An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0242
Sector:	Insurance
Product / Service:	Whole-of-Life
Conduct(s) complained of:	Maladministration
Outcome:	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The First Complainant incepted a Retirement Account for Personal Pensions (Self-Employed) with the Provider on 1 April 1990, through his independent financial intermediary. This policy is hereinafter referred to as the Pension Plan.

The First Complainant incepted a Disability Insurance Policy on 1 March 1991, also through his independent financial intermediary, which at that time provided him with disability benefit cover of IR £10,400 (€13,205.27) per annum. This policy is hereinafter referred to as the Disability Benefit policy, the premium for which was collected from the Pension Plan fund at regular intervals.

The Second Complainant is the First Complainant's wife.

The Complainants' Case

The First Complainant wrote to the Provider on 5 May 1999, as follows:

> *"I refer to* [the Disability Benefit policy] *of* [the First Complainant]*, please be advised that I wish to cancel this policy with immediate effect"*.

In his letter to this Office dated 27 November 2019, the First Complainant submits, among other things, as follows:

> *"I wrote to* [the Provider] *instructing them to cancel* [the Disability Benefit policy] *in 1999.*

> *However,* [the Provider] *continued to deduct the disability premia from my pension fund in the intervening years, and to send me periodic statements outlining the disability benefits; knowing that I had cancelled the policy, I did not read past the pension value on these statements although* [the Second Complainant] *recollects seeing a disability cover statement over the years.*
>
> *In 2008, I discovered that I had arteriosclerosis and had several stents inserted; the condition has progressed and in 2017 I had open heart surgery. My health has deteriorated, other health issues have arisen, and I have not been able to work at my…occupation – a [financial service provider], for some time. I have tried to find more appropriate work to fit my current health condition but have achieved only negligible earnings.*
>
> *When I turned 60* [on 10 April 2019]*, I assessed my pension investments and found that the disability cover was still in place".*

As the Disability Benefit policy remained active in April 2019, despite his instruction to the Provider in May 1999 to cancel it, the First Complainant sought to make a disability benefit claim, however the Provider *"refused to allow that claim or to provide a claim form…* [due to] *my delay in claiming on the policy".*

In this regard, the Provider wrote to the First Complainant on 30 April 2019 to inform him that it was not in a position to consider his disability benefit claim due to an unacceptable delay of over two years in his notifying it of a potential claim, which it advised hampered the Provider's ability to manage the claim appropriately, had it been admitted, by way of assisting with rehabilitating him back into the workforce.

In his letter dated 27 November 2019, the First Complainant submits, among other things, as follows:

> *"I was unaware of* [the Disability Benefit policy] *continuing to exist, given that I instructed* [the Provider] *to cancel it. Therefore I would have no reason to be giving notice* [of a claim] *on the policy to* [the Provider] *…*
>
> *Nowhere would I interpret the policy as* [the Provider] *having a part in my rehab back to work.*
>
> *Notwithstanding* [this]*, had I known the policy continued in place, I may well have benefitted from whatever rehab support* [the Provider] *would have provided…and have avoided the diminishing income over the years of my developing illness*.
>
> [The Provider] *have offered to return the* [Disability Benefit policy] *premia to my* [Pension Plan]*. I am not competent to check the calculations they provide, I have no knowledge of the penalties that may apply or what may be deemed to be a fair solution.*

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> [The Provider's] *assumption that I would have retained the funds within* [the Provider] *is not sound – I may well have transferred the funds to an alternative investment had I known they existed …*
>
> *This situation has caused a lot of stress to me and my family, particularly* [the Second Complainant] *…*
>
> *Given my current health status, I would prefer to receive accessible funds that would allow me to meet my immediate needs than a long term investment amount that is unlikely to be of benefit to me personally"*.

The Complainants seek for the Provider to admit the First Complainant's claim for disability benefit.

The Complainants' complaint is that the Provider wrongly or unfairly refused in April 2019 to admit the First Complainant's claim for disability benefit under his Disability Benefit policy that remained in force at that time.

The Provider's Case

Provider records indicate that the First Complainant incepted a Pension Plan with the Provider on 1 April 1990, through his independent financial intermediary. The Provider later received an application from this intermediary to add disability benefit to the First Complainant's Pension Plan. This application was accepted at special terms and the First Complainant's Disability Benefit policy took effect from 1 March 1991, providing at that time disability benefit cover in the amount of €13,205.27 (IR £10,400) per annum, indexing each year. The maximum disability benefit payable for a valid claim would be the lesser of the amount of disability benefit cover or 75 % of the First Complainant's income. The First Complainant's Disability Benefit premium was collected from his Pension Plan fund at regular intervals.

The Provider received a written instruction from the First Complainant dated 5 May 1999 to stop making contributions to his Pension Plan and to cancel the Disability Benefit policy, as follows:

> *"I refer to* [the Disability Benefit policy] *of* [the First Complainant]*, please be advised that I wish to cancel this policy with immediate effect.*
>
> *I refer to* [the Pension Plan] *of* [the First Complainant]*, please be advised that I am no longer eligible to contribute to this policy, being an employee of* [the Provider]*"*.

At this time, the Provider made the First Complainant's Pension Plan 'paid up' as requested, meaning that he was no longer making any contributions to it, though the units held continued to remain invested in his chosen investment fund with their value rising and falling as normal, in line with the assets in which they were invested.

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In this regard, the Provider wrote to the First Complainant on 18 May 1999 to advise, as follows:

> *"Further to recent instructions received, I wish to advise that the* [Pension Plan] *policy has been altered as follows.*
>
> *This policy is now a Paid Up Policy with no further premiums payable in accordance of the policy document.*
>
> *This alteration is effective from 01/06/1999"*.

The Provider notes that the First Complainant's instruction to cancel his Disability Benefit policy coincided with him becoming an employee of the Provider. During the time that he was an employee of the Provider from 1998 to 2004, the First Complainant was automatically covered for income protection (the equivalent to disability benefit), which the Provider presumes is the reason why he instructed it to cancel his own Disability Benefit policy. However, as a result of an administrative oversight, the Provider continued to charge the First Complainant's Pension Plan for the cost of providing his Disability Benefit policy by way of unit deduction from his pension fund value each month, despite his instruction on file for this to be cancelled.

Before it identified this error, the Provider wrote to the First Complainant on 24 February 2004 to highlight that the cost for his Disability Benefit policy was still being deducted from his pension fund and it offered him the option to have this removed. The Provider did not receive a response to this inquiry. This letter also advised that the Disability Benefit policy was based on the First Complainant's occupation at the time the policy had been incepted and that any change in occupation since could affect the cover. In this regard, when the First Complainant added the Disability Benefit policy to his Pension Plan in 1991, his occupation was Shopkeeper (Self-Employed).

In addition, from February 2007 onwards, the Provider sent Annual Benefit Statements to the First Complainant in respect of his Pension Plan, each of which detailed under the benefit section that charges in respect of his Disability Benefit policy continued to be deducted from his pension fund. In this regard, notwithstanding its error in not cancelling his Disability Benefit policy in May 1999 when he instructed it to do it, the Provider submits that the First Complainant was notified of its continued existence on an ongoing basis since 2004.

The First Complainant in conjunction with his independent financial intermediary contacted the Provider on 1 April 2019 to advise that the First Complainant had been unable to work as a result of a triple bypass that he underwent a number of years earlier and for which he now wanted to submit a retrospective claim under his Disability Benefit policy. At this time, the Provider had not yet identified that it had an instruction on file from the First Complainant requesting to cancel this policy in May 1999.

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The Provider wrote to the First Complainant on 30 April 2019 to advise that as there was over a two year delay in him notifying it of a potential claim, the Provider had been denied the opportunity to assess the claim before the expiry of the 13 week deferred period and to manage the claim appropriately, had a claim been admitted and for this reason, it was not in a position to consider the claim, in accordance with the policy terms and conditions.

It was after this time that the Provider identified that the First Complainant had in fact written to it in May 1999 instructing it to cancel his Disability Benefit policy. As a result, the Provider put the First Complainant's Pension Plan back into the exact same position it would have been in had his Disability Benefit policy been cancelled as and when it was originally instructed to do so. The Provider did this by reworking the units in the First Complainant's Pension Plan fund by reinvesting back into this fund all charges that had been deducted from it in respect of the Disability Benefit policy, resulting in an uplift of €17,220.89 in the pension fund value to €34,105.83. In so doing, the Provider ensured that the First Complainant had not been financially disadvantaged in any way by its administrative oversight.

Whilst his request to make a disability benefit claim in April 2019 was not accepted due to the delay in claim notification, in accordance with the policy terms and conditions, it transpired shortly thereafter that there ought to have been no Disability Benefit policy to claim under as the Provider had an instruction on file from the First Complainant dated May 1999 requesting that this policy be cancelled.

The Provider states that it is sorry to hear that the First Complainant's health has deteriorated and it notes that in his complaint letter dated 27 November 2019 he advised, among other things, *"I would prefer to receive accessible funds that would allow me to meet my immediate needs than a long term investment amount that is unlikely to be of benefit to me personally"*. As he turned age 60 on 10 April 2019, the First Complainant was able to access funds from his Pension Plan from that date. In this regard, Provider records indicate that the First Complainant has since drawn down his Pension Plan benefits on 13 March 2020, that is, a tax free lump sum of €7,896.22 and a taxable lump sum of €23,688.64. The Provider notes that the uplift in value of €17,220.89 which came about when it corrected its May 1999 administrative oversight was included in the fund value when these benefits were paid out to the First Complainant.

As the charge for the Disability Benefit policy had been deducted from the First Complainant's pension fund from June 1999 onwards, the Provider is satisfied that it correctly reinvested these premia deductions back into his fund in order to ensure that his Pension Plan was put back into the exact same position that it would have been in had the administrative oversight not occurred. As the First Complainant's plan was a pension product, the Provider states that it was not possible to return the Disability Benefit policy premia erroneously collected from it in any other way, as there are strict rules which govern when and how funds can be drawn from personal pension plans.

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The Provider states that it is sorry that the First Complainant's instruction to cancel his Disability Benefit policy was not completed when it was received in May 1999 and for the inconveniences that this caused. By way of an apology for its administrative oversight, the Provider offers the First Complainant a customer service award in the amount of €2,000.

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 Complainants were 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 22 June 2020, outlining my preliminary determination 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, I set out below my final determination.

The complaint at hand is that the Provider wrongly or unfairly refused in April 2019 to admit the First Complainant's claim for disability benefit under his Disability Benefit policy that remained in force at that time.

In this regard, the First Complainant incepted a Disability Benefit policy with the Provider on 1 March 1991.

The First Complainant submits that *"in 2017 I had open heart surgery. My health has deteriorated, other health issues have arisen, and I have not been able to work"*. As a result, the First Complainant contacted the Provider in April 2019 to make a disability benefit claim.

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I note that the Provider declined to issue the First Complainant a claim form due to the length of time that had elapsed and it wrote to the First Complainant on 30 April 2019, as follows:

> *"I note that you have been absent from work for over 2 years. The deferred period on your policy is 13 weeks.*
>
> *As stated on the policy document, "Written notice shall be given to the Company at least one calendar month prior to the date on which any benefit shall become payable…*
>
> *Failing or refusing compliance with these requirements to the satisfaction of the Company and within such time as the Company shall deem reasonable no Benefit shall be paid or all Benefits shall cease to be payable hereunder in respect of the Proposer".*
>
> *This delay has meant that the opportunity to assess the claim before the expiry of the deferred period and to manage it appropriately (had it been admitted) has been denied to us. We are being presented with a situation in which you have been out of work for over 2 years. We have evidence which confirms that the probability of a claimant returning to work is greatly reduced after being absent for such a lengthy period and we therefore cannot accept that we should be expected to pay a long term claim in this situation. On the other hand, when we are provided with the opportunity to engage with a claimant from the appropriate stage of the claim, our experience demonstrates we have an excellent opportunity of rehabilitating that individual back into the workforce"*.

The First Complainant submits in his letter to this Office dated 27 November 2019 that, *"Nowhere would I interpret the* [Disability Benefit] *policy as* [the Provider] *having a part in my rehab back to work"*. However, I accept that it is not unreasonable that a disability benefit / income protection claim is subject to regular review to ensure that the claimant continues to meet the policy criteria for a valid claim, and it is when it is carrying out these reviews that the Insurer can assist with identifying and providing appropriate supports in rehabilitating claimants back into the workforce. This is in fact something to be welcomed.

I also accept that it is not unreasonable that a disability benefit / income protection insurance contract would include a policy condition that places a time limit on claim notification. Such clauses help to ensure that the insurer is not prejudiced by any delay in claim notification and is best positioned to assess and make a claim decision proximate to the time that the incident giving rise to the potential claim occurred.

In this regard, in his letter to this Office dated 27 November 2019, the First Complainant submits, among other things, as follows:

> *"I was unaware of* [the Disability Benefit policy] *continuing to exist, given that I instructed* [the Provider] *to cancel it. Therefore I would have no reason to be giving notice* [of a claim] *on the policy to* [the Provider] *…*

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I note that the First Complainant wrote to the Provider on 5 May 1999, as follows:

> *"I refer to* [the Disability Benefit policy] *of* [the First Complainant]*, please be advised that I wish to cancel this policy with immediate effect.*
>
> *I refer to* [the Pension Plan] *of* [the First Complainant]*, please be advised that I am no longer eligible to contribute to this policy, being an employee of* [the Provider]*"*.

I note that the Provider acknowledges that due to an administrative oversight it failed to cancel the First Complainant's Disability Benefit policy at that time and that the policy premia continued to be deducted from his Pension Plan until 2019. As a result, notwithstanding his written instruction to the Provider in May 1999 to cancel it, the First Complainant's Disability Benefit policy remained in force until 2019.

Having written to the Provider on 5 May 1999 instructing it to cancel his Disability Benefit policy, I note that the First Complainant submits *"I was unaware of* [the policy] *continuing to exist"*. In reply to his written instructions, I note that the Provider wrote to the First Complainant on 18 May 1999, as follows:

> *"Further to recent instructions received, I wish to advise that the* [Pension Plan] *policy has been altered as follows.*
>
> *This policy is now a Paid Up Policy with no further premiums payable in accordance of the policy document.*
>
> *This alteration is effective from 01/06/1999"*.

I note that the Provider did not advise the First Complainant in this letter that it had cancelled his Disability Benefit policy as he had instructed it to do.

However, I can see how the Complainant would have been of the view that his instructions had been implemented and his policy cancelled as requested.

I also note from the documentary evidence before me that the Provider wrote to the First Complainant on 24 February 2004, as follows:

> *"We are writing to confirm the current position with your pension policy.*
>
> *Your policy was made "Paid-Up" with effect from 01/06/1999. This means that although there have been no further regular premiums paid into the policy since this date your policy remains active and the funds remain invested. Since that date you have had the following risk benefits attaching to your plan:*
>
> *Disability Benefit €16,691.98*

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The cost of these benefits have continued to be deducted from your unit balance on a monthly basis.

It is important for you to remember that the Disability Benefit under this policy is in relation to your occupation at the time you affected the policy. If your occupation has changed (and [the Provider] *had not been previously notified of this change) an assessment would be made at the time of any possible claim for Disability benefit of the validity of such a claim based on your circumstances at that time.*

If you wish for these benefits to now be removed from the policy please sign and return the attached declaration. If you have any queries regarding this pleased contact our Pensions Customer Services Area on [telephone number stated]*.*

If we do not hear from you within 14 days from the date of this letter we will assume that the benefits are to continue".

I also note that from February 2007 onwards, the Provider sent Annual Benefit Statements to the First Complainant for his Pension Plan, each of which detailed under the benefit section that charges in respect of his Disability Benefit policy continued to be deducted from his pension fund.

I note that the Provider did not advise the First Complainant in its correspondence of 18 May 1999 that it had cancelled his Disability Benefit policy as he had instructed in his letter of 5 May 1999 and instead, that the Provider informed the First Complainant in its correspondence dated 24 February 2004 and in its Annual Benefit Statements every February from 2007 onwards, of the continuation of this policy.

However, as I have stated above, I can understand how the Complainant would have thought from his communication that his instructions had been carried out.

Notwithstanding his instruction to the Provider to cancel his Disability Benefit policy in May 1999 and its subsequent failure to carry out this instruction, I note that the Provider sent the First Complainant regular notifications of the continued existence of his Disability Benefit policy over the years and the premia collected in relation to it.

I note the Provider acted in strict accordance with the policy terms and conditions when it declined to consider a disability benefit claim in April 2019 from the First Complainant dating back some two years due to the length of time that has elapsed. In this regard, Section 12, 'Claim Procedure' of the applicable Disability Benefit policy booklet provided, *inter alia*, as follows:

"Written notice shall be given to the Company at least one calendar month prior to the date on which any benefit shall become payable … Failing or refusing compliance with these requirements to the satisfaction of the Company and within such time as the Company shall deem reasonable no Benefit shall be paid or all Benefits shall cease to be payable hereunder in respect of the Proposer".

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However, I am mindful that the Provider made this determination unaware at that time that the Complainant had previously instructed it to cancel his Disability Benefit policy in May 1999.

Shortly after its refusal to consider his disability benefit claim, I note that the Provider was reviewing its file in respect of the First Complainant's Pension Plan in order to assess his retirement entitlements when it then transpired that there ought to have been no Disability Benefit policy in place to submit a claim under, as the Provider had in fact a written instruction on file from the First Complainant dated 5 May 1999 requesting that this policy be cancelled.

As a result, I note that the Provider then sought to put the First Complainant's Pension Plan back into the exact same position it would have been in had his Disability Benefit policy been cancelled as and when it had been originally instructed to do so, which I am of the opinion was an appropriate approach for it to take in this matter, given that this was what the Complainant had originally instructed it to do.

I note that the Provider did this by reworking the units in the First Complainant's Pension Plan fund by reinvesting back into this fund all charges that had been deducted from it in respect of the Disability Benefit policy, which resulted in an uplift of €17,220.89 in the pension fund value to €34,105.83. In so doing, the Provider states that it ensured that the First Complainant had not been financially disadvantaged by its administrative oversight.

I note that in his letter to this Office dated 27 November 2019, the First Complainant submits, among other things, as follows:

> *"*[The Provider] *have offered to return the* [Disability Benefit policy] *premia to my* [Pension Plan] *…* [The Provider's] *assumption that I would have retained the funds within* [the Provider] *is not sound – I may well have transferred the funds to an alternative investment had I known they existed"*.

I am mindful in this regard that the Disability Benefit charge was deducted from the First Complainant's Pension Plan fund at regular intervals over a period of twenty years.

In any event, I accept that as the Disability Benefit charges had been deducted from a pension product, it was not possible for it to return the premia erroneously collected from his pension fund to the First Complainant in any other way, as there are strict rules which govern when and how funds can be drawn from personal pension plans.

As a result, I accept that by reinvesting back into the First Complainant's Pension Plan fund all the Disability Benefit policy charges as and when they had been deducted from it, which resulted in an uplift of €17,220.89 in the pension fund value to €34,105.83, that the Provider ensured that the First Complainant had not been financially disadvantaged in any way by its administrative oversight.

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Nevertheless, administrative errors are unsatisfactory and can cause considerable confusion and frustration, as was the case in this matter. The First Complainant ought to be able to rely on the expertise and administration of the Provider with regard to it carrying out his instructions.

I note that the Provider states that it is sorry that the First Complainant's instruction to cancel his Disability Benefit policy was not completed when it was received in May 1999 and for the inconveniences that this has caused. In addition, I note that by way of an apology for its administrative oversight, the Provider has offered the First Complainant a customer service award in the amount of €2,000.

However, I do not believe this is sufficient in all the circumstances.

It is worrying that the Provider failed to carry out the wishes and instructions of the Complainant over a period of 20 years. What is particularly worrying is that it appears this issue only came to light when the Complainant made a claim when he became aware that the policy was still in force.

While I accept that the correct course of action was to implement the Complainant's original wishes and instructions rather than admit the claim, I believe the Provider's errors have caused considerable confusion and inconvenience for the Complainant. Therefore, I believe a larger sum of compensation is merited.

For this reason, I partially uphold this complaint and direct the Provider to pay the sum of €5,000 to the Complainants.

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) (c) and (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 make a compensatory payment to the Complainants in the sum of €5,000, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants 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.***

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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

15 July 2020

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.