



<u>Decision Ref:</u>	2021-0105
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Pension Transfers
<u>Conduct(s) complained of:</u>	Mis-selling (pensions) Fees & charges applied Failure to process instructions in a timely manner
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant joined his employer's pension scheme in **2009** which is administered by the Provider. In **2018**, the Complainant applied to have his pension fund transferred to a pension provider in another EU country. The Provider has been unable to transfer the Complainant's pension fund.

The Complainant's Case

The Complainant explains that in **2009** he "*signed in for a pension plan*" with the Provider. The Complainant says he was told that he would be able to transfer money at any time to another EU Member State and "*that was the only reason why I bought that policy.*"

In **April 2018**, the Complainant says he wrote to the Provider requesting transfer forms. However, "*from day one of my request I met only problems*" in that the Provider said it did not receive the completed forms. The Complainant states that he sent the forms again and a few months later he received an email from the Provider informing him that certain documentation was required from the Revenue Commissioners. The Complainant explains that he found this to be very unprofessional "*as when you get any type of document from any self respecting institution you get ALL the forms along with an instruction or letter of ALL needed documents ...*"

The Complainant says he complied with the Provider's request and waited a number of weeks. After this, the Complainant says he received another email from the Provider stating that it may take up to 18 months to transfer his pension.

The Complainant says he also noticed significant reductions in the value of his pension fund, and on reviewing his annual statement, the Complainant noticed over €2,000 was deducted towards administrative fees.

The Complainant advises that he sent further requests to the Provider and there was no sign of the transfer being processed.

Recently, the Complainant explains that a new staff member within the Provider started communicating with him and requested he contact his pension provider in another EU country as the Provider needed additional information. Following this, the Complainant says he received an email from the same person advising him that the transfer would not happen.

The Complainant says it became clear that the Provider had no intention of transferring his pension funds and this *"is directly against promises made upon purchasing the financial product and was deliberately misrepresented by the seller."* The Complainant submits that the policy was mis-sold.

The Provider's Case

The Provider explains that the Complainant applied to take out a Personal Retirement Savings Account (**PRSA**) through his employer on **7 April 2009**. The Provider says it wrote to the Complainant on **10 July 2009** enclosing his policy schedule and conditions, a PRSA 1 certificate and a statement of reasonable projections. The Provider advises that transfer options are set out in section B, part 11 of the policy conditions and cites section 11.3.

The Provider says its records show the Complainant contacted it by email on **29 July 2016** to enquire about the documentation needed to transfer his pension fund to another provider based outside Ireland. The Provider says it responded on **5 August 2016** and stated the following documents would be required:

- A Benefit Crystallisation Event Certificate
- A Form of Discharge and Indemnity
- An Overseas Transfer Declaration

The Provider says it heard nothing further from the Complainant until **30 April 2018** at which time he emailed the Provider to request the documentation to transfer his pension fund to an overseas provider. The Provider notes the Complainant indicated that he had requested the forms previously, however, the Provider has no record of receiving such a request. The Provider says it responded to the Complainant the same day to request some additional information to facilitate the transfer.

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In particular, the Provider says it requested details of the receiving pension plan that the Complainant wanted to transfer his pension funds to, including details of the type of arrangement and the country of governance.

The Provider states that the Complainant responded on **7 May 2018** stating that he wanted to transfer the funds from his PRSA into a standard pension plan with a provider in the other EU country. The Provider advises that it issued a letter to the Complainant on **11 May 2018** to request completion of the following documents:

- A Benefit Crystallisation Event Certificate
- A Form of Discharge and Indemnity
- An Overseas Transfer Declaration
- A Revenue Overseas Transfer Declaration

In addition, the Provider states it asked that the Complainant provide a certificate of his tax credits and standard rate cut off.

The Provider says the Complainant contacted it on **15 July 2018** to inform the Provider that he had returned the completed paperwork but had not heard from the Provider. On **30 July 2018**, the Provider says it responded to the Complainant to inform him that the Provider had no record of receiving the completed documents and to ask the Complainant to confirm the date on which he returned the documents so that additional searches could be carried out internally. The Provider says the Complainant responded that day to request a further copy of the documents to be sent to him which were re-sent on **1 August 2018**.

The Provider says its records reflect that it received the completed Benefit Crystallisation Certificate, Form of Discharge and Indemnity and Revenue Overseas Transfer Declaration from the Complainant on **9 August 2018**. The Provider says it emailed the Complainant on **20 August 2018**, to confirm receipt of the documents and asked if he had organised the relevant tax certificate which was needed before the transfer could proceed.

The Provider says these were provided the same day but unfortunately the tax certificate provided was not suitable as the Provider required a tax certificate under its tax registration number. The Provider says it emailed the Complainant on **24 August 2018** to ask him to organise a revised tax certificate. On **9 September 2018**, the Provider says the Complainant emailed it to advise that he had requested the certificate from Revenue and that he would be raising a complaint if the transfer was not processed.

Having received the required forms, the Provider says it wrote to the provider in the other EU country on **10 September 2018** to confirm whether the proceeds from the Complainant's PRSA could be transferred to the pension policy held by them. The Provider advises that the following information was requested from the provider in the other EU country:

- Confirmation the pension arrangement which the Complainant held with them was operated or managed by an Institution for Occupational Retirement Provision within the meaning of the EU Pensions Directive

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- A copy of an appropriate approval certificate or a letter confirming the approval status of the policy held by the provider in the other EU country from the appropriate regulator
- Confirmation the pension arrangement held by the provider in the other EU country can accept a transfer payment from a PRSA which is a uniquely Irish pension arrangement
- Confirmation of the precise status of the administrator/provider of the receiving overseas pension arrangement and a confirmation of who they are regulated by in the other EU country.

The Provider also sets out the information requested in respect of the Complainant's specific provider pension in the other EU country.

The Provider says it wrote to the Complainant on **14 September 2018** to inform him that it had written to the other provider to request information from that provider. The Provider says it explained to the Complainant that arranging an overseas pension fund transfer can take some time and that it would endeavour to complete the transfer without undue delay.

On **16 September 2018**, the Provider says the Complainant raised a formal complaint in respect of the length of time it was taking to process the transfer request. The Provider points out that it can be seen from the above that it had only received the relevant forms to begin the transfer on **9 August 2018** and it was only once those forms were received that the Provider was in a position to begin liaising with the other provider to ensure it was possible for the transfer to take place.

On **12 October 2018**, the Provider says it issued a response to the complaint advising that overseas transfers can take some time to process due to the complex nature of pension schemes. The Provider says the letter assured the Complainant that it was necessary for the Provider to follow certain procedures in order to facilitate an overseas pension transfer to ensure the Provider was fully compliant with current pension legislation and Revenue rules.

As no response was received from the provider in the other EU country to the Provider's letter of **10 September 2018**, the Provider says a further letter was sent on **11 October 2018** requesting the information required to effect the transfer. The Provider says the Complainant emailed it on **18 November 2018** and the Provider responded on **20 November 2018** advising it had written to the other provider on two occasions but no response had been received. The Provider explains it also advised the Complainant that it issued a further letter to the other provider that day. The Provider says it reminded the Complainant that it would not be able to proceed with the transfer unless it received a response from the other provider. The Provider says it was recommended to the Complainant that he contact the provider from the other EU country directly with a view to expediting a response.

The Provider says it wrote to the provider from the other EU country on **10 September, 11 October** and **20 November 2018**, and on **7 January, 29 January** and **1 March 2019** with no response being received. The Provider advises that it does not know if the Complainant made contact with the other provider as recommended, with a view to eliciting a response.

On **4 May 2019**, the Provider states that the Complainant emailed it requesting an update on the transfer request. By way of response on **14 May 2019**, the Provider says it advised the Complainant that despite writing to the other provider on a number of occasions, it had not received a response. The Provider says it reminded the Complainant of the need for a response and provided him with copies of the correspondence issued to the other provider.

On **27 July 2019**, the Provider says the Complainant informed it by email that if the transfer was not completed within an 18 month timeframe, he would be initiating legal proceedings. The Provider says it responded on **1 August 2019** requesting his contact number so that a representative could speak with him in his native language to discuss the matter. The Provider states that the Complainant responded the same day refusing the request.

The Provider says it wrote to the Complainant on **2 August 2019** to explain that it would not be in a position to facilitate the transfer request until such time as they were in receipt of the requested information from the other provider. The Provider advises that it attempted to contact the other provider by phone in early **August 2019** but the other provider advised they could only discuss the matter with the Complainant directly. The Provider says the Complainant emailed it on **2 August 2019** to advise that he was raising a formal complaint.

The Provider says that as the other provider never engaged with it, it has not been in a position to facilitate the transfer request.

The Provider also refers to guidance issued by the Pensions Authority regarding overseas pension transfers and the information requested from the overseas provider to process a request. The Provider says there is no timeframe within which an overseas provider is required to comply with such a request for information.

The Complaint for Adjudication

The complaint is that the Provider mis-sold a Personal Retirement Savings Account to the Complainant.

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.

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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 15 March 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.

Following the issue of my Preliminary Decision, the Complainant made a submission under cover of his e-mail dated 16 March 2021, together with enclosures, a copy of which was transmitted to the Provider for its consideration.

The Provider has not made any further submission.

Having considered the Complainant's additional submission and all submissions and evidence furnished by both parties to this Office, I set out below my final determination.

Background

The Complainant signed a Provider 'Employee PRSA Application' on **7 April 2009**.

The Provider wrote to the Complainant on **10 July 2009**, enclosing a number of documents in respect of his PRSA. In particular, a copy of the 'Personal Retirement Savings Account Policy Conditions' was enclosed. I note that 'Transfer Options' are provided for at clause 11. In the context of this complaint, clause 11.3 states as follows:

"11.3 You may request us in writing and subject to the provisions of the Act to transfer your Fund Value to

- (a) another PRSA contract in your name approved by the Pensions Board and the Revenue Commissioners under section 94 of Part X of the Act*
- or*

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*(b) an occupational pension scheme/statutory pension scheme as defined by the Act of which you are a member
or*

(c) any pension arrangement which may be approved for the purpose of receiving a transfer by future amendments to the Act or Regulations made under the Act."

The Complainant wrote to the Provider on **29 July 2016** as follows:

"I would like to get information in relation to transferring my funds (sic) to another provider. The new provider would be outside of Ireland but within the EU."

In response to this request, the Provider advised the Complainant on **5 August 2016** that:

"I have provided a list of what you need to provide in order to enable this transfer. Please be advised that our Pensions Technical Department have the final say on whether or not a transfer is allowed to proceed.

In order to transfer your benefit out, we will require the following:

- *Benefits Crystallisation Event Certificate*
- *Form of Discharge and Indemnity*
- *Overseas Transfer Declaration"*

The Complainant replied to this email on **9 August 2016** stating:

"I am not really sure what are the documents you are asking for and where to get them. I will contact the private pension company ... and ask if they know what they are. Secondly you mention something it is up to some board at [the Provider] if the funds (sic) will be transferred or not??? that is not what i was told on the day i signed in. That fact was hidden or deliberately not said. I believe the person that got me on board ... was not totally honest and i proved it 8 years ago at the financial ombudsman (in relation to another product ... sold to me). ... Please let me know what and where should i ask for the documents required for the transfer."

The Provider explained to the Complainant on **10 August 2016** that:

"In relation to the documents that are necessary, I have attached them to the previous email. I tried to attach them again but I receive an email that your email won't accept it. Do you have an Irish email address?

Irish Pension Legislation regulates transfers in and out of Irish pension schemes. Usually transfers to the EU are permitted as long as the necessary documentation is received and the relevant procedures followed.

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I was simply informing you that not all transferred are permitted. We have to ensure that the receiving scheme receives Revenue approval. ...”

The Complainant suggests that he returned the relevant transfer documentation to the Provider following this email exchange. However, the Provider’s evidence states that it did not receive any documentation from the Complainant around this time. In this regard, I note that the Complainant has not provided details of the date he completed and returned transfer documentation and whether by email or post for example. There is also no evidence of the Complainant having followed up with the Provider regarding any transfer request made in **2016** in the weeks or months that followed.

The next communication between the parties regarding a transfer appears to have been an email from the Complainant on **29 April 2018** where the Complainant states:

“This is the last time i am writing to you and requesting forms to transfer my founds (sic) to the pension outside Ireland. If no forms nor reply is sent i will contact the financial ombudsman.”

The Provider responded on **30 April 2018** as follows:

“I apologise that you have not received a response to your query. I am the administrator of the [PRSA] and this is the first time I have been forwarded an email from you.

I would be grateful if you would provide some more details of the receiving pension plan that you would like to transfer your benefit to. For example, we would need details of the type of arrangement and country of governance as before we can transfer the benefit we would have to ensure that this arrangement complies with Irish Legislation.

Once I receive confirmation of the above I will then contact our Pensions Technical team who review and decide on all overseas transfer requests.”

On **7 May 2018**, the Complainant explained that:

“The pension i want to transfer my funds to is in [redacted] (EU country). It is a standard pension plan at the [other provider] from where i pay the contributions for past 15 years and i am sure it does comply with EU standards. As far as i remember i and every other non Irish member off staff at [the Complainant’s employer] was told we can transfer the funds to another European country. This is the only reason i sign up with the [Provider]. ...”

By letter dated **11 May 2018**, the Provider advised the Complainant of the documentation he would need to provide in order to begin the transfer process.

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In particular, the second page of this letter advised as follows:

“The Irish Revenue requires that all overseas transfers are of a ‘bona-fide’ nature. An overseas transfer to facilitate getting early access to your pension benefits or to circumvent existing pension tax legislation is not permitted by the Revenue.

...

When we receive the above documents from you, your Overseas Transfer Declaration will be sent to the Revenue Commissioners. Your request will be reviewed to ensure that the proposed transfer complies with the requirements of the Revenue Commissioners.

When we hear back from you we will write to [the] overseas provider and request certain information about your pension plan When we receive the required information from your new provider we will be in a position to consider the transfer request further.

Completing the transfer of a pension benefit from an Irish pension arrangement to an overseas pension arrangement does take time but I can assure you that at all stages [the Provider] will endeavour to process the transfer requirements without delay.”

The Complainant suggests that he returned the various forms but it appears they were not received by the Provider. In this respect, the Provider issued the above letter and various forms again on **1 August 2018**. It appears that the relevant documentation was received by the Provider during **August 2018**.

Following this, the Provider wrote to the other pension provider on **10 September 2018** explaining that it had received a request from the Complainant to transfer his pension from the PRSA to his overseas policy. In this respect, the Provider sought information regarding the administrator/provider of the overseas pension and information in respect of the Complainant’s overseas policy. Insofar as concerns the other provider, the Provider requested the following:

“...

- *Confirmation the pension arrangement is operated or managed by an Institution for Occupational Retirement Provision (IORP) within the meaning of the EU Pensions Directive.*
- *A copy of the appropriate approval certificate or letter confirming the approval status of the [Complainant’s overseas policy] from the appropriate regulator. We require this to be on the regulator’s headed paper.*

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- *Confirmation the pension arrangement can accept a transfer payment from an Irish Personal Retirement Savings Account (PRSA) which is a uniquely Irish pension plan.*
- *Confirmation of the precise status of the administrator/provider of the receiving overseas pension arrangement and confirmation who they are regulated by in [other EU country] and..."*

I note that essentially identical letters were sent to the other provider on **11 October** and **20 November 2018**, **7 January**, **29 January** and **1 March 2019**. There is no evidence of any response being received to these letters or any communication from the other provider.

I also note that between **August 2018** and the **August 2019** (when a complaint was received by this Office), there was regular communication between the Provider and the Complainant regarding the status of the transfer request.

In this regard, the Provider emailed the Complainant on **14 September 2018** advising that the Provider had written to the other provider requesting information and that transferring an Irish pension to an overseas pension arrangement was likely to be a lengthy process.

In response to a formal complaint, the Provider wrote to the Complainant on **12 October 2018** as follows:

"As per [the Provider's] standard procedure, we wrote to the overseas provider on 10th September 2018 requesting confirmation of receiving scheme details. To date we have not received a response to this request and have issued a reminder to the overseas provider on 11th October 2018.

In our experience overseas transfers can take up to 18 months to complete due to the complex nature of pension schemes. I can assure you that in this case we have followed our procedure at all times to ensure we are compliant with current pensions legislation. We sincerely apologise for the delays you have experienced to date and can confirm that there has been no deliberate delay in processing the claim as we must ensure all requirements are satisfied prior to processing the claim.

I understand your frustration with the length of time this transfer is taking and will ensure that upon receipt of further requirements, I will review the case as a matter of priority. The delays you have experienced fall well below our usual high standard. I can assure you that we have reviewed our procedures to ensure the process is as efficient as possible."

The Provider advised the Complainant by email dated **20 November 2018** that a response had not been received to its previous correspondence to the other provider and it was issuing a further letter that day.

On **14 May 2019**, the Provider advised the Complainant that it had not received a response to its correspondence. This email listed the dates on which it wrote to the other provider and attached copies of the various letters.

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This email also asked that the Complainant try to contact the other provider to ascertain why a response had not been received to the Provider's correspondence.

By email dated **2 August 2019**, the Provider advised the Complainant that it still had not received a response from the other provider and the transfer could not proceed until this information was received. The Provider advised that the 18 month transfer/waiting period was not necessarily applicable in circumstances where there was no engagement from the other provider. The email also advised the Complainant that he "*should actually be chasing*" the other provider.

Analysis

The basis for the Complainant's belief that the PRSA was mis-sold to him is that when applying for the PRSA in **April 2009**, he was told that he could transfer his pension funds to an overseas pension provider.

The Complainant suggests that he understood the transfer process would be a quick and simple. However, having considered the correspondence issued to the Complainant in **2016** and **2018**, it was reasonable to expect him to have been aware or understand that certain documentation and information was required from him and the other provider before the transfer request could proceed. This does not mean that the Provider was refusing to transfer the Complainant's pension funds or that the Complainant was prevented from doing so, it simply meant that a certain process was required to be followed in order to carry out the transfer.

Further to this, having considered the information and documentation sought by the Provider from the Complainant and the other provider, I accept that its requests of both were reasonable.

The evidence in this complaint shows that the Complainant was indeed entitled to transfer his pension funds to an overseas provider. The evidence also shows that the Provider endeavoured to facilitate the Complainant's transfer request, kept the Complainant updated and informed as to the transfer process, and advised him of the difficulties being encountered with the other provider.

However, fundamental to the transfer was the co-operation of the other provider. As can be seen, there was a clear lack of co-operation or engagement from the other provider. This is something which the Provider had no control over and cannot be held responsible for. Several letters were sent by the Provider to the other provider and telephone contact was also made. However, none of this proved fruitful and the other provider failed to respond to the Provider's requests for information. As a result of this, the Provider was unable to complete the transfer of the Complainant's funds. I do not accept that the Provider can be required to complete the transfer without the other provider first responding to its correspondence and supplying the requested information and documentation to a standard that would allow the Provider complete the transfer.

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It also appears that the Complainant had an existing policy or relationship with the other provider and that the Provider asked that the Complainant contact the other provider in an effort to get them to respond to the Provider's correspondence. In the circumstances, I consider this to have been a very reasonable request and contact from the Complainant may have prompted the other provider to engage with the Provider. However, there is no evidence to suggest that the Complainant made efforts to contact, or contacted, the other provider. It is difficult to understand why the Complainant did not do so.

On the basis of the evidence in this complaint, I do not accept that the Provider misled or misinformed the Complainant regarding an overseas transfer of his pension funds. The evidence shows that the Complainant was free to do so subject to certain requirements. However, simply because certain information/documentation was required in order to carry out the transfer or the fact the transfer was not necessarily a straight-forward process and can take considerable time, does not mean that the Complainant's PRSA was mis-sold. It was the total lack of engagement and co-operation from the other provider that was preventing the transfer and not the Provider.

Therefore, I do not accept that the Provider mis-sold the PRSA to the Complainant.

Accordingly, I 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**

21 April 2021

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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.