An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2021-0212
Sector:	Investment
Product / Service:	Cash Investment
Conduct(s) complained of:	Mis-selling (investment) Maladministration Misrepresentation (at point of sale or after) Alleged poor management of fund Value of policy at surrender less than expected or projected Product not suitable
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the nature of advice given regarding the Complainant's pension.

The Complainant's Case

The complaint concerns the transfer of the Complainant's benefits under his UK defined benefit pension scheme and other accrued pension benefits to a scheme which included a Qualifying Recognised Overseas Pension Scheme (QROPS) after consulting with the Provider.

In 2014, after consulting with the Provider, the Complainant took a transfer value of the benefits he had accrued in his defined benefit scheme and transferred, along with other pension benefits, to a QROPS with a third party trustee.

The Complainant, who is being assisted in this complaint by a third party advisor, claims that the risks associated with transferring his pension benefits were not explained to him and that it is unrealistic to expect the defined contribution arrangement to achieve the returns that would be necessary for it to provide him with the same level of benefit that he would have received from the defined benefit scheme (and other accrued pension benefits).

The high returns that would be required would have required that the Complainant would have to make an investment at a risk level higher than the Complainant is prepared to tolerate.

The Complainant submits that some of his transferred pension is invested in a fund that targets an annual return of 4-5%.

The Complainant claims that a return of 12.27% would be required for the defined benefit contribution arrangement to match the benefit of the defined benefit scheme and that is unlikely when some of the fund is targeting a return of 4-5%.

The Complainant alleges that he is over exposed to the German property market after transferring his benefit and the Provider is at fault for this overexposure because of poor advice that was given to him.

The Complainant claims that he was not given a clear reason for investing in an overseas pension scheme and the currency risk was not explained to him. The Complainant also submits that the Provider did not explain to him that he would lose the protection of the Financial Services Compensation Scheme and the Financial Ombudsman Service.

The Complainant states that options, other than the pension scheme to which he transferred his fund, on the advice of the Provider, were not explained to him. The Complainant wants the Provider to confirm that it was authorised to give advice on the transfer of benefits from a defined benefit scheme.

The Complainant feels that the costs and fees were not explained to him and are more expensive than what he would have been paying under his old plan.

The complaint is that the advice given by the Provider to the Complainant recommending that he transfer the accrued benefits under his UK defined benefit pension scheme (and other accrued pension benefits) to a defined contribution arrangement outside of the UK, was very poor advice. The Complainant alleges that he now takes all the risks associated with his pension and he has lost the guarantees and security that the defined benefit scheme provided to him and his family.

The Complainant is seeking compensation for the failure of the Provider to give him proper advice and all relevant information regarding the transfer of benefits that he had accrued under the defined benefits pension scheme.

The Provider's Case

The Provider has stated that it did not offer advice, nor did it purport to offer advice. It states that the risks associated with the course of action taken by the Complainant were clearly explained to him.

/Cont'd…

It also states that there appears to be no evidence that the Complainant is in fact any worse off as a result of being in the scheme he is currently in, nor is there any evidence that the fees/charges are high and were, in any event, clearly set out to the Complainant when he effected the transfer. The Provider states that, to its knowledge, the fund which the Complainant appears most concerned about has not missed any payments to investors when they fell due.

The Complaints for Adjudication

The complaint for adjudication is that the advice given by the Provider to the Complainant recommending that he transfer the accrued benefits under his UK defined benefit pension scheme (and other accrued pension benefits) to a defined contribution arrangement outside of the UK, was very poor advice.

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 21 August 2019, 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, both parties made the following submissions:

1. E-mail from the Complainant's representative to this Office dated 4 September 2019.

/Cont'd…

2. E-mail, together with enclosures, from the Provider to this Office dated 1 October 2019.

3. E-mail from the Complainant's representative to this Office dated 15 October 2019.

4. E-mail from the Provider to this Office dated 14 November 2019.

5. E-mail from the Complainant to this Office dated 17 November 2019.

6. E-mail from the Provider to this Office dated 2 December 2019.

7. E-mail from the Complainant's representative to this Office dated 2 December 2019.

8. E-mail from the Provider to this Office dated 20 December 2019.

9. E-Mail from the Complainant's representative to this Office dated 21 April 2020.

10. E-Mail, together with enclosures, from the Complainant's representative to this Office dated 21 April 2020.

11. E-mail from the Provider to this Office dated 15 May 2020.

12. E-Mail from the Complainant's representative to this Office dated 6 July 2020.

13. E-mail from the Provider to this Office dated 21 September 2020.

14. E-Mail from the Complainant's representative to this Office dated 5 October 2020.

15. E-mail from the Provider to this Office dated 27 October 2020.

16. E-Mail from the Complainant's representative to this Office dated 3 November 2020.

17. E-mail from the Provider to this Office dated 25 November 2020.

18. E-mail from the Complainant's representative to this Office dated 26 November 2020.

The above submissions were exchanged between the parties.

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

/Cont'd…

As can be seen there were a considerable number of submissions and exchanges over a protracted period after I issued my Preliminary Decision. These related in the main to the regulated status of the Provider as it relates to the provision of certain advice.

While the Complainant has, in his post Preliminary Decision submissions, challenged my decisions, he has not, in my opinion, raised an error of law or fact which would persuade me to alter the decision I had reached.

The Complainant, in a post Preliminary Decision submission dated 4 September 2019, requested that either I or the Central Bank confirm that the Provider were authorised to advise on, and facilitate a transfer from a Defined Benefit Pension to the QROP. This submission stated, among other things:

> *"I therefore seek confirmation form you that the [Provider] and [named representative of the Provider], were authorised to advise on or facilitate the transfer from the [named Defined Benefit Pension] to the QROP at the time".*

The Provider responded to the Complainant's submission stating:

> *"We receive our permission through the passporting arrangements and our Regulator is the Central Bank of Ireland and not the FCA in the UK."*

The Complainant was not satisfied with the Provider's assertion that it was authorised to facilitate the transfer and that it did not present itself as providing advice on the scheme.

The Complainant stated in the Post Preliminary Decision Submission dated 17 November 2019:

> *"A further email/letter from [named representative of the Provider], confirming he was authorised, will not be acceptable.*
>
> *It needs to come from an independent body, either yourselves [the FSPO] or the Central Bank of Ireland".*

This issue had been raised during the investigation stage and the Provider and and Complainant exchanged emails disputing this point.

The Provider, in its email to this Office dated **1 April 2019** during the Investigation stage, noted:

> "*[the Complainant] is disputing my rights under passporting to provide pension advice in the UK. As my previous submission stated I have permission to provide pension advice in the UK and occupational schemes are covered. The Central Bank of Ireland provide me with my permissions and it is to them that [the Provider] is answerable to, not the FCA who do not even communicate directly with us.*

/Cont'd…

> *In relation to this specific case, I did not provide a recommendation to transfer from this scheme. We clearly restricted our offering and targeted our marketing at a cohort of potential clients that we deemed may be suitable and favour the product we had on offer. [the Complainant] being one of them".*

This is not a matter which this Office can resolve. This Office does not provide advice and is not a regulatory authority. My role is that of an independent adjudicator of complaints. In adjudicating on this complaint, I am acting within my remit as set out in the governing legislation for this Office, the ***Financial Services and Pensions Ombudsman Act 2017***.

In this regard I wrote to the Complainant on the **27 January 2020** detailing as the Complainant noted in his post Preliminary Decision submission dated **17 November 2019** that:

> *"I wish to clarify that the Office of the Financial Services and Pensions Ombudsman is not an advisory body nor is it a regulatory authority. The role of the Financial Services and Pensions Ombudsman's Office and indeed my role as the Financial Services and Pensions Ombudsman is to be an independent and impartial adjudicator of complaints.*
>
> *However, I am happy to offer the Complainant an opportunity to raise his enquiry with the Central Bank of Ireland directly. I have for your convenience included in this letter contact details for the Central Bank of Ireland.*
>
> *Should you wish to make the enquiry to the Central Bank of Ireland I will put the complaint on hold, pending a response, and I will not issue my legally binding decision for a period of time which may be considered just and equitable to all parties involved".*

I note the Complainant then sought clarification from the CBI.

On **21 April 2020** the Complainant submitted that:

> "[Provider] *has always argued that under the […] Insurance Distribution Directive (IDD), he was passported to arrange the transfer of a Final Salary Pension Scheme, in this case* [Complainant's] *Pension Scheme.*
>
> *I have contacted the Central Bank of Ireland, who referred me to the FCA, as the appropriate authority, and the FCA have confirmed that it isn't possible to passport Pensions advice, as this isn't an activity that falls under the passporting regulations, and that the Insurance Distribution Directive relates to Insurance rather than Pensions, and Irish firms would fall under the remit of their home state regulator rather than the FCA.*
>
> *The Central Bank of Ireland have already said that it is the FCA who would be the authorising body, and as such, the FCA have said that the Insurance Distribution Directive doesn't cover Pensions.*

/Cont'd…

> [Provider], *was therefore not authorised to conduct the transfer of the* [redacted] *Pension Scheme, and it would also appear neither was he authorised to conduct any transfer business in relation to UK based Pension Schemes, which then calls into question whether he was authorised to transfer* [Complainant's] [name of scheme redacted].

The Complainant in a follow-up email of the same date provided email chains from the CBI and the FCA.

In this email chain the Complainant poses the following question to the CBI:

> "Please can you confirm whether [Provider] were authorised to facilitate the transfer a UK Defined Benefit (Final Salary) Pension Scheme to a QROP, based in Malta, in September 2014?"

To which the CBI responded:

> "[Provider] *has passporting rights into the UK and Malta under the Insurance Distribution Directive ('IDD'). However you will need to check with the relevant UK authorities to establish if* [Provider] *is allowed under the IDD passport to facilitate the transfer of a UK Defined Benefit (Final Salary) Pension Scheme to a QROP, based in Malta"*

The Complainant then sent the following request to the FCA:

> *"Please can you confirm, that if an Adviser based in Southern Ireland passports into the UK, they can facilitate the transfer of a UK Defined Benefit (Final Salary) Pension Scheme to a QROP, based in Malta?*
>
> *Please can you also confirm from what date they would have been able to do this?"*

The FCA responded with:

> "*I can advise that it isn't possible to passport pensions advice as this isn't an activity that falls under the passporting regulations. There are details of the different activities which can be passported on our website which you may find helpful.*
>
> *With regards to pension transfers, any defined benefit pension scheme will need to check that an individual has received pensions advice from an FCA authorised firm before transferring, if the pension transfer exceeds £30,000.*
>
> *I hope this is helpful and answers your question".*

/Cont'd…

The Complainant followed up by asking:

> *"Would it be possible for an Adviser based in Southern Ireland, to arrange to transfer a UK Defined Benefit (Final Salary) Pension Scheme to a QROP, on the basis that they aren't giving advice, only information, under the Insurance Distribution Directive (IDD).*
>
> *Please can you also confirm the date when this would have come into force?"*

The FCA responded by directing the Complainant to another body:

> *"I don't think we are going to be able to assist further on this matter. It is the Pension Regulator rather than ourselves that regulates Occupational Pension Schemes, so they may be able to advise.*
>
> *To clarify however, the trustees of an Occupational Pension scheme need to check that a member with a transfer value of over £30,000 has taken advice from an FCA authorised firm (so not an Irish firm) before facilitating the transfer. This has been the case for a number of years, but the Pensions Regulator maybe able to give you a specific date when this requirement came in.*
>
> *The Insurance Distribution Directive relates to Insurance rather than pensions, and Irish firms would fall under the remit of their home state regulator rather than ourselves".*

The Provider responded to the above in its post Preliminary Decision submission dated **15 May 2020:**

> *"With regard to the submission from* [Complainant's representative] *in relation to* [Complainant's] *Post Decisions Appeal.*
>
> *I note that in his correspondence to the FCA and Irish Regulator* that [the Complainant's representative] *did not mention that the QROPS was invested into a Life Assurance company, in this instance* [name redacted]*. Therefore it comes under the remit of IDD.*
>
> *The obligation for a client to have advice by way of a TVAS or PTR (Pension Transfers Report) for DB pension schemes over £30,000 in value became a requirement after our dealings with* [the Complainant]*. In fact the complications and uncertainty of that process was the reason that we at* [Provider] *made the decision to stop transacting UK business. Instead we looked at establishing in the UK with an FCA Regulated firm.*
>
> *The FCA in the correspondence to* [Complainant's representative] *also pointed out that the obligation to check on the eligibility to transfer a pension lies with the Trustees of the ceding scheme in the first instance and the receiving scheme also. Not the advice firm. Perhaps* [Complainant's representative] *should take that point up with them.*

/Cont'd…

The FCA correspondence also points to my company falling under the Irish Regulators remit, and I have previously furnished you with correspondence relating to their confirmation of my permission to engage in that business.

Both we ourselves and I believe [Pension scheme Trustees and investment firm] *all performed Due Diligence and took separate advice as the weather* [Provider] *had necessary permissions before accepting business. Again,* [Complainant's representative] *should take that point up with each of those organizations if he feels they were in error".*

The Complainant advised he would return to the FCA to clarify some matters and then submitted the following in a post Preliminary Decision submission dated **6 July 2020:**

"The fact that the transfer from the [redacted] Final Salary Pension Scheme was invested in a QROP, via a Life Insurance Company, is not relevant.

All the emails from the Central Bank of Ireland confirm that [Provider] *and* [Provider's agent], *are authorised to deal in insurance based products under the Insurance Mediation Regulations (IMR).*

To quote from an email from [name redacted] *at the Central Bank of Ireland dated the 04th August 2015 at 1146, "I can confirm that* [Provider] *can advise on pensions and pension transfers in the UK and Malta as long as those pension products are underwritten by a life or non-life insurance company".*

[Provider] *and* [Provider's agent] *have to be authorised on both parts of the transaction, not just one. That is, they need to be authorised to deal with both the ceding and receiving schemes. It would appear that they are authorised to deal with the receiving scheme i.e. The QROP, but not the ceding scheme i.e. [redacted] Pension.*

[Provider's agent] *states "that the obligation to check on the eligibility to transfer a pension lies with the Trustees of the ceding scheme in the first instance and the receiving scheme also. Not the advice firm". This isn't what it states, it states "the Trustees of an Occupational Pension Scheme need to check that a member with a transfer value of over £30,000 has taken advice from an FCA authorised firm before authorising the transfer".*

They checked that [the Complainant] *had taken advice but were unaware that it was from an adviser that wasn't authorised to conduct this transfer, based in Southern Ireland.*

This I feel is a red herring. If they are culpable, along with [Pension Scheme Trustees] *or* [investment firm], *as well as* [Provider] *and* [Provider's agent], *I will be taking it up with them, however, in the first place* [Provider] *and* [Provider's agent] *should not have been conducting the transfer".*

/Cont'd…

The Provider, in its post Preliminary Decision submission received on **21 September 2020**, states:

> "[Complainant's representative's] *claims are at odds with our own legal advice that we took at the time through* [name of legal firm and location in UK redacted]. *It would also seem to be at odds with the understanding of both sets of Trustees namely the [redacted] and [redacted] Trustees. I believe the [transferor scheme] did check on [Provider] Regulatory status, as did [receiving scheme] who conducted extensive DD on [Provider] and the whole process before accepting the transfer.*
>
> [The Complainant's representative] *has referenced "the Trustees of an Occupational Pension Scheme need to check that a member with a transfer value of over £30,000 has taken advice from an FCA authorised firm before authorising the transfer".*
>
> *Again as previously mentioned, this obligation to receive transfer advice for schemes with a + £30,000 value came into effect at a later date than our dealings with [Complainant] and was not applicable at the time.*
>
> *We assert again, and I believe that the Ombudsman has already established in his adjudication, that we did not provide advice on the [redacted] scheme. This would have to have been done in the form of a TVAS Report which is prescribed and would have to make a recommendation to transfer or not, which as already established in this process, that [Provider] did not. The FCA has since the time of our dealings with [Complainant] provided new and extensive rules around Pension scheme and particularly DB Schemes that had not been provided or established at that time".*

The Complainant responded on **5 October 2020**:

> *"For [Provider's agent] and [Provider], to facilitate the transfer of the [redacted] Defined Benefit Pension, he would have had to be authorised by the Central Bank of Ireland, whether the transfer was advised or non advised.*
>
> *Clearly the emails from the Central Bank Of Ireland, make it clear that [Provider's agent] and [Provider] are only authorised to deal with transfers relating to insurance based schemes.*
>
> *The [redacted] Defined Benefit Scheme, is not insurance based, and therefore by transferring it, [Provider's agent] and [Provider], are acting outside their authorised activities, and [Complainant] should be duly compensated".*

The Provider responded on **27 October 2020**

> *"What* [the Complainant's representative] *fails to understand is that the CBoI unlike the FCA does not have a separate or additional permissions regime to deal with Company or Defined Benefit schemes (no G60 advisors). It comes under my Irish regulation.*

/Cont'd…

The UK has a prescribed formula for advising on DB schemes, a TVAS Report which must be provided to the client. Since [Provider] dealings with [Complainant] the FCA have made these compulsory for schemes with £30,000 and over, which addresses an anomaly in the process. The advising Broker does not need to have these UK permissions but the provider of the TVAS does, and it is the Ceding scheme who needs to check that the client has received one. As previously mentioned it was our opinion at the time that there was no issue with us providing this service, and neither the ceding or receiving schemes who checked the [Provider] permissions had an issue with them".

On **3 November 2020** the Complainant submitted:

"I understand that as a Financial Adviser, [Provider's agent], and [Provider], have to be authorised by the Central Bank Of Ireland.

The authorisation will determine what type of business he is allowed to conduct.

The Central Bank Of Ireland emails, previously forwarded to you, clearly show that [Provider's agent], and [Provider], are only authorised to conduct, advised or non advised, to deal with transfers relating to insurance based schemes.

The [redacted] Defined Benefit Pension Scheme is not an insurance based scheme, and therefore [Provider's agent], and [Provider], under rules laid down by the Central Bank Of Ireland, wasn't authorised to facilitate the transfer, advised or non advised.

A decision needs to be made whether, at the time, [Provider's agent], and [Provider] were authorised to transfer the [redacted] Defined Benefit Scheme.

I do not feel that the fact [Provider's agent] asserts that he was authorised, is enough, the decision needs to come from an official organisation who has the authority to make it".

The Provider, in its submission of **25 November 2020**, stated:

"In response, I'd just want to reiterate that I did not provide advice on the [redacted] scheme. I believe that the adjudication on [Complainant]'s case established that already. [Provider] is regulated by the CBoI to provide advice on pension schemes but the passporting permissions is IMD and related to Insurance Products which the new scheme was. We at [Provider], *the ceding scheme,* [investment firm] *and* [receiving trustees] *were satisfied that this was the case".*

After being advised that the matter would be submitted for my final determination, the Complainant made a submission about a fund that he states the Provider's agent recommended as part of the transfer, stating that it has been suspended, and that as a result the Complainant would lose £120,000 of his Pension Fund. He suggests the Provider's agent and his firm, should be held to account for what they have done.

/Cont'd…

While I accept that the Complainant may well lose money on his investment, the performance of the investment is not a matter which has been investigated by this Office and does not form part of this adjudication.

As can be seen, a very considerable amount of the submissions both before and after the issuing of my Preliminary Decision relate to the regulated status of the Provider against which this complaint is made. This was the case, despite the fact that I informed the parties that this Office is not an advisory body nor is it a regulatory authority. I pointed out that my role is to be an independent and impartial adjudicator of complaints. That does not include determining the regulated status of a financial service provider.

For this reason, I put my final adjudication of the complaint on hold and offered the Complainant an opportunity to raise his enquiry with the Central Bank of Ireland directly.

As can be seen from the submissions above, the Complainant engaged with both the Central Bank of Ireland and the UK FCA on the matter and I will therefore not comment further on those interactions as they are not matters that fall within my jurisdiction and therefore do not form part of this Decision.

I will now deal with the complaint which does fall within my jurisdiction, that the advice given by the Provider to the Complainant recommending that he transfer the accrued benefits under his UK defined benefit pension scheme (and other accrued pension benefits) to a defined contribution arrangement outside of the UK, was very poor advice.

In 2014 the Complainant effected a transfer of a number of his pension funds into a scheme offered by the Provider.

The Complainant listed 3 schemes in which he was a beneficiary that he intended to transfer into the scheme proposed by the Provider – with estimated values in April 2014 of GBP£56,372.60, GBP£36,384.91, and GBP£20,947.86.

During October 2014 a number of forms were signed by the Complainant.

The essence of this complaint is that the Complainant asserts that he received poor advice, and that the risks associated with the transfer were not explained to him.

In relation to the complaint regarding the quality of advice/information given by the Provider, I pointed out in my Preliminary Decision that the Complainant had not furnished any evidence to suggest that he has suffered any loss.

The Provider submits that it did not in fact offer any advice and that its role was strictly limited to offering a product which the Complainant was free to either accept or reject. I do not entirely agree with this proposition – clearly when a person considers transferring investments he or she will take cognisance of all information provided when making their choice. It is a fine line between advising and simply presenting an option. Whether or not advice was in fact given must be considered in light of the information that was provided.

/Cont'd…

The Provider states that its agents were not paid on a commission basis, and thus had no personal inducement to sell a product.

The Complainant contends that risks were not explained to him and that fees and charges were not set out clearly. The information that was provided to him at the time he decided to enter into the transaction is particularly relevant. In that regard I have been provided with a number of documents in evidence.

On 2 September 2014 the Provider issued a letter to the Complainant enclosing a report *"with a view to providing [the Complainant] with some general information on retirement planning"*.

This letter also contained the following statements:

> *"I have taken some personal and financial information gathered from your fact find to enable me to make a recommendation".*
>
> *"This report addresses your DB [defined benefit] and DC [defined contribution] pension arrangements and an alternative option, a QROPS, which is a personal pension based in another EU jurisdiction.*
>
> *As requested I have included information on a high yielding investment in [investment] Capital, a German property investment".*
>
> *The DB analysis does not, on its own, show whether or not transferring your benefits is advisable, as that depends on many other factors specific to you, such as you* ***'attitude to risk', your personal circumstances and your objectives****.*
>
> *I intend to provide you with some information that will assist you with making an informed decision."*

The report referred to in that letter and provided to the Complainant contained the following statements:

> *"[Complainant], from the information you have provided us with, you may need to increase your annual contribution to provide yourself with the lifestyle you want in retirement.*
>
> *However, I also recommend that you check on your entitlement to a state pension and the age you will start to receive that benefit. I presume you will have an entitlement to a state pension and provided that it is still available when you retire and it's still at its current levels it may cover your shortfall".*

This line is based on the Complainant's instruction that he wanted a monthly income in retirement of £1,000. It does not appear to me to be misleading.

/Cont'd…

The report continues:

> *"Conventional wisdom would say that you should not surrender a Defined Benefit (DB) scheme.*
>
> *The reasons for maintaining the benefits in this type of scheme are:*
>
> - *The retirement benefits are guaranteed*
> - *The running costs of the scheme are paid for by the sponsor or employer"*
>
> *"The [defined contribution] DC scheme rules do not provide or promise any specific level of investment return.*
>
> *The important difference is that under the DC scheme, the scheme rules do not promise any specific level of retirement benefit or investment performance, as there is no guarantee on what the accumulated contributions will have grown to by retirement age."*

The report then goes on to explain that some defined benefit schemes have been underfunded and members might not receive their full entitlements, although they are protected to a certain degree by pension protection schemes. There is no specific reference to the Complainant's pensions.

The report carries out a comparison of the Complainant's current capitalised value of the benefits in one of his defined benefit schemes (£56,372.60) to the benefits that can be purchased by transferring this value to *"an investment in [investment] Capital and [investment firm] Internationals Investment Platform, through a QROPS administered by [a Pensions provider] in Malta"*.

There is a table of projected investment returns marked "depending on investment performance" which sets out possible fund values for a range of annual returns from 3.0% to 8.0% at different retirement ages.

The report describes the Complainant as being categorised as *"Risk Group 4"* and sets out a number of characteristics which a person in risk group 4 would have. For example, a risk group 4 person is *"prepared to take a small amount of risk with their financial decisions, more likely medium".*

The report goes on to "recommend" that the Complainant invest a maximum of 50% of his funds in [investment] Capital and the remaining 50% split equally between two funds on the [investment firm] Platform. Fees payable are set at "*£1790.0346*".

Anticipated returns are set out but with the rider: *"These figures are estimates based on previous and anticipated returns. They are not guaranteed. Please note that past performance is no guarantee of future returns."*

/Cont'd…

The report also states:

> *"It is an excellent time to invest in good alternatives. Conventional finance is not open to some industry sectors as banks are not lending to them.*
>
> *However, we advise caution and you should do your own research into any investment proposal if you are not intimately knowledgeable about the company.*
>
> *[The Provider] and [the administrator] don't approve many alternatives, we put them through a high level of due diligence before allowing our investors to put their money into one. Currently the only alternative we allow access to is [investment] Capital."*
>
> *"[investment] Capital GmbH operates a unique and proven investment scheme. The company builds brand new buildings and apartments in Germany..."*
>
> *"However, investors should be aware that they will be required to bear the financial risks of the investment".*

There is then a three page section headed ***"RISK FACTORS"*** which sets out various risks associated with this type of investment under 17 headings (including currency risk).

A section then sets out some more charges – initial charges to the Provider of 0.50% of the funds and an establishment fee with the administrator of £800.00, then an annual fee to the administrator of £1,000. Additional fees from £125.00 to £50.00 are set out, together with a termination fee.

Finally, the Provider provides a short summing up containing the following statements:

> *"As discussed, conventional wisdom says that one should hold a Defined Benefit pension scheme till retirement as the returns are guaranteed and benefits are indexed to protect against inflation. When you enter personal pension arrangements you are exposing your funds value, to the risks of investment returns and the investment markets. It would seem likely that your fund at retirement may be less than that provided by your DB scheme(s).*
>
> *You may have some specific personal preferences. Like the option of increasing pension income. The desire to have control over your pension and importantly transparency with the ability to plan. Fears over the scheme being underfunded.*
>
> *Therefore you may feel a transfer to a QROPS solution is of benefit to you. If you are willing to take on the additional risk to your fund value by affecting a QROPS in order to meet your specific needs.*

/Cont'd…

> *... [the Provider] is an introducer for [the administrator] QROPS, this is the only QROPS [the Provider] use.*
>
> *"The purpose of this information is to help you make an informed decision. Should you decide to move ahead with the transfer of your DB scheme you can find more detail on our recommendation in the main report.*
>
> *... after considering the information above please confirm to me by signing below that you understand the risks involved with surrendering you DB scheme and that you want to proceed with the recommended QROPS and investment strategy."*

The Complainant signed the bottom of this letter on 11 September 2014.

A "Summary Letter" is also provided, again signed by the Complainant on 11 September 2014 which states:

> *".....I believe QROPS is a suitable product for you and can be useful as your needs may change in the future.*
>
> *I believe you have a shortfall in your existing pension funding. There are two ways to bridge that gap – either you can contribute more or you must attain higher returns. If successful, [investment] will help you bridge that gap....*
>
> *... after considering the information in this report, please sign below to confirm that you are satisfied with its recommendations. To confirm you are happy to proceed please complete the application form".*

The application forms (there is one for each administrator) contain numerous statements that the customer confirms by signature, in particular, that he has received and read all relevant material and fully understands those materials and accepts the risks. The Complainant signed both of these forms under these declarations.

A one-page schedule of fees from the fund administrator is included with the documentation and is also signed by the Complainant.

Analysis

The Complainant complains that he was not advised of the risks associated with moving his pension funds, including currency risks and the fact that the proposed scheme was not guaranteed by the UK pension protection scheme, that he was not advised of fees, and that generally the advice received was poor.

/Cont'd…

The documentation signed and presumably read by the Complainant prior to entering into the transfer deals specifically with each issue now raised by his advisor in this complaint – the loss of the benefit of the UK pension protection scheme; the currency risk, and the fees and charges associated with the new product.

The literature even specifically states that the schemes put forward were the only product offered by the Provider, therefore it cannot be criticised for "failing to offer any other options".

I note the Complainant's representative states that the transfer made by the Complainant in 2014 will result in him losing a significant sum of money. However, this has not been investigated by this Office and does not form part this adjudication.

The Provider is not a wealth management firm who advises on a broad range of options before guiding a client into a decision. It sold one product. I have been provided with no evidence that it misled the Complainant about the service it was offering.

In relation to the quality of the advice/information provided, I accept that while some of the literature clearly promotes the product being sold as being suitable, I have been provided with no evidence that the Complainant was pressured into any decision.

For the reasons set out in this Decision, 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

23 June 2021

/Cont'd…

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.