



<b><u>Decision Ref:</u></b>	2019-0362
<b><u>Sector:</u></b>	Investment
<b><u>Product / Service:</u></b>	Personal Pension Plan
<b><u>Conduct(s) complained of:</u></b>	Value of policy at surrender less than expected or projected Delayed or inadequate communication
<b><u>Outcome:</u></b>	Rejected

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

**Background**

The complaint concerns a personal pension policy which the Complainant held with the Provider since 1993.

**The Complainant's Case**

The Complainant submits that he selected 65 years old as the specified pension date on a personal pension policy he incepted with the Provider. The Complainant states that, upon reaching the age of 65 years, the value of the pension fund was €57,395.54. The Complainant submits that his personal pension fund was drawn down and on 3 October 2018, after his 65<sup>th</sup> birthday, the sum transferred by the Provider was €52,625.02, thereby leaving a shortfall of €4,770.52 of the total fund value.

The Complainant submits that his intention to retire on 7 September 2018, at the age of 65 years, was communicated to the Provider, and was in accordance with Condition 13 of the policy.

The Complainant submits that he is undergoing chemotherapy and radiotherapy for prostatic cancer; his medical practitioner has confirmed this diagnosis and the treatment for same in writing as well as confirming that the Complainant is unfit to return to work due to his illness.

The Complainant also submits that while the Provider had supplied him with an annual policy statement, it failed to make direct contact with him on an on-going basis to discuss the policy.

The complaint is that the Provider failed to transfer the full value of the Complainant's personal pension policy, which at the time of the funds transfer was valued at €57,395.54, and that it did not provide any adequate correspondence to the Complainant during the lifetime of the policy. The Complainant wants to Provider to honour the full value of the pension fund by transferring the remaining fund value of €4,770.52.

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

The Provider submits that the transfer fund value of €52,625.02 is correct as per the policy terms and conditions with specific reference to Condition 9 of the policy.

The Provider says that the policy documents issued to the Complainant by letter dated 25 November 1993 confirming that if the Complainant retired before age 70 (which was defined as the "Conversion Date") the value of the capital units allocated to the policy at that time would be their then value, multiplied by a factor. Details of the factor and how it would be calculated in the event of retirement before age 70, were also set out in the policy conditions. The Provider says that a reminder was contained in the Annual Benefit Statements issued to the Complainant each year, including in the Statement that was issued to him on 26 September 2018, just prior to the policy being surrendered.

The Provider points out that when the Complainant applied to take out the policy in November 1993, he was asked to indicate the age at which he expected to retire (referred to in the Policy Conditions as the "Specified Pension Date") as Revenue rules permit personal pension policyholders to retire earlier or later than age 70. The Complainant selected a Specified Pension Date of his 65<sup>th</sup> birthday at that time. The Provider considers it important to point out that the Specified Pension Date is not a fixed date and can be changed at any time, subject to Revenue rules. No matter what Specified Pension Date the Complainant selected however, the full value of the capital units held in the policy would not become available to him unless he retained the policy to age 70. This was made clear in the documents furnished to the Complainant.

### **The Complaint for Adjudication**

The complaint is that the Provider, in late 2008, failed to honour the full value of the Complainant's pension fund, wrongfully retaining a sum of €4,770.52.

### **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

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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 3 October 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, within the period permitted, the final determination of this office is set out below.

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 Preliminary 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 do 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 are sufficient to enable a Decision to be made in this complaint without the necessity for holding an Oral Hearing.

It is useful to set out the terms of the policy agreement between the parties.

### **Policy Terms and Conditions**

Section 1 of the Policy includes the following conditions:

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**1. GENERAL DEFINITIONS**

**SPECIFIED PENSION DATE**

*The Annuitant's 70<sup>th</sup> birthday or such other date selected by the Annuitant in accordance with Condition 13.*

**CONVERSION DATE**

*The Annuitant's 70<sup>th</sup> birthday*

**9. CONVERSION OF CAPITAL UNITS**

**9.1**

*On the Conversion Date the Capital Units in each Specified Fund allocated to the Policy shall be converted to Accumulation Units of the same Fund on the basis of the respective Bid Price values of Units on the Relevant Valuation Date.*

**9.2**

*If Specified Pension Date is earlier than the Conversion Date at the value of Capital Units allocated to the Policy shall be their value at Bid Price on the Relevant Valuation Date multiplied by the appropriate factor in the following table.*

<i>Number of unexpired years from Specified Pension Date to Conversion Date</i>	<i>Factor</i>
<i>1</i>	<i>.940</i>
<i>2</i>	<i>.884</i>
<i>3</i>	<i>.831</i>
<i>4</i>	<i>.781</i>
<i>5</i>	<i>.734</i>
<i>6</i>	<i>.690</i>
<i>7</i>	<i>.648</i>
<i>8</i>	<i>.610</i>
<i>9</i>	<i>.573</i>
<i>10</i>	<i>.539</i>

**13. PENSION DATE OPTIONS**

*The Annuitant may by Notice select a Specified Pension Date earlier than his 70<sup>th</sup> birthday not being earlier than his 60<sup>th</sup> birthday unless:*

- (i) *the Revenue Commissioners are satisfied that the Annuitant's occupation is one in which it is customary to retire before the age of 60 in which event the substitute Specified Pension Date shall not be earlier than the date approved by the Revenue Commissioners*  
*or*
- (ii) *the Annuitant provides Proof that he is permanently incapable through infirmity of mind or body of carrying on his own occupation or any occupational of a similar nature which is trained or fitted.*

*Notice in connection with this Condition shall be deemed to be received not earlier than two months before the date specified therein.*

### **Analysis**

The Complainant takes issue with the fact that the amount paid out to him upon surrender of his personal pension policy was less than the figure notified to him to represent the full value of the policy at the relevant time. The Complainant incepted the pension policy in 1993. At the point of inception, the Complainant specified his intended retirement age as '65'. Consequently, the Complainant's 'Specified Pension Date' was his 65<sup>th</sup> birthday.

The Complainant ultimately encashed the policy for €52,625.02 on 3 October 2018, a number of weeks after his 65<sup>th</sup> birthday. Prior to this, the Provider had written to the Complainant notifying him that the value of the policy as of 24 September 2018, would be €57,395.54. This 'Annual Statement' confirmed that the figure of €57,395.54 was comprised of the amount of €18,201.17 in respect of 'Capital Units' and €39,194.37 in respect of 'Accumulation Units'.

The Annual Statement also provided as follows:

*Please note, as set out in your policy conditions, the full nominal value of the capital units is not payable on retirement/transfer before 7 September 2023. The capital units amount available at this time is the nominal value discounted by 6% per annum for the future period until 7 September 2023.*

The Annual Statement went on to state the value of the policy "if you were to transfer at this time" was €52,625.02.

In essence, the Complainant's grievance relates to this reduction of the value of the Capital Units.

I am satisfied that the terms and conditions of the policy make clear that a policy that is encashed prior to the policyholder attaining the age of 70, will be subject to deductions. Condition 9.2 clearly refers to specific reductions of the full value of the Capital Units on the conversion date. In the Complainant's case, this reduction is noted to be calculable by multiplying the full figure by the 'Factor' of ".734", that 'Factor' being equivalent to the deduction applicable when conversion is sought 5 years prior to the policy holder attaining

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the age of 70. The foregoing means that the Complainant was entitled to 73.4% of the full value of the Capital Units only, in circumstances where he proposed to encash the policy 5 years before attaining the age 70.

Accordingly, I am satisfied that the Provider was entitled to apply the relevant deduction, and to offer and to pay to the Complainant 73.4% of the full value of the Capital Units component of the policy (together with 100% of the value of the Accumulated Units component of the policy) as of 24 September 2018. The Complainant maintains that the fact that he indicated to the Provider at inception that he intended to retire at 65, should in some way impact upon this. He notes that the Provider had *"25 years notice of the terms of the contract"*.

This argument does not however impact upon those precise terms of the contract which provide for a deduction if retirement occurs earlier than age 70. There was no derogation from this provision sought or provided. I might also note that the annual statements sent to the Complainant each year (I have been furnished with copy correspondence sent in 2016, 2017 and 2018) each recorded the reduced amount available, were a decision to be taken, to transfer as of the date of each statement.

Turning to the calculations actually employed in this case, the Annual Statement refers to a 6% per annum deduction rather than a reduction by reference to a *"Factor"* of *".734"*. A 6% per annum deduction over 5 years is broadly, though not precisely, equivalent to a reduction by reference to a *"Factor"* of *".734"*. A reduction of the figure of €18,201.17 by 6% per annum for 5 years results in the arithmetic which I have set out on the following page:

<b>Starting total</b>	<b>€18,201.17</b>
<b>Minus 6%</b>	-1,092.07
<b>Total after 1<sup>st</sup> Reduction</b>	17,109.1
<b>Minus 6%</b>	-1,026.55
<b>Total after 2<sup>nd</sup> Reduction</b>	16,082.55
<b>Minus 6%</b>	-964.95
<b>Total after 3<sup>rd</sup> Reduction</b>	15,117.6
<b>Minus 6%</b>	-907.06
<b>Total after 4<sup>th</sup> Reduction</b>	14,210.54
<b>Minus 6%</b>	-852.63
<b>Finishing Total</b>	<b>€13,357.91</b>

An application of the factor reduction of .734 on the other hand results in a finishing total of €13,359.66. Neither of these figures are the same as the figure calculated by the Provider, which proposed to pay (and did ultimately pay) the amount of €13,430.65 in respect of Capital Units. Whatever the explanation for this, I am satisfied that I do not need to explore this issue any further in circumstances where the amount paid out to the Complainant was greater than the amount to which he appears to have been strictly entitled, pursuant to the terms and conditions of the policy. In light of all of the foregoing, this aspect of the Complainant's complaint is not upheld.

The Complainant also makes reference to an illness he is currently suffering. This is very regrettable, but I am not satisfied that this development requires the Provider to alter its position. The Complainant did not notify the Provider of his illness until after he had encashed the policy and, in any event, given the Complainant's age (ie over 60) it seems that

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no particular benefit over and above those already available to him would have been available to the Complainant, had earlier notification in fact been given.

The last matter relates to the Complainant's complaint that he was "*never contacted in any way*" by the Provider other than the policy statement sent each year. I am not satisfied however that the foregoing amounts to any breach of any legislation or code to which the Provider is or was subject. In addition, on receipt of the Policy Statement each year, it was open to the Complainant to make contact with the Provider if he had any questions or concerns about the manner in which the policy would operate.

In light of the entirety of the foregoing, and in the absence of evidence of wrongdoing by the Provider or conduct within the terms of **Section 60(2)** of the **Financial Services and Pensions Ombudsman Act 2017** that could ground a finding in favour of the Complainant, I am not in a position to uphold this complaint.

### **Conclusion**

My Decision is that this complaint is rejected, pursuant to **Section 60(1)** 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.**

**MARYROSE MCGOVERN**  
**DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES**

30 October 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.**