



<u>Decision Ref:</u>	2021-0343
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Approved Minimum Retirement Fund AMRF
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service Failure to process instructions in a timely manner
<u>Outcome:</u>	Rejected

**LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

The complaint concerns an approved retirement fund held in the name of the Complainant's husband.

The Complainant's Case

The Complainant submits that her late husband took out an approved retirement fund with the Provider in **2015**, and further submits that her husband sadly passed away suddenly in **2020**. The Complainant contends that she subsequently applied to have the fund proceeds transferred into her name, this being a feature of her late husband's policy. She states that the Provider advised her that it required a Grant of Probate in order to process her application.

The Complainant submits that the policy document does not specify that a Grant of Probate is required, and that she considers this requirement to be an unnecessary and costly expense. She further submits the Provider has failed to provide any evidence that the requirement was included in the policy terms and conditions, and that neither she nor her late husband were aware of the requirement. The Complainant states that the Provider has been furnished with certified copies of her late husband's will and that it is aware that she is the sole beneficiary and executor of his estate.

The Complainant argues that it should have been in the relevant paperwork if it was necessary for a Grant of Probate to be taken out.

The Complainant wants the Provider to transfer the proceeds of the policy into her name immediately and pay her compensation for loss of access to the funds since her husband passed away.

The Complainant has subsequently confirmed that she had taken out a Grant of Probate and that the funds were transferred by the Provider to an approved retirement fund in her name with another company.

The Provider's Case

The Provider submits that the Complainant's late husband's policy forms part of his estate. It further submits that there are two options available under current legislation relating to approved retirement funds following the death of the policyholder:

1. encash the policy and pay the proceeds either to the deceased's estate or the children of the deceased, or;
2. transfer the bond into the name of the deceased's spouse.

The Provider contends that it is the estate's executors or administrators that are responsible for determining which option should be selected. The Provider submits that it is its policy to seek a Grant of Probate in such circumstances and then to seek instructions from the executors/administrators on how to administer the policy.

The Provider submits that if it paid out or transferred ownership of the deceased's policy without a Grant of Probate, it would be unable to get a valid discharge of the proceeds and could be sued by any party who believes that they have a claim on the deceased's estate, or any creditors who are owed funds by the deceased's estate.

The Provider contends that the Grant of Probate protects it from being forced to pay out additional funds to anyone who might prove a legitimate claim against the deceased's estate and submits that a Grant of Probate is required so that the Provider can gain legal discharge during the claims process of the policy.

The Provider notes that it confirmed in its initial requirements letter to the death claim that a Grant of Probate was required alongside the relevant options form to be completed by the executor or administrator of the estate.

The Provider accepts that there are no specific policy terms and conditions in respect of it seeking a Grant of Probate prior to the transfer of a policy to a policyholder's spouse in the event of death. It submits that as a matter business practice, it requires a Grant of Probate in respect of a single life policy. The Provider states that it is not willing to release funds without confirming the correct direction of these funds. It argues that the only document that protects both the payee and the Provider is a Grant of Probate which gives legal protection to the payment following the death of the policyholder.

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The Provider argues that the documentation it requires under clause 6 of section 5 of the policy for the legal discharge of the claim is the Grant of Probate and the completed options form by the named executor or administrator of the Grant. The options form contains four options for discharge of the funds and each option comes with additional requirement(s) depending on which option is chosen, to establish identity and so forth.

In relation to the Complainant's argument that the policy document does not provide for the requirement of a Grant of Probate, the Provider argues that the document states that it will pay a benefit on death to the policy owner's legal representatives. It submits that the only way it can satisfy itself as to who the legal representatives are is with a Grant of Probate.

The Complaint for Adjudication

The complaint is that the Provider has wrongfully refused and/or unnecessarily delayed in transferring the policy into the name of the Complainant in accordance with clause 6 of section 5 of the policy from **July 2020**.

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 8 September 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.

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In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

It appears that the approved retirement fund policy in question was taken out by the Complainant's husband in his sole name in or around **2015**. The Provider was notified by a broker on **17 June 2020** that the policyholder, the Complainant's husband, had passed away on a given date.

The Provider notified the broker by letter on **3 July 2020** that a Grant of Probate was required in addition to completion of the relevant options form. An email was submitted by the broker on **14 July 2020** attaching an incorrect form and requesting that the Provider transfer the fund to a different company in the name of the Complainant. The Provider notified the broker on **15 July 2020** that it required a Grant of Probate and a completed options form to facilitate the request.

The broker responded on **15 July 2020** with the completed options form and various documents including a marriage certificate and a copy of policyholder's will. The will named the Complainant as the executrix and beneficiary of the estate. The Provider responded requesting a Grant of Probate and the broker responded that the Complainant did not intend to extract a Grant. By email dated **15 July 2020**, the Provider explained that due to the sum of money involved, it was not in a position to waive the requirement for sight of the Grant of Probate. The broker queried whether a letter from the Complainant's solicitor would suffice if it advised that there was no Grant of Probate as the case was straightforward. The Provider reverted and clarified that this was not sufficient and that it has to protect itself against third party claims.

By email on **16 July 2020**, the broker requested that the Provider treat it as a special case and waive the requirement for a Grant of Probate. The Provider responded it was not in a position to do so. By email dated **20 July 2020**, the broker noted that the policy document indicated that the policy could be transferred to a spouse and that therefore this should be done without a Grant of Probate. By email in reply on **21 July 2020**, the Provider stated that it could not proceed to transfer ownership of the policy without the correct legal documentation confirming there were no debts owing to the estate which would leave the Provider open to a claim from a third party. It noted that it could provide an application for advance payment of €10,000 due to the circumstances in regard to the Complainant's income but could not waive the requirement for a Grant of Probate.

On **22 July 2020**, the Complainant's solicitors wrote to the Provider seeking that it waive the requirement for a Grant of Probate because this would constitute a considerable financial burden to the client. The letter further noted that there was no reference in the policy document to transfer subject to sight of a Grant of Probate. By email dated **29 July 2020**, the Provider responded that it was not in a position to waive the requirement for the Grant of Probate. A final response letter was requested on the issue.

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By final response letter dated **3 September 2020**, the Provider noted that the policy forms part of the deceased's estate and it is the responsibility of the executors or administrators to the deceased's estate to determine what was to happen to the policy on the policyholder's death. It argued that it is its policy to seek a Grant of Probate and to seek written instructions from the executors/administrators on how to administer the policy. The Provider indicated that it considers waiving its usual requirement for a Grant of Probate where the value of the policy is less than €60,000 but as the policy, the subject of this complaint, was worth more than €260,000, it was well in excess of the limits.

The Provider argued that if it was to transfer ownership of the policy without a Grant of Probate, it would be unable to get valid discharge of the policy proceeds and it could be sued by another party with a claim against the estate. It stated that, in the present case, it specifically requires that a Grant of Probate be obtained from the Probate Office so it can gain legal discharge during the claims process of the policy.

I have reviewed a copy of the policy document concerning the Approved Retirement Fund in question. Section 5 of the policy deals with the payment of benefits and provides as follows:

"Amount Payable on Death

3. *[The Provider] will pay the Death Benefit to your legal representative(s) on proof of your death.*
4. *The Death Benefit payable on your policy will be the value of your Unit Account plus Special Dividend, if any. The value of your Unit Account will be based on the Bid Price(s) of the units calculated on the next fund valuation date after the date of notification of death.*
5. *[The Provider] will deduct any taxes from the Death Benefit as required of it by the Revenue Commissioners.*
6. *As an alternative to paragraphs 3 to 5 above, ownership of your policy can be transferred to your spouse on your death, subject to the Revenue Commissioners' approval. [The Provider] will not charge for this change of ownership, but will deduct any taxes as required of it by the Revenue Commissioners."*

It is apparent from the above that there is no specific provision in the policy document that sets out the Provider's requirement for proof in the form of a Grant of Probate before it will transfer the proceeds of a single life policy to the estate or surviving spouse of a policyholder. This is accepted by the Provider itself. The relevant provision simply states that the Provider will pay the death benefit to the policyholder's legal representative(s) on proof of death, or alternatively to their spouse.

If it had been the case that the policy document set out a list of requirements for the transfer of the policy in the event of death, but excluded the requirement for a Grant of Probate, the Complainant may well have been correct that this should have been set out.

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The policy document in question, however, simply does not deal with the question of the proofs that will be required by the Provider, other than proof of death. Indeed, proof of death is not even specifically set out under clause 6 of section 5 in respect of the transfer of the policy to a spouse.

However, I do not believe it would be reasonable to assume that no proofs whatever would be required by the Provider in order to transfer the benefit of the policy to a surviving spouse.

The Complainant has raised no issue in respect of any of the other documentation that the Provider required. The only objection that the Complainant raised was in respect of the Grant of Probate as, it appears, she would not have extracted a Grant at all in respect of her husband's estate if this had not been required by the Provider.

I acknowledge that it is not always necessary to extract a Grant of Probate, for example where all assets and property are held in joint names. Further, where there is a very small estate and only cash assets, this can be dealt with under small estates procedure. In most other cases, however, a Grant of Probate will be required. I accept that there are costs involved in the administration of an estate and that the process can be time consuming for an executor.

The policy, the subject of this complaint, was (by necessity) held in the sole name of the Complainant's deceased husband. The Provider was entitled to require the executors or administrators of the policyholder's estate to elect what to do with the proceeds of the policy as there were a number of choices to choose from. From the Provider's perspective, I accept that it would be open to a possible legal claim from third parties if it proceeded to transfer the proceeds of the policy in the absence of conclusive proof of who those executors or administrators were and what was to be done with the proceeds. The estate of a deceased person must be available for the payment of his or her debts. Further, an executor appointed under a will has the right to renounce.

The only conclusive proof of the appointment of an executor is the Grant of Probate. A fundamental feature of the Irish system of the administration of estates is that a person dealing with the estate should be able to rely upon a grant of representation (such as a Grant of Probate) without having to enquire further. Under section 22(1) of the Succession Act 1965:

“Every person making or permitting to be made any payment or disposition in good faith under a representation shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of the representation.”

For this reason, I do not consider the Provider's requirement for sight of a Grant of Probate unreasonable, particularly considering the value of the policy. While I appreciate that extracting a Grant was inconvenient and incurred a cost for the Complainant, I do not consider the Provider's requirement to be unreasonable.

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Further, I do not consider that the Provider had an obligation to set out its requirement for a Grant of Probate in the policy document. The policy does not deal with the required proofs and, as these are likely subject to change over time, understandably so. It is not surprising that the Provider requires certain documentation to prove an entitlement to transfer the proceeds of a deceased policyholder's fund and, in my view, it was entitled to seek a Grant of Probate.

The evidence indicates that, from the very outset, the Provider communicated its requirement that a Grant of Probate be submitted to it and was consistent in each of its communications in this regard. It responded promptly and clearly to all correspondence received from and on behalf of the Complainant with regard to the issue.

I note that a Grant of Probate issued on **5 February 2021** and this was forwarded to the Provider by email dated **11 February 2021**. By letter dated **25 February 2021**, the Provider confirmed the transfer of the policy funds in accordance with the instructions of the Complainant in full discharge of the claim.

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**

30 September 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.

