Decision Ref:	2021-0050
Sector:	Investment
Product / Service:	Pension Transfers
Conduct(s) complained of:	Failure to process instructions in a timely manner Dissatisfaction with customer service Value of policy at surrender less than expected or projected
Outcome:	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint arises from the transfer of ownership (an "*in specie*" transfer) of the Complainant's executive pension portfolio (EPP) from the Provider to a Personal Retirement Bond (PRB) supplied by a third party provider.

The Complainant's Case

The Complainant submits that on **23 November 2018** she notified the Provider of her intent to transfer her executive pension portfolio to a third party provider.

The third party provider contacted the Provider by email on **28 November 2018** regarding the facilitation of the transfer of the Complainant's pension. The Provider advised that it required a transfer instruction signed by the Complainant, along with other forms attached for completion, before it could begin the transfer.

It appears that the transfer was not completed until **20 February 2019**, just under three months later.

The Complainant believes that this three month delay in effecting the transfer in accordance with her instructions was excessive, due to failures on the part of the Provider.

The Complainant points to a number of specific matters.

In this regard. she says that:

a) the Provider did not correspond with her during the process;
b) the Provider wrongly sought to apply a wind up fee;
c) the Provider failed to provide the requisite notice period to a third party bank ("the Bank") resulting in an unnecessary penalty charge being applied which the Provider wrongly sought to pass on to the Complainant;
d) the Provider did not progress the matter over the Christmas period;
e) the Provider had insufficient procedures in place to ensure continuity of service when staff were ill;
f) the Provider sought documentation to effect the transfer, that was not in fact necessary.

The Complainant submits that, due to the delay in effecting this transfer, she has suffered a financial loss, as a result of having to *"remain uninvested*' in the period between November 2018 and February 2019. The Complainant would like to be compensated for this loss. By reference to the growth in value in one portfolio that she wished to invest in (4.43% from 1 January 2019 to 21 February 2019) the Complainant believes that she should recover an appropriate level of compensation in the sum of €4,430.

<u>The Provider's Case</u>

The Provider submits that industry practice requires it to correspond directly with the new third party provider, rather than directly with the customer, when carrying out a transfer of this nature.

The Provider confirms that it waived the €2,000 wind up fee.

The Provider accepts that it did not provide sufficient notice to the bank, to avoid a withdrawal fee, and it agreed to pay it on the Complainant's behalf.

The Provider submits that its response times were efficient throughout December 2018. It notes that in December 2018 one of its staff members (a full time administrator) went on sick leave, and another staff member (a team leader) went on sick leave from 17 January 2019 to 4 February 2019. It submits that these unforeseen absences left it short staffed and unfortunately this led to some delays. The Provider states that it subsequently hired additional staff to cover for these absences.

The Provider accepts that on 29 January 2019 it sent an additional "transfer instruction form" that was not required. It states that this occurred because the remaining staff member who was dealing with the transfer, was not aware that such a form was already on file.

The Provider states that it has always been its procedure to send a signed transfer instruction to the third party bank and that it cannot be held responsible, if a bank alters its requirements in that regard.

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In its Final Response Letter the Provider said that it was unable to investigate the Complainant's claim of financial loss, due to lack of detail. Subsequently, the Provider considered documentation submitted by the Complainant but it does not accept that sufficient evidence has been provided by her, to substantiate her claim.

In addition to waiving / covering certain fees as set out above, the Provider has offered compensation to the Complainant in the sum of €500.00, confirmed in its responses to this Office.

The Complaint for Adjudication

The complaint is that the Provider wrongfully caused the Complainant financial loss, by reason of the maladministration of an *in specie* transfer of her pension to a third party provider.

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 **1 February 2021**, 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 consideration of additional submissions from the parties, the final determination of this office is set out below.

The Complainant took out a pension product with the Provider late **2013**. The value of the Complainant's fund as of **30 September 2018,** was stated by the Provider to be €554,421.00.

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CHRONOLOGY OF EVENTS

On **28 November 2018**, the Provider was contacted by a third party provider advising it that the Complainant wished to transfer her executive pension portfolio held with the Provider to a Personal Retirement Bond (PRB) with the third party provider. This is the date upon which the transfer was put in motion. The email from the third party provider queried whether there would be any documentation required, other than a transfer instruction and a *"W&A"* [Willing and Able] letter from the third party provider. The third party provider advised that it was meeting the Complainant 2 days later on Friday **30 November 2018**.

It is noted that a transfer of this nature involves a number of parties – a customer, two pension providers (the old and the new), and in this case, two third party banks (one holding cash the other holding investment assets).

The Provider responded to that email 10 minutes after it was sent, stating that it would require a transfer instruction signed by the Complainant before "initiating the process". It advised that in general it would also require the forms that were attached to the email, but there could be more required, depending on what was *"in the valuation"*.

On **7 December 2018** (a Friday) the third party provider emailed the Provider confirming that the Complainant would be setting up a PRB with it. It is not clear why the third party provider sent this email to a different staff member, rather than to the person who had been emailed on 28 November 2018. There is no evidence before me to conclude that the Provider nominated the staff member as a point of contact. In any event, this email was forwarded to the correct point of contact in the Provider that same day. It appears there were some issues opening the attachments to the original email from the third party provider.

On **13 December 2018**, apparently having been able to access the previously emailed attachments, the Provider then emailed the third party provider advising that it required a number of documents and completed forms. The Provider also stated that it would be charging a "wind up fee" of €2,000 plus VAT, plus a pro rata fee, to the date the last asset was transferred. It appears that this email was also copied to the Complainant by the Provider.

On **14 December 2018** the third party provider emailed to query the pro rata fee, wondering roughly how much this would be, and noted *"no problem with the other requirements we can get a W&A over to you etc."*. Later that day, the Complainant followed up to specifically query the "wind up fee" seeking any correspondence referring to it and evidence that she had agreed to such a fee at inception.

On **17 December 2018,** three days later, the Complainant followed up by email reiterating that she could find no mention of wind up fees or charges in the papers she had signed at inception, nor could she recall them ever being mentioned. She stated that she wished her email to be recorded as a *"formal complaint of excessive charges"*.

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On **18 December 2018** the Provider responded to confirm that no wind up fee would be charged. It noted that, although it held up to date identity documentation for the Complainant, it did not hold up to date proof of address, and required this, as well as *"the other requested documents in order to proceed with the transfer"*.

On **19 December 2018**, the Complainant emailed to note that *"this is now in order. I will leave it to [the third party provider] to complete the administration of the transfer"*. On the same date, the third party provider emailed the Provider asking *"are we ok to proceed with the Trustee sign off on this case now?"*

On **20 December 2018** the following day, the Provider responded to advise that, as per its email of 13 December 2018, it required *"the information/docs requested from you in order to proceed with the transfer"*.

The third party provider replied to this email half an hour later. The Willing and Able letter was to be issued by another staff member of the third party provider, certain items were marked *"N/A this is a Bond"*, and two items were marked *"Issued to customer"*.

A couple of hours later, at 11:49am on **20 December 2018**, the third party provider emailed the Provider with what appeared to have been the totality of the documentation and information sought by the Provider. It also sought confirmation from the Provider of *"the current value and schedule of assets (if in specie)"*, confirmation of whether there was a Pension Adjustment Order and it queried whether the pension had ever received an overseas transfer.

On **7 January 2018,** as this email of 20 December had not been responded to, the third party provider followed up.

On **10 January 2018** the Provider responded, stated that it was now *"ready to go with the transfer"*. It noted that cash is transferred last *"so please confirm when all assets have been transferred to [the third party provider] and I will transfer the funds in the [bank] acc."*. The Provider in this email also requested that the client sign *"the attached instruction".*

On **16 January 2019** the third party provider sought the final value from the Provider, explaining that the Complainant was due to meet with it that day. The Provider emailed a valuation that afternoon, and the third party provider immediately replied by asking *"would you have a timeline for when you expect this might be transferred?"* The Provider replied 2 minutes later stating that the third party provider *"can proceed with the transfer of assets and forward anything you need [the Provider] to sign to me and I will get them straight back. Please let me know when you have received all the assets and then I can arrange for the case to be transferred (this is transferred last)".*

The third party provider replied 20 minutes later to say *"Apologies I wasn't aware that this was an in-specie transfer until now. Could you provide the SEDOLS for the assets to transfer please?"* The third party provider also asked for confirmation of the other queries from 20 December 2018, regarding pension adjustment orders and overseas transfers.

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On **17 January 2019**, the following day, a phone call took place between the third party provider and the Provider. The third party provider emailed to confirm that the Provider would furnish the SEDOLs (Stock Exchange Daily Official List) and answer the outstanding queries. Later that day, the Provider answered the queries regarding any pension adjustment order and overseas transfer, and advised that it did not store the SEDOLs. The Provider asked the third party provider to liaise with *"the other Stockbroker"* to get them. The third party provider queried who was meant by *"the other Stockbroker"* and was given the name of a third party broker ("provider X").

The following day, **18 January 2019**, the third party provider emailed the Provider to advise that provider X would not release the requested information to it, and that the Provider would have to instruct it to do so.

On **22 January 2019** the third party provider contacted provider X to seek information from it. Provider X advised that it had not received instruction from *"our client"* to transfer, so it would not be facilitating the transfers sought at that time.

On **23 January 2019** provider X clarified that it had not received *"a signed instruction"* from the client or from the Provider. The third party provider asked the Provider to attend to this. The third party provider noted in another email the following day that this instruction had issued *'over a month ago*". It later followed up to confirm that the instruction issued on 20 December 2018. On **29 January 2019** the Provider sent an instruction form to the third party provider, requesting that the Complainant sign it. (It is now apparent that the Provider's staff member did not realise that a completed instruction form was already on file).

On **30 January 2019** it was confirmed that the instruction form already held by the Provider (and by the third party provider) was sufficient for provider X to proceed. Provider X raised queries at 4:07pm on 30 January 2019 which the Provider responded to the following morning, **31 January 2019** at 9.49 am.

On **1 February 2019**, a Friday, the third party provider emailed the Provider stating that provider X needed confirmation of the Complainant's account number. I note that 15 minutes later, the Provider confirmed it had sent this information.

On **4 February 2019**, a Monday, the Provider forwarded correspondence from provider X stating that the Complainant's bank account had a 30 day notice requirement for withdrawals, and accordingly was subject to a penalty charge of €15.84.

There then followed some debate about who should pay this €15.84 charge. The Provider noted that it would not have instructed the bank to transfer funds until the assets had been transferred because *"cash is transferred last"*, and that it had sent an instruction form to the third party provider on 16 January 2019 but *"got nothing back"*. The third party provider noted that the Provider could have pre-empted this problem and prevented it, and that the form that was sent on 16 January 2019, was not actually required.

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On **7 February 2019** the Provider confirmed it would not be covering the €15.84 charge. It stated to the third party provider that it had handled the transfer "as efficiently as required" and had already waived the wind up fee. The third party provider and the Complainant did not accept that the Provider had handled the transfer efficiently.

A complaint was made to this office on **8 February 2019** and the transfer itself was finalised on **20 February 2019**.

Analysis

Firstly, I have been furnished with a *"Scale of Fees"* document which purports to evidence that the Provider would have been entitled to charge a "wind up fee" of €2,000. However, I was not furnished with sufficient evidence that this scale (dated July 2013) was ever shown to or agreed by the Complainant – it is not listed as a received document on the checklist that the Complainant signed when incepting the product in October / November 2013.

In the event, I note that the Provider agreed to not pursue such a fee. Insofar as it is relevant to the remainder of this complaint, this issue took 4 days to resolve. I do not, however, accept that this 4 day period formed part of a culpable delay, occurring as it did during a period in which other documentation was outstanding. On the contrary, the fact that the Provider agreed to waive the fee quickly will, if anything, have expedited matters.

Secondly, although the Provider did not correspond directly with the Complainant to any great degree during the transfer (other than her being copied in on some emails) I am not satisfied that this was inappropriate in the circumstances – the clear tone of the correspondence between the third party provider and the Provider is that this is a matter that the Complainant wanted to be taken care of by them, without unduly bothering her. In fact, on occasion the third party provider indicated what seems to have been a reasonable reluctance to contact her on certain issues.

Thirdly, I take the view that the Provider from the outset, ought to have been aware (or it should have taken steps to have made itself aware) as to whether the bank account in question, required a 30 day notice period for withdrawals, in default of which a penalty fee would be applied. Insofar as it is relevant to this complaint, this issue took 3 days to resolve, however I accept the Provider's submission to the effect that this 3 day period had no impact on the overall timeframe, as provider X had not completed the transfer of assets at that time.

Fourthly, in my opinion the Provider ought to have known that a transfer instruction form was already held by it and so it did not need to have another one filled out by the Complainant and/or the third party provider, when it asked for one on 16 January 2019. Insofar as it is relevant to this complaint, this issue took roughly 2 weeks to resolve, although there were other matters ongoing at this time which also caused some delay.

Finally, I must consider whether or not, on a broad view, unreasonable delays occurred in effecting this transfer by reason of wrongful conduct on part of the Provider.

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A transfer of this nature involves a number of moving parts. I accept that a transfer of this nature can be implemented within a period of 3 or 4 weeks, or less, where there are no complicating circumstances. However, I also accept that sometimes transfers of this nature are not straightforward; they can involve multiple stakeholders, and different assets require different periods of time (and varying levels of paperwork) to transfer. A period to effect such a transfer can only be deemed "excessive" after consideration of the circumstances of the transfer in question.

In this complaint, the transfer was set in motion by email from the third party provider to the Provider on **28 November 2018**, and was finalised on 20 February 2019. I note that during the three months, there are certain periods during which progress stalled.

I am not satisfied that any culpable delay occurred on the part of the Provider between 28 November 2018 and 20 December 2018 (when the instruction form and various other documentation was received by it from the third party provider).

From 20 December 2018 to 10 January 2019, the ball was in the Provider's court, so to speak, and no progress was made. During that 3 week period, it is reasonable to excuse 1 week by reason of the Christmas holidays. That leaves a period of 2 weeks during which I am satisfied the Provider failed to provide an acceptable level of customer service.

Thereafter, in the period from 10 January 2019 onwards, the matter was complicated by the issues I have already set out above – namely the involvement of two other stakeholders, the error in relation to requiring another transfer form, the issue surrounding the penalty fee, and the issue surrounding the wind up fee. Of these issues, I am satisfied that only the request for another transfer instruction form, caused a material delay though this was limited.

In total, I am satisfied that the Provider's failures in customer service accounted for roughly 3 weeks of the total period it took for this transfer to be completed. The Provider has explained that during December and January it lost the services of two staff members, leaving it short staffed. I accept that this constitutes unforeseen and unavoidable circumstances which mitigate, but do not entirely excuse, the customer service failures that resulted.

Accordingly, on the basis of the evidence available, I consider it appropriate to partially uphold this complaint.

The Complainant has sought compensation based on the performance of a fund she wanted to invest in between 1 January 2019 and 12 February 2019, when her funds were, in her words, *"uninvested"*. I am not satisfied that, even in the absence of culpable delay on the part of the Provider, the Complainant's funds would have been fully transferred by 1 January 2019. In that regard, I note that the transfer instruction form had issued on 20 December 2018, and all assets remained to be transferred (with the co-operation of provider X) before yet another third party bank would have transferred the cash portion of the pension.

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Furthermore, I am not satisfied that the Provider was put on notice at any point that there was any specific investment (with any specific projected yield) that the Complainant was urgently seeking to place her pension funds into.

In my opinion, estimating a loss which has resulted from a delay in potentially investing in a fluctuating asset like stocks or a fund, presents a challenge, both factually (as to what was to be invested in, on what date, until when) and legally (particularly with regard to the concepts of certainty, foreseeability and remoteness).

It is also worth noting that, what I have found to be a culpable delay – 3 weeks – is arguably a relatively negligible period of time in the context of a long term investment product, such as a pension. In the circumstances, I do not believe it would be appropriate to assess compensation by reference to a somewhat speculative attempt at measuring the suggested financial loss occasioned to the Complainant ,by reason of the Provider's failures.

It does not appear to this Office that the Provider had a set procedure or protocol for carrying out a transfer of this nature, which might have avoided the delays encountered in this instance - the transfer appears to have been conducted on a somewhat ad hoc basis with back and forth emails, instead of simply having a set checklist / procedure in place. This state of affairs was then exacerbated by unforeseen staff absences.

I am not satisfied however that the Provider's most recent offer of €500.00 is commensurate with the nature of the wrongdoing, or the level of inconvenience visited upon the Complainant. I therefore consider it appropriate to direct that the Provider make an improved compensatory payment to the Complainant. I am mindful of the cheque for €100 which was issued to the Complainant by the Provider, when the final response letter was sent in February 2019. Accordingly, in order to conclude, I consider it appropriate to direct the Provider to make an additional compensatory payment to the Complainant in the sum of €900 (nine hundred euros) to bring the total overall compensation then paid to the Complainant to a figure of €1,000.

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(g).***

- Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider make a compensatory payment to the Complainant in the sum of €900, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant 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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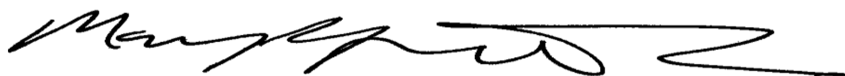
The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

1 March 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.