



<b><u>Decision Ref:</u></b>	2019-0244
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Whole-of-Life
<b><u>Conduct(s) complained of:</u></b>	Fees & charges applied (life)
<b><u>Outcome:</u></b>	Rejected

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

**Background**

The complaint relates to information being furnished by the Provider in relation to the charges and fees which apply to the Complainant's Personal Retirement Savings Account ("PRSA") with the Provider.

**The Complainant's Case**

The Complainant invested in a PRSA with the Provider and is seeking detailed information in relation to the charges and interest which he is paying on his PRSA.

The Complainant states that he has "*already identified one error in the allocation rate that was applied [by the Provider]*".

The complaint is that the Provider is wrongfully failing to provide detailed information to the Complainant regarding fees and charges applicable to his PRSA.

The Complainant wants the Provider to set out in detail, in annual statements, the charges and interest being applied to his PRSA on the date it is being applied to his account and how they are calculated.

### **The Provider's Case**

The Provider has indicated that the Complainant's PRSA is subject to a 1% annual management charge.

The Provider states that "*there is no monetary figure*" that can be provided as annual management charges are applied as a percentage of the entire fund assets and are automatically taken from the fund on a monthly basis. The Provider has also stated that:

*The annual fund charge is not charged on an individual basis. The charge is taken from the overall value of the fund.*

*The amount you are charged is a percentage of your units against the total of the units in the fund. As this charge is deducted from the total fund, it is not possible to relate this to an individual investor's plan.*

The Provider went on to state that, as of October 2017, the total management charges levied against the Complainant since the Complainant's plan started, amounted to €825.

### **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 16 July 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.

/Cont'd...

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

Before embarking on my analysis, I will set out the terms of the PRSA relied upon by the Provider.

### **PRSA Terms and Conditions**

#### **Section 5. Charges**

##### **5.5 Fund Charge**

*Each month we take a fund charge of 1/12 of 1% if the value of each of your chosen funds. We take this charge from the unit price evenly over the month.*

##### **5.6**

*The maximum allowed levels of charges on a standard PRSA such as this is limited by law to 5% of each contribution and 1% of the assets in the account.*

### **Analysis**

The Complainant takes issue with the Provider's stated inability to provide him with an annual account statement in respect of his PSRA, detailing precise figures as to the specific fund management charge levied on his funds. The Provider provides Annual Benefit Statements to the Complainant in the form of 'Annual Communication Packs' and a 'Half-Yearly Statement of Account'. The former refers to the charges levied on the PRSA by reference to the percentage taken from the fund as a whole. The following is stated within each Annual Communication Pack:

*Also, each month we deduct a fund charge of 1/12<sup>th</sup> of 1% of the value of each of your chose funds. We take this charge from the investment price evenly over the month.*

A table below the foregoing statement indicates that the Complainant's funds are subject to a 1% charge. The Provider argues that it is not practical to provide a monetary figure for the precise contribution of the Complainant to the charge levied on the overall fund. In its response to this office, the Provider stated as follows:

*..this charge is not levied directly at the level of the individual customer's plan / fund value, but is applied at the overall investment fund level and is taken on a continuous daily basis and ultimately reflected in the funds published Daily Unit Price.*

*It is for this reason that it is not practical to provide individual customers with the exact figure which may represent the portion of the overall Fund Management Charge their investment contributes to the charge levied other than as a percentage figure.*

/Cont'd...

Whilst I have some sympathy for the Complainant, it seems to me that the information provided to him reflects exactly the mechanism described in Section 5.5 of the PRSA terms and conditions pursuant to which the charge is levied. There is no other provision of the terms and conditions in support of his claimed entitlement to the precise breakdown he desires. The Complainant has no contractual entitlement to that which he seeks.

In the absence of support from the terms and conditions, it would require some statutory or regulatory regime to support the Complainant's request. Section 6.16 of the Consumer Protection Code 2012 provides as follows:

*For each **investment product** held with it, a **regulated entity** must, at least annually, provide to a **consumer** a statement in respect of the previous 12 month period, which includes, where applicable:*

- a) the opening balance or value;*
- b) all additions including additional amounts invested;*
- c) all withdrawals;*
- d) the total sum invested;*
- e) the number of units held;*
- f) all interest;*
- g) all **charges** and deductions affecting the **investment product** including any **charges** associated with the management, sale, set up and ongoing administration of the **investment product**; and*
- h) the closing balance or statement of the value of the investment.*

Subparagraph g) above requires the statement to include details of all charges and deductions affecting the investment product including management charges. The Provider has shown that the only charges to the Complainant's funds are the 1% fund management charge and the Government Pension Charge. The information that the Provider is furnishing meets the requirements of the CPC.

It is clear that the terms of the PRSA entitle the Provider to deduct the management charge from the overall fund "*evenly over the month*". It is equally clear that the number of units in the fund (and indeed the value of the fund) will fluctuate on a daily basis. As such, the Complainant's percentage holding of the fund will fluctuate on a daily basis, thus his relative contribution to the 1/365 daily charge (which itself will fluctuate) will also fluctuate. In such circumstances, the argument that it would be impractical to give a precise monetary breakdown to individual fund unit owners is not unreasonable. The Provider notes that it receives only 1 or 2 requests for this kind of information on an annual basis and it argues that it would be an inefficient use of funds to implement a costly computerised system to track the figures involved. I accept this proposition.

I also note that the Complainant appears to be incorrect insofar as he states that he has "*already identified one error in the allocation rate that was applied*". This statement relates to a letter of **25 September 2017** from the Provider to the Complainant wherein it was stated that the allocation rate for the Complainant's investment was 95%. The Complainant

/Cont'd...

queried this giving rise to the Provider stating that the allocation rate was 96.5%. The Provider apologised “for the incorrect rate given” in its letter of **25 September 2017**.

However, following further consideration of the matter, the Provider has clarified that the rate quoted in the September 2017 letter “was correct at the time” in circumstances where the Complainant’s most recent annual contribution, when the letter was sent, had dropped below the amount that qualified for the 96.5% allocation rate. In the event, the most recent contribution was in fact properly the subject of a 95% allocation rate.

For the reasons outlined, I do not 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.**

**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

8 August 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**

**(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.**