An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2021-0022
Sector:	Investment
Product / Service:	Personal Pension Plan
Conduct(s) complained of:	Fees & charges applied
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to a pension policy.

The Complainant's Case

The Complainant took out a pension policy in 1985 with an entity which was acquired by the Provider, against which this complaint is made. The Complainant states that the policy "*catered for the fact that it could be paid up*" and asserts that he took out this type of policy because his employment was prone to change.

The Complainant submitted a copy of a letter from the Provider's predecessor dated 27 June 1991, which states that the policy was "*paid up*" as the Complainant had ceased paying premiums. He also submitted a certificate of benefits which stated that the policy was paid to 31 March 1991, and the value of the investment accounts was £12,193 as of 1 April 1991. The Complainant points out that in this letter, the Provider states that:

> "*There will be no reduction in pension benefits except in respect of the premiums which are unpaid*".

The Complainant asserts that he became aware of an issue with his pension in October 2018, when the Provider turned down his request to calculate his pension annuity at the "*10% rate*" which he asserts was outlined in schedule one of the policy document.

The Complainant submitted a copy of the document "First Schedule" which he asserts sets out that the policy:

- was issued in July 1985;
- had an optional Maturity Period from April 2015 to January 2025;
- a Final Maturity Date of January 2025, and
- listed a value for a Guaranteed Maturity Sum at Final Maturity Date of £194,164/ Guaranteed Annuity at Final Maturity Date of £19,416 based on an annual premium of £1,515 and that this was payable until the expiry of the Optional Maturity Period or retirement or earlier death of the Complainant.

The Complainant contends that the Provider has ignored Schedule one in its comments regarding his query and further that the Provider omitted to include Schedule one and a copy of the policy documents he requested from the Provider.

The complaint is that the Provider wrongfully refused to pay a 10% annuity based on the Complainant's pension and wrongfully failed to abide by a guarantee that was set out in his pension policy.

The Complainant wants the Provider to pay the rate that was outlined to him when he took out the policy.

The Provider's Case

The Provider in its final response letter dated October 2018 set out that in February 2018, due to human error, an incorrect policy document was sent to a third-party and this incorrect policy document was then forwarded in error to the Complainant.

The Provider goes on to state that the policy document which was sent in error to the Complainant in February 2018, indicated that there was a 10% annuity rate applicable, but that this policy document related to a different product type and not the product held by the Complainant. The Provider asserts that a 10% annuity rate was not applicable to the Complainant's product/policy at any time.

The Provider further asserts that a guarantee may apply to this product depending on certain conditions. The Provider sets out that the guarantee relates to a guarantees maturity value of a specific final maturity date, which it states was outlined in the original "*first schedule*", but as the Complainant had stopped paying premiums, this guarantee no longer applied "*as per the sixth schedule, paragraph six*".

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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 7 January 2021, 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.

There are two elements of the Complainant's complaint:

1. That the Provider wrongfully refused to pay a 10% annuity based on the Complainant's pension and;
2. That the Provider wrongfully failed to abide by a guarantee that was set out in the Complainant's pension policy.

<u>The 10% annuity</u>

The Complainant in his complaint form states that the 10% was outlined in schedule one of the policy document. The Provider on the other hand states that a 10% annuity rate was not applicable to the Complainant's product/policy at any time. Provider believes that the Complainant was understandably confused because the Provider, through its own inadvertence, issued a policy document for a different product to the Complainant or his representative in October 2018.

The policy document in its entirety has been furnished to this office and a full and detailed review of this document has been carried out. The Complainant's assertion that a 10% annuity was outlined in schedule one of the policy document is not correct. There is in fact no reference in the Autometric Pension Policy to a 10% annuity. A copy of an "*OldCapp*" policy has also been furnished and that does expressly set out, amongst other things, that "the Company's annuity rate at the Final Maturity Date shall be not less than 10%". But the *OldCapp* policy is not the Complainant's policy and I accept that the confusion in this regard emanated entirely from the Provider's error in sending the policy documents for a different product to the Complainant's representative. However, in circumstances where a 10% annuity is not provided for in the Complainant's policy, I do not propose to uphold the complaint that the Provider wrongfully refused to pay a 10% annuity based on the Complainant's pension.

<u>The Guarantee</u>

This office has been furnished with a copy letter from the Complainant dated 27 April 1991. The letter states:

> *"I now want to stop payment [policy number redacted] as I am now employed [employer redacted].*
>
> *Yours sincerely*
>
> *[Complainant]"*

In a subsequent letter sent by the Complainant to the Provider's predecessor, and stamped as received by the Provider's predecessor on 24 June 1991, the Complainant wrote:

> *"Dear Sir/Madam,*
>
> *Policy number [policy number redacted] is to be stopped immediately. I have requested a refund of the last payment and I would appreciate this as soon as possible as my bank manager is very unhappy.*
>
> *Yours sincerely,*
>
> *[Complainant]"*

On 27 June 1991, the Provider's predecessor wrote to the Complainant and stated:

> *"Dear [Complainant],*
>
> *We have pleasure in enclosing a Certificate of Benefits now that the above policy has been paid up. [See schedule 6 paragraph 6 of your policy documents].*

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It is regrettable that it has not been possible for you to continue paying the premium under your policy. However under the special and unique terms of your Autometric Pension Policy the pension premium may be recommenced at anytime in the future. We will reactivate your policy without charge and there will be no reduction in pension benefits except in respect of the premiums which are unpaid.

Please consult your broker for details of this unique feature of your [Provider's predecessor] Autometric Pension Policy.

Note:

1) *The value of the investment accounts is shown as at 1/4/1991.*

2) *The paid up policy will continue to receive dividends.*

3) *In the event of death prior to retirement a benefit equal to the investment accounts at the date of death is payable, plus interim dividend.*

4) *Any other associated policies have lapsed, without benefit.*

All benefits are subject to the provisions of the policy document.

Yours sincerely etc."

The certificate of benefits that was enclosed with the above letter stated, as follows:

"CERTIFICATE OF BENEFITS

Paid up policy

(Schedule 6-paragraph 6)

Life Insured: [Complainant]

Policy number: [policy number redacted]

Paid To: 31/03/1991

Value of Investment Accounts at 1/04/91 is £12,193.97

Death Benefit: Value of Investment Accounts at date of death, plus interim dividend.

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> *Your investment accounts will continue to grow by the addition of dividends.*
>
> *All benefits payable are subject to the privileges and conditions of your policy.*
>
> *Yours sincerely etc."*

The Provider accepts that as per the first schedule of the policy, the guarantees at final maturity date are a guaranteed to maturity value totalling £194,164 and a guaranteed annuity value of £19,416.

However, it is the Provider's position that the guarantees do not apply to the Complainant in circumstances where the guarantee only applies on the basis that the premiums were paid up to the optional or final maturity date.

It is the Provider's position that the terms and conditions provide that when the policy is paid up, as it was in the Complainant's case, then the guarantees that apply to the policy at inception ceased.

Paragraph one of the Third Schedule of the policy provides as follows:

> ***"Final Maturity Annuity***
>
> *If the Life Insured survives to the Final Maturity Date and has not elected under the fifth schedule to take an Early Maturity Annuity he shall be entitled to a "Final Maturity Annuity".*
>
> *The amount of the Final Maturity Annuity will be determined by applying The Investment Accounts on the Final Maturity Date (including any interim dividends added thereto) at the Company's then current annuity rate for the then current age of the Life Insured to provide the said annuity.*
>
> *Provided that the Investment Accounts so applied shall never be less than The Guaranteed Maturity Sum on the Final Maturity Date, and the amount of the Final Maturity Annuity shall never be less than the Guaranteed Annuity set out in the first schedule.*
>
> *The Final Maturity Annuity shall be payable yearly on each anniversary of the Final Maturity Dates commencing with the payment on the first such anniversary and with subsequent payments continuing until a total of ten payments have been made and thereafter for as long as the life insured is alive."*

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The Fifth Schedule of the policy provides, amongst other things:

> *"**Early Maturity Annuity***
>
> *The Life Insured may elect to stop paying premiums and take an "Early Maturity Annuity" commencing from "Early Maturity Date" not earlier than the attainment of age sixty and not later than the Final Maturity Date.*
>
> *The amount of the Early Maturity Annuity will be determined by applying the Investment Accounts on the Early Maturity Date at the company's then-current annuity rate for the then current age of the Life insured to provide the said annuity."*

Paragraph six of the Sixth Schedule provides as follows:

> *"If a renewal premium due under this policy or under the Additional Policy is not paid within the days of grace specified under paragraph 3 of this schedule, then this policy will be converted into a fully paid up policy.*
>
> *No further Accountable Premiums will be credited to the Investment Accounts after such conversion but dividends will continue to be credited in accordance with the second schedule.*
>
> *Notwithstanding anything to the contrary contained in the first five schedules the amount payable to provide benefits under the said schedules on the Final Maturity Date or on Early Maturity Date shall after a conversion under this paragraph be limited to the Investment Accounts".*

The Complainant ceased paying premiums into the policy in 1991. Accordingly, under the Fifth Schedule of the policy he elected to stop paying premiums and took an "Early Maturity Annuity". The Early Maturity Annuity was to be determined under the policy by applying the Investment Accounts on the date of the Early Maturity at the company's then-current annuity rate for the then current age of the Complainant to provide the said annuity.

Under the Sixth Schedule the policy is converted into a fully paid up policy which means that no more premiums are credited to the Investment Accounts and the First Schedule of the policy also shows that the Guaranteed Annuity Sum was calculated at the "Final Maturity Date" which was expressly stated to be 26 January 2025. The Complainant, having stopped paying premiums in 1991 and taking the Early Maturity Date and not the Final Maturity Date, is not eligible or entitled to the "Guaranteed Annuity Sum at Final Maturity Date" within the meaning of the policy.

In light of all of the foregoing circumstances, I do not uphold this complaint.

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<u>Conclusion</u>

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

2 February 2021

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.