



<u>Decision Ref:</u>	2019-0052
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Bonds
<u>Conduct(s) complained of:</u>	Fees & charges applied Failure to provide accurate investment information
<u>Outcome:</u>	Partially upheld

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

Background

The Complainant's complaint relates to the charges on his Investment Plan and in particular the fact that his Annual Fund Management Charge is collected and presented in his plan documentation as a percentage of the value of the investment fund and not in monetary terms.

The complaint is that the Provider has not reasonably made a full discourse of the fees that applied to the Investment Plan.

The Complainant's Case

The Complainant states the basis of his dispute, is as follows:

- *“Complete lack of visibility into the management fees, transaction costs and/or other costs that [the Provider] imposes on my account.*
- *No means of ensuring I am receiving value for money due to the non-disclosure of fees and charges*
- *No means of verifying that the fees and charges are calculated correctly*
- *The fees and charges are applied irrespective of fund performance*
- *Fees and charges are not reflected on any statements*

I feel that this is a confounding arrangement whereby I am paying for a service yet have no visibility into how much this service is costing me and am fully reliant on the integrity of [the Provider]”.

The Complainant states that he wants the details of fees and charges he has paid since 2016 and over the life of the investment.

The Provider’s Case

The Provider submits that the charges on the Complainant’s plan are as set out in paragraph 15 of the plan Terms and Conditions. The Provider states that the Terms and Conditions were posted to the Complainant on 14 April 2002 along with his other plan documentation.

“15 Charges
Unit Charge
The 5% difference between the offer price (at which units are added to investments) and the bid price (at which units can be cashed in) will go to [the Provider].
Fund Management Charge
Each month we make a charge of 1/12th of 1.65% of the offer price of the units in your fund. We take this charge evenly over the month”.

The Provider says that this 5% charge on each regular payment is the difference between the offer price (the price at which units are added to the investment) and the bid price (the price at which units are cashed in). The Provider says that these fund prices are declared and available to the Complainant on a daily basis.

The Provider states that since February 2014 it has been providing a breakdown of this charge to the Complainant in his Annual Benefit Statement. The Provider says it began to include this charge at this time following changes to the Consumer Protection Code in 2012. The Provider submits that while this charge was always provided for in the Complainant’s plan documentation there was no requirement for the Provider to include this level of detail in its Annual Benefit Statements before this time.

Regarding the Annual Fund Management Charge of 1.65% the Provider says that this is applied to the value of the investment fund as a whole and is not levied on an individual investor's value directly. The Provider explains that each month it makes a charge of 1/12th of 1.65% of the offer price of the units in the fund and then spreads this charge evenly over the month.

The Provider states that the level of Fund Management Charge deducted on any given day varies depending on the value of the fund as a whole on that day and the total number of units in the fund on that day. The Provider submits that as such it is not levied as a monetary charge and at no time did it inform the Complainant that it would be.

The Provider's position is that the nature of the charge is such that it does not allow for it to be provided in monetary terms for an individual's investor's specific plan and in providing such a calculation it can only provide an estimation only.

The Provider states that it is very important to note that how it collects and presents the Complainant's Annual Fund Management Charge in the plan documentation is in line with industry norms regulated by the Central Bank of Ireland and is not something that is unique to the Provider. The Provider states that it is fully compliant with the Consumer Protection Code in how it presents this charge to the Complainant in his Annual Benefit Statements.

The Provider's position is that the plan charges have always been correctly applied as per paragraph 15 of the plan Terms and Conditions.

In its complaint submission to this Office, the Provider sets out an estimation of the Fund Management Charge paid by the Complainant in monetary terms since the inception of the plan on 1st April 2002 to 1 October 2017.

Submissions and Evidence

6th December 2017 – the Complainant's response to the Provider's submission to this Office:

"I reviewed the file yet it still does not address my initial complaint in that I cannot determine how much I am paying in fees and charges - either upfront or historically. I believe this is completely unacceptable in that there is;

- *A complete lack of visibility into the management fees, transaction costs and other costs imposed on my account*
- *No means of ensuring I am receiving value for money*
- *No means of verifying that the fees and charges are calculated correctly*
- *Fees and charges are not reflected on any statements*

I am not aware of any other 'industry' where such a practice would be considered acceptable let alone try to justify it. Even if the company cannot tell me upfront what the anticipated charges may be, I cannot understand why these fees cannot be determined and communicated retrospectively".

The Provider's Customer Information Notice on the Policy

"3. What Are The Projected Benefits Under The Policy

"Projected Expenses and Charges to date" Year 2 111, Year 3 255, Year 4 434, Year 5 646 etc.

"Important: These illustrations assume a return of 8.00% per annum. This rate is for illustration purposes only and is not guaranteed. Actual investment growth will depend

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on the performance of the underlying investment and may be more or less than illustrated”.

The 2014 Annual Statement shows the yearly fund charge and the following “Important Information” is set out:

“We take the yearly fund charge from each fund before the fund price is declared”.

The Statement also shows “How your plan value has changed since your last statement” and shows “Charges applied – Payment charges applied” and the “Important Information” states “We take any payment charges from your payments before we add them to your fund”.

19th January 2017 – The Provider to the Complainant

“Unit charge: There is a 5% bid/offer spread on your plan. The 5% difference between the offer price (at which units are added to your plan) and the bid price (at which units can be cashed in) goes to [the Provider].

Fund management charge: Each month we make a charge of 1/12th of 1.65% of the offer price of the units in your fund. We take this charge evenly over the month.

As both charges change due to the price of units we are unable to provide you with a monetary value of the charges. I apologise for any inconvenience this may cause”.

2nd February 2017 – Provider to the Complainant

“The annual Management Charge is levied on the fund as a whole, and not on a customer’s specific plan. It is deducted by [the Provider’s] Investment Managers from the overall value of the fund before the bid price is declared.

Therefore, the fund prices are declared after these charges are taken meaning that these charges are not deducted from the customer’s plan directly but are included in the price when declared”.

The Complaint for Adjudication

The complaint is that the Provider has not reasonably made a full discourse of the fees that applied to the Investment Plan.

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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 18th February 2019, 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.

A Submission dated 28th February 2019 from the Complainant was received by the Financial Services and Pensions Ombudsman after the issue of a Preliminary Decision to the parties. This submission was exchanged with the Provider and an opportunity was made available for any additional observations arising from the said additional submission. No additional observations were received. In his submission the Complainant expressed his disappointment with the outcome reached in the Preliminary Decision, in that he did not consider it provided for the greater transparency of charges that he was seeking from the Provider. The content of the Complainant's submissions however has not persuaded me to alter my previous preliminary determination and, consequently, the final determination of this office is set out below.

Analysis

I have examined the submissions of both parties regarding this investment and the evidence submitted surrounding the applicable charges.

I acknowledge the Complainant's comments regarding the Provider's inability to provide a specific figure for the charge applicable to his investment. However, it is important to point out that the charges are applied generally to the funds in which the investment is made rather than a specific plan belonging to an individual investor. In its complaint submission

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the Provider sets out an estimation of the Fund Management Charge paid by the Complainant in monetary terms since the inception of the plan on 1st April 2002 to 1 October 2017.

I accept that the Provider's submissions adequately address this point and provide sufficient detail as to the manner in which charges are applied to the fund/s in which the Complainant's investment is placed.

That said, I do consider that the Provider could have been clearer in its communications and in its documentation from the outset on how the management charges were to be calculated.

In its complaint submission the Provider explains that the Annual Fund Management Charge of 1.65% is applied to the value of the investment fund as a whole and is not levied on an individual investor's value directly. The Provider explains that each month it makes a charge of 1/12th of 1.65% of the offer price of the units in the fund and then spreads this charge evenly over the month.

The Provider states that the level of Fund Management Charge deducted on any given day varies depending on the value of the fund as a whole on that day and the total number of units in the fund on that day. The Provider submits that as such it is not levied as a monetary charge.

The above explanation of how the 1.65% Management Charge is applied is not as clearly set out in the policy documentation. Because of this, I consider that a compensatory payment to the Complainant is merited. I also consider that the Provider should continue to provide the Complainant with the estimated figure of the fund management charge, upon the Complainant's request at reasonable intervals.

With regard to the provision of information to a consumer the Consumer Protection Codes state that a regulated entity must ensure that all information it provides to a consumer is clear and comprehensible, and that key items are brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information.

Having regard to all of the above it is my Legally Binding Decision that the complaint is partially upheld and I direct that (i) the Provider pay the Complainant the compensatory payment of €500 (five hundred euro), and (ii) continue to provide the Complainant with the estimated figure of the fund management charge, upon the Complainant's request at reasonable intervals.

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) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to (i) the Provider pay the Complainant the compensatory payment of €500 (five hundred euro), 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, and (ii) continue to provide the Complainant with the estimated figure of the fund management charge, upon the Complainant's request at reasonable intervals.

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.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

15th March 2019

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**

ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.