is important to note that these figures are an estimated pension amount only and the current transfer value may go down as well as up."*

2017

- i. Email dated **16 February** from the Provider to the Complainant's agent stating *"the transfer values are not guaranteed so if [the Complainant] were to opt for a transfer value, the scheme actuary would need to recalculate in the first instance."*

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- ii. Email dated **17 February** from the Complainant's agent to the Provider outlining that *"the member wishes to proceed with the transfer value,"* and then requesting *"Can I also please request the recalculated transfer value when it comes available?"*
- iii. Transfer application made on **6 March**
- iv. Phone call between Provider and Complainant's agent on **28th March**, wherein the Provider submits the Complainant's agent was made aware that the recalculated transfer value was €256,100.
- v. On **24th April**, the Provider writes to Complainant confirming that his benefits under the scheme would be fully discharged
- vi. On the same day, an email from the Provider to the Complainant's agent dated **24th April 2017** outlines *"there will be no recalculation of the transfer value."* The Provider also wrote to the Complainant's agent via email that day setting out, *"the letter (as mentioned) has been issued to [the Complainant] today and he has until 3rd May to respond. If we hear nothing from him then the transfer will be paid."*
- vii. On **27th April**, the Provider sent the Complainant, and copied the agent in an email outlining that a cheque in the amount of €256,100 representing the Complainant's transfer was being sent to the PRB Provider that day. The Complainant states he never received that letter.
- viii. The Complainant sent the Provider an email on **2nd May 2017** thanking them for their help.

Regarding the phone call between the Provider and the Complainant's agent on **28th March**, wherein the Provider submits the Complainant's agent was made aware that the recalculated transfer value was €256,100, while there is a handwritten note on the Provider's file to this effect, the Provider's policy is that they do not record telephone calls. This phonenumber is denied by the Complainant's agent. The Complainant's agent has a time stamped electronic note on their file which states;

"...[Provider] has confirmed that the disinvestment of funds for [Complainant's] transfer should be completed by next week."

It is very unhelpful that there is no recording of this phonenumber, as its existence would demonstrate whether the Complainant's agent was made aware that the recalculated transfer value was €256,100, and would therefore definitively prove whether the Provider failed to inform the Complainant of the decrease in the transfer value of his funds in advance of the transfer taking place.

The Complainant has submitted that he received no notification from his agent or the Provider as to the change in the transfer value.

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The Complainant's agent emailed the Provider on **7 June 2017** requesting a copy of the letter issued to the Complainant on the **24th April 2017**, as, it says, it were unable to locate a copy. However, it had emailed a copy of this correspondence to the Complainant on **25th April 2017**.

The Provider is of the view that the Complainant and his agent were aware of the new figure and/or the possibility of a new figure for the following reasons:

- i. On **28th March**, the provider submits that it communicated the revised amount to the Complainant's agent via phonecall as evidenced by phone note;
- ii. On **27th April**, email confirmation was sent advising that the cheque was in the post and that letters were in the post to the agent and the Complainant confirming the amount, any reasonable reaction would have been immediately after, as opposed to two months later;
- iii. There was no need to advise the Complainant as he was a client of the agent and all correspondence had previously been through the agent and the agent advised on the phone on the **28th March** that she would inform the Complainant.

The Consumer Protection Code was introduced by the Central Bank of Ireland in August 2006, and came fully into effect on 1 July 2007, in order to provide a consistent level of protection for consumers. This Code was updated and replaced by a revised Consumer Protection Code 2012, which came into effect on 1 January 2012. The Code is a set of rules and principles that all regulated financial services firms must follow when providing financial products and services. **Chapter 2 of the Consumer Protection Code - Common Rules for all Regulated Entities** – provides 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.”

As stated, while it is disappointing that there is no recording of the phone conversation dated **28th March 2017**, in my view, it has not been established that the Provider's behaviour is at odds with the Consumer Protection Code. In that regard, the email dated **17 February** from the Complainant's agent to the Provider outlining that *“the member wishes to proceed with the transfer value,”* and then requesting *“Can I also please request the recalculated transfer value when it comes available?”* is crucial. It is clear from this email that the Complainant's agent had taken instructions from the Complainant to proceed regardless of the potential for a recalculation, and that the agent was aware that there would be a recalculated transfer value in the near future. The Complainant had therefore been told by his agent that such recalculation was looming, either confirming the Provider's account of the phonecall of the **28th March 2017**, or confirming that the Complainant's agent was instructed to proceed regardless particularly in light of the fact that, within the same email, the agent communicated the Complainant's instructions to proceed.

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It is evident to me that the Complainant was willing to proceed on **17 February 2017**, regardless of the potential for a recalculation and the amount of this, and I therefore 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 May 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.