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| <u>Decision Ref:</u> | 2022-0199 |
| <u>Sector:</u> | Investment |
| <u>Product / Service:</u> | Cash Investment |
| <u>Conduct(s) complained of:</u> | Encashment delays Failure to provide correct information Poor wording/ambiguity of policy |
| <u>Outcome:</u> | Rejected |

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint relates to the processing of a withdrawal request from a savings plan the Complainants hold with the Provider.

The Complainants' Case

On **09 March 2020** the Complainants checked the cash-in-value of their savings plan held with the Provider and the value quoted on the system that day was **€92,404.05**. The Complainants on **09 March 2020** submitted a written request to the Provider to withdraw **€90,000.00** from the savings plan. The Complainants received two amounts from the Provider pursuant to their request, one amount of **€86,142.81** on **18 March 2020** and a further **€2,699.99** on **16 April 2020** paid to their personal bank account, a total of **€88,842.80**, but **€1,157.20** less than the original **€90,000.00** requested.

The Complainants in their **27 August 2020** submission state that they:-

“Got a confirmation text at 11:33 on 09 March 2020 for receipt of encashment request. Got a second confirmation text at 10:32 on 12 March 2020 for receipt of encashment request.”

The Complainants submit that they called the Provider's customer services phoneline on **16 March 2020** to check on the status of their withdrawal where they were:-

“assured that our withdrawal of €90,000.00 would be paid.”

The Complainants in their **27 August 2020** submission further state that they:-

“Got a third confirmation text at 15:39 on 18 March 2020 for receipt of encashment request.”

The Complainants state that on **18 March 2020** an amount of **€86,142.81** was paid into their personal bank account from the savings plan held with the Provider. The second Complainant called the customer services phonenumber on the **18 March 2020** and was told on that call that the value of their savings plan on **09 March 2020** was **€91,751.00** and not **€92,404.05**. The second Complainant was further told that this discrepancy would be reviewed. The Complainants in their **27 August 2020** submission further state that they:-

“Got a fourth confirmation text at 17:25 on 07 April 2020 for receipt of encashment request. Got a fifth confirmation text at 12:41 on 09 April 2020 for receipt of encashment request. Got a sixth confirmation text at 13.54 on 15 April 2020 for receipt of encashment request.”

The Complainants state that on **18 April 2020** they received a letter from the Provider confirming that a further **€2,699.99** would be paid from their savings plan into their personal bank account, bringing the total paid from the Complainants savings plan held with the Provider to **€88,842.80**.

The Complainants in their submission of **27 August 2020** conclude by stating:-

“We have checked all the literature we received when we took out the policy and also all the literature on the website and nowhere is it stated that the fund prices are not updated until the afternoon of the next working day so we encashed the policy based on the information we had on 09 March 2020.”

The Complainants are seeking that the Provider pay them an additional **€1,157.20** to their personal bank account, bringing the total withdrawn amount to **€90,000.00** as requested by them on **09 March 2020**. The Complainants are also seeking to have a further **€2,404.05** added to the value of their savings plan held with the Provider, because they claim the amount in their savings plan on **09 March 2020** was **€92,404.05**.

The Provider’s Case

The Provider submits that the net value of the savings plan on **09 March 2020** was in fact **€89,142.80** and not **€92,404.05**, as the value of the Provider’s savings plans are calculated and updated each day, on the afternoon of the next working day.

The Provider issued its Final Response Letter on **16 April 2020**, addressing the value of the savings plan on **09 March 2020**:-

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“The net value of your fund that would have been available to you to view on the morning of Monday 9 March 2020 was €91,751.95. However, this was the value of your fund based on a pricing date of Thursday 5 March 2020. This is because fund prices are not updated until the afternoon of the next working day. The fund value based on a pricing date of Monday 9 March 2020 would not have been available until the afternoon of Tuesday 10 March 2020.

...

The gross value of your fund based on a pricing date of 9 March 2020 was €87,859.34. There was also a refund of exit tax of €1,283.45. This meant that the value of your fund was €89,142.80 on this date.

As an amount of €300 is needed to remain in your fund after you made a withdrawal from your plan, an amount of €88,842.80 (€89,142.80 - €300) should have been paid to you on 18 March 2020. I am sorry that this did not happen.”

In explaining why an amount of **€86,142.81** was paid on **18 March 2020** and a further amount of **€2,699.99** was paid on **16 April 2020** the Provider said:-

“Unfortunately, the value of your fund based on a pricing date of 9 March 2020 was less than €90,000. This is why you received a payment of €86,142.81 and not €90,000. However, from my review of your file I note that the amount of €86,142.81 that was paid to you on 18 March 2020 was incorrect. This was an error on our part and I am sorry that this happened.

...

I have arranged for the difference of €2,699.99 to be transferred to your bank account.”

Referring to the phone call made by the Complainants to its customer service phonenumber on **18 March 2020** seeking an explanation as to why the **€90,000.00** was not transferred, the Provider said:-

“Our Customer Service Representative explained that there would not have been enough in your fund on 9 March 2020 to withdraw €90,000. However, they reviewed your file and advised that the value of your fund on 9 March 2020 was €91,751 and that we would arrange to have this looked at further.

As explained previously in this letter, the value of €91,751 was based on a pricing date of Thursday 5 March 2020. This is the value that you have been available to view on Monday 9 March 2020 as unit prices are not updated until the afternoon of the next working day.....

I am sorry for the incorrect information we gave you during your telephone call on 18 March 2020. This should not have happened.”

The Provider in its Final Response Letter of **16 April 2020** enclosed a **€100** voucher as a gesture for the inconvenience it had caused the Complainants.

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The Complaint for Adjudication

The complaint is that the Provider miscalculated the payment made to the Complainants, in response to a withdrawal request from their savings plan, and offered poor customer service and communication.

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 Complainants were 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 **23 May 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 additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

(i) **Evidence**

The Provider submits a copy of the savings account terms and conditions that were given to the Complainants at the time they opened the savings plan with the Provider. The Provider specifically references section 1 entitled "Benefits Provided" and refers to paragraph B sub - sections (i) – (iii) which state:

"B Partial Surrender

At any date, the Policy holder may, subject to the terms and conditions in this document, surrender any number of Units allocated to the Policy provided that:-

- (i) *The amount payable by the Company is not less than the minimum amount the Company prescribes at that time.*
- (ii) *The value of the Benefit Fund remaining calculated at the Unit Price then ruling is not less than the minimum amount the Company prescribes at that time.*
- (iii) *The claim requirements in Section 8B are satisfied.*

The Unit Price used in the Benefit Fund calculation is the price ruling on the day after receipt of the Policyholder's instructions, subject to the conditions specified in Section 8A."

In its response to questions posed by this office, the Provider on **24 October 2020** states:-

"As mentioned [the Complainants]' withdrawal instruction was received on 9 March 2020 and as such their plan value would be calculated based on the unit price of their chosen investment funds at the close of business for that day."

The Provider submits a copy of the executed withdrawal request form completed by the Complainants which is dated **09 March 2020**.

Further the Provider submits copies of each of the text messages sent by it, to the Complainants, on the following dates, **09 March 2020, 12 March 2020, 18 March 2020, 07 April 2020 and 09 April 2020**. The message on each text message was identical and stated:-

"We have received an encashment request for your plan. If you did not request this encashment please contact us immediately on [Provider's phone number]."

(i) Audio Evidence

Audio evidence of a telephone calls that took place between the second Complainant and the various Provider employees were submitted to this office. I note the following exchanges:-

Call dated 16 March 2020

Provider: *If we received everything in on the 9th then you will receive whatever the plan is worth on the 9th March.*

Call dated 18 March 2020

Complainant: *I called you on the 16th and I was assured that I was getting my €90,000, because that was what was in it on the 9th March.*

Provider: *I rang through to encashments and they confirmed to me on the phone that the amount requested was 101% of total funds and that was why it couldn't be done.*

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Complainant: *When I encashed on the 9th March there was €92,000 in it, so we asked for €90,000.*

Provider: *Yes but what was the pricing date. That was on the 9th March. So when you're looking at the value it works off the previous day.*

[...]

Provider: *OK 9th March €91,751. That certainly is interesting. Its showing €91,000. You're right there. The amount of €92,000 would have been Friday's value and on Monday it was €91,751.*

Complainant: *What was Friday's value.*

Provider: *Friday the 5th March was €92,404. The 9th March was €91,751. That is interesting. I've never seen that happen. I'm going to look into it more for you.*

18 March 2020 – follow up call

Provider: *None of us could make sense of it why €86,000 was paid out. I looked at the previous values myself and I could see where you got your value from which would have been Friday's value, and then Monday its still showing €91,000.*

[...]

Provider: *I'm going to send it back to encashments for them to have a look at and see if we can get you something out in the post explaining it.*

Complainant: *You still can't tell me what value we will get.*

Provider: *I still can't. I don't want to confirm anything and be incorrect.*

23 March 2020 – Call

Provider: *I know you requested €90,000 but there wasn't €90,000 in the funds when you requested it to be paid.*

Complainant: *But there was when I requested it.*

Provider: *When you made the request you were going off a different pricing date than the one you'd received.*

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Complainant: *I have that information in front of me, it was €92,404.05 was in the account the date I made the request.*

Provider: *The date you made the request isn't the price you would have gotten. So for example, if you made a request today, we don't have today's price. Today's price isn't declared until the close of business..... So whatever price you got was the day before price.*

Complainant: *Even the price on the 9th March was more than €90,000 when all my stuff was submitted.*

Provider: *It will be looked into and somebody will be back to you next week.*

Call – 26 March 2020

Complainant: *It says that the net surrender value is €89,139.97. What exactly does that mean.*

[...]

Complainant: *We had all our documents submitted on the 9th March where the gross value was over €90,000. That was not the gross value on my computer screen or the gross value a previous customer representative told me it was on the 9th. And I also have documentation that it was valued at €92,404 on the 4th March which he says our encashment would be based on.*

Provider: *On the 4th March? We can only process on the date we get all the documents in.*

Complainant: *On the 9th March the gross value was over €90,000.*

Provider: *Where did you get this from.*

Complainant: *From the customer service representative who couldn't understand why we only got paid €86,000 when we looked for €90,000.*

Provider: *We've checked with the actuarial team. They confirm that on the 9th March the gross value was €87,854.55.*

(ii) Chronology

The following correspondence, phone calls and text messages between the parties from **March 2020 and April 2020** is also noted:-

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09 March 2020 – The Complainants sent in an instruction and completed withdrawal form to the Provider seeking to withdraw **€90,000.00** from their savings plan.

09 March 2020 – A text message was sent from the Provider to the Complainants confirming receipt of encashment request.

10 March 2020 – The Provider wrote to the second Complainant requesting that she complete a Tax Status Declaration Form.

12 March 2020 – A text message was sent from the Provider to the Complainants confirming receipt of encashment request.

16 March 2020 – The second Complainant placed a call to the Provider seeking an update on her withdrawal request.

18 March 2020 – A letter was sent from the Provider to the Complainants confirming that **€86,142.81** had been transferred to their personal account.

18 March 2020 – A text message was sent from the Provider to the Complainants confirming receipt of encashment request.

18 March 2020 – A phone call was placed from the second Complainant to the Provider querying the amount of **€86,142.81** that was transferred that day rather than the **€90,000.00** requested.

23 March 2020 – The second Complainant placed a follow up call to the Provider seeking an update as to why the full **€90,000.00** had not been transferred.

26 March 2020 – The Provider e-mailed the Complainants with details of the correct breakdown of their savings plan value, confirming that the correct net value as at **09 March 2020** in the fund was **€89,139.97**.

26 March 2020 – The second Complainant called the Provider querying the **09 March 2020** savings fund value that had been sent to her by e-mail earlier that day. The Complainants confirmed that they were making a formal complaint to the Provider.

27 March 2020 – The Provider sent the Complainants an acknowledgement letter of their formal complaint.

07 April 2020 - A text message was sent from the Provider to the Complainants confirming receipt of encashment request.

09 April 2020 - A text message was sent from the Provider to the Complainants confirming receipt of encashment request.

15 April 2020 – A text message was sent from the Provider to the Complainants confirming receipt of encashment request.

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16 April 2020 – The Provider transferred **€2,699.99** to the personal account of the Complainants.

16 April 2020 – The Provider sent its Final Response Letter.

Analysis

I note that the general terms and conditions of the savings plan state that:-

“The Unit Price used in the Benefit Fund calculation is the price ruling on the day after receipt of the Policyholder’s instructions.”

[My underlining for emphasis]

Therefore, I am satisfied that when the Complainants logged into their savings plan on **09 March 2020**, the value of **€92,404.05** displayed, was in fact the value based on the closing price from the previous day, and not the value of their savings plan on **09 March 2020**. The withdrawal request was clearly sent to the Provider by the Complainants on **09 March 2020** and therefore the Complainants were only entitled to withdraw funds from the savings plan based on the value on that date, after those instructions were received by the Provider. The value could only be ascertained, on the following day **10 March 2020**.

Based on the available evidence I am satisfied that the amounts transferred of **€86,142.81** on **18 March 2020** and **€2,699.99** on **16 April 2020** (collectively **€88,842.80**) represented the correct amount that the Provider should have transferred to the Complainants, as this was the net encashment figure of the Complainants’ savings plan based on withdrawal instructions given on **09 March 2020**, and also conscious that **€300.00** has to be retained within their plan as a condition.

Whilst finding that the amount transferred to the Complainants was the correct amount, the communication, administration and processing of the withdrawal, in my opinion, fell short of the standards that the Complainants should reasonably expect in the circumstances.

The actual value of the Complainants’ plan on **09 March 2020** was not confirmed to the Complainants until **26 March 2020** some **17** days after the withdrawal request was initially made. Further, the withdrawal request was processed in two separate amounts of **€86,142.81** and **€2,699.99** on two separate dates of **18 March 2020** and **16 April 2020**. The processing of the April withdrawal was some **5** weeks after the initial withdrawal request was first made. Further confusion ensued when, during a call with the Provider on **18 March 2020**, the second Complainant was told by an employee of the Provider that the actual value of the savings account on **09 March 2020** was **€91,751**. This was incorrect.

I note that throughout this **March / April 2020** period the Complainants received **6** separate text messages from the Provider confirming that an encashment request had been received, when only **1** encashment request was sent by the Complainants to the Provider.

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In addition, the Provider's Final Response Letter of **16 April 2020**, added to the confusion as it repeatedly made reference to an amount of **€91,751** being the value of the Complainants' fund the day before their withdrawal request, the day before being **05 March 2020**. However, the Complainants' actual query related to a value amount of **€92,404.05** and not **€91,751**, and the day before value date was Friday **06 March 2020**, and not Thursday **05 March 2020**.

This Office queried the Provider on these issues and in its response, regarding the length of time taken to process the withdrawal the Provider stated:-

"that it typically takes five to seven working days to process"

Further the Provider stated:-

"On 18 March 2020 we paid [the Complainants'] claim. Unfortunately due to an administrative oversight this claim was paid incorrectly and for this we would like to apologise."

The Provider does not expand on what the administrative oversight was or how the figure for the first transferred amount of **€86,142.81** was arrived at. Further the Provider does not explain why, when it e-mailed the Complainants with the correct **09 March 2020** savings fund value on **26 March 2020**, that it still took it an additional **3** weeks to process the balance of the withdrawal request. The Provider stated in its response of **24 October 2020** regarding the processing of the withdrawal:-

"the error was raised with our Encashments Team to prevent issues like this from happening again. We also amended our online services so that it is now clear what pricing date is used when a value is being quoted."

This Office acknowledges and welcomes these positive changes that may prevent such an occurrence again. Further and as a gesture to the Complainants the Provider stated on **24 October 2020**, in its formal response to the investigation by this Office, that:-

"We acknowledge that on this occasion our service to [the Complainants] fell short of our normal standards. While there is no entitlement to the value that they viewed online on 09 March 2020 as this value was based on a pricing date of 5 March 2020 we would like to offer a Customer Service Award of €1,600 by way of an apology for the level of service received."

I accept that the Provider ultimately processed the correct withdrawal amount but there were delays, and inaccurate information was conveyed to the Complainants throughout the process, causing them some inconvenience.

I am of the opinion however that in responding to the formal investigation of this Office, the Provider has acknowledged its errors in this regard and it made an appropriate offer of compensation to the Complainants of **€1,600.00** on **24 October 2020**.

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Accordingly, as this offer of **€1,600.00** remains open to the Complainants to accept, I do not consider it necessary or appropriate to make any direction or to uphold the complaint. Instead, it will be a matter for the Complainants to advise the Provider directly whether they now wish to accept the offer available.

It is my Decision therefore, on the evidence before me that the complaint should not be upheld.

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)

17 June 2022

PUBLICATION

Complaints about the conduct of financial service providers

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.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension providers in such a manner that—

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(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.

