



<u>Decision Ref:</u>	2021-0204
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Buy-Out Bonds
<u>Conduct(s) complained of:</u>	Mis-selling (pensions)
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the sale and suitability of a personal retirement bond.

The Complainant's Case

The Complainant incepted a Retirement Bond Finance Plan with the Provider on **19 May 2015** when he was 63 years old. The Complainant met with a Provider financial adviser, H, in May 2015. On behalf of the Complainant, his accountants advise that the sole purpose of the Complainant in making contact with H was to obtain advice in relation to moving his then existing pension fund, into a more stable fund as the initial fund was dropping in value. They argue it was not the Complainant's intention when meeting H that he would take out a new pension policy. The Complainant's accountants argue that the Provider has not sought to properly address the issues raised by the Complainant in a letter sent to the Provider dated **14 September 2018**.

In his letter to the Provider dated 14 September 2018, the Complainant submits that H recorded a number of incorrect facts in the course of the fact-finding process. He states that he told H that he was the holder of the self-administered pension which invested in direct property and informed him that this property had a loan that was due to be paid in 2020. The Complainant argues that, without asking or clarifying, H assumed a retirement age of 68 years (ie in 2020). He argues that he was not asked this question by H and it is his belief that an assumption was made which led to the Personal Retirement Bond issuing with a normal retirement age (**NRA**) of 68. The Complainant also argues that H recorded on the factfind that an executive contract held by the Provider again had an NRA of 2020. He argues that this was again incorrect as the NRA was 60 years of age and it seems that H did not check this.

The Complainant argues that having noted the NRA incorrectly at age 68 rather than 60, H recommended and facilitated the transfer of his former executive pension contract into a personal retirement bond, claiming that it alleviated him from trustee training responsibilities, and leading him into a retirement contract that would penalise him for drawing benefits within the first five years of its existence. The Complainant submits that H did not correctly research his own company's executive contract for his pension when making this recommendation. He argues that another view of the incorrect NRA of 68 is that it allowed H to establish the new Pension Retirement Bond with a penalty mechanism to maximise the remuneration that he would be entitled to under the transaction.

The Complainant argues that the primary justification from H for placing the funds into a retirement bond was to alleviate his business of trustee obligations but this advice was incorrect as an independent trustee could have been appointed to the executive pension in its current format without the need to transfer to a retirement bond. The Complainant argues that either H was insufficiently familiar with the structures and mechanisms of the Provider's products upon which he was advising, or alternatively he omitted to mention the "locking in" of the funds by way of early exit penalty.

In a letter to this Office dated 23 April 2020, the Complainant's accountants advise that the details recorded by H in the **Statement of Suitability** and **Financial Review** were incorrect and it was not the Complainant's intention when meeting H that he would take out a new pension policy so the reason for the meeting as recorded was incorrect. The Complainant's accountants also point to page 20 of the review, which records that the reason for the Complainant replacing the company pension into a Personal Retirement Bond, was that his company had not traded since 2009 and trustee training was an issue. The accountants confirmed that the company is still in existence and the Complainant would never have been aware that trustee training was a requirement.

In the Complaint Form completed on 28 June 2019, the Complainant submits that he was sold a Personal Retirement Bond that did suit his circumstances, when the original company retirement plan could have been drawn down at any time. He argues that his original retirement age of 60 with this policy, was changed to 68. He argues that as a result, he suffered an early exit penalty in **March 2019** of €3,593.43 along with professional fees from the accountants, in addition to substantial loss of pension income, time and stress.

In a complaint summary, the Complainant indicates that he was advised by H at a meeting on **30 April 2015** to move the funds in their entirety to a personal retirement bond and that H confirmed that this would have no tax or additional costs. He argues that he was not made aware that he could have drawn down his exiting company pension at that time, and that he signed the required forms when asked to. He argues that when he sought pension quotations from the Provider in 2018, he was in contact with H until August 2018 when H was asked not to do any further work on the pension. By that point, the Complainant states that it was clear that he would suffer an early exit penalty and he would have to sell or transfer his shareholding with his company, which he has subsequently had to do.

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The Complainant seeks compensation as follows:

- Early encashment penalty €3,539.43
- Loss of pension Jan2018 – Feb 2019 €3,290 (€235 x 14)
- Accountant's fees €4,000
- Compensation for stress and inconvenience.

The Provider's Case

The Provider argues that the Complainant's employer, ZZ, put in place an executive pension plan for the Complainant with the Provider on 1 December 2000. ZZ appointed itself as trustee of the plan. It states that a total of €113,414.25 in employer contributions was paid into the plan over the years. It states that the final contribution was paid on **1 May 2008** at which time the plan was made paid-up.

The Provider states that the financial adviser appointed as plan contact for the Complainant/ZZ was H, a tied agent of the Provider. The Provider says that H has a clear recollection of his interactions with the Complainant over the years, and has provided a statement clarifying his dealings with the Complainant and his accountants from 2015.

The Provider quotes from the statement of H to the effect that the Complainant had taken out an executive pension a number of years earlier, in conjunction with the self-administered pension. Both pensions were funded by the one company, ZZ. The self-administered pension was invested in property and had gone into negative equity and, as a result, could not be retired as there were borrowings on it. He notes that because both pensions were funded from the same income source, both had to be retired together which was not an option at that time. H notes that in discussions with both the Complainant and his previous accountant, he was informed that they intended to wrap up the company ZZ and that the Complainant was going to leave the company, as it had ceased trading a number of years back, in approximately **2009**.

H notes that in **April 2015**, he was asked for an opinion on what would be the best option with the company pension held with the Provider, based on the then current information. H states that because the company (ZZ) was to be wound up and had ceased trading, he informed the Complainant "*of the obligations of trustee training on it if held in the wound up company*". He states that due to the self-administered pension situation at that time, taking both pensions was not an option for the foreseeable future because the self-administered pension was in negative equity as it was based on a property. He indicates this was confirmed by the Complainant.

H states that he spoke to the Complainant on the phone and discussed his options on 30 April 2015. He states that the Complainant was happy to take the pension out of the company and wanted confirmation of any tax implications. H notes that he requested completion of a risk profile and that he completed a full fact find with the Complainant two weeks later.

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H states that they set up the retirement bond in the Complainant's name, taking it out of the ceased company's name, as the company was to be wound up. H notes that he carried out a full factfind, outlining the fact that the Complainant could not consider retirement until 2020m as the self-administered pension property was in negative equity and this was recorded on the factfind and signed by the Complainant.

H indicates that he was not in contact with the Complainant again for approximately a year when he was contacted about the possibility of wrapping up the self-administered pension property which had lost money, but there was a possibility of small balance being left for the Complainant to put into his retirement bond. A sum of approximately €4,000 was transferred into the bond from the sale of the property. H notes that they had moved out the Complainant's retirement age based on the self-administered property being in negative equity at the time of setting up the personal retirement bond.

H indicates that he was contacted by new accountants approximately a year after the self-administered pension had been wrapped up and he was asked if the Complainant could retire his pension. H indicates that he presumed that the Complainant had left the company or wound it up or relinquished his shares, so he confirmed that the pension could be retired, subject to early exit penalties. A meeting was arranged with the Complainant and his accountants to discuss options for retiring the bond in 2018. H outlines that options were presented at that time to the Complainant, including the best option of taking a 25% tax-free lump sum and AMRF/ARF option and that an extra 2% allocation could be applied, which would almost take care of the 3% exit penalties. H indicates that it was only at that point that he was informed that ZZ had not ceased trading and on 2 August 2018 he received an email from the accountant requesting that he refrain from any further actions relating to the pension.

The Provider argues that during the meeting on **30 April 2015**, H completed a personal financial review with the Complainant on which H recorded notes to reflect the discussions that took place. It argues that the Complainant confirmed that he was self-employed and that ZZ had ceased trading in 2009. It argues that the Complainant confirmed that he held the self-administered pension with another provider, in which he co-owned an investment property. The Provider states that the self-administered pension was connected to the Complainant's employment with ZZ and that the Complainant confirmed he would not have access to the proceeds of the self-administered pension for a further five years. The Provider argues that, in accordance with Revenue rules, it is necessary for all pension benefits connected with the same employment to be drawn down at the same time and in the same manner.

As the Complainant confirmed that he would not have access to the proceeds of the self-administered pension until 2020, the Complainant was not going to be able to draw down any benefit until that time. Taking that into account, and noting that ZZ had ceased trading in 2009 and was scheduled to be wound up, H recommended that the Complainant take out a personal retirement bond with the Provider.

The Provider refers to a series of notes of particular relevance to this complaint, taken as they were during the personal financial review in April 2015, including that:

- the Complainant's property with the self-administered fund would not be paid off for another 4-5 years and hence he could not encash his executive pension until then;
- the Complainant held a self-administered pension connected to his company ZZ which hasn't traded since 2009. The property in it was tied between three other people, and this would not be paid off for another 4-5 years so the Complainant could not look at retirement until 2020; and
- ZZ has not traded since 2009 so "*with trustee training etc, he wishes to move it into a Retirement Bond*".

The Provider argues that by signing the personal financial review form, the Complainant made a number of important declarations, including that he had read and understood the information provided and that it was an accurate reflection of his current circumstances and objectives. It argues that by his signature, the Complainant also confirmed that his options had been explained to him and that he was satisfied that the benefits in terms of the products recommended, were suitable to his current circumstances. The Provider argues that the Complainant was provided with an important information document relating to the personal retirement bond during the meeting and also provided with a statement of suitability which he signed on **19 May 2015**, confirming that he had read and agreed with the recommendations made.

The Provider argues that the information document contained details of the cooling off period, if the Complainant was unhappy with the personal retirement bond for any reason once it had gone into force. The document also contained a warning recommending that customers satisfy themselves that the policy met their needs, and particularly if the retirement bond was a complete or partial replacement of an existing policy. The application completed by the Complainant on 19 May 2015 confirmed that he wished to take out a personal retirement bond with the normal pension age of May 2020.

The Provider argues that the personal retirement bond went into force and the Provider wrote to the Complainant on **18 June 2015** enclosing the policy schedule, conditions, statement of reasonable projections and the important information notice. Section 9 of the policy conditions provided details in relation to the early encashment charge.

The Provider argues that a year later, on **20 May 2016**, a third party provider made contact with H having been appointed as trustee and administrator to the Complainant's self-administered pension. The Provider states that it appears that the underlying property held in the self-administered pension had been sold earlier than anticipated, at a substantial loss and that there was small cash balance of €4,478.25 to be distributed to the Complainant. On the instructions of the Complainant, the cash balance from that pension was transferred into the retirement bond.

The Provider argues that subsequently, on **6 December 2017**, the Complainant's new accountants telephoned to ask if the Complainant could retire at that time and an options letter was issued to the Complainant on 12 December 2017. The Complainant refers to a series of phone calls between the accountant and the Provider, from January 2018 in which various retirement options were discussed. The Provider notes that during January 2018, H contacted the Provider to see if anything could be done to reduce the impact of early surrender charges for the Complainant, as he was considering drawing down benefits earlier than had been expected. The Provider notes that it was not possible for the early surrender charge to be removed from the personal retirement bond as it is a product feature. It states, however, that H came up with an alternative way to substantially reduce the impact of the charge, if the Complainant decided to retire at that time.

The Provider argues that the Complainant wrote to it on **1 February 2018** to express dissatisfaction with the early surrender charge. He also requested copies of the personal review and statement of suitability completed in May 2015. The Provider responded by letters dated 5 March and 14 March 2018 in respect of the issues raised. The Provider refers to a series of contacts between the Complainant's accountant and H and/or the Provider during 2018. It also refers to a meeting between H, the Complainant and his accountant on **25 July 2018** during which a financial review was conducted. The notes recorded that the Complainant chose to take the advice of the accountant rather than H in relation to his retirement options. On 2 August 2018, H received an email from the accountant requesting that he refrain from further action in respect of the pension. After a series of communications between the Provider, H, and the accountants acting on his behalf in the present complaint and two other accounting firms, the Complainant submitted an annuity application form in **March 2019**.

The Provider argues that, in 2015, the personal retirement bond was sold to the Complainant in good faith. It submits that the bond was a suitable product for the Complainant based on his confirmed circumstances at that time. It states that the Complainant had confirmed that his company, ZZ, was to be wound up and that the balance of his pension was held in a specialist self-administered arrangement and would not be accessible for a further five years. The Provider argues that while the bond provided for early encashment charges in the first five years, the Complainant did not envisage retiring until 2020 by which time the early encashment charge period would come to an end.

The Provider also highlights that when it came to the attention of H that the Complainant was considering retiring in January 2018 because the self-administered pension been surrendered earlier than anticipated, H engaged with a view to minimising the effect of the early encashment charge and offered the Complainant a 2% enhanced allocation, in the event he decided to take out an AMRF with the Provider which could be converted into an annuity at a later date, as required. The Provider notes that the Complainant chose not to avail of that option when he eventually drew down his pension benefits.

The Provider argues that there was no loss of pension benefits in the period January 2018 to January 2019 as contended, as the delay encountered by the Complainant in respect of his pension benefits was outside the control of the Provider. It further argues that it is not uncommon for a policyholder to retain the services of an accountant in addition to a qualified financial adviser to assist with the drawdown of pension benefits, but that any fees charged by an accountant for that purpose, are matters between the accountant and the policyholder. The Provider submits that the accountant was not a qualified financial adviser and was unfamiliar with the drawdown process and retirement options. The Provider argues that H provided as much help as he could, with a view to progressing matters. The Provider argues that no compensation is merited in this matter.

The Provider submits that when an employer company is to be wound up, it is also necessary to wind up any occupational pension arrangement sponsored by the employer. It argues that when winding up an occupational pension arrangement or plan, a member must transfer the benefits to another occupational pension of which they are a member, or the benefits are transferred into a personal retirement bond. The Provider highlights that the personal retirement bond is a personally held policy and allows a member full control over the pension. As the Complainant did not have another occupational pension arrangement that could facilitate the transfer at the time, the most suitable option for him, based on the declared circumstances, was to transfer his benefits to a personal retirement bond.

The Provider argues that H has confirmed that it is his normal practice to provide a copy of the completed financial review and statement of suitability to an applicant during the sales meeting.

The Complaint for Adjudication

The complaint is that the Provider mis-sold the Complainant his Personal Retirement Bond in May 2015, resulting in financial loss.

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.

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A Preliminary Decision was issued to the parties on **27 May 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. In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

The present complaint concerns the suitability of a personal retirement bond (**PRB**) sold to the Complainant in **May 2015** through a tied broker of the Provider. The main reason why the Complainant alleges that the PRB was unsuitable for his needs is that it raised his normal retirement age (**NRA**) under the pension bond from 60 years to 68 years and contained early encashment penalties if he sought to drawdown its benefits before the age of 68. The Complainant says that he has suffered financial loss as a result.

The background to the sale of the PRB is set out above. In **May 2015** the Complainant had two pre-existing pensions products in place: an executive policy held with the Provider and a self-administered plan with another provider. Both of these products were funded through the Complainant's previous employer, ZZ, which had ceased trading in 2009 but which company was still in existence in May 2015. A phone meeting took place between the Complainant and the broker, H, on 30 April 2015.

Following this meeting, the Complainant sent an email to H requesting that his executive pension policy held with the Provider be switched from ZZ to a personal retirement bond. In his email, the Complainant requested confirmation that *"this move will have no tax implications or any additional costs"*. There was a follow up meeting on 19 May 2015 in which a fact find was completed and the application documentation was signed by the Complainant.

I have been supplied with a Personal Financial Review created at a meeting between H and the Complainant on **19 May 2015**. The following extracts from the Review are relevant:

*"2. What you hope to get out of our meeting?
To move ex pension into Retirement Bond.*

5. Assets/Liabilities

Property

Principal Residence €120k

Other Property €180k

...

Notes: [The Complainant's] property no 2 is in a self admin fund and will not be paid off for about another 4-5 years hence he can not incash this Executive pension till then. (sic)

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6. Retirement

What is your expected retirement date?

31/05/2020

7. Planning for Your Retirement

What is your required annual income at retirement (as percentage of current earnings or amount)?

2/3rds

Expected Retirement Age

68 yrs

Do you have any existing pension arrangements to provide for your retirement?

Yes

Other (please specify) Self admin [third-party Provider]

Notes: One property that will be paid off in about 4 - 5 years in self admin scheme that is tied to current pension fund, pre-employment. Current value 300k divided between 2 other investors so 3 people in total to take out approx. €100k each to go into pension on top of 110k. [The Complainant] has rental income of €1000 per month from another property.

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Proposed options at retirement

Total Retirement Fund	Retirement Lump Sum (Tax-free amount)	Annuity	AMRF (Approved Minimum Retirement Fund) (maximum €63,500)	ARF (Approved Retirement Fund)	Taxable Lump Sum
€260k	€65k		€63,500	€131,500	

Proposed Date of effecting relevant option	2020				

...

Notes: As already stated, [the Complainant] has a self admin pension also connected to his "now" old company, [ZZ] which hasn't traded since 2009. The property in it is tied between 3 other people and it will not be paid off for another 4-5 years, so [the Complainant] can not look at retirement till 2020.

11. Existing Arrangements

	Provider	Normal Retirement Age	Fund Value	Premium	Policy Type
Pension					
	[the Provider]	2020 68 years of age	€110k	€Nil	Ex pension
Savings					
	None				
Investment					
	[third party Provider] pension fund property				

12. Recommendations/Client's Decision

Retirement Planning	Our Recommendation			Client Decision		
	Normal Retirement A	Regular Premium Amount	Single Premium Amount	Normal Retirement Age	Selected Regular Premium Amount	Selected Single Premium Amount
	68	€Nil	€110k	68	€Nil	€110k

13. Recommendation/Client Decision Detail

Retirement Planning

Summary of Client Decision: To move Ex pension into Retirement Bond. To move into Retirement Bond.

Product Proposed: Retirement Bond

Premium Proposed: €110k

14 Policy Replacement

Are any of the proposed policies replacing in part or in whole any existing policies with [the Provider] or any other life company?

Y✓

If so, please provide a written explanation.

Ex pension policy no [*****] [the Complainant's] business [ZZ] has not traded since 2009 and with trustee training etc, he wishes to move it into a Retirement Bond. His policy no [*****] does not qualify for 5% bonus at retirement so it will not effect the transfer, also his current management charge is 0.75% and as such his Retirement Bond will be the same.

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15. Declarations/Data Protection Consents

I confirm that:

I have read and understand the information provided above and it is an accurate reflection of my current circumstances and objectives ✓

I understand that recommendations made by the Financial Adviser are based on information that I provided to the Financial Adviser ✓

The Financial adviser has explained and discussed my options and I have carefully considered my options before making my decision ✓

I am satisfied that the benefits and terms of the product(s) recommended have been explained to me/us and are suitable for my current needs ✓

I have been provided with a copy of and have read the relevant explanatory brochure(s) in relation to the product(s) I have chosen ✓

The Financial Adviser has explained the charges for the product(s) I have chosen ✓

I understand the long-term nature of the product(s) I have chosen ✓".

I note that the Personal Financial Review was signed by the Complainant and by H, and dated 19 May 2015. The Statement of Suitability in respect of the retirement bond dated 19 May 2015 highlighted key aspects of the retirement bond and why the adviser considered the product to be suitable for the Complainant. The Statement of Suitability was signed by the Complainant on 19 May 2015. By his signature, the Complainant agreed with the recommendation made and indicated his desire to proceed with the recommended policy.

In the Retirement Bond Application, the date on which the Complainant's employment ceased was noted as **1 August 2009**. The Normal Pension Date indicated was May 2020. This was signed by the Complainant on 19 May 2015. By his signature, the Complainant confirmed as follows:

"I have read through all the replies to the questions in this application. I declare that the statement in this application including any statements written at my request are true and complete and shall be the basis of the proposed contract. . ."

In an email dated **9 June 2015**, H wrote to representatives of the Provider requesting that they review the proposal and financial review as the client has:

"pushed out his retirement age to 68 years on the retirement bond. It is linked to a self admin scheme through [third-party Provider] again on financial review. The self-admin is in property and will not be able to accessed till age 68".

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By letter dated **18 June 2015**, the Provider wrote to the Complainant enclosing his Retirement Bond Policy and an information notice in respect of the policy. The Policy Conditions provided the following information to the Complainant:

“6. Retirement Date Options

Your Normal Pension Date is shown on the Policy Schedule and unless we hear from you to the contrary, your retirement benefits will be payable to you with effect from that date. You may request the Company in writing to commence the payments benefits on a Retirement Date earlier or later than your Normal Pension Date subject to the requested date not being earlier or later than that permitted by the Revenue Commissioners under the Act.”

“9. Early Encashment Charge

Any encashments or transfers from the policy are subject to an early encashment charge. The amount of the early encashment charge is a percentage of each Single Contribution paid and depends on the period of time since each Single Contribution was paid:

Number of years since each Single Contribution was paid	Early Encashment Charge
<i>Up to 1 year</i>	<i>5%</i>
<i>1 to 2 years</i>	<i>5%</i>
<i>2 to 3 years</i>	<i>5%</i>
<i>3 to 4 years</i>	<i>3%</i>
<i>4 to 5 years</i>	<i>2%</i>
<i>Over 5 years</i>	<i>0%</i>

If the total value of the units allocated to the policy before encashment is less than the cumulative Single Contributions paid, then the early encashment charge is proportioned by the ratio of the total value of the units allocated to the policy before the encashment to the cumulative Single Contributions paid.”

The Policy Schedule included the following information:

*“Policy Number *****02*

This form shows your specific Policy details.

To be read in conjunction with the Policy Definitions and Conditions.

Retirement Bond

<i>Policyholder</i>	<i>[the Complainant]</i>
<i>Scheme</i>	<i>[ZZ] Pension Scheme</i>
<i>Policy Commencement Date</i>	<i>21/05/2015</i>

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<i>Employer</i>	[ZZ]
Contributions	
<i>Single Contribution</i>	€110,516.26
Investment	
<i>Investment Contribution</i>	€110,516.26
Final Remuneration	€25,000.00
Normal Pension Date	The Policyholder's 68 th birthday
Earliest Pension Date	The Policyholder's 50 th birthday
Revenue Maximum Limit	
<i>Lump Sum in Lieu of Annuity</i>	€8,747.00"

The Policy Schedule was signed on behalf of the Provider on **18 June 2015**.

An Important Information Notice was sent to the Complainant on 18 June 2015 with the recommendation that it be read carefully in conjunction with the policy details. This notice contains following information:

"Disclosure of material information

The contract expressed in the Policy Document is based on the information in the application form (a copy of which is available on request). Consequently, it is important for the validity of the policy that all material information should be stated on the form, that is, all information which [the Provider] would need to receive in order to accept the application."

"Cooling-off period

If, after reading this notice carefully, and after examining your policy, you feel the policy is not suitable for your needs then you may cancel it by sending direct to [the Provider's] Head Office your personally signed and dated instruction for the cancellation along with your policy document. The policy will terminate immediately the instruction is received at [the Provider's] Head Office and, if it is received not later than 30 days after the date of issue of this notice, any Single Contributions paid to the policy will be refunded less an adjustment for any downward movement in unit prices from the policy commencement date to the date of cancellation."

I am satisfied that the documentation as set out in detail above is the best evidence available in respect of information supplied by the Complainant to H and the recommendations made by H when the PRB was sold in May 2015. The documentation provides a detailed insight into the rationale for the extension of the Complainant's normal retirement age to age 68. It also contains a number of contemporaneous confirmations and acknowledgements from the Complainant with regard to the accuracy of the information recorded and the suitability of the product being recommended.

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Furthermore, on receipt of the policy schedule and conditions on 18 June 2015, the Complainant was provided with a further opportunity to cancel the policy if any of the recorded details or policy terms (such as the retirement date of 68) was unsuitable for him.

As to the first issue of the extension of the Complainant's normal retirement age from 60 to 68, the documentation available to me confirms that the reason why the normal retirement age under the PRB was set to 68 years was the complication arising from the existing self-administered pension held with a third party provider. The fact find notes that the property held under that pension was in negative equity and the loan would not be paid off for another four or five years.

While the existing executive pension had a normal retirement date of 60 years, I accept that because both pensions were funded by the same employer (ie ZZ), benefits under the pensions had to be taken at the same time. As it was not anticipated in May 2015, that the self-administered pension could be retired for another four or five years, it did not appear at that time, that the Complainant could take retirement benefits until the age of 68. The notes recorded on the fact find outline this position and the information contained therein was acknowledged and confirmed by the Complainant by his signature.

I note that an email from H to the Provider dated 9 June 2015 demonstrates that H was conscious that the normal retirement age in respect of the product was being extended but the email clearly clarifies the rationale for this recommendation and decision. The new normal retirement age of 68 was also set out in the policy schedule sent to the Complainant on 18 June 2015.

I appreciate that, as events transpired, the property held under the self-administered pension plan was sold earlier than had been anticipated and, as a result, it proved possible for the Complainant to take his retirement benefits earlier than anticipated, which he sought to do. This subsequent development does not however affect the suitability at the time, of the product sold to the Complainant in May 2015. There is no evidence before me that the Complainant sought to raise any objection in May or June 2015 in respect of the new normal retirement age. In my view, the Complainant had ample opportunity to do so at the time when he signed the relevant fact find and application form for the PRB, and again in June 2015 when the policy schedule and conditions were sent to him.

As the second issue of the early encashment charges, those charges were outlined to the Complainant by way of the policy terms and conditions sent to him on 18 June 2015. The Complainant was also sent an important information notice on that date which clarified that he had the right to cancel the PRB within 30 days of receipt of the documentation. He was encouraged to carefully read the policy schedule (which included a normal retirement age of 68) and the policy conditions (which included the early encashment charges). The Complainant did not however avail of the opportunity to cancel.

In light of the above, I am unable to accept the Complainant's arguments that the product sold to him in 2015, was unsuitable for his needs as a result of the extension of the normal retirement age and the early encashment charges.

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I am satisfied that the evidence confirms that the PRB was suitable to him at that time it was sold, but that subsequently, his circumstances changed, as a result of which it became less suitable. In my opinion however, the Provider bears no responsibility in respect of that change in circumstances.

When the Complainant's circumstances changed and he wished to retire earlier than anticipated in 2018, the evidence before me suggests that H attempted to find a solution for the Complainant that would exclude or at least minimise the early encashment charges applicable to the policy. I note that H made a proposal in respect of the Complainant's retirement options which would have minimised the effect of these charges, but this recommendation was not accepted by the Complainant who was, by that point, being advised by accountants.

In that context, I note that the Complainant has raised an issue in respect of the delay encountered by him in receiving his benefits between 2018 and 2019 but I accept on the basis of the evidence before me, that any delay encountered in this regard was not caused by the Provider, or by H. It appears to me that at all relevant times, both H and the Provider attempted to assist the Complainant and his accountants, by providing all relevant options and information in a timely fashion.

On behalf of the Complainant, his accountants have argued that the Provider failed to respond to many of the issues raised by the Complainant. Having reviewed the relevant correspondence between the parties, I don't accept this, and I am not satisfied that this aspect of the complaint has been made out.

After the Complainant initially raised issues with the Provider in respect of the early exit penalties, the Provider responded by letter dated 5 March 2018 as follows:

"You complaint relates to the early surrender penalties on your Retirement Bond.

You completed an application form to put this policy into force in May 2015. On this you stated that you were taking out this Retirement Bond for a term of five years; this was in line with your financial responsibilities until 2020. You therefore stated the date of retirement as 31 May 2020. Please find a copy of this application form enclosed for your records.

Upon commencement of your policy we issued your policy conditions. We asked that you review the policy conditions to ensure that the policy was suitable for your requirements and that if you had any questions to contact your adviser, [H]. These conditions specifically state the early surrender penalties applicable to your policy in line with your application. Please find these enclosed for your records."

The Complainant raised a further complaint dated 14 September 2018, the contents of which are noted above.

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The Provider responded by letter dated 8 November 2018. In its final response letter, the Provider referred to the notes on the application form that put the policy into force in May 2015, in which the Complainant confirmed that he was taking out the Retirement Bond for a period of five years. The letter noted the declaration which he had signed to proceed with the policy, and which is set out above. The Provider referred to a conversation with H regarding the sale and suitability of the product. It argued that the Complainant had advised H that his company was wrapping up at the time when the policy was taken out, and that it had not traded since 2009. In light of this, and without the company, the retirement bond was suitable for him.

The letter indicated that H advised that he outlined the early encashment charges and informed the Complainant that if he was to proceed with an Approved Minimum Retirement Fund at drawdown, he would be able to provide extra allocation to offset the encashment charges that were still applicable at the time.

The Provider drew attention to the notes on the application form which explained the reason why the Complainant's Normal Retirement Age was extended to age 68 on the pension.

The Provider stated that it appreciated that the Complainant's circumstances had changed since 2015, because his company did not cease trading and he did not now want to proceed with the Approved Minimum Retirement Fund, but it pointed out that at the time when the policy went into force, the product was suitable for the Complainant's stated needs. In those circumstances, the Provider declared that it was satisfied that the policy was provided to him in good faith and in line with his stated retirement needs in 2015.

I am satisfied on the basis of the above, that the Provider sought to deal with the Complainant's complaint in full in 2018. The Provider's final response letter detailed the notes that were included on the application form for the pension bond in question and it explained the relevance of these notes with regard to the complaint being made. It further drew attention to the confirmations from the Complainant in May 2015, and relevant policy conditions.

I have reviewed a number of telephone calls between the Complainant's accountant and the Provider during 2018 and 2019, in respect of the Complainant's options. I am satisfied that the recorded conversations demonstrate that the Provider sought at every opportunity to clearly answer all queries raised on behalf of the Complainant in respect of his options and further sought to fully inform the Complainant and his advisers in respect of what was required from him, to choose the various options that were available to him.

In all of the circumstances, on the basis of the evidence before me, I do not consider that it would be reasonable to 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.



**MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

21 June 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.