



<u>Decision Ref:</u>	2020-0198
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Approved Minimum Retirement Fund AMRF
<u>Conduct(s) complained of:</u>	Failure to provide accurate investment information
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant incepted ARF (approved retirement fund) policy xxxxx017 with the Provider on **2 June 2016**, in the amount of €136,971.42.

He lodged a further €119,227.19 to this policy on **15 August 2016**.

The Complainant also incepted AMRF (approved minimum retirement fund) policy xxxxx824 with the Provider on **2 June 2016**, in the amount of €63,500.

The Complainant's Case

The Complainant surrendered both his ARF xxxxx017 and AMRF xxxxx824 policies on **6 September 2018**. The total gross value of these policies at that time was, as follows:

ARF policy 93488017	€216,017.28
AMRF policy 93479824	<u>€60,374.41</u>
Total:	€276,391.69

The Provider applied a 2.5% early encashment charge, as follows:

ARF policy 93488017	€5,400.43
AMRF policy 93479824	<u>€1,509.36</u>
Total:	€6,909.79

The Complainant invested the net value of these surrendered policies, that is, €269,481.90, in a new Annuity policy 94212015 with the Provider.

In this regard, in his letter to this Office dated 30 November 2018, the Complainant questions whether the Provider was entitled to apply a 2.5% early encashment charge to his surrendered policy values, as follows:

*“I am still concerned with the fairness of the application of such a large Surrender Penalty especially **as I am only leaving my ARF/AMRF fund within [the Provider] and placing it into an Annuity Scheme ALSO WITH [the Provider]**. In my case, [the Provider] had originally quoted me a surrender rate of 5% and when I queried this at the time...they then came back with a revised rate of 2.5% on the basis that I was still remaining with [the Provider]. **I had to draw attention to this myself otherwise they were taking 5%. This revised figure amounts to close on a €7,000 penalty.** Are [the Provider] entitled to apply any Surrender Penalty in this instance when I am remaining with [the Provider]?”*

In addition, the Complainant received an Annuity Quotation from the Provider dated **31 August 2018** that advised, *inter alia*, that *“This quotation is based on the figures above and is guaranteed for 14 days from the Quotation Date”*. The Complainant notes that despite the Provider having received all the required documentation from him, via his Broker, by 6 September 2018, the purchase amount for his Annuity policy had decreased by €1,998.84, that is, from €271,480.74 to €269,481.90, and the annuity rate had also dropped from 4.5088% to 4.4902%, despite the quotation being guaranteed for 14 days from 31 August 2018.

In this regard, in his letter to this Office dated **30 November 2018**, the Complainant sets out this part of his complaint, as follows:

“I am unable to get satisfaction from [the Provider] in relation to a recently taken out Annuity-based pension, based on their final quotation...dated the 31st August 2018.

A key element of my complaint is that this quotation dated the 31st August 2018 contained within it the following sentence:

“This quotation is guaranteed for 14 days from the quotation date”.

It quoted the following details:

Annuity rate	4.5088%
Purchase amount	€271,480.74
Gross monthly pension income:	€1,020.05
Annuity start date:	01/09/2018 ...

Having at once completed the documents sent to be by email on Friday 31st August, returned them on the next working day Monday 3rd September via my broker, I assumed that my Annuity Pension which was scheduled to begin on the 1st September would be in accordance with their quoted figures.

*However, when the monthly payment came through as a credit to my bank account I noted that it was based on a monthly payment of just **€1,008.36** ... but I had been quoted **€1,020.05** (based on a Purchase Amount of €271,480.74 and the annuity rate had also been changed from 4.5088% to 4.4902%. **So what had become of my quotation valid for 14 days** ... [The Provider] have since confirmed in writing that they had all of the signed documentation back with them by the 6th September (just 7 days into the 14 days of the guaranteed period stated within their quotation)".*

As a result, the Complainant seeks for the Provider "to honour [its] quotation and pay me the agreed €1,020.05 per month – not have me accept that they lost "a slight drop in value" of my funds with them in the few days after issuing their quote, and receiving back my signed acceptance 6 days later. Nowhere can I find evidence that their quote could be thus changed within the 14 days guaranteed".

The Provider's Case

Provider records indicate that the Complainant incepted his ARF (approved retirement fund) policy 93488017 in the amount of €136,971.42 and a separate AMRF (approved minimum retirement fund) policy xxxxx824 in the amount of €63,500 with the Provider on 2 June 2016. The Provider notes that each of these policies were sold to the Complainant by an independent financial adviser, who advised him in relation to these products. The separate terms and conditions accompanying each policy were posted to both the Complainant and his financial advisor on 2 June 2016.

The Provider notes that the 'Important Notice' included in the policy documents sent to the Complainant and his financial adviser on 2 June 2016 stated that both ARF and AMRF products should be regarded as medium to long term investments, for a period of at least 5 years. It also advised of the charges that would apply should the Complainant wish to encash either policy before the recommended 5-year period, for example, in years 1, 2 and 3 the rate of 5% of the amount encashed or transferred applied.

In addition, when he lodged a further €119,227.19 to his ARF policy xxxxx017 on 15 August 2016, the Provider wrote to the Complainant and his financial adviser on 17 August 2016 to acknowledge this increased investment and advised that if he were to encash the policy in its early years, there could be an early encashment charge.

Furthermore, the '2016 ARF/AMRF policy update' the Provider sent to the Complainant in February 2017, listed the encashment charge that would apply should he wish to transfer or encash ARF policy xxxxx017 as €12,416.58. Similarly, the '2017 ARF/AMRF policy update' detailed this encashment charge as €11,528.71.

Likewise, the '2016 ARF/AMRF policy update' that it sent to the Complainant in February 2017 listed the encashment charge that would apply should he wish to transfer or encash his AMRF policy xxxxx824 as €3,189.50. Similarly, the '2017 ARF/AMRF policy update' detailed this encashment charge as €3,115.45.

The Complainant emailed on 18 March 2018 with a number of queries regarding his policies and in its email response of 11 April 2018, the Provider outlined, *inter alia*, that the encashment charges in years 1, 2 and 3 was 5% and that these charges were applicable in the event of purchasing an annuity.

The Provider applies early encashment charges in order to recoup its setup costs, should the retirement benefits be transferred within a certain period of time. These setup costs include commission payments to any financial advisers and any extra allocation that may have been made available to the policyholder. The Provider is satisfied that the Complainant was made aware of the applicable encashment charges from the outset, and at various times throughout the duration of his ARF and AMRF policies.

As the Complainant wished to encash both his ARF and AMRF policies during Year 3, a 5% early encashment charge was applicable, in accordance with the terms and conditions of each policy, which would have amounted in total to €13,819.58. However, as the funds were being used to purchase an Annuity with the Provider, it agreed, as a goodwill gesture, to reduce this early encashment charge to 2.5% in respect of each product, reducing the total encashment charge by half, to €6,909.79.

The Annuity Quotation generated by the Provider on 31 August 2018 was based on the Complainant acquiring an Annuity with the purchase amount of €271,480.74, this being the transfer value of his combined ARF and AMRF policies when the quote was generated. Based on this purchase amount of €271,480.74, the Provider was prepared to offer an Annuity at a rate of 4.5088%, which equated to €1,020.05 per month.

The Complainant submitted, via his financial adviser, the necessary documents enabling the Provider to encash his ARF and AMRF policies on 6 September 2018, by which time the value of his pension fund had reduced to €269,481.90 due to a change in the unit price of the fund that the ARF and AMRF were invested in. As a result, the Complainant no longer had the same purchase amount of €271,480.74 available for the Annuity as had been quoted on 31 August 2018 and thus that Quotation was no longer valid.

The Annuity Quotation dated 31 August 2018 was prepared at the request of the Complainant's financial adviser, whose role it was to advise the Complainant as to the nature and complexity of the product being sought and the long-term consequences of the purchase, including the implications and market fluctuation risks. Previous annuity quotations had been provided to the Complainant's financial adviser on 22 May, 24 July and 30 July 2018, and each of these showed different annuity purchase amounts, annuity rates and monthly payments, based on the value of the Complainant's ARF and AMRF funds on those specific dates.

/Cont'd...

In this regard, the Complainant's ARF and AMRF policies were both unit-linked policies. A unit-linked policy is an investment plan where the premium is used to buy assets that are held in a fund. A Fund Manager manages the fund, which can go up or down in value, depending on the changes in the value of the underlying assets. The underlying value of the fund can increase or decrease on different dates as a result of fluctuations in the investment performance. The annuity rate in turn is directly linked to the value of the fund, that is, the purchase amount available, and therefore also changed on each date that quotations were generated.

Whilst the Provider notes that the statement *"This quotation is based on the figures above and is guaranteed for 14 days from the Quotation Date"* is included on the first page of each annuity quotation, it does not accept that this is misleading. Instead, this statement advises that the Annuity Quotation was guaranteed for 14 days on the basis that the annuity premium was €271,480.74, that is, the purchase amount on 31 August 2018 when the quote was generated. Had the Complainant's pension fund remained at this amount, the Provider would have been in a position to honour the quotation as given on 31 August 2018.

However, upon encashment of the Complainant's ARF and AMRF policies, based on the unit price of 6 September 2018 (when the Provider had received all the necessary documents), the amount that was available to purchase the annuity had decreased, due to market fluctuations. Therefore the terms of the Quotation had changed in the intervening period and the Provider was no longer in a position to offer the same annuity amount as before. This would also have been its position had the fund been transferred from another life assurance provider, as the Provider can only provide an annuity based on the funds available to purchase the product.

Annuity rates can fluctuate and are dependent on a number of factors including mortality rates, investment returns, changes in the yields available in the sovereign bond market and the purchase amount available. The amount that is available for contribution to the annuity fund, that is, the purchase amount, has a direct bearing on the rate the Provider can offer. As the Complainant's purchase amount has decreased by €1,998.84 by the time his ARF and AMRF policies were encashed on 6 September 2018, this in turn affected the rate of the annuity the Provider could offer and resulted in the reduction from 4.5088% offered on 31 August 2018 when the purchase amount was €271,480.74, to 4.4902% on 6 September 2018, when the purchase amount was €269,481.90.

The Provider acknowledges that long term financial products such as ARFs, AMRFs and Annuities are complex in nature and are subject to various regulatory and taxation conditions. For that reason, the Provider always recommends that purchasers of these products use a qualified financial adviser to help them to understand the benefits and also the risks involved and in this regard, the Provider notes that the Complainant engaged the services of a financial adviser.

In conclusion, the Provider is satisfied that it administered the Complainant's policies in line with the terms and conditions as set out at inception. The Complainant chose to encash his ARF and AMRF policies within the first three years of his investment, instead of the recommended 5-year period for an investment product of that nature. As a result, a 5% early encashment charge should have applied, however the Provider agreed as a goodwill gesture to reduce this by half to 2.5%, resulting in a saving of €6,909.79 in the Complainant's favour.

The Provider acknowledges that the annuity quoted on 31 August 2018 would have provided a monthly income of €1,020.05, however by the time Annuity policy xxxxx015 was incepted on 6 September 2018, in light of the reduced purchase amount available and the resultant change in the annuity rate, this monthly payment amount had reduced to €1,008.36. The Complainant was dissatisfied with this decrease and in an attempt to resolve the matter, the Provider offered the annuity rate at the higher rate of 4.5088% that was available on 31 August 2018. By applying this rate to the purchase amount on 6 September 2018 of €269,481.90, this would have provided a monthly payment of €1,012.53. The Provider notes that this offer remains open to the Complainant to accept.

The Complaints for Adjudication

The first complaint is that the Provider wrongfully charged an early encashment rate of 2.5% when he surrendered both his ARF policy xxxxx017 and AMRF policy xxxxx824.

The second complaint is that the Provider failed to honour a written quotation which had been stated to be guaranteed for 14 days.

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.

/Cont'd...

A Preliminary Decision was issued to the parties on **7 April 2020**, 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.

Following the consideration of additional correspondence from the parties, the final determination of this office is set out below.

The Complainant incepted ARF (approved retirement fund) policy xxxxx017 with the Provider on 2 June 2016, in the amount of €136,971.42. He lodged a further €119,227.19 to this policy on 15 August 2016. The Complainant also incepted AMRF (approved minimum retirement fund) policy xxxxx824 with the Provider on 2 June 2016, in the amount of €63,500. Having later obtained an Annuity Quotation from the Provider on **31 August 2018**, the Complainant encashed both his ARF and AMRF policies on **6 September 2018** and used the net value of these surrendered policies to incept Annuity policy xxxxx015 with the Provider.

In this regard, the first complaint is that the Provider wrongfully charged the Complainant an early encashment charge of 2.5% when he surrendered AMRF policy xxxxx824 and ARF policy xxxxx017. I note from the documentary evidence before me that the 'Important Notice' included in the policy documents that the Provider sent to both the Complainant and his financial adviser on 2 June 2016 when these two policies were incepted advised, *inter alia*, as follows:

"We would recommend that this contract should be regarded as a medium to long term investment (i.e. at least 5 years investment period). If you are not satisfied with the nature of the commitment, and feel it does not meet your needs you should not enter the contract ...

What happens if you want to cash in the policy early...? ...

... In the first five years, if you take a full encashment or transfer your money in full from [the Provider] to another qualifying fund manager there will be an encashment/transfer charge. This is based on a percentage of the amount encashed/transferred.

<i>Encashment in year 1</i>	<i>5%</i>
<i>Encashment in year 2</i>	<i>5%</i>
<i>Encashment in year 3</i>	<i>5%</i>
<i>Encashment in year 4</i>	<i>3%</i>
<i>Encashment in year 5</i>	<i>1%".</i>

/Cont'd...

In addition, following his lodgement of a further €119,227.19 to his ARF policy xxxxx017 on **15 August 2016**, I note that in its correspondence to the Complainant dated 17 August 2016, 2 days later, acknowledging this payment, the Provider advised, *inter alia*, as follows:

“What Happens If You Want To Cash in the Policy Early?”

You can encash your policy, partially or fully at any time. If you encash your policy in the early years, there could be an early retirement charge. Your encashment value may be less than the premiums you have paid. Full details of when the encashment charge may apply are in your policy conditions”.

In relation to his ARF policy xxxxx017, I note that the **‘Your 2016 ARF/AMRF policy update’** that the Provider sent to the Complainant in February 2017 clearly stated, as follows:

“If you decided to transfer or cash in your policy, because of the way your policy works, there are some changes we have to make to the value...

- Early encashment charge €12,416.58 ...

Notes

- *We may apply an early encashment charge to your policy”.*

In addition, the **‘Your 2017 ARF/AMRF policy update’** also stated, as follows:

“If you decided to transfer or cash in your policy, because of the way your policy works, there are some changes we have to make to the value...

- Early encashment charge €11,528.71 ...

Notes

- *We may apply an early encashment charge to your policy”.*

Similarly, in relation to his AMRF policy xxxxx824, I note that the **‘Your 2016 ARF/AMRF policy update’** that the Provider sent to the Complainant in February 2017 clearly stated, as follows:

“If you decided to transfer or cash in your policy, because of the way your policy works, there are some changes we have to make to the value...

- Early encashment charge €3,189.50 ...

Notes

- *We may apply an early encashment charge to your policy”.*

/Cont’d...

In addition, the 'Your 2017 ARF/AMRF policy update' also stated, as follows:

"If you decided to transfer or cash in your policy, because of the way your policy works, there are some changes we have to make to the value..."

- Early encashment charge €3,115.45 ...

Notes

- *We may apply an early encashment charge to your policy".*

Furthermore, I note that in its email to the Complainant at 15:36 on **11 April 2018**, the Provider advised, *inter alia*, as follows:

"The current value of your ARF policy – xxxxx017 - @ 10th April 2018 is as follows:

[24,943.88 Units x Unit Price €8.919 = Value €222,474.47]

The current encashment / transfer value of your ARF policy, if you were to transfer the proceeds from [the Provider] to another provider, @ 10th April 2018 is €211,350.75. In the first five years of the policy there are early encashment charges, details of which are as follows:

- Year 1 – 5%*
- Year 2 – 5%*
- Year 3 – 5%*
- Year 4 – 3%*
- Year 5 – 1%*

Your broker...is best placed to give you advice on funds. If you are not happy with your current broker, you do have the option to switch to another broker / financial adviser who will give you independent investment advice based on current market conditions ...

With regard to purchasing an annuity, you may encash your AMRF and ARF policies with us and purchase an annuity through your broker either with [the Provider] or on the open market. Your broker will need to contact our new business department if a quote for a new annuity with [the Provider] is required.

The current value of your AMRF policy – xxxxx824 - @ 10th April 2018 is as follows:

[6,826.34 Units x Unit Price €8.919 = Value €60,884.13]

The current encashment/transfer value of AMRF policy number xxxxx824 @ 10/04/18 is €57,839.92.

Please note that the early encashment charges outlined above are also applicable in the event of purchasing an annuity.

- ***The above values are not guaranteed and can fall as well as rise depending on investment returns. In the event of a claim, the value will be determined by the Bid Price declared at the close of business on the day [the Provider] receive all requirements”.***

I am therefore satisfied that the Provider furnished the Complainant with appropriate notice of the applicable early encashment charges from the outset, and at various times throughout the duration of his ARF and AMRF policies.

The Complainant incepted his ARF and AMRF policies on 2 June 2016 and later encashed them on 6 September 2018. As this occurred within Year 3 of the policies, I am satisfied that a 5% early encashment charge ought to have applied in line with the terms and conditions of each policy, which would have totalled €13,819.58. I note, however, that as the funds were being used to purchase an Annuity with the Provider that it agreed, as a goodwill gesture to the Complainant, to reduce the early encashment charge by half to 2.5%, that is, to €6,909.79.

In his letter to this Office dated 30 November 2018, the Complainant submits, *inter alia*, as follows:

*“I am still concerned with the fairness of the application of such a large Surrender Penalty especially **as I am only leaving my ARF/AMRF fund within [the Provider] and placing it into an Annuity Scheme ALSO WITH [the Provider]**. In my case, [the Provider] had originally quoted me a surrender rate of 5% and when I queried this at the time...they then came back with a revised rate of 2.5% on the basis that I was still remaining with [the Provider]. **I had to draw attention to this myself otherwise they were taking 5%. This revised figure amounts to close on a €7,000 penalty.** Are [the Provider] entitled to apply any Surrender Penalty in this instance when I am remaining with [the Provider]?”*

In addition, in his correspondence to this Office dated 11 October 2019, the Complainant submits, *inter alia*, as follows:

“I also note that I was changing WITHIN [THE PROVIDER] ... My saved investment was not leaving [the Provider], just transferring within [the Provider] ...

... It was a simple in-house switch of funds”

/Cont'd...

I note that the Complainant chose to fully surrender his ARF and AMRF policies and to use the proceeds of these policies, after encashment, to then purchase an Annuity product with the Provider. I am satisfied that this Annuity policy was a completely new and separate contract for a different product type and was not, as suggested by the Complainant, a transfer or a “*simple in-house switch of funds*”. In this regard, I also note that in its email to the Complainant at 15:36 on 11 April 2018, which I have quoted already above, the Provider clearly advised, among other things, as follows:

“Please note that the early encashment charges outlined above are also applicable in the event of purchasing an annuity”.

I am therefore satisfied from the documentary evidence before me that the Provider made the Complainant aware of the applicable early encashment charges from the outset, and at various times throughout the duration of his ARF and AMRF policies, and that such encashment charges would also apply if he were to purchase an annuity product.

As the Complainant encashed his ARF policy xxxxx017 and AMRF policy xxxxx824 on 6 September 2018, within Year 3 of each policy, I am satisfied that the applicable early encashment rate was 5%. I note that the Provider subsequently reduced this rate by half to 2.5% as the Complainant was using the proceeds of these policies, after encashment, to purchase a separate annuity product with the Provider. The Provider was under no obligation to do this, but this gesture resulted in a saving of €6,909.79 to the Complainant.

With regard to the Complainant’s second complaint that the Provider failed to honour a written quotation to set up an Annuity policy that it advised was guaranteed for 14 days, I note that at the request of his financial adviser, the Provider generated an Annuity Quotation on 31 August 2018, which quoted, as follows:

<i>“Annuity rate</i>	<i>4.5088%</i>
<i>Purchase amount</i>	<i>€271,480.74</i>
<i>Your gross pension income</i>	<i>€1,020.05 per month</i>
<i>Annuity start date</i>	<i>01/09/2018”</i>

In his letter to this Office dated 30 November 2018, the Complainant submits, as follows:

“A key element of my complaint is that this quotation dated the 31st August 2018 contained within it the following sentence:

“This quotation is guaranteed for 14 days from the quotation date” ...

Having at once completed the documents sent to be by email on Friday 31st August, I returned them on the next working day Monday 3rd September via my broker, I assumed that my Annuity Pension which was scheduled to begin on the 1st September would be in accordance with their quoted figures.

/Cont’d...

However, when the monthly payment came through as a credit to my bank account I noted that it was based on a monthly payment of just **€1,008.36** ... but I had been quoted **€1,020.05** (based on a Purchase Amount of €271,480.74 and the annuity rate had also been changed from 4.5088% to 4.4902%. **So what had become of my quotation valid for 14 days** ... [The Provider] have since confirmed in writing that they had all of the signed documentation back with them by the 6th September (just 7 days into the 14 days of the guaranteed period stated within their quotation)".

Similarly, in his correspondence to this Office dated 11 October 2019, the Complainant also submits, *inter alia*, as follows:

*"The key issue here I still maintain is the use in the Annuity Quotation of the wording "This quotation is based on the figures above and is **guaranteed for 14 days from the Quotation Date**" ...*

*So when I got this quote and noted its content, I naturally assumed that the Annuity Rate of 4.5088% was **guaranteed** and so too I believed at the time that the Purchase Amount of €271,480.74 was also **guaranteed** for 14 days.*

*I cannot understand therefore **what is actually guaranteed**, if as [the Provider] have pointed out, the Annuity Rate could change and so too the quoted Purchase Amount could also change within the guaranteed period of 14 days! There is nothing else shown which could be covered by the term 'Guaranteed'. **So why was this term used, if apparently nothing was in fact guaranteed?**"*

I note that pg. 1 of the Annuity Quotation dated 31 August 2018 provides, *inter alia*, as follows:

"This quotation is based on the figures above and is guaranteed for 14 days from the Quotation Date".

The Complainant, in essence, sums up this part of his complaint by asking in his letter to this Office dated 11 October 2019, **"what is actually guaranteed"**? In reply, it is the annuity rate and the gross monthly pension income that is guaranteed for 14 days, but only where the annuity is purchased in the amount quoted, that is, €271,480.74. In this regard, *"based on the figures above"* means that where the same purchase amount or premium is used to purchase the annuity within 14 days, the Provider guarantees the annuity rate and the gross monthly pension income quoted.

In this instance, however, by the time the Provider had received the completed documents and encashed the Complainant's ARF and AMRF on 6 September 2018, I note that the purchase amount available had reduced by €1,998.84 to €269,481.90, which in turn affected the rate of the annuity the Provider could offer and resulted in the reduction from 4.5088% offered on 31 August 2018 when the purchase amount was €271,480.74, to 4.4902% on 6 September 2018, when the purchase amount was €269,481.90. As a result of the different purchase amount, the Annuity Quotation dated 31 August 2018 was no longer valid.

/Cont'd...

The difference in the purchase amount available on 31 August 2018, when the Annuity Quotation was generated, and on 6 September 2018, when the Complainant's ARF and AMRF policies were encashed, was due to market fluctuations in the value of his pension fund. I note that in his correspondence to this Office dated 11 October 2019, the Complainant submits, "*I have always noted that fund values may rise and fall*", and it is the fall in his pension fund value between 31 August 2018 and 6 September 2018 that resulted in the Annuity Quotation of 31 August 2018 being no longer valid.

In this regard, I note that in its email to the Complainant dated 6 November 2018, the Provider advised, among other things, as follows:

The value that is used for a claim, is the value on the date all requirements are received in [the Provider]. In your case, the requirements were received on the 6th [September 2018] and that is the effective date of the claim that we used... There was a drop in value between when you were given the quote and when [the Provider] actually received our requirements. I know this is frustrating but unfortunately, this is the nature of unit linked policies. The value that we used is correct and we won't be in a position to use the earlier value.

The quote being guaranteed for 14 days, does not mean that we can hold the fund value. But we will honour the annuity rate of 4.5088% and we will backdate it to the 01/09/2018 if you agree.

It would mean that your gross monthly annuity would increase from €1,008.36 to €1,012.53".

I am satisfied that the Annuity Quotation dated 31 August 2018, including the annuity rate and gross monthly pension income quoted therein, was only guaranteed for 14 days where the quoted purchase amount remained the same, which was not the case in this instance.

I note that the Provider has offered to apply the higher annuity rate of 4.5088% that was available on 31 August 2018 for the Complainant's purchase of Annuity policy xxxxx015, which would increase the monthly payment from €1,008.36 to €1,012.53. I consider this to be fair gesture by the Provider and one which is appropriate, as one can well understand why the Complainant may have been confused by the statement on the quotation "*This quotation is guaranteed for 14 days from the quotation date.*"

This issue, caused by the use of the word "*guaranteed*", is something which I recommend that the Provider examine with a view to ensuring that any information given on a future quotation of that nature, does not cause the same sort of confusion or mislead a recipient in a way which can be avoided.

/Cont'd...

In the meantime, I note that the Provider's offer to increase the annuity rate remains open to the Complainant if he wishes to accept that offer. Indeed I note that since the Preliminary Decision was issued by this Office, the parties have been in communication, with a view to putting that arrangement into effect, once the adjudication of this complaint has been finalised, by the issuing of this Legally Binding Decision.

I am pleased to note this development, and accordingly, on the evidence before me I am satisfied that it is not appropriate to uphold this complaint.

Conclusion

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

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



**MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

1 May 2020

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.