



<b><u>Decision Ref:</u></b>	2021-0407
<b><u>Sector:</u></b>	Investment
<b><u>Product / Service:</u></b>	Approved Minimum Retirement Fund AMRF
<b><u>Conduct(s) complained of:</u></b>	Failure to process instructions Maladministration
<b><u>Outcome:</u></b>	Substantially upheld

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

The Complainant invested in an Approved Retirement Fund (**ARF**) and an executive Advantage Plan (**AP**) with the Provider around **2010**.

**The Complainant's Case**

The Complainant made a claim on his ARF in **January 2019**. The Complainant argues that he sent an accompanying letter with the ARF claim instructing the Provider to wait to make his ARF payment to him after his 66<sup>th</sup> birthday in **April 2019**. The Complainant also made a claim on his AP in **January 2019** along with a similar instruction to the Provider to wait to make his AP payment after his 66<sup>th</sup> birthday.

By email dated **13 February 2019**, the Complainant made further instructions to the Provider in respect of the manner in which he wished for his ARF payment to be made. The Complainant identified an account that he wished the funds to be transferred to. He stated that he wished to draw the full amount of the AMF if it is taxed at 20%. He indicated that he had applied for his state pension and that once he received it, it would put him above the €12,700 tax threshold, then he would like to draw the 25% tax free sum from his ARF and discuss his options with the Provider in respect of the balance.

In the same email of **13 February 2019** and in respect of his AP, he instructed that he wished to draw the 25% tax free lump and the balance as taxable cash if it is taxed at 20%.

The Complainant argues that the Provider surrendered payment of his ARF on **14 February 2019**. He submits that the early payment of his AMF meant that he was put into a higher tax bracket for **2019**. The Complainant is dissatisfied that the Provider made payment of his ARF in **February 2019** against his instructions and states that this resulted in financial loss to him. The Complainant submits that he contacted the Provider and instructed that no further payments should be made to him until he instructed it to do so.

The Complainant submits that the Provider made payment of his AP in **May 2019**. The Complainant states that the funds were deposited to his account without any prior notification to him and that he only received correspondence in that regard from the Provider a few days after payment had been made.

The Complainant submits that he had requested the Provider to make both of these payments into a specific bank account. The Complainant submits that he decided not to supply the Provider with the account details to prevent the Provider from making the payments until he instructed it to do so. He states that he had informed the Provider in that regard and that the Provider had confirmed and assured him that it could not make any payment to his account without his account details.

The Complainant submits that the Provider identified an account in his name which it had used for other regular payments to him and it used this account to pay the funds into without his instruction.

The Complainant submits that he changed address and informed the Provider of the updated address, which had confirmed the updated address. He states that, in error, the Provider sent correspondence to his former address and used the postcode from his former address in its correspondence to him.

The Complainant contends that the Provider's premature payments of his ARF and his AP claim resulted in a financial loss to him. He states that he has had to pay an additional £1,828 in tax as a result.

### **The Provider's Case**

The Provider states that in a Claim Form completed on **27 January 2019** and emailed to the Provider on **30 January 2019**, the Complainant indicated that he wished to withdraw the total ARF plan. The Provider states that in a letter dated **25 January 2019** and emailed to it on **2 February 2019**, the Complainant asked that the claim be processed after his 66<sup>th</sup> birthday in **April 2019**. In a subsequent email dated **13 February 2019**, the Provider states that the Complainant noted that he wished to claim the full pension but only if it was subject to tax at 20%. He also noted the details of a bank account to which the proceeds were to be lodged.

In respect of the AP plan, the Provider states that in a Claim Form completed on **27 January 2019** and emailed to the Provider on **30 January 2019**, the Complainant indicated that he wished to receive a breakdown of the pension options available to him.

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He also noted that he wished to claim the whole pension as taxable cash. In a letter dated **25 January 2019** and emailed to the Provider on **2 February 2019**, the Provider states that the Complainant asked that the claim be processed after his 66<sup>th</sup> birthday in **April 2019**. The Provider states that in a subsequent email dated **13 February 2019**, the Complainant noted that he wished to claim the full pension as taxable cash but only if it is subject to tax at 20%. He also noted the details of a bank account to which the proceeds were to be lodged.

The Provider accepts that the claim on the ARF plan was incorrectly processed on **14 February 2019**. It accepts that this was the result of human error and should not have been done, bearing in mind the various instructions received from the Complainant in the two weeks prior. The Provider states that it appears that a review of previous documentation received had not been carried out prior to the claim being paid.

The Provider states that the error was brought to its attention by the Complainant by way of telephone call on **18 February 2019**. The Provider states that it was not possible to rewind the claim. The Provider argues that it arranged for a refund of tax on the plan on two occasions in **2019**, to put the Complainant in the position he would have been in had his plan been claimed after his 66<sup>th</sup> birthday as requested and when he would have sufficient tax credits to reduce his tax liability to 20%, again, as requested. The Provider states that the Complainant received a refund of €2,448.59 in **May 2019** and a further refund of €5,040.21 in **December 2019**. The Provider states that the total cost of €7,488.80 was borne by the Provider. The Provider argues that this ensured that the Complainant was not financially disadvantaged by the ARF plan being surrendered early.

In respect of the executive AP, the Provider accepts that the plan should not have been surrendered without further contact with the Complainant due to the fact that he noted he only wished to proceed with the claim in the event that he would be taxed at 20% and as the Provider no longer needed the bank statement referenced in its emails of **19 February 2019** and **4 March 2019**. The Provider states that as the Complainant's tax credits had been used to reduce the tax commitment on his ARF (incorrectly surrendered in **February 2019**), he was always going to be taxed at the higher rate of 40%.

The Provider accepts, therefore, that the Complainant should have been contacted before processing the claim and made aware of this and that in order to ensure he only pays 20% as requested, he would need to hold off claiming the proceeds of the AP plan until **December 2020**. The Provider states that unfortunately this was not done as the plan was surrendered and the higher tax liability of 40% was incurred by the Complainant.

The Provider notes that it agreed to correct the error and put the Complainant into the same position he would have been in had the error not occurred, as he had originally requested the Provider to do. The Provider agreed to rewind the claim in full for the Complainant. The Provider states that it also offered the Complainant the chance to keep the tax-free lump sum element and return the balance he received as a taxable payment (€15,382.84) and reinvest it in a new Approved Retirement Fund.

It states that the balance would remain invested in an Approved Retirement Fund until the Complainant decided on how he would like to claim the funds. The Provider notes that this option would involve setting up a new plan with the Provider or another pension provider. The Provider states that despite originally requesting that the Provider rewind the claim, the Complainant chose not to send back the money received, despite claiming he would ultimately pay higher tax in the UK as a result of receiving/keeping the money. The Provider notes that while it is unfortunate that the Complainant would rather pay high tax than allow the Provider to correct the error in question, this was his decision to make.

In respect of the correspondence address, the Provider states that the address for the AP was updated just prior to the claim being paid. It states that the address added to the plan was the address noted on the Claim Form completed and signed by the Complainant on **27 January 2019**. The Provider notes that while the Complainant confirmed his new address on several occasions, this was different to the address provided on the Claim Forms. The Provider submits that the new address was updated to the Complainant's records following a telephone call on **21 January 2019** but the old address was provided on the Claim Forms signed on **27 January 2019**. The Provider argues that the Complainant must accept a degree of responsibility for the fact that he supplied the Provider with conflicting information regarding his correspondence address and, particularly, that he provided an alternative address after updating to his new address in **January 2019**. The Provider accepts that in its letter of **17 May 2019**, it included the postcode of the old address with the new address in error.

In respect of the Provider's request for a copy of a bank statement prior to making payment on the AP, the Provider states that this is standard claim procedure. It states that it is a requirement for all claimants seeking to transfer the proceeds of their plan to a bank account not already noted on the records or not previously verified by the Provider. The Provider states the details of the bank account provided by the Complainant in an email of **13 February 2019** matched that of a bank account to which the Provider had previously been transferring automatic payments relating to another plan. The Provider states that the bank account had therefore been verified by the Provider in the past. Although the Provider notes that the Complainant was informed that it required a bank statement from him, it states that this was not actually the case. As the Complainant had noted his desire to transfer the proceeds to the bank account in question and as it had previously been verified, further verification was not required. The Provider accepts, however, that it would have been good customer service to contact the Complainant and make him aware of this before proceeding.

The Provider accepts that it incorrectly processed the claim on the Complainant's ARF plan in **February 2019** which resulted in him being taxed at 40% rather than the 20% he would have been charged that had been processed as directed after his 66<sup>th</sup> birthday. As it was not possible to rewind the claim, the Provider states that it refunded any additional tax paid by the Complainant as a result, putting him in the same position he would have been in if it had been claimed after **April 2019**.

The Provider also accepts that when processing the claim on the Complainant's AP, it should have noticed that he only wished to proceed with the claim if he would pay tax at 20%. As a result of his instruction, the Provider accepts that it should have contacted the Complainant made it clear to him that as he had no further tax credits for the year 2019, he could not claim his AP subject to 20% tax until **December 2020**. The Provider states that it should also have made him aware that it no longer needed a copy of his bank statement to transfer the proceeds to the nominated account as the account had been previously verified. The Provider argues that in order to put the Complainant in the same position he would have been in had the error not occurred, it agreed to rewind the claim and also gave him the option of just rewinding the taxable portion of the claim. It notes that the Complainant chose to do neither of those things, despite claiming that he had to pay higher tax for the rest of the year in the UK. The Provider further accepts that the Complainant confirmed his new address on several occasions, though notes that he had provided conflicting information in this regard.

In respect of the errors that occurred in processing the claims, the Provider offers a goodwill gesture of €1,000 to the Complainant.

### **The Complaints for Adjudication**

The complaints are that the Provider:

Failed to execute the Complainant's instructions and/or acted against his instructions when it made payment of his AMF in a manner and at a time contrary to his instructions which resulted in financial loss to the Complainant.

Failed to execute the Complainant's instructions and/or acted against his instructions when it made payment of his AP in a manner and at a time contrary to his instructions.

Furnished the Complainant with incorrect information in relation to its ability to make payments to his bank account.

In error, issued correspondence concerning the Complainant's claim to an incorrect address and/or incorrectly addressed correspondence it sent to the Complainant.

### **Decision**

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. 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.

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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 13 October 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.

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

Although there are four complaints in the present complaint, they can be usefully analysed in two sections – (i) the early surrender of the plans, to include information concerning the verification of the Complainant’s bank account; and (ii) the incorrect correspondence address.

### ***Early Surrender of the Plans***

#### *Payment of the ARF*

On **30 January 2019**, the Complainant submitted by email a Claim Form in respect of an ARF held in his name. This instructed the Provider that he wanted to withdraw all of his funds and was signed by the Complainant.

On **2 February 2019**, the Complainant submitted an email to the Provider attaching a cover letter that he omitted from his email of **30 January 2019**. The letter dated **25 January 2019** (but sent on **2 February 2019**) provided as follows:

*“Please find attached completed claim forms for the above two policies.*

*...*

*I request these policies to be paid out after my 66<sup>th</sup> birthday which is on [date redacted].*

*Please note that I am not resident, nor ordinarily resident and not domiciled in Ireland. ...”*

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On **7 February 2019**, the Provider emailed the Complainant *“in relation to drawing down your AMRF in full this April”* and requesting a signed version of the AMF instruction and evidence of guaranteed income.

By email dated **13 February 2019**, the Complainant responded as follows:

*“Regarding transfer of funds when they take place they can be sent to my [named] bank account in [place] details attached. please note below my requests.*

*[AMF] I wish to draw the full amount if it is taxed at 20%. ...”*

By letter dated **14 February 2019**, the Provider confirmed that the Complainant’s AMF had been paid out in full. The letter attached a breakdown of the tax paid on the payment by way of PAYE and PRSI.

In a telephone call on **18 February 2019**, the Complainant stated that his instructions were only to surrender the ARF at a 20% tax rate and now it had been paid, he was subject to 40% tax. He stated that he had sent this instruction the previous week. He also indicated that he had received confirmation from an adviser that it would not be surrendered. A complaint was logged on his behalf. In the course of the call, the Complainant highlighted that the request to only process a surrender at 20% also applied to the AP plan. The Provider confirmed that this would be noted.

By email dated **19 February 2019** in respect of the AP claim, the Provider stated:

*“[AMF] was surrendered and tax paid on same, this will be taken into account for the taxable cash calculations [AP] as it is the same Certificate of Tax Credits.”*

By email dated **21 February 2019**, the Complainant referred to his letter of **2 February** regarding payment of the plans and indicated that he had been informed by his Irish accountants that he would not have paid any PRSI on the AMF if it had been paid out after his 66<sup>th</sup> birthday.

By email dated **4 March 2019**, the Complainant was informed that the Provider would refund him when he turned 66.

By letter of complaint dated **5 March 2019**, the Complainant referred to the AMF and stated as follows:

*“The above plan was paid out prematurely in February 2019, despite the clear and specific written instructions provided (see attached letter of 19<sup>th</sup> January 2019) and without the required documentation (bank statement). I have today spoken to my UK accountant who advises that due to tax liabilities this payment is rescinded with immediate effect.*

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*As you will appreciate, the situation is causing me considerable distress and inconvenience. I have contacted you and several of your colleagues via email and telephone on numerous occasions since becoming aware that the payment was made prematurely and have yet to be reassured by anyone at [the Provider] that this error is being addressed.*

*I look forward to your immediate response confirming this error has been addressed as this is now a matter of urgency. In addition, I am seeking fair compensation for any financial detriment I have suffered as a result of this error made by [the Provider].*

The Provider acknowledged the complaint by letter dated **12 April 2019**.

A member of the Provider's complaints team telephoned the Complainant on **18 April** confirming that the complaint was in respect of the early payment of the pension plan when he specifically requested that it not be paid until after his 66<sup>th</sup> birthday.

The Complainant indicated that in terms of compensation, he was interested in being compensated in respect of what it would cost him in extra taxes and time as it would put him into a higher tax bracket in respect of UK tax and also cost in terms of time and stress. The Provider informed the Complainants that it would look into whether the surrender of the plan could be rewound.

An update letter was sent on **3 May 2019** indicating that the Provider was still investigating the complaint. The Complainant objected to the timescale of the investigation in a letter of **11 May 2019**, in which he also objected to the early payment of the AP plan, discussed in the next sub-section. The Complainant requested that both payments be rescinded with immediate effect as there were affecting his UK tax status and putting him into the 40% tax bracket. He indicated that the early payment of the ARF was going to cost him in the region of £20,000 extra in tax.

#### *Payment of the Executive AP*

On **30 January 2019**, the Complainant submitted by email a Claim Form in respect of an Executive AP held in his name and related to his employment with a dissolved company. This instructed the Provider that the Complainant wanted:

- (a) Details of the options available to him before making his decision; and
- (b) The maximum retirement lump and the balance in taxable cash.

The Claim Form was signed by the Complainant and dated **27 January 2019**.

On **2 February 2019**, the Complainant submitted an email to the Provider attaching a cover letter that he omitted from his email of **30 January 2019**.

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The letter dated **25 January 2019** (but sent on **2 February 2019**) provided as follows:

*"Please find attached completed claim forms for the above two policies.*

...

*I request these policies to be paid out after my 66<sup>th</sup> birthday which is on [date redacted].*

*Please note that I am not resident, nor ordinarily resident and not domiciled in Ireland. ..."*

The Provider responded by email dated **7 February 2019** requesting further documentation in respect of salary and a signed Deed of Indemnity. In respect of the withdrawal of funds from the AP, the Provider stated as follows:

*"Upon receipt of salaries we will be in a position to proceed with claim of 25% tax free cash and balance as taxable cash, we are in receipt of Certificate of Tax Credits. Please confirm upon receipt of salaries if we should proceed with the claim or if you require options to be issued as noted on the claim form."*

In a call dated **11 February 2019**, the Provider confirmed with the Complainant that he wished to take the 25% tax-free lump sum from the AP plan and explained that the balance had to go into another pension product or be taken as taxable cash. The Provider recommended that he speak to a financial adviser in respect of this. The Provider confirmed that the 75% balance of the AP plan would be taxed and the Complainant confirmed that he wished to take it as taxable cash. He confirmed that he had an Irish bank account and did not want to be paid by cheque and stated that he just sent his account information to the Provider. He confirmed that he had signed the Deed of indemnity.

By email dated **13 February 2019**, the Complainant sent the signed Deed of Indemnity and proof of salary to the Provider. He stated as follows:

*"Regarding transfer of funds when they take place they can be sent to my [named] bank account in [place] details attached. please note below my requests.*

*[AP] I wish to draw the 25% tax free lump sum and the balance as taxable cash if it is taxed at 20%...."*

In a telephone call on **18 February 2019**, the Complainant made a complaint in respect of the early payment of the ARF. He stated that his instructions were only to surrender the ARF at a 20% tax rate only. The Complainant highlighted that the request to only process a surrender at 20% also applied to the AP plan. The Provider confirmed that this would be noted.

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By email dated **19 February 2019** in respect of the AP claim, the Provider stated:

*"In order to pay by EFT we require a bank statement in your name dated in the last 6 months. The correspondence received is not a bank statement.*

*[AMF] was surrendered and tax paid on same, this will be taken into account for the taxable cash calculations [AP] as it is the same Certificate of Tax Credits. This means the (sic) most of the taxable cash amount on [AP] will be taxed at 40% as only 2 months tax credits can be taken into account if the plan is claimed in February. Should you be due a tax rebate you may contact Revenue at year end to obtain same."*

By email in response dated **19 February 2019**, the Complainant referred back to his email of **13 February 2019** which *"clearly states my wishes regarding the plans I have with [the Provider], this mail was preceded by a telephone call to your colleagues outlining my wishes ..."*

By email dated **21 February 2019**, the Complainant referred to his letter of **2 February** regarding payment of the plans and indicated that he had been informed by his Irish accountants that he would not have paid any PRSI on the AMF if it had been paid out after his 66<sup>th</sup> birthday.

By email dated **4 March 2019**, the Provider stated as follows:

*"In order to pay by EFT we require a bank statement in your name dated in the last 6 months. The correspondence received is not a bank statement. We can alternatively pay by cheque. Please confirm.*

*As per your letter dated 25/01/2019 payment of claim is to be after your 66<sup>th</sup> birthday on [date redacted]. Upon receipt of either bank statement or confirmation to pay by cheque we will be in a position to process the claim and can either process then or wait until your 66<sup>th</sup> birthday. Please also confirm."*

On a telephone call on **5 March 2019**, the Provider stated that it needed a bank statement from him to make payment by way of EFT. The Complainant stated that he did not want to give the Provider the bank details so it could not make payment out early, as it had in respect of the ARF. He stated that he did not want to surrender the AP until after his birthday in **April**. The Provider's representative placed an alert message on his file not to pay out the AP plan until after the Complainant's 66<sup>th</sup> birthday. In light of that, the Complainant agreed to send the bank statement and to reply to previous emails sent by the Provider. The Provider again committed not to pay out the AP plan until the Complainant's 66<sup>th</sup> birthday.

The AP surrender was processed by the Provider on **2 May 2019**. By letter dated **2 May 2019**, the Provider wrote to the Complainant at the old address providing a breakdown of benefits paid from his AP plan on foot of his "*recent claim*". The payment included a tax-free lump sum and the taxable balance was subject to PAYE at source.

As the Provider sent confirmation of payment of the AP to an incorrect address (discussed in a subsequent section), this letter was not received by the Complainant. Instead he noticed that payments had been made into his bank account, and not labelled with a plan number. He called the Provider on **7 May 2019** and confirmed his new address. It is clear from the phone call that the old address had been updated to the Provider's system. The Complainant was informed that he had received a refund on **3 May** in respect of the PRSI and tax relating to his ARF. He was informed that a further payment related to the AP plan. The Complainant confirmed that he had not requested that the AP be surrendered and stated that he had written a letter to the Provider requesting that it not be paid out pending further instructions.

In a further call on **8 May 2019**, the Complainant reiterated that he had sent an email to the Provider not to pay out the AP plan until further instructions. He stated that it was not supposed to be paid until the Provider had received his Irish bank statement and that he did not want it to be paid out. He stated that he had sent an email stating that he did not want the AP plan paid out unless it was taxable at 20%. The Provider noted that there was a note on the system that it should not be paid out until his 66<sup>th</sup> birthday. The Complainant stated that he would await receipt of the payment slip to decide what he wanted the Provider to do.

By letter dated **11 May 2019**, the Complainant stated that he had received premature payment of the AP "*despite the clear and specific instructions not to pay anything else out (I did not send you relevant bank details).*" He also indicated that the letter providing details of the payment was sent to the wrong address despite the Provider having confirmed his change of address. He stated that he had not received a detailed payment slip so he did not know what the breakdown of payment was. The Complainant requested that the payments be rescinded with immediate effect as they were affecting his tax status in the UK and putting him into the 40% bracket.

#### *The Provider's Resolution of the Complaint*

The Provider called the Complainant on **21 May 2019** and informed him that it was unable to reverse either payment. It stated that it had refunded him in respect of the tax paid on his ARF and that it could make a payment of half of the tax that was charged to him on his AP plan, in the sum of approximately €4,500. The Complainant stated that refunding the tax on the ARF was insufficient as it had put into a different tax bracket in the UK which would cost up to £20,000 and that this was not satisfactory. In respect of the AP plan, the Provider accepted that it should not have paid out on the plan until it had communicated further with the Complainant. It explained that it had previously verified the bank account in question and it was able to use it to make payment to him as a result.

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By letter dated **24 May 2019**, the Provider referred to the telephone call on **21 May** and indicated that the writer had arranged for his concerns regarding the impact of the payments in respect of tax liability reviewed further. She indicated that the Provider would be in contact with him again.

The Provider sent a final response letter to the Complainant on **31 May 2019**. The Provider noted the Claim Forms received in respect of both plans on **30 January 2019** requested the withdrawal of funds. It further noted an email received from the Complainant on **2 February 2019** which requested the payment from the plans to be made after the Complainant's 66<sup>th</sup> birthday.

The Provider acknowledged that the ARF was surrendered prior to his 66<sup>th</sup> birthday on **14 February 2019**. The Provider apologised for this and stated that it was an administration error on the Provider's part and should not have happened. The Provider noted that the early payment meant that he had been subjected to a higher tax bracket and wanted the payment to be reversed. The Provider stated that it was not possible to reverse the payment made on **14 February 2019**. It stated that an amount of €2,448.59 was refunded to the Complainant in **May 2019** which represented the tax overpayment and the payment of PRSI.

In respect of the AP plan and in addition to the email of **2 February 2019**, the Provider stated that it received a further email from the Complainant on **13 February 2019** which clarified that he wished to take a 25% tax-free lump sum from the AP and to take the balance of taxable cash if it was taxed at 20%. The Provider states that it sent an email on **19 February 2019** to explain that the balance of the AP would be taxed at 40% based on the Complainant's tax credits as tax already been paid on the ARF.

It stated that it received an email from the Complainant on the same day referring to the email of **13 February 2019** outlining how the claim should be paid.

The Provider states that it sent another email on **4 March 2019** requesting a copy of the bank statement to transfer the proceeds of the AP plan. The Provider referenced the telephone call of **5 March 2019** in which the Complainant stated that he did not want to provide a copy of the bank statement to make sure the payment was not made before his 66<sup>th</sup> birthday. It stated that a note been placed on his file to make sure the payment was not made before the Complainant's 66<sup>th</sup> birthday. The Provider stated that the claim was processed and transferred to the bank account on **2 May 2019**. A breakdown of the payment was provided. The Provider explained that the payment had been made to the account nominated by the Complainant on **13 February 2019**. It acknowledged that it sent emails on **19 February and 4 March 2019** stating that it required a copy of the bank statement to verify the accounts before making payment. It explained, however, that the bank account details matched a bank account where payments had previously been made so it was in a position to make a payment after all. The Provider apologised for the incorrect information given. The Provider stated that although it had sufficient information on file to make payments to the bank account, it acknowledges that it should have waited for confirmation from the Complainant on how he would like the payments to be made in line with its email.

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In respect of the proposed resolution of the complaint, the Provider again noted that a sum of €2,448.59 was refunded to the Complainant in **May 2019** in respect of his ARF. It stated that to issue a further tax refund, the Provider would have to wait until **December 2019** and then use the Complainant's full year's tax credits for **2019**. It estimated that would be able to issue a further refund of €5,040.21 at that time.

In respect of the AP plan, Provider offered to reverse the retirement claim and reapply the funds to the plan. It stated that in order to reverse the claim, the Provider would need him to return the tax-free lump sum and the taxable balance that he received. The Provider stated that he would need to wait until **December 2020** to make a claim against the AP plan at a 20% tax rate because he had already reached the maximum taxable balance he could take within the 20% tax rate for the year **2019**. Alternatively, the Provider stated that the Complainant could return the balance he received as a taxable payment and reinvest it in a new Approved Retirement Fund which would remain invested until the Complainant decided how he would like to claim the funds. It explained this option would involve setting up a new plan with the Provider or with another pension provider. The Provider recommended that he speak with his accountant or financial adviser to discuss the options outlined and that he provide confirmation on how he would like to proceed. The Provider apologised for the errors and inconvenience caused to him.

The Complainant declined to reverse his retirement claim by letter dated **25 June 2019** and retained the proceeds of the AP plan. I note that he was refunded the additional sum of approximately €5,000 in **December 2019** in respect of the ARF. A complaint was made to this office on **5 August 2019**.

Compensation in the sum of €1,000 was offered to the Complainant by letter to this office dated **6 November 2020** in light of all of the errors made by the Provider in relation to the Complainant's case.

#### *Analysis and Conclusion on Early Surrender of the Plans*

From an analysis of the correspondence between the Complainant and the Provider between **January and May 2019**, it is apparent that there was a degree of inconsistency and confusion. To my mind, there were three key instructions given by the Complainant to the Provider:

1. instruction by way of Claim Forms dated **30 January 2019** to surrender both policies without reservation;
2. instruction by way of email dated **2 February 2019** to pay out both policies after the Complainant's 66<sup>th</sup> birthday in **April 2019**; and
3. instruction by way of email dated **13 February 2019** to pay out both policies if the taxable benefit of the plans would be taxed at 20% rather than 40%.

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In respect of the early payment of the ARF on **14 February 2019**, the situation is comparatively clear. The Provider was instructed by the Complainant not to pay out the ARF until his 66<sup>th</sup> birthday. The Provider surrendered the policy more than two months early and as a result the Complainant was charged PRSI and additional PAYE in respect of the proceeds of the policy. The Provider accepted at a very early stage that it had incorrectly paid out the policy prior to the Complainant 66<sup>th</sup> birthday and further committed to refunding the additional tax that the Complainant paid on the proceeds. I note that an initial payment was made in **May 2019** in respect of tax credits from **February to April 2019**. I further note that an additional payment was made to him in **December 2019** in respect of tax credits for the balance of **2019**. Although there was a suggestion in phone calls between the Complainant and the Provider that the early surrender would result in the Complainant having a significant additional tax liability in the UK, this argument has not been made subsequently by the Complainant and he has not submitted any evidence to suggest that this was the case. No evidence has been submitted by the Complainant to counter the argument that the approximately €7,500 refunded to him by the Provider adequately compensated him for the additional tax that he had to pay in respect of the early surrender of the ARF.

In light of the Provider's early acknowledgement of its error, its speedy resolution of the error, and the fact that it has placed the Complainant in the position he would have been in had the ARF not been surrendered early, I am satisfied that the Provider dealt adequately with the error that it made. For this reason, I do not uphold this aspect of the complaint.

This issue is more complicated in relation to the surrender of the AP plan as I am of the view that there was a degree of conflicting information passing between the parties. In addition to the three key instructions that I have identified above, I note that the Provider sent an email to the Complainant on **19 February 2019** setting out the fact that the Complainant would not be able to take the taxable proceeds of the AP plan at 20% as his tax credits for that year had already been utilised through the surrender of the ARF and therefore the proceeds would be taxed at 40%. The Complainant's response to this was to refer back to his email of **13 February 2019**, which I note stated that he wished to withdraw the taxable balance only at 20%. This response would suggest that he no longer wished to surrender the AP plan. This does not appear to have been interpreted as such by the Provider, however, as it followed up with the Complainant seeking a copy of a bank statement from him in respect of bank details previously provided in order to make payment of the AP proceeds.

It is apparent from a phone call on **5 March 2019** that the Complainant did not wish to provide the account statement that was requested of him as he did not wish the Provider to make a similar error as that made in respect of the ARF that is, to make payment prior to his 66<sup>th</sup> birthday. The entire focus of the call of **5 March 2019** was that the Complainant did not want the Provider to pay out the AP plan prior to his 66<sup>th</sup> birthday. To that end, the representative of the Provider that he spoke to placed a note on his file stating clearly that the plan was not to be paid out until his 66<sup>th</sup> birthday.

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There was no instruction given or no mention by the Complainant that he did not wish to receive the proceeds of the AP plan owing to the fact that the balance would be taxable 40% (as per the Provider's **email of 19 February 2019**). The phone call suggested that the Complainant still wanted to surrender the AP plan but not until his 66<sup>th</sup> birthday.

I note, however, that the Complainant had been informed at this juncture on two occasions in writing and once by telephone call that the Provider was not in a position to pay the proceeds of the AP plan until the Complainant submitted a copy of his bank statement. The Complainant did not submit the copy bank statement requested of him so, from his perspective, the Provider was unable to make payments until it received further instructions from him. Due to the fact that the bank account in question had previously been utilised by the Provider to make payment, this was incorrect and the account did not require further verification. When the Provider attempted to surrender the plan, therefore, after the Complainant's 66<sup>th</sup> birthday and in accordance with its understanding of the Complainant's instructions, it was in a position to process the payments using the bank account nominated, despite the incorrect information provided to the Complainant in respect of the required statements.

In light of all of the above, and while acknowledging that there was certain contradictory information provided, I am of the view that the Provider should not have surrendered the AP plan on **2 May 2019** until it communicated further with the Complainant in respect of his instructions. In his email of **13 February 2019**, the Complainant's instructions were to surrender the plan only if the taxable balance of the plan would be taxed at 20%.

This was also confirmed in a telephone call on **18 February 2019** and cross-referenced in an email of **19 February 2019**. As this was not possible due to the Complainant's prior utilisation of tax credits for **2019** through the surrender of the ARF (as was communicated to the Complainant by email dated **19 February 2019**), further contact should have been made with the Complainant to clarify his wishes before the plan was surrendered.

Further, I am of the view that the Provider misled the Complainant by stating that it was unable to make payment to him prior to receipt of his bank statement only to then proceed to make the payment when, quite deliberately and as explained in a call on **5 March 2019**, the Complainant opted not to submit the bank statement as he did not yet wish to receive payment of the policy. Again, further contact should have been made with the Complainant to clarify his wishes before the plan was surrendered.

In its final response letter of **31 May 2019**, the Provider stopped short of acknowledging any error in respect of the payment out from the AP plan. The letter rehearsed at great length the various communications between the parties but did not acknowledge that it had made an error nor offer any apology in respect of it. As indicated above, I am satisfied that an error was made in this regard and that the payment should not be made prior to further communication from the Provider to the Complainant to confirm his instructions. I acknowledge, however, that the Provider offered the Complainant the opportunity to reverse the retirement claim in respect of the AP plan.

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He was offered two options in this regard – first, to return the entire amount paid including the tax-free lump sum and the taxable balance which would have been reapplied to his AP plan pending his instructions; and second, to keep the tax-free lump sum and return the taxable balance to be reinvested in a new Approved Retirement Fund. My understanding in respect of both of these options was that the entire taxable sum would be reinvested for the Complainant and not simply the net balance that was paid to the Complainant. No further compensation was offered to the Complainant at this juncture, despite the fact that this was the second policy that had been paid out in error by the Provider.

The Complainant declined both options on the basis that he had lost faith with the Provider. The Complainant has submitted tax workings that suggest that the payment out of the AP plan cost him an additional UK£1,812. While I appreciate the Complainant's reluctance to continue his investment with the Provider in light of the errors that it made in respect of the surrender of his policies, this was nevertheless a choice made by him. The AP plan was paid out to him on **2 May 2019** and less than a month later he was offered the opportunity to reverse the transaction. Further, I note that under the second option, a new Approved Retirement Fund could have been opened with a third party provider. On this basis, I am not convinced that the Complainant is automatically entitled to be compensated in full by the Provider for the additional tax payable by him as a result of his choice in retaining the proceeds of the AP plan in **May 2019** and in circumstances where he has had the benefit of the additional monies since that date.

In all of the circumstances, I uphold this aspect of the complaint.

I am not satisfied by the Provider's initial response to the complaint concerning the AP plan as set out in its final response letter of **31 May 2019**, on two bases:

- (i) as a result of its failure to acknowledge its errors in surrounding the AP plan without further communication with the Complainant and in providing misleading information concerning the bank statement; and
- (ii) as a result of its failure to offer a measure of compensation to the Complainant.

While I acknowledge that the Provider offered to reverse the surrender (contrary to information provided by the Provider to the Complainant by telephone the previous week that it was not in a position to do so), it made no further gesture to the Complainant. I find this surprising in light of the fact that this was the second significant error to occur in respect of the Complainant's policies in very short order.

### ***Incorrect Address***

The two Claim Forms submitted by the Complainant to the Provider on **30 January 2019** and cover letter of **25 January 2019** submitted on **2 February 2019** contained his old address.

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The Provider submits that the Complainant communicated his new address on a call in **January 2019** but I have not received a recording of this call. By letter dated **9 February 2019** sent to his new address, the Provider confirmed that it had noted the address on its records as requested. On a call on **11 February 2019**, the new address was confirmed and used for the data protection security check. It was also confirmed a telephone calls on **18 February 2019** and **5 March 2019**.

The Complainant submitted a signed Deed of Indemnity dated **11 February 2019** to the Provider in respect of the surrender of the Executive AP on **13 February 2019**. The template Deed supplied to him by the Provider indicated his address as the old address. On one signed Deed submitted in evidence, the Complainant placed an asterisk beside the old address and wrote his new address for correspondence at the bottom of the first page and again above the signature line on the second page. On a second (otherwise identical) signed Deed, the Complainant asterisked the printed old address as "old address" but wrote the old address above the signature line.

By letter dated **14 February 2019** sent to his new address, the Provider confirmed that the Complainant's AMF had been paid out in full.

By email dated **28 February 2019**, the Complainant requested that the Provider update the address of the employer company associated with the AP plan to his new address. In reply dated **4 March 2019**, the Provider informed the Complainant that it does not hold his email address on file so it cannot take the address update instruction.

When the AP payment was made to the Complainant on **3 May 2019**, confirmation of payment details was sent to the old address. When the Complainant rang the Provider on **7 May 2019** to query the payment received by him, it became apparent that his new address was no longer the address associated with the account but rather the old address had been updated to the Provider's system.

The Provider has indicated that when the AP claim was processed in early **May 2019**, the Claim Form signed on **27 January 2019** set out the old address and this address was then updated to the system. The Provider accepts that the Complainant confirmed a new address on a number of subsequent occasions but has sought to argue that the Complainant should bear some responsibility for providing conflicting information that is, in providing the old address on **27 January 2019** when it appears that he updated his new address earlier in **January 2019** on a telephone call with the Provider.

As the alleged phone call in **January 2019** in which the Complainant updated his address to the new address has not been submitted in evidence, is not something I can take into account in respect of this aspect of the complaint. In any event, it is apparent to me that between **February and March 2019**, the Complainant made it clear on a number of occasions that his correspondence address was the new address. The Complainant has explained that as he was in the process of moving from one address to the other, this was the reason why the old address was used in the Claim Forms.

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It would appear that when the Provider opted to process the surrender of the AP policy in early **May 2019**, the individual concerned took the correspondence address from the signed Claim Form and updated the Complainant's correspondence address with that address, despite the fact that the form was at that point several months old and that there had been several emails and telephone calls between the parties in the meantime which confirmed the new address as the appropriate correspondence address.

Contrary to the Provider's submissions, I do not accept that the Complainant bears any responsibility for this. He is entitled to change his correspondence address, which he duly did. It is the obligation of the Provider to ensure that it retains accurate and up-to-date records. Having taken it upon itself to update the Complainant's correspondence address without a formal request by the Complainant and without taking the trouble to confirm the position in light of the fact that the Claim Form was several months old, that there had been subsequent communication between the parties, and that the change of address had been flagged by the Complainant in the Deed of Indemnity associated with the AP, the Provider must accept responsibility for the error that resulted.

I accept that the Provider sent confidential correspondence to an incorrect address and in a further letter of **17 May 2019** utilised the old postcode within the new address. Therefore, I uphold this aspect of the complaint.

## Conclusions

In light of the above, I find that:

2. The Provider failed to execute the Complainant's instructions and/or acted against his instructions when it made payment of his AP in a manner and at a time contrary to his instructions.
3. The Provider furnished the Complainant with incorrect information in relation to its ability to make payments to his bank account.
4. The Provider, in error, issued correspondence concerning the Complainant's claim to an incorrect address and/or incorrectly addressed correspondence it sent to the Complainant.

While I accept that the Provider had a case to answer in relation to the first complaint in respect of the payment of the ARF, I am satisfied that the Provider dealt with its error and remedied it on an appropriate basis and, accordingly, I am not upholding that aspect of the complaint.

I am of the view that in its conduct, the Provider has not complied with the following provisions of the **Consumer Protection Code 2012**:

*"A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:*

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*2.2 acts with due skill, care and diligence in the best interests of its customers;*

*2.5 seeks from its customers information relevant to the product or service requested;*

*3.3 A regulated entity must ensure that all instructions from or on behalf of a consumer are processed properly and promptly.*

*1.1 A regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. ...*

*4.2 A regulated entity must supply information to a consumer on a timely basis. In doing so, the regulated entity must have regard to the following:*

- a) the urgency of the situation; and*
- b) the time necessary for the consumer to absorb and react to the information provided.*

*11.5 A regulated entity must maintain up-to-date records containing at least the following:*

- a) a copy of all documents required for consumer identification and profile;*
- b) the consumer's contact details...".*

I note that in its letter of **6 November 2020**, the Provider now accepts that it should have contacted the Complainant before processing the AP plan to make him aware that he would be taxed at the higher rate of 40% if he surrendered it in **2019** and that he would need to delay claiming on the plan until **December 2020** to avail of the 20% tax bracket. I further note that the Provider accepts it would have been "good customer service" to contact the Complainant in respect of the fact that it did not require a copy of his bank statement to make a payment in respect of the AP plan despite its previous communications that it could not make any payment until a bank statement was provided to it. Finally, I note that the Provider acknowledges that the Complainant provided a new address to it in **January 2019** which was confirmed by him on several other occasions but argues that the Complainant bears a degree of responsibility for the misdirected communications owing to the fact that he provided a conflicting address in his Claim Forms submitted on **30 January 2019**. The Provider emphasises the refund of €7,500 made in respect of tax paid on the ARF claim and highlights the fact that it offered to reverse the surrender of the AP plan. The Provider has offered a sum of €1,000 in compensation to the Complainant.

In my view, neither the level of responsibility taken nor of compensation offered by the Provider are sufficient. As set out in detail above, further instructions should have been sought from the Complainant before any payment out of was made in respect of the AP plan in light of the Complainant's instructions that he wished to surrender the proceeds only where the taxable balance was subject to 20% tax.

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In that sense, the payment out in **May 2019** was wrongful as it was against the Complainant's instructions. This error was compounded by the misinformation provided by the Provider in respect of the necessity for the Complainant to submit a bank statement in order for the Provider to process the payment. This was not simply a matter of good customer service – the payment should not have been processed until the Provider had communicated with the Complainant to confirm that he wished the payment to be made to the account in question in light of the fact that the Complainant had not submitted the bank statements as requested and in light of his understanding that the Provider could not make any payment to him until a bank statement had been submitted by him.

Further, and as discussed in detail above, I do not accept that the Complainant bears responsibility in respect of the incorrect correspondence address. The Provider wrongfully updated an old address to the Complainant's records in the course of wrongfully processing his AP claim in early **May 2019** and this was contrary to the repeated confirmations by the Complainant that his correspondence address was the new address since **February 2019**.

In light of the incorrect correspondence address used by the Provider to communicate the surrender of the AP plan, the misinformation in respect of the bank statement and the wrongful surrender of the AP plan and bearing in mind the background of the early surrender of the ARF, I am of the view that compensation is necessary to reflect the multiple errors that were made by the Provider. I can readily appreciate the Complainant's frustration in respect of the wrongful surrender of the AP policy so soon after the Provider's error in surrendering the ARF several months early and in light of his attempts to keep control of the payment out of the policy by his refusal to submit a requested bank statement. In assessing an appropriate level of compensation, I have borne in mind the refund of tax provided to the Complainant in respect of the ARF plan and further borne in mind the early opportunity offered to the Complainant to reverse the surrender of the AP plan or to reverse the payment of the taxable cash element of the plan. I note that neither offer was accepted by the Complainant who has submitted that the payment of the AP plan in May 2019 caused him financial loss in the form of an increased UK tax liability. I further note that in a telephone call of **21 May 2019** (and in which the Provider indicated that it was not able to reverse the surrender of the AP plan), it suggested that it could offer him a refund of half of the tax that he paid in respect of his AP plan, in the sum of approximately €4,500. I note that there was no further mention of this offer in the Provider's later written correspondence.

In light of all the circumstances, I substantially uphold the complaint and direct payment of compensation to the Complainant in the sum of €5,000.

### **Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld, on the grounds prescribed in **Section 60(2) (a) the conduct complained of was contrary to law**.

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Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €5,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

**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**

5 November 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.**