



<b><u>Decision Ref:</u></b>	2022-0183
<b><u>Sector:</u></b>	Investment
<b><u>Product / Service:</u></b>	Pension Transfers
<b><u>Conduct(s) complained of:</u></b>	Dissatisfaction with customer service
<b><u>Outcome:</u></b>	Upheld

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

The Complainant was a member of a pension plan with the Provider and was identified as the customer of the Provider, in the plan schedule.

#### **The Complainant's Case**

The Complainant submits that in **March 2020** the decision was made to transfer his pension bond from the Provider to a third-party provider. He further explains that he then cancelled his initial transfer request to allow him time to gather "*as much documentation as possible*", because markets and values were volatile at that time, and he wanted, insofar as was possible, to avoid "*not being invested*".

The Complainant contends that on **15<sup>th</sup> May 2020**, he instructed the Provider to transfer his pension to the third-party provider.

He states that the Provider "*finally*" transferred his funds on **9<sup>th</sup> June 2020**, though it applied a transfer date of **25<sup>th</sup> May 2020**.

The Complainant submits that the value of his pension had increased by more than **€7,000.00**, in the period between **25<sup>th</sup> May** and **9<sup>th</sup> June 2020**. He further submits that after the initial transfer request was made on **15<sup>th</sup> May 2020**, he contacted the Provider on "*numerous occasions*" but that his emails were not answered and "*some of the information we were given over the phone...was not correct*".

The Complainant states that the Provider has acknowledged that it had received all required information on **25<sup>th</sup> May 2020**. He says that the Provider apologised for the fact that the information was not acted on at that time, and the pension remained invested until the funds were transferred on **9<sup>th</sup> June 2020**. The Complainant contends that the Provider advised him during a phone call on **4<sup>th</sup> June 2020** that it was still awaiting outstanding information.

The Complainant submits that the Provider, in keeping his pension invested until **9<sup>th</sup> June 2020**, delayed his transfer and *“benefitted by €7,000”*. He further submits that the Provider has offered him a customer service payment of €500.00

### **The Provider’s Case**

In its Final Response Letter, the Provider states that it received the Complainant’s original request to transfer his pension on **27<sup>th</sup> March 2020** and that it confirmed receipt of the request on **31<sup>st</sup> March 2020** *“and advised that the transfer value would be based on the date that we received the final requirement”*. The Provider submits that it then received an email on **2<sup>nd</sup> April 2020**, stating that the transfer was not going ahead.

The Provider contends that it received an email from the Complainant’s office on **12<sup>th</sup> May 2020**, advising that the pension transfer *“was now going ahead”*, and that it asked the Complainant for a signed written instruction to confirm he wanted to proceed with the transfer, which the Complainant furnished. The Provider submits that, on foot of an email from the Complainant on **19<sup>th</sup> May 2020**, requesting an update on the transfer, it asked the Complainant for further information which is set out in the Provider’s Final Response Letter.

The Provider states that it received an email from the Complainant on **25<sup>th</sup> May 2020**, which *“included the outstanding information that was needed in order to proceed with the transfer”* but that the email was overlooked. The Provider acknowledges that this was an administrative error, resulting in the outstanding requirements not being recorded as received.

The Provider submits that the Complainant telephone on **3<sup>rd</sup> and 4<sup>th</sup> June 2020**, requesting an update. The Provider acknowledges that during these calls, the Complainant was advised that the Provider was *“still waiting on”* information that had already been submitted, but not recorded due to the Provider’s administrative error. The Provider states that the Complainant’s pension was transferred on **9<sup>th</sup> June 2020**.

The Provider contends that it is *“not in a position to pay the difference in value between the date all requirements were received...and the date your pension was transferred.... This is because your transfer value is based on the date our final requirement is received”*. The Provider submits that as it received the final requirement on **25<sup>th</sup> May 2020**, the fund value on that date was the amount transferred.

The Provider states that the increase in value of the Complainant's pension between **25<sup>th</sup> May 2020** and **9<sup>th</sup> June 2020** "*is retained*" by the Provider, and notes that "*the same process would have been followed if there was a reduction in value*".

### **The Complaint for Adjudication**

The complaint is that the Provider failed to deliver an acceptable level of customer service from **May 2020**, particularly in relation to its administration of the Complainant's transfer request in **May** and **June 2020**.

The Complainant wants the Provider to pay the sum of €7000 into his pension, and to pay him compensation.

### **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 **2 March 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.

### **Chronology of Events:**

- **27<sup>th</sup> March 2020:** Provider received instruction from the Complainant's financial services entity to transfer the value of the Complainant's Company Pension to another insurance company ("**Company X**") where it was to be invested in a Personal Retirement Bond (PRB).

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- **31<sup>st</sup> March 2020:** The Provider confirmed by return email that the value to be transferred would be the value on the date that all valid claim requirements were received.
- **2<sup>nd</sup> April 2020:**
  - The Provider received email communication from the Complainant's financial services entity indicating that the transfer was now no longer going ahead.
  - The Provider received an email confirmation from Company X confirming that it was willing and able to accept the transfer from the Provider. This communication is referred to as a Willing and Able Letter.
- **12<sup>th</sup> May 2020:** Provider received confirmation from the Complainant that he wished to continue with the transfer to Company X. The Provider confirmed at this point that it did not require a new Willing and Able Letter from Company X, but that it required a written confirmation from the Complainant that he wished for the transfer to proceed.
- **15<sup>th</sup> May 2020:**
  - The Provider received the Complainant's written confirmation that he wished to proceed with the transfer
  - Company X confirmed to the Provider in an email that it was still willing and able to accept the transfer of the Complainant's Personal Retirement Bond.
- **19<sup>th</sup> May 2020:** The Provider received an email from the Complainant enquiring whether there was an update on the transfer to Company X.
- **20<sup>th</sup> May 2020:** The Provider responded to the Complainant's email by return email stating that the following requirements remained outstanding from the Complainants:
  - Confirmation of the Complainant's three highest salaries within the last ten years; and
  - Confirmation that the Complainant's Company X Personal Retirement Bond related to the same employment.
- **25<sup>th</sup> May 2020:** The Provider received the above-mentioned two outstanding requirements to enable it to make the transfer to Company X.
- **3<sup>rd</sup> and 4<sup>th</sup> June 2020:** The Complainant telephoned the Provider seeking an update. During the telephone call on **4<sup>th</sup> June 2020**, the Provider incorrectly confirmed that it required confirmation from Company X that the receiving Personal Retirement Bond pertained to the same employment.
- **5<sup>th</sup> June 2020:** The Provider received an email confirmation from Company X setting out that the Complainant's Personal Retirement Bond was in relation to the same employment
- **9<sup>th</sup> June 2020:**
  - The Provider received an email from the Complainant seeking an update. At this point, the Provider identified that the outstanding requirements to pay the claim were received on **25<sup>th</sup> May 2020**
  - The Provider paid the Complainant's claim using the prices of **25<sup>th</sup> May 2020**, which was the date that all valid requirements were received. The value transferred to Company X at this time was €124,866.95.
- **10<sup>th</sup> June 2020:** The Complainant queried the pricing date used to pay his claim with the Provider.

- **7<sup>th</sup> July 2020:** The Provider confirmed with the Complainant that the correct pricing date was used.
- **8<sup>th</sup> July 2020:** The Complainant raised a formal complaint.
- **13<sup>th</sup> July 2020:** The Provider acknowledged receipt of the formal complaint.
- **27<sup>th</sup> July 2020:** The Provider issued its Final Response Letter

I note that the Complainant had endeavoured to engage with the Provider by email on **10<sup>th</sup> June 2020** to seek clarification about the price date that had been applied. The Provider failed to issue a response during the following two weeks, and the Complainant sent a follow up email on **25 June 2020**. His second email was responded to, a week later, when he was told that the matter had been escalated to management level. The response he subsequently received from the Provider set out what had occurred in respect of the price date as follows:

*"... Looking at our files I note we received our final requirement on the **25<sup>th</sup> May** from yourself.*

*The final information we required was salary information along with confirmation that PRB related to the same employment which was provided on the **25<sup>th</sup>**. I note further information was later sent in by [Company X] which highlighted your email of the **25<sup>th</sup>** was not reviewed...*

*... Unfortunately we are unable to amend the price date of the transfer on this case to the later date of **5<sup>th</sup> June**."*

*Email from the Complainant to the Provider's Agent on July 31<sup>st</sup> 2020*

Following receipt of the above email, the Complainant engaged with the Provider's agents by email to ascertain why the price date of **25<sup>th</sup> May 2020** had been applied.

Upon being informed that the date of receipt of the final requirement was the only one that could be applied, the Provider initiated his complaint with the Provider in the following email:

*"I had decided to move my pension earlier this year. However, given the recent volatile markets and the potential loss or gain by being out of the markets for a number of day or even weeks I decided to cancel this until I could have as much of the paperwork complete as possible to avoid any time out or not invested.*

*So the second transfer went in and we were given the date of the **25<sup>th</sup> of May** and the money was not transferred until the **9<sup>th</sup> of June**. This involved a large loss to my transfer which you tell me [Provider] are going to keep.*

*Just so I am clear and don't misunderstand your response to my complaint you might just confirm the following.*

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*The transfer request was presented and you had all the requirements on the 25<sup>th</sup> of May (your policy is the transfer date you give is the date all requirements are received) but this was overlooked. An administration error on your behalf your Sorry.*

*We contacted [the Provider] on 5 occasions between the 25<sup>th</sup> of May and the 9<sup>th</sup> of June and were told by [Agent] on the 4<sup>th</sup> of June that you needed confirmation from [Company X] that the receiving PRB was from the same employment. This would mean there were outstanding requirements, however your now saying this was a mistake and the requirements were in and again your sorry.*

*The result of the above [Provider] have benefitted and I have lost by over €7,000.00 from these mistakes..."*

Audio Recording of telephone conversation between the Complainant's agent and the Provider's agent

This is a telephone conversation repeatedly referred to by the Complainant in his submissions in reliance on the position that the Provider notified the Complainant that requirements were still outstanding after the 25<sup>th</sup> May 2020. The Provider acknowledges that this was communicated erroneously. I note the following exchange:

<b>Provider's Agent</b>	[Consulting customer records] <b><i>There's a broker email on 12th May advising "Awaiting [Company X] to confirm PRB relates to same employment and the same three highest earning salaries" because he's a director, I imagine?</i></b>
<b>Complainant's Agent</b>	<i>He is yeah, I sent them on 25th May</i>
<b>Provider's Agent</b>	<b><i>That might not just be reviewed yet...I don't see them unfortunately... That's the last bit of information, and the next thing was a call yesterday evening. Did you say the 25<sup>th</sup>?</i></b>
<b>Complainant's Agent</b>	<i>Yes, the 25th, it was sent to Pensions &amp; Retirement team. I confirmed the three highest salaries and then I emailed again on the 29th asking for an update on the transfer but haven't heard back</i>
<b>Provider's Agent</b>	<b><i>I'm just looking through those emails now - I don't think there's much more they can ask for; they are the end of it.</i></b>
<b>Complainant's Agent</b>	<i>Yeah</i>

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Provider's Agent	<i>There's not much needed after this. That was 25th May, usually they're within 5 working days, and we're passed that now, but obviously the long weekend comes into that too...</i>
Complainant's Agent	<i>It's usually 5 working days, is it?</i>
Provider's Agent	<i>Yeah, well pension claims, it's always 5 working days minimum, things tend to fly up in November, but yeah generally it's 5 working days. [Reading aloud from customer records]: "I also note that we're awaiting confirmation from [Company X] that the PRB relates to the same employment as our company pension"</i>
Complainant's Agent	<i>I just confirmed that but maybe they need confirmation from [Company X]?</i>
Provider's Agent	<i>Yeah, [Company X], yeah, they need confirmation from them - you could probably get back on to them, just send a quick email just to say this relates to the same employment as the PRB, and if it doesn't what employment does it relate to? It's the same employment then?</i>
Complainant's Agent	<i>It's the same employment</i>
Provider's Agent	<i>They're waiting for that...do you know what, I don't understand why they can't take that from the broker...</i>
Complainant's Agent	<i>And are they saying on their notes that they won't take it from the broker?</i>
Provider's Agent	<i>You see, it should be apparent from the Willing and Able, say you're taking the claim, you need to be able to tell me what the pension relates to. You have to get sign off from the trustees, and if it's a different employment you might need high salaries, but if it's the same employment you might not need it. A PRB generally means you're leaving service.</i>
Complainant's Agent	<i>We're transferring, that's all</i>
Provider's Agent	<i>That's why it should be a part of the Willing and Able, and it generally is to be fair to them</i>
Complainant's Agent	<i>We're going from a PRB to an Executive Pension, that's probably why it wasn't on it</i>

<b>Provider's Agent</b>	<i>It's for the same company isn't it? Did he initially set this up on the same employment?</i>
<b>Complainant's Agent</b>	<i>He did, yeah</i>
<b>Provider's Agent</b>	<i>It's a bit strange, put it like that, but that's what we're waiting on, just confirmation from [Company X] that they confirm it's the same employment</i>
<b>Complainant's Agent</b>	<i>I'll get onto [Company X] now, I'll pop them off an email</i>
<b>Provider's Agent</b>	<i>When we have that confirmation, we'll pay it off within 5 to 7 working days</i>

Final Response Letter of 27<sup>th</sup> July 2020

I note the following relevant sections from the Provider's Final Response Letter issued the month before the Complainant made this complaint to the FSPO:

*"The email we received on **25<sup>th</sup> May 2020** included the outstanding information that was needed in order to proceed with the transfer of your pension. However, this email was overlooked. This was an administration error on our part. This meant that the outstanding requirements were not marked off on our system. I am sorry that we made this error.*

*"The transfer value would always be based on the date we receive all our requirements. Our standard turnaround time for processing pension transfers is three to five working days. However, due to our administration error, the turnaround time for transferring your pension was ten working days.*

*"I understand that there was an increase in value between **25<sup>th</sup> May 2020** and **9<sup>th</sup> June 2020**. This increase in value is retained by [the Provider]. However, the same process would have been followed if there was a reduction in the value."*

Analysis

from a consideration of the correspondence and documentation submitted as part of this complaint, it is apparent that the Complainant experienced delays in receiving correspondence from the Provider and having his requests processed, despite efforts on his part, to follow up and engage with the Provider. I am not satisfied however, that these delays had any bearing on the financial circumstances of the Complainant's investment value.

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It can be seen clearly that the Complainant was notified that the relevant price date for the transfer of the pension, was the date when the last requirement was received by the Provider. These requirements were set out in correspondence to the Complainant. It has not been disputed that the final requirement, which concerned salary information, was submitted by the Complainant, on **25<sup>th</sup> May 2020**.

I note that in fact, it seems that the Provider did not need the confirmation of this information to come from Company X: confirmation of this from the Complainant was sufficient. Although unfortunate, the subsequent delay on the part of the Provider, not to process receipt of this requirement until **9<sup>th</sup> June 2020**, did not have any bearing upon the price date, which was governed by the contractual arrangement. Although Company X also furnished the information pertaining to the final requirement on **5<sup>th</sup> June 2020**, I am satisfied that this did not have an impact upon the price date, as this information had already been received.

I appreciate that the Complainant relies heavily on the conversation with the Provider's customer service representative on **4 June 2020**, the relevant parts of which are set out above. I note that the Provider's agent stated that it appeared from the records he was viewing during the conversation, that a confirmation from Company X was still outstanding. However, he went into detail towards the end of the conversation as to why this appeared strange to him, in that it appeared from his point of view, that all the requirements had already been complied with, since the **25 May 2020**.

Furthermore, I agree with the Provider's submissions that the opposite could have very easily have occurred (i.e. the value could have fallen after 25 May 2020, as a result of negative market performance) and, had that happened, the Provider would have absorbed and paid the difference between the value at the date of processing the claim and the value at **25 May 2020** to ensure that the full and correct value of **25 May 2020** was transferred to Company X. This appears to me to be a fair and just practice and it is in accordance with the contractual provisions. It is applied to each customer equally, and I take the view that the Complainant was not financially impacted directly by the delay on the Provider's part in processing the transfer request, as he received the value on transfer which he should have received on **25 May 2020**.

What appears to have occurred in this instance is an administrative error by the Provider in overlooking receipt of all requirements for the pension transfer on **25<sup>th</sup> May 2020**. However, this error does not change the fact that the requirements were, in fact, provided on that date and the Provider is not responsible for market occurrences that occurred during the subsequent period.

Although I appreciate that it is unfortunate from the Complainant's perspective that the market movement during the period between **25<sup>th</sup> May** and **9<sup>th</sup> June 2020** would have resulted in a growth to his pension, if he had remained invested with the Provider at that time, I am satisfied that the Provider has no obligation to pay the Complainant the €7,000 to which he claims he is now entitled.

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I acknowledge that a €1,000 customer service payment has been offered to the Complainant as an apology for the incorrect information provided to him and for the delays in processing the pension transfer and in responding to the Complainant's queries. I am not convinced that this figure is adequate, because the Complainant was denied the opportunity after 25 May 2020, to have the transfer to Company X completed, so that he could commence his alternative Personal Retirement Bond Investment with Company X. This did not happen until 9 June 2020.

In the circumstances, whilst I accept that it was reasonable for the transaction to take a small number of days, I take the view that the delay in this instance in putting the transfer into effect, was inappropriate. I am of the opinion in that regard that the Provider's conduct was unreasonable within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**, and I do not accept that the customer service payment offered by the Provider is reasonable.

In all of the circumstances, I consider it appropriate to uphold the complaint and to direct the Provider to make a compensatory payment detailed below.

#### Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld, on the grounds prescribed in **Section 60(2)(b)**.
- 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 **€2,500 (two thousand, five hundred Euros)** 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.



MARYROSE MCGOVERN  
Financial Services and Pensions Ombudsman (Acting)

28 March 2022

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## 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—

(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.