



<u>Decision Ref:</u>	2022-0051
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Pension Transfers
<u>Conduct(s) complained of:</u>	Switching funds Delayed or inadequate communication
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint relates to the conversion of the Complainant's pension plan into a cash fund on maturity of the plan.

The Complainant's Case

The Complainant held a pension policy with the Provider through an occupational pension scheme. This policy was due to mature on **4 June 2020**.

The Complainant received a letter from the Provider on **7 May 2020**, which was dated **24 April 2020**. He says that this letter advised him to contact his broker, and that the Provider would advise the Complainant of the options available to him.

The Complainant says that he had not received any advice from the Provider by **19 May 2020**, and therefore he contacted his broker regarding his options. He says that on **18 June 2020** the Provider informed him via letter dated **5 June 2020** that his policy had been switched to a cash fund.

The Complainant says that he did not want his policy to be taken out of the market, and that he did not authorise this course of action. The Complainant believed that this was a mistake, as the Provider had not yet provided him with written advice.

The Complainant says that on **6 July 2020**, he asked to draw down the fund, as he had still not been provided with written advice from the Provider. On **9 July 2020** the Complainant wrote to the Provider but received no response. The Complainant then submitted a complaint to the Provider on **13 July 2020**.

The Complainant's nominated asset manager informed him that it was having difficulties in having the pension monies transferred from the Provider. On **27 August 2020** the Complainant received the 25% tax-free portion of his pension and on **28 August 2020**, he received the remaining funds.

The Complainant says that the Provider did not take his wishes into account regarding his pension fund, and that they did not execute his instructions in a timely fashion. He states that the Provider blamed the broker for its shortcomings, and that there was a breakdown in communication that led to a lengthy period of time during which the Complainant's funds were withdrawn from the market.

In an email to this Office of **19 October 2020**, the Complainant calculated that he had lost out on an additional €42,278 (forty-two thousand, two hundred and seventy-eight Euro) to his fund. He stated that if he had bought an S&P tracker, his fund would have gained €13,712 (thirteen thousand, seven hundred and twelve Euro) during the same period.

In response to the Provider's final submissions to this Office, the Complainant stated in an email of **6 April 2021** that the Provider had failed to address a number of core issues. He reiterated that he was "*promised*" that the Provider would give him options on how to manage his pension, but that these were not supplied.

The Complainant stated that he was "*resigned*" to taking the cash fund as he could not communicate with the Provider. However, he maintains that he had wished at all stages for the funds to remain invested in equities.

Finally, the Complainant says that it took three months for the pension funds to be transferred from the Provider. He calculated that he could have made between €5,000 (five thousand Euro) and €10,000 (ten thousand Euro) in that period, if he had been able to invest the funds in an S&P tracker.

The Provider's Case

In its reply to the formal investigation of this Office, the Provider provided a timeline of the key events and communications in regard to the Complainant's complaint.

It stated that it wrote to the Complainant's pension owner/trustee and his independent financial intermediary ('the broker') on **7 March 2020** to confirm that the Complainant's plan would mature on **4 June 2020**. In this correspondence the Provider stated that the value of the pension funds would be automatically switched to cash if the benefits were not taken prior to the maturity date. The Provider says that this was standard industry practice to protect matured funds against falls in the market. The Provider sent similar correspondence on **24 April 2020**.

On **13 May 2020** the Complainant's broker contacted the Provider to seek the Complainant's pension options. The Provider responded on **18 May 2020**, stating that it required a Company Pension Claim Form to be completed, before this information could be confirmed. This form was supplied with the correspondence for completion.

On **20 May 2020** the Provider received an email from the broker which stated that the Complainant sought options based on taking the 25% tax-free sum and the balance being invested in an Approved Retirement Fund (ARF). The Provider says that this email attached a partially completed Company Pension Claim Form which contained inaccuracies.

The Provider responded to the broker on **25 May 2020** to confirm that the employer's name on the claim form was incorrect. The Provider additionally sought information relating to any other pension benefits held by the Complainant.

On **4 June 2020** the Complainant's fund reached maturity and was switched to the cash fund. The following day, the Provider wrote to the pension owner/trustee and the broker confirming this.

On **8 June 2020** the broker sent another Claim Form to the Provider. The Provider says that this form contained the incorrect employer's name and had not been fully completed. The Provider wrote to the broker on **15 June 2020** requesting clarity on the employer's name and asked the broker to complete specific sections of the Claim Form.

On **19 June 2020** the Complainant called the Provider to query the cash fund switch of his pension fund.

The Provider submitted that:

“despite [the Complainant] talking to his independent intermediary about what to do at this time no alternative instruction to switching to cash on maturity was given to us.”

The Provider says it received a fully completed form with the correct employment details on **22 June 2020**, requesting a list of available funds to switch into. The Provider responded on **4 July 2020** to request further clarification on the pension benefits already drawn by the Complainant. The Provider stated that it would be in contact to arrange for the list of available funds to be provided, and informed the broker that the fund switch query was being dealt with by a different team of the Provider.

On **6 July 2020** the Complainant asked an asset management company to contact the Provider regarding the drawing down of the pension benefits. On **7 July 2020** the management company replied that an instruction would first be required for the Provider to transfer to the company. The Provider was sent a copy of this email correspondence.

On **7 July 2020** the Provider emailed a list of the available fund options to the Complainant's broker. It stated that a written instruction would be required from the plan owner/trustee in order to process a fund switch. This instruction was not received.

The Complainant then emailed the Provider and his broker to request the transfer of the funds to the asset management company. On **9 July 2020** the Provider contacted the management company to indicate that a transfer could be arranged. The Provider contacted the broker to note that information remained outstanding in regard to the Complainant's claim. The Provider outlined the specific information required from the broker.

On **9 July 2020** the Complainant contacted the Provider via telephone regarding his claim. He wished for the Provider to contact his nominated asset manager. The Provider received an email authorising this contact, and on **14 July 2020** the asset management company confirmed that it was able to accept the funds.

On **10 July 2020**, the Complainant emailed the Provider to clarify what was outstanding on his claim. The Provider acknowledged that it did not respond to this email and apologised for this. It stated that *“there was no financial consequence to this lapse in customer service”*.

On **15 July 2020** the Provider received a Claim Form from the broker, and responded on **21 July 2020** indicating that certain sections remained incomplete. The Provider received the outstanding information from the broker on **24 July 2020**.

/Cont'd...

The asset management company provided a UK bank account for the Complainant's funds to be transferred. It was unable to provide an Irish bank account. As a result, the Provider undertook due diligence processes on this account, to verify and approve the transfer. The Provider submits that this process can take up to 15 days, and involves a phone call with the asset management company. The Provider states that this process was vital, but acknowledged that it could take time to complete. Therefore, the Provider offered the Complainant a €500 (five hundred Euro) Customer Service Award.

The due diligence process began on **30 July 2020**, and on **20 August 2020** the Provider paid the 25% tax-free sum to the Complainant directly, and the balance of the funds to his asset manager.

The Provider has submitted that the policy was inceptioned in **1988**, and that the Complainant received financial advice at the outset from an independent financial intermediary. It explained that the exact claim requirements are specific to the claimant's set of circumstances at the time of the claim and referred to a section of the document entitled **Letters of exchange and rules of the retirement account**. It states that the Complainant's account was "*correctly switched to the cash fund*" on maturity, and that no alternative instruction was received prior to or following this date. The Provider strongly refuted the allegations that the Complainant incurred financial loss.

The Provider referred to the number of instances in which the Complainant's broker provided incomplete Claim Forms. It stated:

"In all instances where our claim requirements were not met we communicated with [the Complainant's] claim representatives on what was outstanding in a correct and timely manner."

It stated that it was always clear with the Complainant's broker as to the requirements for processing the claim.

The Provider submits that the Complainant was represented by a broker from the outset of the claims process and reiterated that it did not respond to one of the Complainant's emails, but that this "*did not delay or affect his claim in any way*".

In relation to the Complainant's submission that the Provider was to advise him of his options, the Provider referred to the letters of **7 March 2020** and **24 April 2020**. It stated that the options referred to were in relation to discussions that the Complainant could have with his broker, on what course to take upon the maturity of the plan. The Provider reiterated that the funds were correctly converted to cash, in the absence of any alternative instruction.

/Cont'd...

The Complaint for Adjudication

The complaint is that the Provider switched the Complainant's to cash, in his pension policy without authorisation and delayed in issuing funds to him, as a consequence of which he has lost income from this policy.

The Complainant wants the Provider to compensate him for loss of investment opportunity due to the funds being withdrawn from his policy and not issued to the Complainant in a timely manner. The Complainant has outlined in his FSPO complaint the relevant calculations in this regard.

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 **18 January 2022**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. In the absence of substantive submissions from the parties, within the period permitted, the final determination of this office is set out below.

Evidence

The Provider's identical letters to the plan owner/trustee and the Complainant's broker of **7 March 2020** states as follows:

"If you have not taken your benefits by your maturity date, we will automatically transfer your fund into the Cash Fund at that date.

/Cont'd...

Should you wish to remain invested in your existing fund or an alternative fund after your maturity date, it is still a good idea to meet with your Financial Broker or Adviser to consider among other things an appropriate fund to be invested in after your current maturity date.

Alternatively, you may postpone taking your benefits and extend the maturity date to a later date.”

The Provider’s subsequent identical letters to the plan owner/trustee and the Complainant’s broker of **24 April 2020** states:

“If you have not already done so, we recommend you contact your Financial Broker or Adviser who will be able to complete a financial review with you and help you make important financial decisions in relation to your upcoming retirement. They can also arrange for a quotation of the benefits available to you under your plan.

If you have not taken benefits by your maturity date, we will automatically transfer your fund into the Cash Fund at that date. Should you wish to remain invested in your existing fund or an alternative fund after your maturity date, it is still a good idea to meet with your Financial Broker or Adviser to consider among other things an appropriate fund to be invested in after your current maturity date.

Alternatively, you may postpone taking your benefits and extend the maturity date to a later date.”

Analysis

The Complainant contends that the Provider acted without authorisation in switching his funds to the cash fund, at the policy’s maturity date. The relevant Provisions of the Central Bank of Ireland’ Consumer protection Code (“CPC”) are as follows:

“GENERAL PRINCIPLES

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

...

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

...

/Cont’d...

GENERAL REQUIREMENTS

...

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

The Provider’s position is that the Complainant was given the opportunity to provide instructions almost three months before the expiry date, and he was reminded of this opportunity again a month before the expiry. The Complainant did not give instructions to the Provider, and the default option where instructions were not provided, was for the policy to be converted into a cash fund. This is industry practice to protect the Complainant’s pension value.

In this regard, I note that the Complainant did not give instructions to the Provider **before 4 June 2020**. I am satisfied that the Provider therefore acted appropriately in his best interests, in circumstances where no further instructions were made available.

In relation to the Provider’s obligations to communicate with the Complainant, I note that the following Provisions of the Code are relevant:

“PROVISION OF INFORMATION

GENERAL REQUIREMENTS

4.1 A regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information.

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.”*

The Complainant has submitted that the Provider stated that it would provide options to the Complainant, referring to the letter he received on **7 March 2020**. This is the Provider’s letter of **24 April 2020**, but I do not accept that it states that the Provider would provide options to the Complainant. It advises the Complainant to contact his financial adviser.

/Cont’d...

The Complainant has complained of the complicated nature of the Claim Form, which led to a “*breakdown in communication*”. I have had regard to the Provider’s Claim Form, and to the extensive correspondence between the broker and the Provider. I am satisfied that the Provider communicated clearly at all stages to the broker, that the Claim Form was to be completed in its entirety. The Provider also brought inaccuracies and omissions directly to the broker’s attention when they arose.

The Complainant submits that the delay in transferring the funds to the asset management company was lengthy and had a financial consequence for the Complainant. The Provider has outlined in detail the communication that took place between the parties to facilitate this transfer, and it has explained the reason for the length of this process.

I am satisfied with the Provider’s explanation that the due diligence procedure for the transfer of these funds to a UK bank account was a requirement, and indeed I accept that this is good practice, and I accept that the Provider remained in open communication with the Complainant, his broker, and the management company, once authorised, throughout this period.

The Complainant also contends that the Provider refused to communicate with him directly, and responded only to his broker. The Provider has noted that it did not reply to one of the Complainant’s emails. This email was sent on **10 July 2020**, and the broker had provided all of the outstanding information by **24 July 2020**. As a result, the consequence of this failure to reply could not have exceeded a possible two-week delay in the claim process, at a time when the funds had already been switched into cash. I note that the Provider had been corresponding with the Complainant’s broker throughout the process. However, this failure to respond to the Complainant is disappointing and I note that the Provider has made an offer of €500 (five hundred Euro) to the Complainant in recognition of that error.

Having regard to the above, I do not accept that the Provider wrongfully acted without authority, in switching the Complainant’s policy to a cash fund. I believe that the Provider acted in compliance with Provisions 2.2, 4.1 and 4.2 of the Consumer Protection Code. I note the Provider’s failure to respond to the Complainant’s email requesting information, but I am conscious that the Provider, in responding to this complaint, acknowledged that error and made what I consider to be a reasonable compensatory offer to the Complainant, in the circumstances of the limited impact this error had on him.

On the basis that this compensation remains available to the Complainant to accept, I do not consider it necessary or appropriate to make any further direction, nor do I consider on the basis of the evidence available, that it appropriate to uphold this complaint.

/Cont’d...

Conclusion

My Decision, pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



MARYROSE MCGOVERN
Financial Services and Pensions Ombudsman (Acting)

9 February 2022

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.