An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2018-0021
Sector:	Investment
Product / Service:	Investment
Conduct(s) complained of:	Fees & charges applied Delayed or inadequate communication
Outcome:	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This is a complaint concerning an Investment Fund. The Complainants invested in the fund through an Independent Intermediary. The complaint is against the Distributor of the Fund which is the Company referred to in this Decision.

It is the Complainants' complaint that the Company did not do what it was authorised to do as regards (i) the payment of fees to the Intermediary and (ii) providing the Complainants with fund updates.

The Complainants' Case

The Complainants state that they entered into an investment agreement with the Company via an Independent Intermediary / Authorised Advisor under the IIA (Investment Intermediaries Act) and which is regulated by the Central Bank of Ireland. The Complainants state that on three occasions, commencing in 1996, tranches of money totaling €270,000.00 were invested in various Company funds. The Complainants submit that the Intermediary provided them with a valuation in December 2013 stating that the total value of the investment was €250,000.00

The Complainants state that when they eventually received a valuation directly from the Company in February 2014 they discovered that the total value of the investments was less than €2,000.00. The Complainants contend that reckless behaviour by the Company in breach of its own contract with them and in breach of acceptable standards of

administration, contributed to the losses they experienced from the *false reporting* by the Intermediary.

It is the Complainants' position that had they been aware of the impact of losses, as rational players, they would have taken remedial action, but this opportunity was denied to them.

The Complainants state that the Intermediary was being Investigated by the Central Bank and is no longer operating having had its accounts frozen and they believe its license removed. The Complainants state that it is evident from the records that the Intermediary had been deliberately misrepresenting investment performance for many years during which it dealt with the Company who carry a significant responsibility for not having exercised sufficient duty of care to them as shareholders in the Company's funds and that this negligence exacerbated losses.

It is the Complainants' position that the Company's lack of adherence to its own internal processes assisted the Intermediary in its deception.

The Complainants sought information from the Company, but say that it refused to provide data and that they eventually issued a Data Access Request which the Complainants state the Company did not respect and frustrated their efforts in obtaining data.

The Complainants say that part of the data which they did obtain from the Company was a copy of an agreement between themselves and the Company which specified, amongst other things, the Company's role.

The Complainants say that the agreement:

1. Specified that the maximum commissions payable to the Intermediary was 0.5% or 1.0% per annum depending on fund type.

2. Specified that balances should be sent to their home address.

3. Specified the timing and process for payment. The process states that the Intermediary would lodge a request to the Company for payment of the appropriate % and the Company would calculate the monetary amount due and arrange payment.

The Complainants state that on reviewing the data obtained it became clear that the Company commenced approving commissions at double or quadruple the agreed rate in and around January 2010.

The Complainants say that there seemed to be other charges about which the Company refused to provide details.

The Complainants submit that the Company was either unwilling or unable to supply them with any documentation requesting the change in the fees to be charged or any letter from the Intermediary or the Company informing them or any other Investors of the change.

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The Complainants state that it also became clear that the Company was not calculating the amount due in commission, but rather allowed the Intermediary calculate the amount in monetary terms. The Complainants say that this was then deducted by the Company without validation. The Complainants state that again the Company refused to supply them with any document requesting the annual fee.

The Complainants submit that the Company sent valuations directly to the Intermediary's offices and not to them as account holders affording them no opportunity to examine primary records.

The Complainants' complaint is that the Company is responsible for losses by not adhering to the agreement and by not following its own agreed internal process. The Complainants say that additionally the Company refused to participate in any meaningful discussion, refused to meet with them and refused to furnish them with information.

The Complainants state that they would like to be compensated for the losses both real and consequential. The Complainants estimate that the compensation should be in the region of €70,000. The Complainants say that the lack of information makes it difficult to come up with a more precise amount.

The Complainants state that due to the Company's unwillingness to provide data or engage in any dialogue they had to obtain legal and financial advice and write endless letters. In order to keep costs to a minimum the Complainants prepared the letters and maintained the communications with the Company. It is stated that in excess of 30 letters were sent to approximately 6 different individuals within the organisation. The Complainants state that they would conservatively estimate the cost including their time at more than €9,000.00 which they would also like to get refunded.

The Provider's Case

It is the Company's position that it considers that no complaint is properly made out against it and that the Complainants' true grievance lies with the Complainants' independent investment advisor, (the Intermediary). The Company states that this is apparent from the Complainants' Complaint Form dated 8 October 2015 and the Complainants' subsequent correspondence, which demonstrate that the substance of the Complaint relates to the actions of the Intermediary rather than the Company.

The Company states that its conduct towards the Complainants was at all times fair, reasonable and in accordance with the applicable law and contractual documents.

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Evidence

The Company's Terms of Business

"This letter (the Agreement) sets out the terms relating to the marketing and distribution of units in the [the Company] Funds by your [Intermediary] to your customers (each Customer).

In this agreement

..

1.c) The Distributor shall forward all correspondence in respect of units of a relevant Fund to the person named, and at the address specified in the register of unitholders for the relevant Fund and where units are jointly owned, to the first named person at the first named address on the register.

…

3. Intermediary's agreement and representations

..

b) Intermediary represents and warrants to the Distributor on an ongoing basis that…

viii) Intermediary has obtained authority to make applications, notifications or otherwise deal with the Fund, and (where appropriate) to receive correspondence from the Distributor, on behalf of Customers".

Application Form

" 3. Fees

I/We authorise the payment by [the Company], the General Portfolio Manager and Distributor [of the Company], of the following fees, in addition to those described in the Prospectus issued by [the Company] dated April 1996 as amended from time to time (the Prospectus).

A portfolio management fee of one per cent per annum of the value of my / our Shares in the … Portfolio and the …Portfolio and one half of one per cent per annum of the value of my/our Shares in the …. Portfolio, calculated and payable by [the Company] in half-yearly instalments to [the Intermediary] on the last business day of March and September based on the net asset value of my/our investment at that date, using the proceeds of redemption of sufficient Shares from my/our Portfolio.

4. Registration Details **[the names and addresses of the Complainants are entered here]**

..

6. Valuation

You will receive a valuation of your Portfolio in Irish Punts half yearly from [the Intermediary].

…

9. Declarations

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(f) in the case of joint investors [the Intermediary] is authorised until further notice in writing:

1. to accept instructions (by telephone, post or fax) from any of us. ☐

2. to accept instructions only in writing (by post or fax) signed by all of us. ☐

Tick one box **[Neither box was ticked**].

(g) joint investors will be jointly and severally liable for the fees referred to in paragraph 3 above.

10. [The Company] Client Authority
(a) I / We hereby authorise [the Company] to accept instructions and terms from [the Intermediary], without reference to me/us, for the investment of the monies specified in section 1 of the application, for switching from time to time between Class Funds of [the Company], and for the redemption of shares held in my / our portfolio account including redemptions in respect of the fees payable to [the Intermediary] detailed in section 3. I / We acknowledge that all such instructions will be effected at my / our risk.

(b) I/We understand that [the Company] accept no responsibility as to the choice of investment by [the Intermediary].

(c) I /We declare this Authority will remain in force until such time as it is terminated by me / us in writing to [the Intermediary]. Any instruction to terminate the Portfolio should also be sent to [the Intermediary]. N.B. Please note that, irrespective of any authorisation given by [the Intermediary] in 9(f) above, any instruction given to [the Company] by or on behalf of joint holders must be signed by ALL joint parties.

The Complainants signed this Form which is dated 14th April 1998 and agreed to the Declaration in Section 9 and the Authority in Section 10 of the Application Form.

Sample letter said to have been sent by the Intermediary to its clients:

"We wish to take this opportunity to inform you that due to increased Portfolio options available to [Intermediary] it is necessary that [Intermediary] increase its current Portfolio management fees as and from the 2nd March, 2009.
…
Should you have any queries in respect to this new arrangement, we would appreciate if you would contact this office within twenty eight (28) days being the 2nd February, 2009. In the event we do not hear from you, we shall assume that you have accepted and agreed the new terms as outlined hereto".

Company's Letter of 22 September 2014

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"It is not unusual for a client to request that their correspondence be sent to their agent which appears to have happened in your case. [The Company] has a strict code of internal procedures around change of address and these are only executed under written instruction. We have tried to find this written instruction but as it would have been received more than 10 years ago we have not been able to locate it. [Intermediary] may itself retain a copy of the instruction.

If you had contacted us when you stopped receiving valuations directly from [the Company] we could have continued to send them directly to you".

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 16th January 2018, 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, the final determination of this office is set out below.

The issues for investigation and adjudication are whether the Company did what it was authorised to do as regards (i) the payment of fees to the Intermediary and (ii) providing the Complainants with fund updates.

The Company states that the Complainants were clients of the Intermediary, who provided them with investment advice and a discretionary portfolio management service. The

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Company states that it managed and distributed the underlying funds into which the Intermediary invested on behalf of the Complainants. The Company submit that the role and regulatory responsibility of the Intermediary and the product producer (the Company) are separate and distinct. The Company says that the Intermediary was an independent intermediary authorised and regulated by the Central Bank of Ireland (Central Bank) and, contrary to the Complainants' assertion, was not an agent of the Company at any time nor did it have authority to act for the Company. The Company states that this is evident from the Terms of Business between the Intermediary and the Company.

The Company submits that it notes that the Complainants have made reference to the fact that the the Intermediary's Terms were based on a template contract prepared by the Company. The Company submits that this is not true. The Company says that the Intermediary's terms were created by the Intermediary. The Company explain that it is only mentioned as the document was used for investment in the Funds through the Intermediary's products. The Company say that the fact that the Company's name was mentioned in the Intermediary's Terms did not create, and is in no way evidence of, an agency relationship between the Intermediary and the fund manager. The Company's position is that the selection of products, portfolio management and investment advice remain matters solely within the remit of the investment intermediary. The Company says that this is demonstrated at section 2 of the Intermediary's Terms, which references three 'portfolios' of investments for the Complainants to select from, which were not products created by the Company, but in fact appear to have been compiled by the Intermediary.

<u>The Company's due diligence of the Intermediary was reasonable and proportionate</u>

The Complainants raise a number of allegations in their correspondence, in particular, regarding the Company's questioning and examination of the Intermediary. The Company's response is that as detailed in its letter dated 22 January 2016, it was normal practice for it to meet with intermediaries periodically to discuss matters arising from their commercial relationship and the meeting with the Intermediary conducted by the Company in 2012 was part of the Company's internal compliance process. The Company says that this was not a regulatory requirement and, in fact, it was entitled under the Investment Intermediary Act 1995 to rely on its initial due diligence and, in particular, the Intermediary's independent regulated status.

It is the Company's position that in such circumstances, it was reasonable for it to rely on the authority given to the Intermediary by the Complainants, the instructions provided by the Intermediary to the Company on foot of that Authority and to assume the truthfulness and accuracy of statements and representations made by the Intermediary both generally and during such meeting. The Company's case is that it was not required to look behind such representations and, to address a specific assertion by the Complainants, it would not have been reasonable or appropriate for it to look behind letters which the Intermediary

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represented to it as having been sent by the Intermediary by contacting the purported recipients to verify receipt. The Company states that such examination would go far beyond the bounds of what is required in the relationship between an investment fund provider and an independent regulated intermediary, and would amount to a disproportionate regulatory burden on such commercial relationships.

The Company responded to the Complainants' information requests

The Company states that it notes that part of the complaint relates to the provision of information to the Complainants. The Company says that at the outset, it notes that it has always been transparent and co-operative with the Complainants and has provided all information reasonably requested which the Complainants were entitled to receive. To the extent that the Complainants are dissatisfied with the information provided by the Company in response to their data access request, as previously noted the Company consider that its response was adequate and in compliance with the Data Protection Acts 1988 and 2003, and, in any event, this is a matter more properly raised with the Data Protection Commissioner.

The Company says that lastly, it reiterates that it is important not to conflate the conduct and responsibilities of the Intermediary with those of the Company. The Company refer to Clause 6 of the Intermediary's Terms as clearly providing that account valuations were to be provided to the Complainants by the Intermediary.

The alleged losses suffered by the Complainants are not the Company's fault

The Company states that the total sum of the challenged payment of fees by the Company to the Intermediary from the Complainants' accounts is $1,610.16, as identified in the 'Analysis of fees applied to the Complainants' accounts' document. The Company's position is that while these payments were, in any case, lawfully and properly processed by the Company, the quantum of the complaint now brought by the Complainants bears no relation to these sums. The Company states that instead the Complainants make the entirely unfounded claim for €70,000, together with costs of €9,000. The Company's position is that the Complainants' claim belies the fact that they frequently redeemed many times. The Company point out that between November 1996 and March 1999 the Complainants invested $324,240.50, comprised of various currencies through their agent in the Company's funds. Redemptions were made at various stages up to March 2014 totalling USD 259,940.90 as identified in the Annual Benefit Statements. The Company submit that the total amount of fees deducted throughout this period was USD 25,935.58. The Company states that regrettably, the Complainants are plainly seeking to use the Complaints Process to recover their trading losses from the Company. It is the Company's position that there is simply no causal link between the Complainants' trading losses and the matters complained of in relation to the Company. The Company says it notes, in that regard, that

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the Complainants would appear to seek to rely on the fact that annual benefit statements were sent by the Company to the Intermediary rather than the Complainants directly as somehow grounding an expanded claim against the Company for their general trading losses. The Company submit that in the first instance, the annual benefit statements were sent to the Complainants' Intermediary and, in any event, the Complainants could have contacted the Company to seek duplicate or further information as they wished.

Current status of the Intermediary

The Company submit that for completeness, it notes that the Intermediary has voluntarily withdrawn its authorisation and cancelled its registration with the Central Bank. The Company says that it understands that an administrator has been appointed to the Intermediary and the Investor Compensation Scheme has been invoked. The Company states that it notes that and understand that the Complainants have also submitted a claim through that scheme as they have recently requested the Company to provide information to support their request for compensation.

As regards evidence in relation to the performance and / or maturity of the investments, and / or in relation to fund switches, the Company's response is that insofar as matters relating to the performance and/or maturity of the Complainants' investment is concerned, this category is not applicable to the Company as it did not have a direct sales relationship with the Complainants. The Company's position is that the Intermediary had the sole, direct sales relationship with the Complainants. However, at the request of the Complainants in or about May 2014, the Company says that it did provide the relevant transaction histories of the accounts to the Complainants.

With regard to any Annual Benefit Statements that were issued, the Company states that these statements were automatically generated and issued to the Intermediary as the Complainants' agent for receipt of such statements.

The Company's position is that the Intermediary is not an agent of the Company.

As regards the application of the Consumer Protection Codes, the Company states that the Complaint relates to investment service and, accordingly, the Consumer Protection Code has no application to this matter.

The Company's position is that the applicable regulatory regime is the Investment Intermediates Act 1995. It is the Company's case that it has at all times acted in compliance with its regulatory obligations and, in particular; the provisions of the Investment Intermediaries Act 1995. The Company states that the Investment Intermediaries Act 1995 does not require product producers (such as the Company) to conduct on-going due diligence of regulated intermediaries in advance of every transaction. Rather, it is sufficient

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for the product producer to conduct due diligence at the outset of the relationship to determine that the Intermediary is appropriately qualified, and this can be assumed where the Intermediary is regulated under the Investment Intermediaries Act 1995. The Company says that it conducted such due diligence at the commencement of its relationship with the Intermediary, and once this was done the Company was entitled under the Investment Intermediary Act 1995 to rely on its initial due diligence and, in particular, the Intermediary's independent regulated status as long as the Intermediary continued to be regulated.

The Company's position is that it does not consider the complaint about its conduct to be in any way well-founded, much less that the said conduct was the cause of any loss suffered, by the Complainants. The Company states that nevertheless, it was willing to offer the Complainants the sum of €2,500. It says that this sum is a reimbursement of the amount of the fee payments lawfully processed by the Company to the Intermediary from the Complainants' accounts in accordance with the Intermediary Terms since 9 October 2009 but in excess of the percentage agreed in the original Intermediary Terms (i.e. payments falling within the six year period before the complaint was brought) ($1,610.16), together with an additional goodwill payment. The Company consider this offer to be fair and reasonable in the circumstances. The Company states that it should be noted that this offer is made without any admission of liability and is being done solely in a good faith effort to resolve the dispute.

It is the Company's case that it has acted appropriately in accordance with applicable law and within the bounds of its authority at all times. The Company states that it remains its view that the complaint is without merit and should not be pursued against it and that this is supported by the evidence.

It is the Complainants' complaint that it is evident to any neutral observer that the Company wilfully neglected a minimum duty of care to them.

The Complainants submit that the Company was possessed of the Intermediary agreement which it implemented across the fund range. The Complainants state that the Company had to, at the very least, screen and approve the agreement in making the Intermediary a distributor of their funds. The Complainants say that on a very basic level the Company paid commissions upfront and commissions in the form of rebated fund fees. Commissions are paid to agents. The Complainants state that they did not pay the Intermediary commissions, but that the Company paid commissions. It is the Complainants' argument that the Company operated the agreement and failed to do so properly. The Complainants state that this has meant that they were egregiously overcharged by the Company's wilful neglect.

The Complainants submit that this added to the consequential losses inflicted upon them by the Intermediary's fraud and the Company' behaviour in accepting culpability and wilful obduracy in dealing with the complaint has added to legal and advisory costs considerably.

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The Complainants state that there are some specific issues in the Company's submission with which they would like to take issue.

1. The Company state in several parts of their submission that at all times their conduct towards the Complainants was fair and reasonable. The Complainants state that the truth of the matter is that the Company sought to frustrate them at every turn and failed to provide them with information to which they were entitled. The Complainants submit that to obtain information, they had to resort to data access legislation and write over 40 letters.
2. The Complainants state that the Company continue to take the position that they had no input to the agreement and that this agreement was designed and prepared solely by the Intermediary. The Complainant states that the simple fact is that the Intermediary did not have the resources or the business nous to prepare such an agreement. The Complainant's position is that the Company present a case that the Intermediary selected and designed products and the Company had no input into this process and that these were the Intermediary products. The Complainants say that the fact is these agreements consisted only of the Company offerings and de facto were the Company products.
3. The Complainants submit that the agreement was in the first instance sent to them by the Company clearly indicating that this document was used by them as a control and source document. The Complainants' position is that the agreement clearly places the responsibility for the deduction of the management fee on the Company. The Complainants say that it also stipulated the level of the fee, the methodology of making the deduction and the frequency of remittance. The Complainants argue that the Company did not adhere to any of these requirements.
4. As regards the Company's claim that its examination of the Intermediary was normal and appropriate, the Complainants say that there are two different representations of the 2012 meeting. In the first letter from the Company on 9th December the Company stated that the meeting was an "onsite inspection" after an enquiry into increased fees. The Complainants say that in the January 2016 letter the meeting was downgraded to a sales meeting to discuss commercial matters with their agent. The Complainants state that the Company was obviously concerned about the Intermediary's activity, but did not bring it to the attention of the clients or the regulatory authorities for fear of the impact it would have on its reputation.
5. The Complainants state that the Company accept the fact that it changed the address to which it sent statements from their home address to that of the Intermediary solely upon the request of the Intermediary. The Complainant says that this led to a situation where they were receiving false valuations from the Intermediary for more than 14 years.
6. The Complainants say that it is unclear as to the point the Company is attempting to make other than to somehow state that a $70,000 loss over 18-year period was acceptable when in fact like for like comparison against other fund managers would indicate that significant gains would be the case.

The Complainants state that in summary the Company appear to totally abdicate its responsibility of duty and care by hiding behind the Intermediary.

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Analysis

There are two entities involved with this investment, the Company and the Independent Intermediary. The Company would not be responsible for any act or omission of the Independent Intermediary. Both the Company and the Independent Intermediary had responsibilities regarding the administration of this contract. The Complainants also had responsibilities in relation to the contract, in particular in relation to satisfying themselves that the contract met their needs and monitoring what was or was not being provided to them by the two providers.

As regards communications to and from the Company and between the Complainants and the Intermediary, it is noted that the Company's Terms of Business states that:

"The Distributor shall forward all correspondence in respect of units of a relevant Fund to the person named, and at the address specified, in the register of unitholders for the relevant Fund [that is, the Complainants], and where units are jointly owned, to the first-named person at the first named address on the register". The Terms of Business also state that: *"Intermediary has obtained authority to make applications, notifications or otherwise deal with the Fund, and (where appropriate) to receive correspondence from the Distributor on behalf of Customers".* The Application Form states that: *"You [the account holder] will receive a valuation of your Portfolio in Irish Punts half yearly from [the Intermediary]".*

The Company's Client Authority is also noted as follows:

> *"(a) I / We hereby authorise [the Company] to accept instructions and terms from [the Intermediary], without reference to me/us, for the investment of the monies specified in section 1 of the application, for switching from time to time between Class Funds of [the Company], and for the redemption of shares held in my / our portfolio account including redemptions in respect of the fees payable to [the Intermediary] detailed in section 3. I / We acknowledge that all such instructions will be effected at my / our risk.*
>
> *(b) I/We understand that [the Company] accept no responsibility as to the choice of investment by [the Intermediary].*
>
> *(c) I /We declare this Authority will remain in force until such time as it is terminated by me / us in writing to [the Intermediary]. Any instruction to terminate the Portfolio should also be sent to [the Intermediary]. N.B. Please note that, irrespective of any authorisation given by [the Intermediary] in 9(f) above, any instruction given to [the Company] by or on behalf of joint holders must be signed by ALL joint parties".*

The above Company Client Authority is clear as regards how instructions were to be given to the Company, that is, *"signed by ALL joint parties".* Therefore, clearly those instructions from the Complainants, either directly from the Complainants themselves, or through the Intermediary, would have to be in writing and signed by them.

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It is also the stated positon by the Company the instructions which the Company could accept in relation to the fees set out under Section 3 would have to be in compliance with that section. I accept that where there was to be any alteration of the fee structure set out in Section 3, an instruction would have to come from the Complainants in writing and be signed by them. It would not be sufficient for the Company to accept a communication from the Intermediary informing the clients in writing that the fees were going to change, and that if there was no response from the client to such notice, the fees would automatically change. The Company had checked with the Intermediary in 2012 regarding its requests for higher fees. It had received from the Intermediary copies of letters that the Intermediary had purported to have sent to clients in general (not specific to the Complainants), along the lines set out above. The Company did not seek a copy of this letter before altering the fees in question, nor did it submit a copy of the actual letter that was said to have been sent to the Complainants.

The Company also advised the Complainants (in a letter dated 22nd September 2014) that: *"[The Company] has a strict code of internal procedures around change of address and these are only executed under written instruction. We have tried to find this written instruction but as it would have been received more than 10 years ago we have not been able to locate it".*

I accept that where the Company was sending correspondence to a client and then stopped doing so upon an instruction from an Intermediary, that such instruction would have had to be in writing and signed by the client and retained on file, as evidence of same. Here it appears that the Complainants had been receiving, for a time, information about the Fund directly from the Company, but that the Company then began sending the information directly to the Intermediary, upon an instruction apparently, but not evidenced.

Regardless of which entity (the Company or Intermediary) was to issue a valuation statement, it was made clear in the documentation set out above that such statements would issue and it would be reasonable to expect that if the Complainants did not receive the statements when expected that they would be sought by the Complainants from either entity.

To conclude I accept that greater and better oversight was required by the Company regarding the instructions it was receiving from the Intermediary regarding fee changes and changes of address for communication purposes. Both type of instructions would have to be given by the Complainants in writing and signed by them. No evidence of same has been submitted by the Company to this office. As noted above the Company had internal procedures around change of address requiring written instruction from a client before such a change is put into action. While this complaint does not involve an investigation of the alleged acts or omissions of the Intermediary, I accept that such oversight requirements as required of the Company in its own agreement with the Complainants could have avoided or alleviated any such alleged acts or omissions by the Intermediary that are claimed by the Complainants.

Without an examination of the Intermediary's role in the matter I cannot conclude that the Company was wholly responsible, or that its acts or omissions wholly contributed to the

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losses claimed for by the Complainants. The Company would not be responsible for the alleged acts or omissions of the Intermediary. The Complainants themselves had a general oversight obligation to make sure they were receiving information from the Company, and where such information had stopped coming from the Company, to further question same at the earliest opportunity.

Having regard to all of the above it is my Legally Binding Decision that the complaint is partially upheld and I direct that the Company is to pay the Complainants a substantial compensatory payment of €15,000 (fifteen thousand euro).

Conclusion

- My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is partially upheld, on the grounds prescribed in ***Section 60(2)(g).***

- Pursuant to ***Section 60(4)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct that the Respondent Provider to pay an amount of compensation (as set out above) to the Complainant for any loss, expense or inconvenience sustained by the Complainant as a result of the conduct complained of.

- Pursuant to ***Section 60(6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I 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***, where the amount is not paid by 14th March 2018.

- Pursuant to ***Section 60(8)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** the Respondent Provider is now required, not later than 14 days after **14th March 2018** to notify this office in writing of the action taken or proposed to be taken in consequence of the said direction/s outlined above.

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

GER DEERING
FINANCIAL SERVICES OMBUDSMAN

7th February 2018

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) in accordance with the Data Protection Acts 1988 and 2003.