



<u>Decision Ref:</u>	2020-0277
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Bonds
<u>Conduct(s) complained of:</u>	Fees & charges applied
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant's complaint relates to the charges applied to his Investment Plan by the Provider. In particular, the Complainant states that the Provider has not reasonably made a full disclosure of the fees that have been applied by it to date. The Complainant's complaint also concerns the 5% Bid/Offer spread which is a feature of the Plan. He contends that it is unfair and unreasonable of the Provider to continue to apply such a spread "*in this day and age*".

The Complainant's Case

The Complainant submits that he has been complaining to the Provider since in or about 2013 about the imposition of various charges on his Policy.

He submits, regarding the application of annual management charges that he has been informed by the Provider that it cannot furnish him with specific details of the relevant annual management charges which are/have been applied to his policy, save to advise him that it is taken from the fund and deducted before the value of the fund is given. The Complainant submits that as he pays these charges he would like to know and should be provided with the specific details of this charge.

The Complainant contends that there are also "*legal, administration, custody and audit charges*", being applied by the Provider but that the Provider disputes this. He rejects the Provider's position that there are no such charges, as being "*inconceivable*".

The Complainant has submitted that there are further charges applied which have not been disclosed by the Provider, including *“initial entry charges”*, *“exit charges to be levied upon redemption”* and *“Offer charges”*, which the Complainant contends, *“could be 0.25% per annum”*.

The Complainant states that he cannot ascertain these with any certainty that although the Provider has told him that *“Offer charges”* do not exist, he submits that it is a legal requirement for the fund to be audited and administered and there are fees relating to this which are apportioned over the fund, to each client.

The Complainant’s complaint also concerns, *“an excessive 5% exit charge (reflected in a 5% bid/offer spread).”*

The Complainant submits that he has complained specifically about the 5% bid/offer spread and has asked the Provider to reduce this. He submits that *“in this day and age most firms have single pricing for funds, which means no bid/offer spread and consequently no charge.”*

The Complainant submits that he is being treated unfairly by the Provider in this regard and that whilst, *“they were the terms in 1981 but this is nowhere to be found in today’s market. Indeed most policies have single pricing, that is, no bid/offer”*.

The Complaint submits that *“the charging system applied has brutally impinged on the ability of my fund to grow and if I cash it in, I do so not at market rates but at a 5 percent bid/offer spread.”*

He seeks to have the Provider remove the 5% bid/offer rate applicable to his Policy.

The Provider’s Case

The Provider states that the charges applicable to the Complainant’s Policy were clearly delineated in the Policy Terms and Conditions, which were provided to the Complainant, at the commencement of the policy in 1981.

The Provider acknowledges that it is not its normal practice to disclose the amount of the Annual Fund Management Charge applicable to its funds, in monetary terms, due to the complexity of the calculations for long term plans (especially, it notes, going back to 1981).

It states that it is applied as a percentage to the Plan (0.66 %) and this is due to the manner in which the Annual Fund Management Charge is deducted, with the charge being applied to the fund as a whole and not levied on individual customer’s policy values directly.

It describes how the Annual Fund Management Charge is reflected in the daily unit price calculation:

The Unit Price of any fund is calculated daily by taking the total value of the fund on any given day, divided by the total number of units in that fund on the day. This is the Gross

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Unit Price. The Net Unit Price after the application of the Annual Fund Management Charge (0.66 % in this case) is then calculated as follows:

$$\text{Daily Unit Price} = \frac{\text{Total Value of Fund On The Day} - (0.66\% / 365 = 0.0018\%)}{\text{Total No of Units in Fund}}$$

It says that the monetary amount taken on a daily basis varies depending on the value of the fund as a whole on that day and on the total number of units which currently exist within that fund on that day.

It submits that *“As can be seen from the above description it is a very time consuming task to calculate with any degree of accuracy the exact amount of the charge deducted on a continuous basis for any individual customer's fund and it is for this reason that the Provider usually quantifies the Fund Management Charge as an annual percentage in accordance with the relevant section of the Consumer Protection Code.”*

It says that *“at the insistence of the Complainant the Provider did agree to provide a detailed figure of the total charges deducted from the fund in relation to his specific contributions over the duration of his policy from 1981 to date.”*

The Provider's position is that there are no fees or charges applied by it to the Complainant's investment, which have not been disclosed to him.

With regard to the Complainant's comments that there should no longer be a 5% regular payment charge levied on his monthly contributions, the Provider points to the fact that, regardless of how long the policy has been in force and notwithstanding that currently this type of charge is less common with modern products, this charge is a part of the Terms and Conditions of this particular policy and as such it is a legitimate charge applicable to this policy.

The Provider submits that *“if the Complainant objects to the continuing nature of this charge, he is free to surrender this policy and invest in a product that does not have such a charge”*. It suggests that the Complainant *“should be aware that newer investment products that do not have such a contribution charge will usually have a five year early withdrawal penalty instead”*.

The Provider states that it is fully satisfied that the existence of all the charges associated with this regular payment investment policy were outlined in the Terms and Conditions of the policy and all these charges will continue to apply so long as the plan is maintained in force. It submits that it has also provided the Complainant with the total amount of the charges levied in respect of all the various charges applicable from inception.

The Complaints for Adjudication

The complaint is that the Provider has not been sufficiently transparent regarding the charges which have been/are levied upon the Complainant's investment and that it is unfair and unreasonable of the Provider to continue to apply a bid/offer spread of 5%.

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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 21 July 2020, 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.

I note that the Complainant entered into the Plan in question, Life Assurance Plan -9631 (a regular contribution investment plan) on **05 February 1981**, via a broker at that time.

The Policy Conditions

The "*full terms and conditions of the plan*" which have been supplied in evidence consist of a single page. The Provider has stated that "*the document provided is the full terms and conditions for [the Complainant's] plan. They are typical of plans of this nature which were written in the very early 1980's.*" The document contains the following provisions:

POLICY CONDITIONS

1. *The policy is not in force until the first premium has been received by the Corporation.*
2. *If the life assured shall commit suicide within one year from the date of policy the additional benefit payable on the death of the life assured which would otherwise have become payable hereunder shall be forfeited and belong to the Corporation.*

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3. *If the date of birth of the life assured differs from that stated in the schedule no larger benefit shall be payable than would have been secured by the premium specified in the schedule if the date of birth had been correctly stated.*
4. *Valuation day is the last day in each month on which the Offer and bid prices of the units of the [Named] Fund are calculated by the Investment managers. These calculations are based on the values of the assets of the fund and take full account of the expenses of acquiring, managing and selling these assets as well as making the appropriate provisions for any taxes that may become payable by the fund.*
 - (i) *The offer price is the value at which premiums received by the Corporation are converted into units of the fund.*
 - (ii) *The bid price is the value at which units of the fund are converted into the money values in which the benefits are paid. The bid price is approximately 95% of the offer price.*
5. *All the income less tax from the assets of the fund accrues to the fund. A deduction of 0.7% of the value of the fund is made each year to cover the costs of administration.*
6. *A percentage of the premium varying with policy year and age next birthday on the date of policy will be allocated to the policy thus:*
 - (i) first policy year: 25%
 - (ii) second policy year: 50%
 - (iii) third to tenth policy years: 97% up to and including age 45, reducing by 1% for each additional year of age.
 - (iv) eleventh and subsequent policy years 100% units will be allocated at the offer price on the valuation day next following the premium due date.
7. *The policy may be surrendered at any time after two full years' premiums have been paid for an amount equal to the value of the units allocated to the policy, at their bid price by making written application on to the Corporation. If two full years' premiums have not been paid the Corporation will pay a reduced surrender value by deducting an amount equal to the difference between two full years' premiums and the amount of premiums paid from the value of the units allocated to the policy, at their bid price.*
8. *At the option date, the amount of the guaranteed life assurance protection may be converted at the Corporation's then current rates without medical evidence into a whole life, endowment, or capital protection assurance for a sum assured not exceeding the said amount.*
9. *The benefits of this policy will not become payable by the Corporation until the Corporation has received a complete application from the claimant which will include the policy, a written request for the benefit together with proof of the title of the claimant and in the case of death, proof that the life assured has died together with proof of his age.*
10. *Monthly, quarterly and half-yearly premiums must be paid by banker's direct debit.*
11. *Thirty days of grace are allowed for the payment of renewal premiums. The policy will remain in force during the said days of grace.*
12. *If a renewal premium or part thereof shall remain unpaid on the expiry of the days of grace the policy will then lapse and thereafter no benefit shall become payable on the death of the life assured by the Corporation.*
13. *Notices of assignment should be sent to the principal office of the Corporation in Dublin.*

ENDORSEMENTS

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The Complainant has stated that he has...*"seen the documents furnished. The point for me is that these documents were of their time and were market practise."*

Charges applied to the Complainant's Policy

I note that the terms and conditions governing the Plan, as set out above, contain provision for the following charges:

- the Allocation rate of funds invested, over the first ten years (the percentage of the investment used to buy units in the fund);
- the Bid/Offer spread of 5% (being the difference between the price to buy and sell units in the fund) and;
- the *"costs of administration"* charge.

The Provider has submitted copy Annual Benefits Statements, which have issued to the Complainant, from **2006**.

The first statement issued in December 2006 set out the value of the fund, €20,549.18, and included the following information:

If your plan does not have a separate savings element we may show your protection plan to have built up a value. We will use this value to fund your protection benefits in the more expensive years of your plan. Please do not think of this as extra savings. If your plan does have a separate savings element the above value includes your protection and savings values."

Plan Review

Assuming a future fund growth rate of 4.8% and our charge for benefits do not change, we estimate your payments will maintain your benefits for at least the next ten years. We will then review your plan to make sure that your payments and any value built up in the plan are enough to support the benefits applying at that time.

Funds you are invested in

[Named Fund]

Your payment details

<i>Your plan status</i>	<i>In Force</i>
<i>Your payment every month</i>	<i>€25.39</i>
<i>Your payment method</i>	<i>Direct Debit</i>
<i>Total payments made to date</i>	<i>€7,872.09</i>

Important Notes for your plan

- *Your benefits are provided in line with the terms and conditions booklet, and any special conditions or endorsements agreed with us and as outlined in your plan schedule.* *[emphasis added]*
- *The value quoted above is based on the latest available fund price at 5 December 2006 and is not guaranteed as fund prices can rise or fall.*

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- *The growth rates shown above are not guaranteed and values may rise as well as fall.*

The Statements provided during the following years, **2007 to 2012** followed the same format and contained the same type of information, with the additional detail of a 1% Government Levy of €0.25, from **2009**, which brought the monthly payment up to €25.64.

In **December 2007** the value of the fund was €20, 629.66, with total payments made of €8,176.77

In **December 2008** the value of the fund was €13,667.36, with total payments made of €8,481.45.

In **December 2009** the value of the fund was €16,552.38, with total payments made of €8,786.13

In **December 2010** the value of the fund was €18,538.44, with total payments made of €9,090.81.13.

In **December 2011** the value of the fund was €17,692.42.44, with total payments made of €9,395.49.

In **December 2012** the value of the fund was €20,361.43, with total payments made of €9,700.17.

From **2013** onwards the statements began to include further details about the charges applied to the Plan and included within the “*investment fund details*”, the Number of Units held, the Unit price, the Yearly fund charge and the fund performance as well as the fund value, in the following format:

<i>Fund Name</i>	<i>Number of Units</i>	<i>Unit Price</i>	<i>Fund Value</i>	<i>Yearly Fund Charge</i>	<i>Fund Performance</i>
[Name]	1,370.18	€17.529	€24,017.89	0.66%	16.06%

It also set out details of, “*Charges applied, payment charges applied*” (€15.16). It noted that “*We added all payments to your fund, less payment charges, based on the unit price which applied at the time of payment.*”

We take any payment charges from your payments before we add them to your fund.”

I understand from the documentation supplied that the “*Payment Charge*” refers to the Bid Offer/Spread applied.

In **December 2014** the value of the fund was €27, 852.59, with total payments made of €10,284.15. Unit Price was €20,099. Yearly Fund Charge of 0.66%. Payment Charges applied of €13.90, as well as Govt levy of €3.08. Fund Performance was 15.06%.

In **December 2015** the value of the fund was €31,499.06. Unit Price was €22,513. Yearly Fund Charge of 0.66%. Payment Charges applied of €15.16 were applied, as well as Govt levy of €3.08. Fund Performance was 10.88%.

In **December 2016** the value of the fund was €32,333.65. Unit Price was €22.894. Yearly Fund Charge of 0.66%. Payment Charges applied of €15.16 were applied, as well as Govt levy of €3.08. Fund Performance was 3.85%.

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In **December 2017** the value of the fund was €35,084.89. Unit Price was €24.631. Yearly Fund Charge of 0.66%. Payment Charges applied of €15.16 were applied, as well as Govt levy of €3.08. Fund Performance was 7.69%.

Correspondence between the parties

From the details of correspondence between the parties which has been furnished, it appears that the Complainant first expressed his concerns by email of **04 January 2013** to the Provider, stating:

I am paying into this plan for 31 years I paid euro 9,700.17 in and it is valued at 20,361.43. This is a gross return of approx. 110 percent over 30 years. I do not know the annual compound rate of return but guessing it is about 2 percent. This is a disgrace given where markets have come from over these 31 years. I would like an explanation as to this insipid performance at your earliest convenience. It would appear that you have taken as much in fees as I have received in return and if this is true it is totally unacceptable to me.

I would also like to know what level of cover this policy has?

The Provider responded by email of **07 January 2013**:

In relation to your query I can confirm that due to the nature of this investment there is no set or compounded rate of return.

The value of this particular fund can rise and fall and is prone to change on a daily basis.

Please note that there is no policy administration fee on this particular plan. I have sent further details of your plan to you by post including any details in reference to cover. [emphasis added]

The Complainant responded, advising:

Over 31 years I have put almost €10,000 into this fund and the bottom line is that I am extremely unhappy about the performance of this product given that performance of equity and bond markets has grown exponentially since then.

The Provider issued a letter to the Complainant dated **08 January 2013** "setting out the main details of this plan" including the start date (5 February 1981) the Life Covered (the Complainant), the amount paid in at that time, €9,725.56, the name of the Fund Invested in and the cash in value at that time of €21,044.91.

The Provider issued a detailed Final Response Letter to the Complainant dated **21 January 2013**.

It identified that the Complainant was "unhappy with the performance of this plan and require[d] confirmation of the annual return achieved by the fund, in which you have been

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invested, over the last 30 years; and You have requested confirmation of the charges applicable to this plan.”

The Provider advised that from 1 January 1981 to 31 December 2012, the fund achieved an annualised return of 7.005%.

The original letter purported to enclose a copy document detailing the annualised return each year since 1981 (a copy of which has not been furnished in evidence to this Office) and in respect of which the Provider advised:

as you can see from this document in 2008, there was a significant fall in the returns achieved (-34.604%) by the [Named Fund]. Since the end of 2007/beginning of 2008 we have been in the midst of a global economic recession which has seen the growth of all investments fall. Since then we have seen periods of positive growth (21.54% in 2009 and 8.661% in 2010), which was then followed by a year of poor growth in 2011...the Annual Benefit Statements we have sent you since December 2006, also provide a good indication of how markets were performing during this period...To date you have made payments totalling €9,736.06 (€10.05 of this represents the 1% Government levy payable since August 2009) to this plan. Based on this bid price of 17 January 2013, the current value attaching to your plan is €21,022.91. Please note that this is not guaranteed as the fund price can fall as well as rise on a daily basis.

As regards the Complainant's complaint regarding the charges applicable to his plan the Provider stated, in this letter:

Having reviewed the Terms and Conditions I can confirm the following charges apply to your plan are as follows:

In the first year of your plan only 25% of your payments were invested.

In the second year of your plan only 50% of your payments were invested.

From the third to the tenth anniversary of your plan 97% of your payments were invested.

From year 11 onwards, 100% of your payments were invested.

You have made monthly payments of €25.39 to this plan since February 1981....There is also a Bid/offer spread of 5% on your plan, this means that the Offer Price which you would buy units at in the [Named Fund] is 5% higher than the Bid Price, the price at which you would sell these units at.

The Complainant responded by email of **22 January 2013** noting the Provider's reference to annual performance but submitted that:

the sum of money I invested has barely doubled in 31 years!! I am aware markets have gone nowhere for 5 years but there were 26 years before that!

You have taken each year of performance and divided by the number of years, giving 7 percent. This does not in any way shape or form represent the return on my portfolio. What I want is the effective rate of return on my portfolio. 7 Per cent per

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annum!! My capital sum would be a multiple of the Euro 20,000 that it is now! Can you please come back to me with the average annual rate of return on my portfolio? With respect to charges you detailed that in the first year you had 75 per cent commission, in year 2, 50 percent, from years 3 to 10, 3 percent per annum. So far we are at 124 Percent of one years contributions! In addition you conveniently left out the annual management charge! Are you not giving me the full fee basis which is what I asked for? What is the annual management charge? [emphasis added]

Finally, if you have not taken enough you want 5% at the end!

I would like to know the annual management charge taken on an annual basis.

Your reply is not satisfactory in that you have not answered the first part. The second part you have not declared ANY annual management charge. This is not satisfactory and both answers are misleading. Your firm should know better and I would be obliged if you would give me the correct information in order for me to assess the performance of my fund and compare this to the amount of fees that you have taken. [emphasis added]

I have no doubt that your firm has the expertise to work out the weighted average effective rate of return on an accretive product such as this.

The Provider then issued a further letter of **25 January 2013**, noting the Complainant's unhappiness with its response.

Regarding the performance of the Plan in question, and the Complainant's request for "confirmation of the annual return achieved", it advised that while over the period 01 January 1981 to 31 December 2012 the Fund achieved an annualised return of 7.005% that only the funds which were invested on a continuous basis since 1981 would have achieved an annualised return of 7.005% and that during the first ten years not all of the payments made were invested in the fund.

It stated that in the first year, 25% of payments made were invested (of the €304.68 paid in, €76.17 invested), in the second year 50% were invested (of the €304.68 paid in €152.34 was invested with the balance of €152.34 taken as a charge), from the third to tenth anniversary 97% of the monies were invested were (of the €2742.12, €2659.86 was invested and the balance of €82.26 taken as a charge) and from year 11 onwards, 100% was invested.

It further noted the 1% Government levy which applied from 2009 and that the "terms and conditions of your plan also allow for a 5% Bid/Offer spread. This means that the Offer Price which you would buy units in the [Named] managed fund is 5% higher than the Bid price, the price at which you would sell these units at."

It advised that "there are no other charges associated with your plan" and re-iterated that "I can also confirm that the only other charge applicable to your plan with the exception of the 1% Government Levy is the 5% Bid/Offer spread".

[emphasis added]

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The next item of correspondence furnished is a letter to the Complainant of **07 July 2014** enclosing a list of funds available for switching purposes, further to a telephone call from the Complainant of **03 July 2014**.

On **27 December 2016** the Complainant emailed the Provider advising that having reviewed his plan update he *"could not believe his eyes when a [sic] in this day and age that there is a 5 percent bid offer spread. I would like you to review this as this is simply not acceptable in this 2016"*

The Provider responded on **29 December 2016** that *"unfortunately, the plan charges and available funds are set out on a product basis which was agreed when the plan was commenced and it is not possible to change."* It recommended the Complainant speak with his financial adviser in relation to this or to discuss taking out a new plan.

The Complainant responded by email of the same date that he had *"registered dissatisfaction with the excessive charges that you are levying. They may have been applicable 35 years ago but life has moved on...One assumes that if I change the product, the charge will still apply? If so how is this a response to my query? Please address this issue in your reply to me before I decide on how to proceed."*

The Provider's response stated that it *"would be unable to change the existing charging structure on your [Named Fund]."*

The Complainant repeated his request that *"If I change does this bid offer spread still apply to this plan? This is the question I am asking"*.

On **03 January 2017** the Provider emailed that *"I can confirm that the funds that are available to you to switch within your [Named Plan] have a 5% bid/offer spread as with the fund you are currently in"* and it listed the funds available for switching.

The Complainant replied that *"this is the problem! 5 percent charges in this day and age are simply outrageous given that I have paid annual management charges for almost 35 years. I am unhappy about this and want to be treated fairly."*

A further Final Response Letter issued on **06 January 2017** that noting the Complainant's dissatisfaction but confirming that *"When your plan commenced, it was set up with a bid/offer spread of 5%. Once a plan is in place we are unable to alter the terms and conditions or any charges associate with the plan"* and that its previous Final Response of **25 January 2013** had set out all the charges associated with the Plan.

The Complainant responded that he would like a detailed breakdown of all fees charged since inception. He asserted that the fees which had been outlined to him previously *"were exorbitant fees taken before the money was invested"* and he contended that:

fees were taken on an ongoing basis, a per annum basis in the form of annual management fees for a start. There were also administration fees, custody fees, legal and audit fees together with brokerage fees.

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I would like you to confirm these fees to me on a per annum basis so that I can determine how much of my money you have taken in fees since inception. We can then have a look at this to see how reasonable these fees are when one looks at the situation in totality”

By letter dated **13 January 2017** the Provider reiterated the charges which applied to the plan, as previously set out in its letter of **25 January 2013**. Further to the Complainant’s request for details of the annual management charges which had been deducted, it advised that it was unable to provide him with these charges in monetary terms. It stated:

“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] Investment Managers from the overall value of the fund before the bid price is declared. Therefore the fund prices are declared after these charges and not deducted from the customer’s plan directly but are included in the price when declared.”

It further stated that *“there are no administration, custody, legal or audit fees applicable to your plan.”*

Analysis

It is the case that consumers are entitled to receive information in respect of their investment products, on a regular basis.

The 2006 Consumer Protection Code provided in this regard, that:

General Principles

6. makes full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer.

Charges

44 A regulated entity must, where applicable:

c) detail in each statement provided to the consumer, all charges applied during the period covered by that statement

The 2012 Consumer Protection Code requires regulated entities to provide consumers with statements in respect of each investment product held with them on a regular basis, as follows:

Information on Charges

6.16 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;*

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- 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.

Whilst the statements which were furnished to the Complainant from 2006 to 2012 contained the statement that *"Your benefits are provided in line with the terms and conditions booklet, and any special conditions or endorsements agreed with us and as outlined in your plan schedule"*, I am not satisfied that this was sufficient to comply with the General Principle enunciated under the Code in place at the time, as regards making *"full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer"* or with Provision 44 of the Code, that it *"detail in each statement provided to the consumer, all charges applied during the period covered by that statement"*.

I am accept that the level of information was increased to an appropriate level in 2013, in keeping with the Consumer Protection Code 2012.

The Complainant has queried the level of annual management charge and notes that it is currently set at 0.66 percent but questions whether it always at that level. From the terms and conditions it appears that this was provided for as 0.7% but that the Provider has submitted that while the Terms and Conditions, show at paragraph 7 the charge, rounded to one decimal place, as 0.7%, *"the charge to two decimal places is actually 0.66% and this has been the same charge since the inception of the fund."*

I do not find anything from the evidence before me which suggests that this has not been the case.

The Complainant has also submitted that, *"under current MIFID II regulation all fees taken from a client need to be identified and set out."*

I have had regard to requirements of the MIFID II Regulation as it relates to this complaint. I note that the provisions of the MIFID II legislation does not apply to insurance based investment products of the type held by the Complainant.

The Complainant draws attention in particular to the Packaged Retail and Insurance-based Investment Products ("PRIIPs") Regulation which came into force on 01 January 2018 and applies to all investments issued on or after that date. It does not apply to policies taken out prior to 01 January 2018. The PRIIPs Regulation requires that retail investors are furnished with a Key Information Document informing them of the main features of the product, as well as the risks, costs, potential gains and losses associated with investment in that product, in a clear and accessible manner. This must be provided in advance of any potential investment and before an investment decision is taken. However, as the Complainant entered into the investment in question in 1981, these provisions were not in force at the relevant time and are therefore, not applicable to this complaint.

I accept however that the Complainant is entitled to be informed as to the costs and charges, charged for the investment service provided as well as to any costs and associated charges related to the investment itself.

I note that within a submission to this Office of **10 April 2018**, the Provider identifies that *"Any non-specified charges such as suggested above would be included in either the 0.66% Annual Fund Management Charge or the 5% Bid/Offer Spread Charge and not levied separately"*. Had this been explained to the Complainant in this way, at the outset, it may have assisted with the Complainant's understanding in this regard. However, from the Complainant's response to the above submission, he remains dissatisfied by this explanation, and the Provider's refusal to supply him *"with a full breakdown of charges."* Going on to state, *"Every fund has audit, legal, brokerage, custody, admin etc charges."* I am satisfied however, that it is not wrongful of the Provider to include them within the AFMC or the Bid/Offer spread rather than to levy them separately.

I appreciate that the Complainant is dissatisfied by the fact that the annual management charge is expressed as a percentage, rather than in monetary terms and has complained in relation to the statement by the Provider that *"it is not normal practice to disclose the amount of the annual management charge in monetary terms due to the "complexity" of the calculations"*. I accept, however, taking into account industry norms and the process by which this is calculated and applied, that this is an acceptable practice on the part of the Provider. I do not consider that it has acted wrongfully in this regard or that it is unreasonable to present the charge in this way.

Neither do I find any basis, from the evidence available to me, which supports the Complainant's contention that there are other additional separate charges which have been applied by the Provider such as audit, legal and brokerage fees, which have not been included in the Annual Fund Management Charge or the 5% Bid/Offer Spread Charge.

However, in terms of the level and/or standard of information which was provided to the Complainant, I note that it initially advised the Complainant there *"there is no policy administration fee on this particular plan."*

Further, when the Complainant initially requested details of the charges applied to his Plan, the correspondence from the Provider, including the Final Response Letter which issued to the Complainant dated **21 January 2013**, confirming the charges applied, made no reference to the Annual Management Charge. When this was specifically queried by the Complainant, the Provider's response again omitted any reference to AMC, and it expressly stated *"there are no other charges associated with your plan"*. It appears that this issue was first addressed by the Provider in a further Final Response Letter dated **13 January 2017** when it advised that it was unable to provide him with these charges in monetary terms.

I consider that the information furnished to the Complainant when he made enquiries in this regard was not satisfactory and was indeed, inaccurate. Whilst it is not clear that there was any intention on the part of the Provider to conceal such information or was caused by anything other than negligent oversight, I can understand how this may reasonably have

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caused, or at least contributed to, the Complainant's lack of faith in the transparency of the Provider in relation to the charges applied to his Plan.

I will now turn to examine in further details the particulars of the Complainant's complaint as it relates to the 5% Bid/Offer Spread on the Plan.

Bid/Offer Spread

The Complainant has expressed his deep dissatisfaction at the 5 % bid/offer spread which is a feature of his Plan in question. He submits that *"I would like to get an answer to my questions and be treated fairly according to market norms and practices. It is not normal to charge an outdated 5 percent bid/offer spread in a market where the norm is single pricing."*

The Complainant advised the Provider during a telephone call of **05 January 2017**, when expressing his dissatisfaction with the 5% bid/offer spread, that he was not made aware of this and that it was not drawn to his attention when he entered into the product in 1981.

I note that the Provider here was not the entity which sold the Plan to the Complainant but rather it was entered into via a third party intermediary, which is not being investigated as part of this complaint. Furthermore, due to the passage of time since the sale of the policy/policy inception, it does not fall within the jurisdiction of this Office to investigate the sale of the plan, at this remove.

The Complainant does not dispute that the terms and conditions set out the existence of the spread but rather, his position is that whilst it may have been acceptable 30 years ago, that *"[the Provider] is seeking to enforce a contract that was put in place 37 years ago to a retail client and is so far out of line with current market practice is strange in the current regime of client transparency and treating clients fairly."*

The Provider's position is that it *"is not in the habit of renegotiating the terms of existing contracts after the fact, particularly in relation to the agreed charging structure set out in the original terms of the contract."*

While the Complainant has set out his dissatisfaction with the Bid/Offer spread which applies to the Plan, I accept that it is nonetheless the case that it forms part of the terms and conditions which govern his plan and forms part of the agreement entered into.

I appreciate the Complainant's frustration at the fact that the terms of his plan are not commensurate with many more recent plans. However, the Provider is entitled to apply the terms of the contract entered into. I appreciate that in the current climate these terms may not seem particularly attractive any longer, however the terms which govern the contract will continue to apply to the contract as long as it remains in force and I accept that the Provider is entitled to apply the terms of the Agreement. It remains open to the Complainant to exit the Plan, if he so wishes. There seems to be some reluctance on his part to do so and this seems to be related to a belief that he will incur a further charge, arising from the bid/offer spread upon exiting.

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I note that by letter to this Office of **10 April 2018** the Provider has advised that, *“The Complainant continues to imply that the 5% Bid Offer Spread or regular payment charge is applied both upon payment and again upon surrender of the plan. This is incorrect and misleading.”*

However, whilst the Provider suggests that this has been wrongfully “implied” by the Complainant, it seems that the Complainant may have simply misunderstood this from the way in which this was explained to him by the Provider when he sought clarity initially, as set out in the correspondence referred to above. The Complainant had queried, in the context of changing his Plan, *“One assumes that if I change the product, the charge will still apply?”* The Provider’s response stated it *“would be unable to change the existing charging structure on your [Named Fund].”* The Complainant repeated his request that *“If I change does this bid offer spread still apply to this plan? This is the question I am asking”*, to which the Provider responded that *“I can confirm that the funds that are available to you to switch within your [Named Plan] have a 5% bid/offer spread as with the fund you are currently in”*.

However, I am satisfied that the Provider has since adequately clarified that there is no additional charge imposed if the Complainant wishes to encash the plan and has stated that *“There is only one levy of the 5% and this is when the regular payment is used to purchase Fund Units at the Offer Price which is 5% higher than the Unit Fund Bid Price, which is the price reflected in the Funds Current Value...There is no additional charge of €1100 upon exit as implied by the Complainant”* and that there is *“no financial bar or impediment for him exiting this investment as the Gross and Net Surrender Values are the same...”*.

Accordingly, the encashment value as stated in the Complainant’s Annual Benefit Statement, is the amount at which he can encash and the Bid/Offer spread does not have an impact upon his encashment value.

Despite the Complainant’s dissatisfaction with the existence of the 5% bid/offer spread, I accept that the Provider is entitled to apply the terms of the Agreement which is in place between the parties. I do not therefore find that there are any grounds upon which it would be reasonable to uphold this aspect of the complaint.


However, overall, and for the reasons which I have outlined in my analysis of the level and/or standard of information which was furnished to the Complainant, particularly within the annual benefit statements which issued from 2006 to 2012 and in correspondence with the Complainant when he initially queried the charges which applied to the plan, I am satisfied that it is appropriate to partially uphold this complaint.

Therefore, for the reasons set out in this decision, I partially uphold this complaint and direct the Provider to pay the Complainant a sum of €2,500.

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)(f) and (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 €2,500, 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.



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

18 August 2020

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.