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| <b><u>Decision Ref:</u></b>             | 2019-0364   |
| <b><u>Sector:</u></b>                   | Investment  |
| <b><u>Product / Service:</u></b>        | Bonds   |
| <b><u>Conduct(s) complained of:</u></b> | Failure to provide product/service information<br>Delayed or inadequate communication<br>Failure to advise on tax implications/tax relief |
| <b><u>Outcome:</u></b>                  | Partially upheld  |

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

#### **Background**

The complaint concerns the Provider's administration of a Dividend Bond. The Complainant states that his complaint is twofold:

- (a) The Provider changed the process involving the payment of dividends on the investment product. The Complainant considers this to be unsustainable, unnecessary and unfair.
- (b) The Complainant considers that the calculations in respect of capital values and tax calculations are intricate and it is unfair and unreasonable to expect a layperson to follow them.

The complaint is that the Provider incorrectly or unreasonably administered the Dividend Bond.

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

The Complainant states that the Provider changed the administrative process involving the payment of dividends on the investment product. The Complainant says that this seems to have resulted in the Capital value reducing to zero. The change means that payment of dividends has been funded through the sale of invested units.

The Complainant says he purchased an investment product from the original underwriter in February 2005. This investment was a Dividend Bond. The product provided for both

income and capital growth. The Complainant says that the promotional literature did not mention that units would be sold to enable payment of the dividend. The Complainant says that when purchasing the investment for Pension purposes he was reliant for guidance on the information provided on the leaflet which was given to him by the original underwriter's broker.

The investment was used to purchase units in the fund. Initially 31,628 units were purchased at a price of €1.43 each giving a Total Value €45,229.

In February 2007 a further 28,090 units were purchased at a price of €1.78. The Complainant says, thus the investment holding was increased to 59,718 units valued in February 2007 at €107,134 (€1.794 per unit). The Complainant states that the unit value was published weekly in the financial news media.

In 2013 the businesses were purchased and set up under the brand of the Provider against which the complaint is made. The Dividend Bond became a Provider product in January 2014.

The Complainant submits that when the original provider was managing the investment, the dividends were distributed twice annually and the amount varied dependant on the dividend performance of the fund. On each dividend payout date he received a statement showing, unit valuation, value of dividend and number of units. The number of units remained the same (59718) and the valuation of each unit varied in accordance with the fund value.

The Complainant says that when the Provider took over the administration of the fund in April 2014 the process changed and now investment units are being sold to fund the dividend payment. The Complainant's position is that there was no mention of this possibility at the time of purchase in 2005 or 2007. The Complainant states that in the period April 2014 to October 2016 the Complainant's unit holding reduced from 59,718 to 52,783. The Complainant says that Dividends have been received, funded by the sale of units, but the computation of the capital value of the fund is unclear to him.

The Complainant states that the Provider advised that the sale of units to fund the dividend distribution is compensated by increasing the individual unit value. The Complainant's position is that this process lacks transparency and the mechanism / computation is vague and unclear. The Complainant says that in any event it would appear that this practice is unsustainable, as ultimately all units will be sold and at that point there is no capital value (as advised by the Provider in a letter date 29 September 2016 – but noted that at a later date the Provider advised that this information was incorrect).

The Complainant says that the Provider's correspondence shows that units are being sold to fund the dividend payment and according to the Provider the remaining units are then revalued to reflect the capital value of the fund.

The Complainant submits that the essence of his first complaint is that since the Provider became involved the process now lacks transparency and is complex in relation to auditing

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the variation in capital value as a result of the sale of units. The Complainant submits that this seems to be unnecessary, that it is unfair because of this complexity, and the reason why is not obvious. The Complainant refers to the Provider's letter of 29 September 2016, in which it advised that the investment would be written down to zero which the Complainant says is at odds with the original purpose, as set out the original underwriter's promotional material.

The Complainant state that his second complaint is as follows:

B) The Complainant submits that the calculations in respect of capital values and tax calculations are intricate and it is unfair and unreasonable to expect a layperson to follow them, as they have not been adequately explained by the Provider.

The Complainant refers to the details of his correspondence with the Provider on this issue. He states that in an effort to understand the computations he requested details and workings of the calculations. The Complainant considers that the calculations could be described as complicated.

The Complainant states that in the course of correspondence three errors have been admitted by the Provider which appears to support the above contention.

- Letter dated 5 April 2016 where the Provider states that in relation to the Deemed Exit Tax calculation an error on how it was calculated was made.
- In letter / report issued to the Complainant dated 14 June 2016 – but which the Complainant considers should be dated 14 August 2016. In this report it is stated:  
*“The “Customer Units after” field in the above comparison does not tie back exactly to what was issued to the customer in letters at that time. There was a timing issue at play here following the migration of business from [original underwriter] to the Provider. This required a positive unit adjustment of 20.7 units to be applied to the fund with effect of April 2015 to correct this. A letter should have been issued to the customer at this time to explain this”.*
- Letter from the Provider dated 23 April 2015 advised that: *“Due to a system error following the payment, your fund holding was discovered to be reduced by a larger amount than was deemed correct”.*

The Complainant states that it is moot whether these errors are material in the overall context, but does illustrate that if inputs are not rigorously checked mistakes can slip by undetected. The Complainant says that this is an indication of the complexity which has resulted in a lack of confidence on his part.

The Complainant wants the Provider to rectify matters in either of two ways:

- (a) Refund his original investment in full and unencumbered, or
- (b) Revert back to the original administrative process as practiced by the original underwriter.

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

The Provider says that the conduct complained of by the Complainant involves the Provider's decision to alter the mechanism by which it distributes the bi-annual Dividend Payment associated with the Complainant's Dividend Bond investment.

The Provider acknowledges that the Complainant also believes the Provider's treatment of the tax liabilities arising from the Capital Gains and Dividend Payments, associated with his Dividend Bond investment, to be overly intricate and that it is unfair and unreasonable for a lay person to understand the underlying calculations.

With respect to the second conduct complained of above, the Provider states that it has no discretion over how, both normal 'Exit Tax' and '8<sup>th</sup> Anniversary Deemed Exit Tax' liabilities are applied to either the Complainant's or any other customers' investments, in respect of the 2001 & 2006 Finance Acts.

The Provider submits that it is obliged by law to apply these taxes in the manner outlined by the relevant legislation. The Provider says that the calculations that underline the application of these taxes are not the Provider's calculations and it is not responsible for the complex or intricate nature of how these types of taxes are applied.

The Provider states however it has made all conceivable efforts, over a protracted period of time, to explain how the Complainant's 'Exit Tax' and '8<sup>th</sup> Anniversary Deemed Exit Tax' liabilities are calculated, in accordance with the 2001 & 2006 Finance Acts. The Provider in this respect refers to the numerous communications to the Complainant's Broker, as well as the communications and correspondences issued directly to the Complainant.

With regard to the Complainant's objection to the change in the method by which the bi-annual Dividend Payments are processed, the Provider states it has gone to great lengths, including having a senior Actuarial Manager meet with the Complainant, in order to explain to him that the Provider's change in method will have the same impact on his Capital Value as the method that had previously been applied by the original underwriter. The Provider submits that due to an apparent breakdown in trust between the Complainant and the Provider, due to a number of communication errors, the Complainant has refused to accept the Provider's explanations.

The Provider says that for an explanation and comparison of the two methods for processing the biannual Dividend Payments (Unit Price Reduction V's Unit Deduction) was given to the Complainant.

The Provider submits that breaking the explanation down into its most simple terms; reducing the Unit Price after each Dividend Distribution and leaving the same number of Units in the Fund, is exactly the same as deducting the equivalent number of Units in the Fund, which then has the result of increasing the Unit Price after each Dividend Distribution.

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The Provider explains that the Unit Price is a product of the division of the Total Value of the Assets in the Fund by the Total number of Units in the Fund:

Value of the Assets in the Fund / Total Number of Units in Fund = Unit Price

The Provider says that as the Asset Value goes down but the number of Units stays the same, then the Unit Price goes down. The Provider submits therefore reducing the Asset Value by paying out the Dividend but leaving the number of Units the same will have the effect of decreasing the Unit Price (the previous underwriter's method).

Value of the Assets in the Fund / Total Number of Units in Fund = Unit Price

As number of Units go down then Unit Price goes up. The Provider says however with its method, reducing the number of Units and increasing the Unit Price means the Value of the Assets remains unaffected and therefore the individual's proportionate share of the overall fund remains the same after the Dividend distribution as before.

The Provider states although the Complainant expressed concerns that the method would eventually (given sufficient time) reduce his Unit Holding down to zero, this would not be the case as the Dividend rate is based on dividends from actual asset and this rate will always be a percentage of the assets, so the Units will not reach zero due to Dividend Payments. The Provider submits that as the fund decreases in terms of Units, a given customer's percentage share of the overall fund remains the same.

The Provider says that it would like to acknowledge that there was an incorrect statement made in one of its Response Letters, dated 29 September 2016, in which it was inferred that the Provider's method of deducting units to pay the Dividend would eventually result in no Units remaining in the fund.

The Provider says that as explained this is not the position and arose as a result of a misunderstanding between the Actuarial Team and the Complaint Investigator, who was responding to the complaint issues. The Provider says it apologises for any confusion this error may have caused.

The Provider concludes that it cannot see how the change in its methodology for processing the Dividend Payments on these types of investment products has financially disadvantaged the Complainant.

The Provider's position is that with regard to the complex nature of the tax calculations associated with the Complainant's investment, the Provider cannot accept responsibility for these complexities as it is simply applying the formulae as laid down by the 2001 & 2006 Finance Acts. The Provider states that it has made every effort to break down the calculations and explain how these specifically effect the Complainant individual investment.

## **The Complainant's submission of 16<sup>th</sup> November 2017**

The Complainant says he notes that the Provider has stated that it is not in a position to provide copies of promotional material. The Complainant says that he has already submitted copies and attached further information in relation to this.

The Complainant states that the following is a summary of his complaint:

### **Original Investment**

The Complainant says that the product was purchased by him from the original underwriter, supported by promotional material. The Complainant states that the Provider has omitted the original underwriter's promotional material as part of its submission and he is surprised at this. The Complainant says that this material formed the basis of his understanding of the attributes of the fund and influenced his decision to invest.

The Complainant submits that the contractual basis that he had with the original underwriter was subsequently changed arbitrarily by the Provider with no equality of bargaining as between himself and the Provider. The Complainant says that promotional material clearly states Income plus capital appreciation as a selling point. The Complainant submits that strategy and transparency was for him a key factor and as he relied on this when he invested initially.

### **Tax complexity**

The Complainant states that the tax treatment seems very intricate and in his view impossible for a layman to follow. The Complainant says that the Provider has submitted details of calculations which are very complex and in some cases there were errors. The Complainant states that he drew attention to these errors and the Provider conceded that he was correct. The Complainant says that the fact that there were errors in the Provider's calculations has gone some way to undermine his confidence in the Provider and anything it says to him. The Complainant states that the Provider has submitted evidence that it conforms to the law in terms of the tax calculations and this is the justification but beyond this statement it has offered no other evidence. The Complainant states that a certificate from the Provider's Auditors referring to these specific calculations (rather than a general statement by them) might be of help in this regard.

### **Fund Management Practices**

The Complainant states that there has been a fundamental change in the manner of managing the investment by the Provider from that which was in place when the original underwriter was the product provider. The Complainant's position is that such a change was not anticipated or envisaged by him at the time of investment as the modus of the original underwriter was completely different and he was able to understand it. The Complainant says that the mechanics of the Provider's management of the Fund are opaque.

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The Complainant's position is that when the Provider took over the original underwriter's business, it commenced selling units to fund the dividend payment.

The Complainant says that the Provider maintains this process will result in exactly the same outcome as in the previous underwriter's process. The Complainant says that the information provided twice a year is unclear to him.

The Complainant says that in 2007 he had a holding of 59718 units and from 2007 until 2014 the valuation was based on this holding. The Complainant states that since the Provider took over in 2014, his holding has eroded to 51,136 units, the difference being sold to fund the dividend. The Complainant says that the Provider's response to the question, as to what happens when the holding inevitably winds down to zero seems strange.

The Complainant makes the following further points.

- The original underwriter paid the dividend then adjusted the published unit price to reflect, that the number of units remain the same.
- The distribution per unit was clearly communicated with each dividend payment.
- An Asset Management Company managed the investment for the original underwriter and the unit price was published weekly in the newspaper.
- The Complainant says that the Provider now sells units to pay the dividend. And that the unit price is revalued upwards then to ensure the overall capital value is unaffected.
- The Complainant states that he has asked the Provider what happens when all the units are sold. The Complainant states that the Provider says this will never happen as when eroded to one unit they will then revert to fractions of a unit. The Complainant says he has correspondence from the Provider saying that it will eventually reduce to zero but it has since re-engineered their answer on this, and hence the fractions explanation. The Complainant says that it is difficult to have confidence when responses vary.
- The Complainant states that he has no way of checking or knowing the validity of adjustments made to unit numbers based on the Provider's valuation.
- The Complainant says that he thinks that the previous company's agent continue to manage the investment but after several phone calls he could get no response. Following a query to the Central Bank they confirmed previous company's agents are still in business.
- The Complainant states that he cannot find details on the Provider's website and they have never provided him with a link.
- The Complainant says that the quarterly updates circulated by the previous underwriter made for transparency. The Complainant says he knew the bid/offer price per unit from the published newspaper data, he had an overview of the basket of companies which made up the fund and changes within the fund, the appreciation in value and also the regular updates from the previous underwriter. The price per unit was fixed for every investor. The Complainant states that the fundamental model has changed.

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- The Complainant says that no quarterly updates are received from the Provider, but only an annual statement which he says lacks complete information.

The Complainant submits that in summary he has an issue with transparency of the Provider's administrative practices because of the above.

### **The Provider's submission of 1 December 2017.**

The Provider states that having reviewed the further comments made, it is apparent that there is a fundamental breakdown of trust on the Complainant's part in respect of the Provider, following the merger with the previous underwriter in 2015 and the subsequent changes made to assimilate the two company's processes.

The Provider states that it would further appear that no amount of reasonable assurances on behalf of the Provider is ever going to be sufficient to convince the Complainant.

The Provider says that all tax calculations are performed by its automated systems and apply the tax codes correctly and consistently across all its products.

The Provider says that the error referred to by the Complainant under the 'Tax Complexity' paragraph of his letter, while regretted, was largely as a result of human error by a member of the Complaint Management Team while attempting to present the complex tax calculations in as simple a manner as possible to the Complainant.

With regard to the Complainant's bullet point comments:

- The Provider says that the Previous Underwriter paid the dividend and artificially adjusted the Unit Price to reflect the reduction in the overall asset value while maintaining the same number of units in the fund.
- The Provider's method is to reduce the number of units in the fund (proportionately across all investors) equivalent to the total dividend amount paid out, which has the effect of increasing the Unit Price in line with previous calculations provided.
- The Provider states that it believes there is more transparency in its methodology, in that unlike the previous Underwriter, it is not artificially manipulating the Unit Price but simply reducing the number of units in the fund, equivalent to the amount of dividend paid out, which will have a natural effect on the Unit Price, free from artificial manipulation.
- In respect of the confusion over whether the Complainant's Unit Holding would ever reduce to zero as a result of the continued unit deduction, the Provider says that again this was a result of a misunderstanding on the part of the non-expert member of the Complaint Management Team, trying to interpret and pass on a very complex mathematically based principle as provided by the Provider's expert Actuary.



- The Provider says it can confirm that previous company's Fund Managers have merged with the Provider's Fund Managers and are both functioning parts of the same management team.

- With regard to the Complainant accessing specific fund information, the Provider says that he has the option to register for the Provider's Online Service which will allow him to view very detailed aspects of his own investment, 24 hours a day, 7 days a week.

### **The Complainant's submission of 20 December 2017**

*"In relation to the submission from [the Provider the Complainant's] comments are as follows:*

*Paragraph 2 refers to a 'breakdown of trust' yet no solution is being offered by [the Provider].*

*Paragraph 3 refers to 'reasonable assurances'. Reasonable to whom ? and what is reasonable ?*

*Paragraph 5 refers to automated systems applying the tax code correctly and I would ask how is this verified ?*

*Paragraph 6 refers to human error . An apology however is omitted. I think that would be appropriate here.*

*Paragraph 7 , the word 'artificially' in this context is very strange.*

*Paragraph 8. Where is the supervision and verifiability of this process . The reduction in units and the connected increase in the Unit Price is complex and open to error.*

*Paragraph 9. The use of the phrase 'artificially manipulating' is strange and seems to reflect poorly on the [the previous Underwriter's] process.*

*Paragraph 10. I relied on the information provided by [the Provider's] staff. I think that [the Underwriter] should analyse the 'misunderstanding' and suggest how my trust in their systems should be re-established".*

### **The Complainant's submission of 7 June 2019**

*"On their own admission [the Provider] can find no record of their having sent me correspondence regarding the Fund and possibly this particular letter might have obviated the reason why I had to raise the matter with the FSO in the first instance. The complaint which I have had to make to the Ombudsman's office consist of a number of matters including complaints as to the manner in which the Fund is managed by [the Provider] and the lack of transparency surrounding it.*

*[The Provider] did not adequately explain to me the change in process which would affect customers on their taking over the [previous Underwriter's business]. They now propose to compensate me for this oversight. It appears that the purpose of the compensation is for redress in lieu of an adequate explanation. The prospectus for the [the previous Underwriter's] investment was clear. [The Provider] took over*

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*[the previous Underwriter's] business and management of the fund. They chose not to explain to their customers, or at least to me, the implications of the change in process. I would imagine that I am not the only pensioner affected by the issues I have raised and therefore I think it is in the interests of all to revert back to the original [Underwriter's] arrangement. [The Provider] refuse to consider this and it has never been explained why.*

*Whilst their offer of compensation is welcome, it is inadequate in the context of my overall investment on which I rely to supplement our pension. The fundamental question of fund management is still not being addressed by [the Provider]. This matter has now been dragging on for almost 5 years and it is most unfair that a person of my age should have to wait so long for an acceptable redress or at least a plausible explanation. This matter should have been addressed at the outset by [the Provider] before I felt compelled to raise the matter with the FSO. And for this reason in the absence of a realistic offer and an acceptable explanation from [the Provider] we wish the adjudication to continue. I sincerely regret this as I would be happy to reduce the, I am sure, considerable workload on your office”.*

The Provider's submission of 27 June 2019

*“Following a review of ongoing cases with your office, the Provider recently contacted the Complainant, .. and offered a Customer Service Award, in respect of his complaint.*

*While the Provider is satisfied that our position remains unchanged from that which was set out in our original Submission to your office, we acknowledge we are only able to produce the generic letter that we know was issued to all customers affected by the change in how dividends were going to be paid. Unfortunately, we cannot produce the actual letter that was sent to the Complainant.*

*Therefore, an offer of €3,000 was made in respect of our inability to produce the communication which was tailored specifically to the Complainant's circumstances. Our offer was not in "lieu of an adequate explanation" for the change taking place, as indicated by the Complainant in recent correspondence to your office.*

*The Complainant subsequently declined the Provider's offer. However, in light of your request for confirmation if the Provider's offer is still available to the Complainant, I can confirm that it is.”.*

## **Evidence**

## **Illustration**

*“.. Dividend Fund*

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*You have chosen the distributing version of the Dividend Fund. This means that similar to investing directly in stocks and bonds you will receive a regular dividend or income.*

*The dividend is payable on the 15<sup>th</sup> April and 15<sup>th</sup> October each year and is effectively the accumulation of all the income received from the assets in the fund (dividends from stocks/coupons from bonds) since the last distribution of income.*

...

#### *Regular Income Facility*

*Where you have chosen the non-distributing Dividend Fund, you can choose to take a regular income from your fund which is more appropriate to your needs. This can be paid on a yearly, half yearly, quarterly or monthly basis. This income can be a fixed amount or a fixed percentage of the fund within certain minimum / maximum limits. There is no charge for this facility”.*

#### Dividend Bond Policy Conditions

##### *“Section A: Investment Benefit Conditions*

##### *2. Allocation to Units*

*(a) ..*

*(b) The allocation of Units is notional only and solely for the purpose of calculating benefits under the Policy and persons entitled to benefits under the Policy have no legal or beneficial interest in the said Units”*

##### *5. Distribution Fund*

*The fund(s) in which the Policyholder has chosen to invest at the Commencement Date of the Policy is specified on the Policy Schedule.*

*If the Policyholder has chosen to invest in the Distributing Fund either initially or as a result of a fund switch, the income received or accrued in the Distributing Fund allowing for:*

*(a) The income received or accrued portion of the Management Charge as set out in Clause 4, which can be specified by formula as follows:  
[Income Received or Accrued / Value / Value of Fund] \* Management Charge*

*(b) Any actual, prospective or other liability for tax, capital levy or any other cost considered by the Actuary to be relevant in relation to the income received or accrued shall be distributed at fixed regular intervals.*

..

*The Determination of the Unit Price, as set out in Clause 4, for the Distributing Fund is affected by the distribution of income received or accrued. In particular,*

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*on the day following a distribution, the Unit Price can be expected to fall in line with the amount of income distributed”.*

#### 11. Tax

*The Company will be entitled to recoup any tax for which it is obliged to account in respect of this Policy including (without limitation):*

- (a) By deduction from any benefit payable under Clauses 6,9, or 12, of an amount equal to the appropriate tax;*
- (b) In the event of a relevant event other than payment of benefits, by cancelling sufficient Units from the Policy to meet the amount of the appropriate tax.*

*Section C General Conditions and Paragraph 13 special Conditions which state the following:*

#### *“13. Special Conditions*

- (a) If at any time during the term of the Policy as a result of current or subsequent legislation or for any other reason whatsoever:*
  - (i) The investment rights of the Company are restricted or removed or it becomes impossible or impractical to carry out any or all of the procedures laid down herein; and/or*
  - (ii) The basis of taxation applicable to a Life Assurance Company or the basis of any other existing taxes, charges or levies is altered; and or*
  - (iii) Any new taxes, charges or levies are or become payable by the Company under other legislation, then in any such event the Company shall have the right to make such adjustments in the basis of calculating the Unit Price, any tax payable under Clause 11 and the benefits under the Policy as the Actuary shall determine”.*

#### *18. Definitions*

*“Unit” means a share in the total value of the Fund. All Units linked to this Policy are accumulator Units and are of equal value. The allocation of Units to this Policy and the determination of benefits on this Policy are based on the Unit Bid Price. Unit Bid Prices are related to the Unit Value, these expressions being further defined in Clause 4”.*

#### Correspondence

Letter of 18 April 2013 - Example of letter from original underwriter on distributions

*“I am pleased to inform you that, having chosen to invest in one of [original underwriter’s] dividend distributing funds, a net of tax distribution of €1,268.68 is now payable to you. We have enclosed a cheque for this amount.*

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*Also, the current value of your investment in the dividend distributing fund is €76,568.00 before encashment charges, and exit tax, if applicable.*

*The above dividend is in respect of a gross half-yearly distribution of 0.022401 per unit”*

23 October 2014 – Provider’s calculation on a withdrawal

| <i>Withdrawal details – withdrawal amount €1,457.16</i> |                          |                   |                               |                             |                             |
|---|--------------------------|-------------------|-------------------------------|-----------------------------|-----------------------------|
| <i>Fund name</i>  | <i>Withdrawal amount</i> | <i>Unit price</i> | <i>Number of units cashed</i> | <i>Opening unit balance</i> | <i>Closing unit balance</i> |
| <i>Dividend Bond 100% Eq Dist</i>                       | <i>€1,457.15</i>         | <i>€1.43800</i>   | <i>1.013.32</i>               | <i>57,656.64</i>            | <i>56,643.32</i>            |

*File Note  
“Outcome*

*We have provided the customer with the section from the terms and conditions which allows the method to be changed. We have provided the customer with examples of dividends paid by both methods showing there is no difference to the plan.*

*The customer also queried capital appreciation. We advised there is capital appreciation in all funds if the fund performs. This was explained in the letter dated 23 June 2016. We explained if there is any growth on the fund, the unit price increases and the customer benefits from the capital appreciation”.*

30 October 2014 – The Complainant to the Provider

*“I received a partial withdrawal cheque this morning. On the accompanying document I noticed a variance in the number of units held. I originally held 31628.1 units purchased in 2005, this was increased to 59717.99 in 2007. The unit balance on your recent letter is 5643.32. Please advise reasons for the change”.*

04 November 2014 – Provider to the Complainant

*“I wish to advise you the reason why there is a difference in your units is Deemed Exit Tax was deducted on 22 February 2013.*

|                                      |                 |
|--------------------------------------|-----------------|
| <i>Initial Units Held</i>            | <i>31628.1</i>  |
| <i>Revised Units (after Top up)</i>  | <i>59717.99</i> |
| <i>Less Deemed Exit Tax</i>          | <i>2061.35</i>  |
| <i>Units remaining</i>               | <i>57656.64</i> |
| <i>Less withdrawal of 15/10/2014</i> | <i>1013.32</i>  |

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|                 |          |
|-----------------|----------|
| Units Remaining | 56643.32 |
|-----------------|----------|

04 November 2014 – The Complainant to the Provider

*“Can you please advise the basis and computation for the tax deduction as this never happened since bond was purchased”.*

07 November 2014 – The Provider to the Complainant

*“On any investment product, exit tax is deducted, currently at a rate of 41% on any growth since investment. Deemed Exit Tax refers to tax that is deducted from a plan on the 8<sup>th</sup> Anniversary if no prior withdrawals have been made. This is a Revenue rule. If you make a subsequent withdrawal, the tax paid on the eight anniversary will be taken into account in that calculation. It is basically early payment of tax due, so that the revenue do not have to wait indefinitely for the payment”.*

09 November 2014 – The Complainant to the Provider

*“.. I would appreciate if you would send me the calculation of the Deemed Exit Tax as I wish to forward to my accountant for scrutiny.*

*The Conditions of my investment (originally with [.. Underwriter]) was that the fund distributes the dividends collected in April and October each year. Thus surely a withholding tax should be deducted from the payment not an exit tax. For the first time, in my case, it appears that the dividends have been reinvested in the fund and then units sold to raise the payment. As far as I am aware my total investment is showing a loss therefore how can there be an Exit Tax due?*

*If the Policy Conditions have been changed I should have been given notice as a matter of courtesy”.*

12 November 2014 – The Provider to the Complainant

*“I can confirm that the above plan is liable for exit tax. This is quoted in your plan document under ‘Taxation’ as at that stage being at the standard rate plus 3%. You will notice that any annual benefit statement you have received from [Original Underwriter] states under the heading of “Your Current Policy Value”, that the plan is subject to exit tax. At the time of the Deemed Exit tax being deducted in February 2013 by [Original Underwriter], the rate was 36%, it is now 41%.*

*..*

*I can confirm that there has been no change in policy terms and conditions”.*

18 November 2014 – The Provider to the Complainant

*“.. details of how your deemed exit tax was calculated on 22/02/2013 ..*

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*The Gross Value – Total Eligible Premiums = Profit, which was then taxed at 36%, which was the exit tax at the time”.*

25 November 2014 – The Complainant to the Provider

*“Appreciate if you would explain how the TEP is computed. As you see from below my total investment has been €95228, the last valuation is approx.. €81k. Please explain how you arrive at a profit of €7409.45?”*

*In your letter dated 23<sup>rd</sup> October the balance of units was 57656, unit price quoted 1.438. Thus  $1.438 * 56643 = €81453$ ?”*

05 December 2014 – The Provider to the Complainant

*“The TEP is lower than the actual amount paid in, as it reduces every time a payment is paid out, in this case each time a dividend had been paid half-yearly”.*

15 December 2014 – The Complainant to the Provider

*“This does not answer the question I put ... see copy below. Please address the question. How is the TEP [Total Eligible Premiums] calculated?”*

22 December 2014 – The Provider to the Complainant

*“Eligible premiums represent the total of all premiums paid into the plan before the chargeable event. A chargeable event can be any of the following: partial, full partial, death claim. As you are receiving a regular dividend payment your total eligible premiums is reducing. In this case the total premiums paid differs from the total eligible premiums”.*

06 January 2015 – The Complainant to the Provider

*“As you suggest .. please arrange a meeting with a Financial Advisor”*

16 February 2015 – Provider’s internal communication

*“Basically the client can’t understand why an investment of €95k that is now worth €69k should be paying tax on profits. Because this has gone on so long he is becoming sceptical as to what is going on and will only be satisfied when he sees the accounts for each transaction. I am looking for a copy of the records attaching to each disbursement”.*

5 March 2015 – The Provider’s file note

*“There are no unit deductions for the payments while the plan was with [original underwriter]. When the plan was with [original underwriter] the price of the fund*

/Cont’d...

*was reduced (not the units) to take the payments into account. Now that the plan is with [the Provider], units will be deducting going forward”.*

21 October 2015 – The Complainant to the Provider

- *“I need a reconciliation (i.e. all withdrawal details) of how my original number of units has declined from 59717 to 54816 in the statement dated 20<sup>th</sup> October received by me this morning.*
- *Listing of all exit tax charges on the policy since inception and full explanations.*
- *An explanation of the tax charge €2667.40 as below and how the profit was calculated when the policy value has never risen above the original investment”.*

03 November 2015 – the Provider to the Complainant

*“You will see from the total amounts paid to you that your plan has in fact a gain over the years and this is the reason that exit tax applies.*

*...*

*Exit tax is charged on the investment profit or gain on the plan on the following chargeable events:*

- *A claim, maturity or full surrender*
- *A partial encashment including an automatic income payment*
- *An assignment of a life plan*
- *Every 8<sup>th</sup> plan anniversary”*

09 November 2015 – The Complainant to the Provider

*“This product was sold to me by [Original Underwriter] on the basis that “The fund will distribute the dividends collected in April and October each year” (as printed in the original literature). In other words it was intended that the number of units would remain the same unless sold and that some capital appreciation would accrue over time. Dividends would accumulate to the fund and then would be distributed to investors twice yearly. I understood tax is paid on dividends as income and Exit tax on the capital appreciation when the units are sold.*

*The current procedure where units are being sold in order to raise cash to pay for the dividend is at variance with the original intention and not as described when the product was sold to me. The capital base is being eroded. It was never my intention that units would be sold to raise funds to pay the dividend. I never gave authorisation for units to be sold as stated in your letter dated 20<sup>th</sup> October.*

*It is evident that there is a fundamental difference in how this fund is being operated now and when I first invested”.*

/Cont’d...



07 December 2015 – The Provider to the Complainant

*“As per the plans terms and conditions we do need to surrender the units under your plan to cover the income amount requested and also the tax on the income amount”.*

30<sup>th</sup> December 2015 – The Complainant to the Provider

*“I have pointed out repeatedly by way of email and telephone call that there is a fundamental change in the way this policy operated since the transfer from [the original underwriter] to [the Provider].  
I wish to lodge a complaint in respect of this change as I was not consulted nor do believe that under the original policy conditions that this is allowable”.*

7 January 2016 – The Provider to the Complainant

*“Prior to your plan moving to [the Provider] your distribution was paid on 15 April and 15 October each year. As part of the process of transferring your plan, [the Provider] agreed that all payments would follow the [Provider] process where the payment would be based on the pricing date rather than on the payment date..... I have set out below section 5 from your Terms and Conditions:*

*“5.Distributing Fund*

*The fixed intervals at which distributions occur are the 15<sup>th</sup> October and the 15<sup>th</sup> April each year; or the nearest following workingday, with the first distribution occurring on the 15<sup>th</sup> October 2003. The Company may vary these distribution dates but policyholders will be informed in advance of any such change”.*

*I am sorry that we did not notify you in advance of the change to the method in which your payment would be made. I can confirm that going forward all distributions will be based on the pricing date of the 15<sup>th</sup> April and October.*

*....*

*In relation to the units being encashed to cover the dividend payment, the process for paying your dividend payments when your plan was set up through [original underwriter] was that the Company would proportionately reduce the unit price of the fund to reflect each dividend payment every six months. Therefore, the unit price would reduce every April and October to reflect the dividend payments made.*

*However, when your plan was transferred to [the Provider], the process of how your dividends would be paid to you was altered. Rather than reducing the unit price, we reduce the number of units that are held in your fund. I can confirm that by changing the process from reducing the unit price to reducing the number of units you are not being disadvantaged”*

/Cont'd...

09 January 2016 – The Complainant to the Provider

*"I am not concerned that the payment date for the distribution has changed in fact I was not even aware it had changed.*

*I am however concerned that units are being encashed to cover the dividend payments. This is at variance with the conditions under which I agreed to invest in the Policy. The process change by [the Provider] represents a fundamental change to the Custom and Practice established by [original provider] over the period 2005 to 2014 and is also a change in the original Policy Conditions. The selling of units adds another dimension in the process and further undermines transparency"*

28 January 2016 – The Provider to the Complainant

*"I note you have queried how a change to the process by which way your payment is allowed for under your terms and conditions. I refer you to Section C General Conditions and Paragraph 13 special Conditions which state the following:*

*"13. Special Conditions*

*(a) If at any time during the term of the Policy as a result of current or subsequent or for any other reason whatsoever:*

- (i) The investment rights of the Company are restricted or removed or it becomes impossible or impractical to carry out any or all of the procedures laid down herein; and/or*
- (ii) The basis of taxation applicable to a Life Assurance Company or the basis of any other existing taxes, charges or lives is altered.*

*And / or*

- (iii) Any new taxes, charges or levies are or become payable by the Company under other legislation, then in any such event the Company shall have the right to make such adjustments in the basis of calculation the Unit Price, any tax payable under Clause 11 and the benefits under the Policy as the Actuary shall determine".*

*Based on what I have outlined above this section allows for the change in the process of how to make a dividend payment from your plan".*

4<sup>th</sup> February 2016 – The Complainant to the Provider

*"1. It is not evident to me which of the sections under Special Conditions 13 is being relied on to allow a change in process. I would appreciate if you would let me know which part of Section 13 is relevant and outline the reasoning.*

*2. Your letter does not address my query arising from the letter signed by .. Chief Executive Retail dated December 2015. For reference I attach a copy of my letter to you dated 9<sup>th</sup> January ..*

/Cont'd...

3. In attempting to understand the calculations on page 2 of your letter may I have an explanation for the Total Eligible Payments figure of €63,785.56 and how it relates to my total investment of €95228. According to your letter "Total eligible payments is defined as the total of all payments made in to the plan before the dividend payment, to the extent that they have not been used in calculating a gain on previous dividend payments".

4. The deemed Exit tax on 14<sup>th</sup> October 2015 was €2435.28 and this is based on the 'profit level' at the anniversary date. What was the figure used for the profit level, how was it calculated, and how was the deemed exit tax derived?

...

Was there a requirement to inform me of a change to the policy schedule or that a fundamental change to the administrative procedures was being implemented? If so let me know how this was communicated to me".

23 February 2016 – The Provider to the Complainant

"you have requested confirmation if there is a requirement to inform you of a change to your plan schedule.

As we have not made any changes outside of the changes allowed within your Terms and Conditions as set out earlier in my response we were not obliged to write to you to inform you".

26 February 2016 – The Complainant to the Provider

"It is disappointing that you have not provided me with the detail I requested. In order for me to fully understand what is going on, I require a step by step detail of how the investment has developed from inception. It was absolute clear up to the time that [the Provider] became involved and I need to understand what has changed. In other words please forward all payments in to and withdrawals from the plan including dates.

Also dates and specific details of how Exit taxes etc. have been calculated".

5 April 2016 – The Provider to the Complainant

"You have requested confirmation that your interpretations of Section 13 of your Terms and Conditions is correct.

As previously advised in my response letter of 23 February 2016 which stated the following;

Based on what I have outlined above section A [Section 13 (a) of the Policy Provisions] allows for any reason whatsoever the Company have the right to make adjustments in the basis of the Calculation of the Unit Price, any tax payable under Clause 11 and the benefits under the Policy as the Actuary Shall determine.

/Cont'd...

*[The Provider] can make adjustments in relation to taxes, calculations and benefits to your plan as a result of a change to current or subsequent legislation or for any reason whatsoever as is deemed necessary by the Company Actuary”.*

11 April 2016 – The Complainant seeks further clarifications from the Provider on its calculations.

13 April 2016 – The Provider to the Complainant

*“In summary, I have outlined our calculations for each figure as requested in your letter. I feel I have handled your complaint and provided in my response letter of 7 January 2016 proof that the amount of income that was paid and the value of the fund after the income was paid are the same whether we use the [original underwriter] process or the [the Provider] process”.*

01 June 2016 – The Complainant to the parent company

*“I would like you to clarify for me how this practice is sustainable in accordance with the advertised objective of capital appreciation. If units are sold to fund the dividend, how then can there be potential capital appreciation? If units are sold to fund dividend payments ultimately a point in time will arrive when there are no units left to sell. I have contacted [the Provider] a number of times and failed to get a satisfactory response to this question.*

*It seems to me that this may be possible, to a limited extent, if the unit prices are adjusted for each customer after the dividend has been distributed. Is this the process? If this is the case where is the transparency and how can this be audited? As the product was sold on the basis of dividend income and potential capital appreciation, the current practice seems at variance with this policy and the basis on which the product was marketed”.*

14 June 2016 – The Provider’s response

*“[W]e are satisfied based on the review of your plan by our Actuary Department and the numerous calculations that we have issued that you are not being disadvantaged. This change was allowed under section 13 of your Terms and Conditions. .. Therefore I would like to note that our offer to meet with the Executive Manager of Customer Services and a member of our Actuary Department to explain the calculations to you remains open”.*

16 June 2016 – The Complainant to Provider

The Complainant expresses that he does not agree that concerns have been addressed.

/Cont’d...

23 June 2016 – The Provider to the Complainant

*“I note that you have queried the capital appreciation on your plan. I can confirm that capital appreciation occurs on all funds if the fund performs. If there is any growth on a fund, the unit price on a fund increases and the customer benefits from this capital appreciation. ... I would like to meet with the Executive Manager of Customer Services and a member of our Actuary Department to explain the calculations ..”*

24 June 2016 – The Complainant to the Provider

*“I will ask the questions one last time*

- 1. If units are being sold to fund the dividend, how then can there be potential capital appreciation as ultimately a point in time will arrive when there are no units left to sell. Is this correct?*
- 2. If the above is the case where is the transparency in relation to auditing the capital appreciation you say will occur if the fund performs?”*

28 June 2016 – the Provider to the Complainant

The Provider refers to Section 13. Special Conditions and states as follows:

*“Based on what I have outlined above this section allows for the change in the process of how we make a dividend payment from your plan. It is important to note that while the process of administering your dividend may have changed, the annual amount of your dividend and the value of your investment does not change.*

*..*

*At any point in time, the value of a plan equals the number of units in a fund multiplied by the unit price of that fund. Where a dividend payment is being made, the difference in the value of the plan before and after the dividend payment is equal to the amount of the dividend payment”.*

*“I understand that you are not happy that the number of units is decreasing using the [Provider] process, however, as you can see from the examples I have provided it has the same effect on your fund value as reducing the unit price which was the process when your plan was with [original provider]. Therefore, the process does not affect the overall value of the fund”.*

19 September 2016 – Provider to the Complainant

*“I note .. confirmed during the meeting that she would review your dividend payment and issue a response in relation to your query”.*

/Cont’d...

The Provider's file note for the Complainant

*"In [the Provider], when dividends are paid out, the number of units falls to signify the subsequent payment of these to customers. As units decrease, prices remain the same following the dividend distribution payment. As per the fund value explanation above, this results in the same overall impact on a policyholder. ... The "Customer Units (after)" field in the above comparison does not tie back exactly to what was issued to the customer in letters at that time. There was a timing issue at play here following the migration of business from [original underwriter] to [the Provider]. This required a positive unit adjustment of 20.7 units to be applied to the fund with effect of April 2015 to correct this. A letter should have been issued to the customer at this time to explain this".*

22 September 2016 – The Complainant to the Provider

*"I note the admission in the accompanying note of an error in the calculations in respect of units applied to the fund in 2015. As this is the second error that has been admitted, you will not be surprised of my scepticism in respect of the calculations".*

The Complainant further questions:

*"How can my dividend be paid if no units remain in the policy and where is the capital value at this point?"*

29 September 2016 – The Provider to the Complainant

*"I note in your letter of 22 September 2016 you have asked how we can make a dividend payment if there are no units remaining in your plan. I can confirm under the [the Provider] process when we are making a dividend payment we are encashing units to provide the funding for the payment. Therefore you are correct in stating that eventually there will be no units remaining in your plan.*

*Similarly under the [original underwriter] process, when they made your dividend payment they would reduce the bid price of your units rather than encashing the units. This would have the same outcome as the [Provider] process as eventually you would have 53,616.38 units with each unit worth €0.00"*

#### Additional Evidence

Exit Tax Explanation For Dividend Bond – Prepared by the Provider' Actuarial Operations Team (4 April 2016)

*"In [original underwriter], when Dividend Bonds were paid out the price of the fund dropped to compensate. In [the Provider] when Dividend Bonds are paid out we*

/Cont'd...

*deduct units from the plan so both ways have the same overall effect to the customer.*

*When tax is paid on these Dividend Bond payments it is relative to the overall value of the plan. So if the value of the plan at the time the payment is made is not in profit or more clearly hasn't made any taxable profit there will be no tax paid on the dividend bond. In these circumstances, the TEP will reduce by exactly the amount of the gross dividend payment.*

*When the Dividend Bond is paid out and the customer's plan value has made a taxable profit, then the tax payable on the dividend bond is as follows (Gross Claim Amount – ((Gross Claim Amount / Gross Surrender Value of plan) \*Total Eligible Premiums [TEP]))\*Tax Rate.*

...

*When Deemed Exit Tax (DET) is paid, the Exit Tax calculation differs slightly. Apologies on the previous DET calculation I made an error on how it was calculated but I have detailed it in the spreadsheet scanned. Once DET has been paid the Exit Tax calculation becomes ((Taxable Profit + DET)\*41%) – DET. The DET used for the Dividend Bond Exit Tax calculation is also proportionate like the TEP".*

#### Further Provider File Note

*"In the calculations below, we compare the [Provider's] method with the [original underwriter's] method to illustrate how the impact of reducing units is the same as that of decreasing prices.*

*The distribution percentage is driven by the impact of the previous six months' dividends in the fund. The customer value applicable (d) at that date is given by the Customer units (c) multiplied by Unit Price (b). The income paid out is the dividend percentage multiplied by the Customer value (before) i.e. the value of the customer's plan at the given distribution date.*

*In the [original underwriter's] process, a new unit price is declared following dividend distribution. The unit price is found by reducing the original unit price, (b) by the effect of the dividend distribution percentage, (a). This new price is multiplied by the Customer Units (which is the same before and after the dividend distribution) to give the Customer's value after distribution (h).*

*In the [Provider] process, the unit remains the same before and after the transaction (b)=(f). Therefore, the income paid out (e) is funded by a reduction in units. The reduction in units is found by subtracting the dividend percentage of units needed to fund the payment from the current units".*

**The Provider's letter to the Complainant dated March 2014 (which the Complainant disputes that he received)**

*"In January we wrote to you about the transfer of the [original underwriter] to [the Provider].*

*Following on from this transfer, we are making small number of administrative changes to some of the [original underwriter's] funds. These changes, which are outlined on the following pages, will be made in the coming months".*

..

*Dividend Fund – Income Distribution Units*

*[The original underwriter] Dividend Bond Fund pays a dividend in April and October each year by a reduction in the unit price of the Fund. In future the dividend will be paid by cashing income of your units in the Fund. This means that the unit price will no longer be reduced when dividends are being paid. The net impact on your policy will be the same. There is no change to the investment mandate or objective of this Fund, and there is no need for you to take any action as a result of this change".*

**Actuarial Explanation of Comparison between the Provider's and the Original Underwriter's Dividend Distribution Methodology / Process (PREPARED BY THE PROVIDER'S Actuarial Operations Team)**

*"[The Provider's] Approach*

- *In [the Provider], both dividends received and capital appreciation/depreciation contribute to price changes.*
- *When dividends are paid out, the number of units falls to signify the drop in overall value.*
- *As units decrease, prices remain the same following pay-out.*
- *This makes it more difficult to see what growth is applicable to capital vs dividends received.*
- *However, policyholders can use their withdrawal letters to work out the percentage of dividends paid.*
- *This can be done by using "units before" and "units after".*
- *The percentage of units removed can be used to determine the overall dividend pay-out percentage.*
- *The percentage of units removed is driven by the overall value of the fund.*
- *As the fund shrinks in size due to the reduction in units, a given person's portion remains the same relative share proportion of the overall fund.*
- *The fund cannot decrease to zero in value, as the number of units decreases, the price of the fund should, on average, increase to compensate.*
- *Therefore, holding fewer and fewer units should not matter as the price multiplied by the units reflects the fund's true value.*

/Cont'd...



*[The Original Underwriter's] Approach*

- *In [the original underwriter], both dividends received and capital appreciation/depreciation contributed to price changes.*
  - *When dividends were paid out, the price fell to signify the drop in overall value.*
  - *As prices decreased, units remained the same, so the effect of the dividend payout vs capital appreciation on the price of a unit was clear.*
- However, the overall value of the fund decreased similarly to the [the Provider] calculation”.*

**The Complaint for Adjudication**

The complaint is that the Provider incorrectly or unreasonably administered the Dividend Bond.

**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 **23<sup>rd</sup> September 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.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

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## Analysis

I accept that it is understandable that the Complainant would want to know why a different process was being applied by the Provider in place of the process that was applied by the original underwriter, when paying dividends from his Dividend Bond. I accept that the Complainant would also want to know how the Provider was dealing with the tax deductions associated with the payment coming from the Dividend Bond. I consider it reasonable that the Complainant would expect the Provider to have alerted and explained the changes in process upon taking over the original underwriter's business.

However, I accept the Provider acted within its rights and in accordance with the Policy Terms and Conditions when changing how it pays dividends from the Dividend Bond. In this regard the following provisions are relevant.

### *"Section A: Investment Benefit Conditions*

#### *2. Allocation to Units*

*(a) ..*

*(b) The allocation of Units is notional only and solely for the purpose of calculating benefits under the Policy and persons entitled to benefits under the Policy have no legal or beneficial interest in the said Units"*

### *"13. Special Conditions*

*(a) If at any time during the term of the Policy as a result of current or subsequent legislation or for any other reason whatsoever:*

*(i) The investment rights of the Company are restricted or removed or it becomes impossible or impractical to carry out any or all of the procedures laid down herein; and/or*

*(ii) The basis of taxation applicable to a Life Assurance Company or the basis of any other existing taxes, charges or levies is altered; and or*

*(iii) Any new taxes, charges or levies are or become payable by the Company under other legislation, then in any such event the Company shall have the right to make such adjustments in the basis of calculating the Unit Price, any tax payable under Clause 11 and the benefits under the Policy as the Actuary shall determine".*

I accept that the provisions set out above make it clear that the Complainant had no legal or beneficial interest in the investment units and that the Provider could process the units in the manner which it did.

While I accept the Complainant position that the original underwriter's process with regard to dividend payments was easier for him understand and to know what was happening with his investment, this office cannot direct that the old process be re-instated. This is because the Provider has the discretion under the Terms and Conditions as to the manner it administers the policy.

That said, I do have concerns that the Complainant was not as fully informed of the changes in process as the Provider claims. It is the Provider's position that the

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Complainant was sent a letter dated **March 2014** which outlined a number of administrative changes to the original underwriter's funds. The Complainant is adamant that he did not receive this communication. The Provider was unable to provide a copy of the actual letter that was sent to the Complainant. The Provider made an offer of €3,000 in respect of its inability to produce the communication which it states was tailored specifically to the Complainant's circumstances. In its submission the Provider states that its offer was not in "*lieu of an adequate explanation*" for the change taking place, as argued by the Complainant.

While the Provider is adamant that the Complainant was sent a letter outlining the administrative changes, I consider that the evidence submitted does not support this contention. In this regard, I have included excerpts from the Complainant's communications and the Provider's responses. These communications are from the time that the issue first arose. I accept that it can be clearly seen that the Complainant is questioning the process and querying why he was not alerted to the changes. For example on 30 December 2015 where the Complainant states:

*"I wish to lodge a complaint in respect of this change as I was not consulted nor do believe that under the original policy conditions that this is allowable".*

In its responses the Provider does not refer back to the correspondence of **March 2014** or that the Complainant had been alerted to the changes. In fact it is noted that in some instances the Provider apologises for not notifying the Complainant of the changes in processing the payment of dividends. In a letter dated **7 January 2016** the Provider states:

*"I am sorry that we did not notify you in advance of the change to the method in which your payment would be made".*

It is also noted that in response to the following query from the Complainant on 4 February 2016: "*Was there a requirement to inform me of a change to the policy schedule or that a fundamental change to the administrative procedures was being implemented? If so let me know how this was communicated to me*", the Provider's response of 23 February 2016 was that:

*"As we have not made any changes outside of the changes allowed within your Terms and Conditions as set out earlier in my response we were not obliged to write to you to inform you".*

These communications clearly contradict the Provider's stated position that it did write to the Complainant to inform him of the changes.

It is also noted that it was not until the Complainant received the Provider's file of papers, as part of the Financial Services and Pensions Ombudsman's formal complaint process in October 2017, that he was alerted to the existence of a letter dated **March 2014** from the Provider explaining the change in processes.

From all of the above, and on the balance of the evidence submitted, I accept that the Complainant had not been pre-advised of the change in the process being implemented by the Provider. While the Provider could still implement the changes without such notice, I consider that had the Provider so advised the Complainant of the intended changes, the situation might not have become so fraught and difficult.

In addition it is noted that the Complainant was given conflicting information as to what would happen should all the units be used up to pay a dividend. At first he was told that there would be no more units left, only to be later told that this was incorrect advice.

Providers should always endeavour to ensure that information is given to a policyholder in a timely, clear and comprehensible manner, and that key items are brought to the attention of the policyholder. I consider that the Provider cannot be said to have done that here, and I consider that this contributed to Complainant's loss of trust in how the Provider was administering the policy. On that basis and given the frustration this caused the Complainant, it is my Legally Binding Decision that the complaint is partially upheld and that a compensatory payment is merited. While I note the Provider's offer of €3,000, I consider that the complaint issues merit a greater payment. In that regard, I direct the payment of €5,000 (five 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) 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 €5,000, 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.**

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**GER DEERING**  
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

15 October 2019

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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.

