



<u>Decision Ref:</u>	2020-0406
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Bonds
<u>Conduct(s) complained of:</u>	Failure to process instructions in a timely manner Dissatisfaction with final fund value
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants held three investment policies with the Provider -628, -223 and -579, which they had incepted in the 1980s.

They submit that the Provider failed to adequately address requests which they made to it, regarding these three Policies in 2014/2015. The Complainants submit that by the time they switched and subsequently encashed their policies, the values had dropped, which they would have been sheltered from, had matters been addressed in a timely manner by the Provider.

The Complainants' Case

The Complainants submit that over a period of approximately 13 months (November 2014 to December 2015) they had enquired of an Agent of the Provider, how to “*de-risk a portfolio of investments*”.

The Complainants submit that in **May 2015** they sought “*specific direction for de-risking current investments*” but that “*specific information sought i.e. such as transfer fees (waiver of fees or reduction of fees) was not conclusively addressed by [Agent]*” which they submit resulted in their having “*incomplete information to make an informed decision*”.

They submit that “*despite this, authorisation was provided to [Agent] by us in July 2015 showing a clear intent and desire to de-risk current investments.*” However, they believe that the Provider was “*distracted*” by the issue of the First Complainant’s retirement plans.

They submit that they received an information “*booklet*” in relation to their investments from the Agent on or about **18 September 2015** but that their requests on the issue of transfer fees was ignored. They submit that as they had been requesting information since **October/November 2014**, this does not represent adequate service on the part of the Provider.

The Complainants’ complain that “*inaction and procrastination*” on the part of the Provider caused financial loss on their investments as the value had dropped by the time they ultimately switched their investments.

The Complainants submit that based on the value of the funds at their height during 2015, they have suffered a loss of approximately €10,600 as a result of the Provider’s inactions.

The Provider’s Case

The Provider notes that the Complainants held three investment plans which are the subject of this complaint. It submits that the Complainants are responsible for choosing their own investment funds within these plans and that the Provider “*simply administers the operation of the investment fund chosen by [the Complainants].*”

The Provider submits that at a meeting with its Agent on **18 September 2015** the Complainants were given a bound booklet containing the details of their plans. A written summary of what was discussed during this meeting was posted to the Complainants on **24 September 2015**.

The Provider submits that in order to switch from one investment fund to another, a customer must confirm what investment fund they wish to switch from, in addition to nominating the fund that they wish to switch to. It states that the Complainants:

demonstrated an aspiration to switch at various times between late May 2015 and December 2015. Despite talking to our adviser [Agent’s name] about switching in addition to being provided with all switch options the first time that they gave an actual switch instruction was in February 2016.

It submits that it received a switch instruction from the Complainants through their independent financial intermediary on **15 February 2016** and their three investment plans were switched to [Fund C], as requested at this time.

The Provider has submitted that the Agent was introduced to the Complainants for the first time in **November 2014**. The Complainants had been dealing with a different adviser before this time. It submits that the purpose of the meeting at this time was to introduce the Agent to the Complainants, as their previous adviser was going on maternity leave. It says that, as it was an informal meeting it was not formally recorded.

/Cont’d...

The Provider submits that the Complainants were not told at this meeting that they would receive correspondence outlining what was discussed because it was an informal meeting.

It says that during this meeting, the Agent recollects the First Complainant having discussed a redundancy opportunity and they had a general discussion on whether or not he could take out an Approved Retirement Fund (ARF). It submits that no financial advice specific to the Complainants was given during this meeting and at no stage were the investment plans which are the subject of this complaint discussed.

Subsequent to this informal meeting in **November 2014** the First Complainant began communicating with the Agent by email on **30 May 2015**. While the First Complainant indicated in this email that they had previously spoken about reducing the risks attaching to the plans which are the subject of this complaint, it is the Provider's position that they hadn't.

The First Complainant and the Agent spoke on a number of occasions over the following weeks regarding the queries that the First Complainant had raised in his emails to the Agent. It submits that these conversations took place on the Agent's mobile phone and as a result, there is no recording of the calls.

The Provider submits that a meeting was planned for the **25 August 2015** but this meeting had to be rescheduled as the Agent could not keep the appointment. The meeting was rescheduled for **18 September 2015**.

The Provider says that the main focus and direction of their approximately two hour meeting on **18 September 2015** was, again, the First Complainant's retirement and that at the end of the meeting a discussion was had about the risks attaching to the investment plans which are the subject of this complaint. It submits that the Agent provided the Complainants with a bound booklet during their meeting on **18 September 2015**, which confirmed the details of their three investment plans in addition to providing a full list of the funds which were available for them to switch into, within their existing contracts.

The Provider acknowledges that the Complainants were interested in switching the investments which are the subject of this complaint, to a particular fund, Fund M, but this is not a fund which was available within the existing contracts. It submits that the fund range in question was introduced to the Complainants by the Agent in the context of the First Complainant's retirement as he wanted to invest in the Named Fund through a new Approved Retirement Fund (ARF).

The Agent wrote to the Complainants on **24 September 2015** documenting what was discussed during their meeting on **18 September 2015**. It notes from this document, that the main focus of the Complainants' meeting on **18 September 2015** was the First Complainant's retirement. On page three of this report the Agent also set out the charges associated with taking out a new investment bond. The Provider submits that in order to invest the three plans which are the subject of this complaint into that particular Fund, the three investments would need to have been cancelled and the proceeds reinvested into a

/Cont'd...

new investment plan, which would have incurred fees. It submits that while the First Complaint queried whether it would be possible not have to pay fees as he was an existing customer, the Agent explained to him that this was not possible.

The Provider submits that the Agent also highlighted to the Complainants that as their current investments were taxed on a net roll up arrangement (as they were taken out prior to 2001) this had tax advantages over gross roll up (any new investment would be subject to gross roll up) and because of these tax advantages the Agent recommended switching to a fund within their existing contracts as opposed to taking out a new investment plan. It states that the decision was however for the Complainants to make.

The Provider submits that no switch instruction was supplied by the Complainants until they requested to switch to a different Fund, in **February 2016**, through their independent financial intermediary and as such they remained invested in their originally chosen funds up to this time.

The Provider notes that the existing funds which the Complainants were actually invested in during this time were performing very well and when switching was discussed with the Agent, the Complainants were *"always very reluctant to make an actual switch decision"* and the Provider points to an email from the First Complainant to the Agent on **30 May 2015** *"where he acknowledges that the funds were performing well."*

The Provider submits that the First Complainant agreed to review the funds which were available to switch into and get back to the Agent with a decision but that he never came back with a decision. It says that *"discussing reducing risk is not an instruction to switch. An instruction to switch is when a customer confirms what fund they wish to switch from and nominated [sic] the fund that they wish to switch to."*

The Provider notes that the Complainants say that they have suffered a financial loss of €10,600 by comparing the value of their three plans at the three different dates of their Annual Benefit Statements in 2015 against what they actually received when they cashed all three plans in June 2016. The Annual Benefit Statement for plan number -628 was issued in February 2015 with plan numbers -223 and -579 being issued in October and May 2015. The Provider submits that as *"no switch instruction was received by [the Complainants] on the dates that the values in these statements were captured so to say that they suffered the loss which they say they suffered is incorrect."*

The Provider has submitted that the investments were in fact performing well and has stated that Plan -628 saw a fund growth of 3.203% between **31 October 2014** and **15 February 2016**. During the same period there were fund growths of 3.203% and 2.4% on Plan -579 and on Plan -223 there were fund growths of 2.088%, 27.411% and 3.203%.

The Complaint for Adjudication

The Complainants' complaint is that the Provider failed to adequately, and in a timely manner, address the requests which they made to it, to "de-risk" their investment policies

and that inaction on the part of the Provider resulted in the value of the policies having dropped by the time they switched funds.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **06 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.

Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished do 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 are sufficient to enable a Decision to be made in this complaint without the necessity for holding an Oral Hearing.

The Complainants held three policies with the Provider:

Plan -**223**: Investment Bond held by Second Complainant. Incepted **19 December 1986**.

Plan -**628**: Investment Bond held by both of the Complainants. Incepted **24 April 1987**.

Plan -**579**: Investment Plan held by the First Complainant. Incepted **01 July 1982**.

The Complainants complain that between **November 2014** and **December 2015** they made a number of requests to the Provider to “*de risk*” their investments, on **30 May, 11 July, 13 October, 16 November, and 02 December 2015**.

The Complainants have submitted that at the meeting which took place with the Agent and their previous adviser, in **November 2014**, the issues discussed were:

*“A joint life policy we had with [the Provider]
Our [Provider] investments
Possibility of a redundancy offer from my employer...in the near future.
Changing our investments into lower risk funds.”*

The Complainants submit that they were told by their previous adviser who was also present on the day that correspondence would issue with a summary of the meeting but that this did not happen.

The Provider, however, refutes the Complainants’ contention that they were told they would receive any such correspondence. It says that the purpose of the meeting was to introduce the Complainants to the Agent, as their previous adviser was going on maternity leave and that, “*as such it was an informal meeting and was not formally recorded*”.

It submits that the Agent’s recollection of the meeting was that they had a general discussion about whether the Complainant could take out an Alternative Retirement Fund and that no specific financial advice was given at this meeting and that “*at no stage were the investment plans which are the subject of this complaint discussed.*”

The Statement of the Agent, setting out his recollection of the following dealings with the Complainants, is:

[The First Complainant] then started to communicate with me by email on 30 May 2015. While his email at the time indicated that we had discussed the risk of the three investment plans which are the subject of this complaint we hadn’t.

There were a number of phone calls both ways over the following weeks and we arranged to meet on 25th August to discuss. I had to cancel this meeting for personal reasons and I agreed that we would reschedule.

Each time I spoke to [First Complainant] about reducing the risk on his investments plans he was always reluctant to make a decision. I had discussed our [M] funds at the first meeting, in context of how we might consider investing an ARF. He wanted to switch his existing investment into [Fund M]. I explained that on the one hand, he was in net roll up funds which have a considerable advantage so he should not move, and also that [Fund M] was not available in his existing contract. To access [Fund M] he would have to come out of his net roll up contract and enter a Signature Bond, incurring fees. He explained that he should not have to pay fees as he was an existing customer. However I explained this was not possible and was also bad advice due to the net roll

/Cont’d...

up/gross roll up advantage. I suggested he select a fund available in his existing contract. I had this same conversation with him each time we spoke or met and it always ended up without a decision.

I rescheduled our 25 August 2015 meeting to 18 September 2015 and we met in the [Named] hotel. We had a two hour meeting at this time and in this time, all but ten minutes were spent discussing pension options, as [First Complainant] had been offered redundancy from [Employer] and he wanted to understand income in retirement.

[The First Complainant] did mention fund switching on the existing investments however he wanted to access [Fund M] which wasn't available within his existing contracts. At the outset of our meeting I provided [the Complainants] with a bound booklet containing details of their [Provider] plans. Included within this booklet was the list of funds actually available to switch into within each contract.

On 24th September 2015 I posted to [the Complainants] a report detailing what was discussed during our meeting. You will see from this report that the main thrust of the conversation had been about income in retirement, though I did give him the charges were he to switch to a new Signature Bond.

You will see from the email trail that it was me who communicated next, on 12th October, to try to meet again. The following day, [the First Complainant] emailed back saying he thought he would hear from me. I told him I had sent the letter but he said he hadn't received it so I sent it again.

I emailed back the following day saying I thought we had arranged to meet again.

On 16th November [the First Complainant] emailed me again to say he was still waiting to hear from [pension administrator] about his pension. He asked about de-risking and going to [Fund M] again. I mailed him on 18th and again told him that [Fund M] wasn't available in this product. I also explained gross roll up and net roll up and recommended that he stay in the existing product and pick a fund that was available within his existing contracts.

I mailed him again on 2nd December and in his response, he asked again about de-risking. At this stage I had told him many times about [Fund M] not being available.

When it came to it [the First Complainant] talked about de-risking but wanted to move to a new product without incurring charges and did not seem to put any value on the tax treatment of his fund. At no time did [the Complainants] give a switch instruction.

The Complainants' position is that the initial advice which was provided to them by the Agent, in **November 2014**, was to move their investment to [Fund M] but that by **November 2015** his advice was to leave the investments where they were and combine them with the ARF.

/Cont'd...

The Complainants say that this *“means a whole year had gone by and nothing had been done when it should have been simple to move the investments into [Fund M] as was discussed.”*

I would note however that there is some disparity between the Agent’s recollection of this meeting in **November 2014** and that of the Complainants. The Complainants submit that a risk assessment was conducted at this time and that they were given specific advice regarding their investments including the recommendation of switching to [Fund M]. The Provider, meanwhile, submits that it was an informal meeting for the purpose of introducing them to the Agent and no specific advice was provided.

The Provider has submitted that it is its

“process to provide a written summary of all formal meetings which take place...Informal meetings such as the one where [the Complainants] were introduced to [the Agent] in November 2014 are a regular and normal feature of any client adviser relationship. Meetings of this nature are not formally documented.”

As there is no record of what was discussed at the meeting which took place previously, it is not possible to ascertain with certainty what occurred. I note that the stated purpose of the meeting was to introduce the Complainants to the Agent who was to be their new adviser going forward.

There is no evidence available that the Agent conducted a “risk assessment” of the Complainants, as contended by the Complainants, or that he furnished specific advice regarding the Complainants’ investments on that date. I accept, however, on balance, that the Agent seems unlikely to have been in a position to have done so, taking into account the information which the Agent had available to him at the relevant time, and the fact that authorisation to review the Complainants’ investments was not furnished to him until a later date.

As regards this authorisation, the Complainants have submitted that they originally issued authorisation to Mr R in **June 2015**. They have not furnished a copy of this correspondence but have furnished a copy of the authorisation correspondence they sent in September 2015.

The Provider has confirmed that it did not receive the scanned authorisation referred to in the Complainant’s email to Mr R, of **16 July 2015** and that the letter of authorisation, sent by the Complainants on **03 September 2015**, was addressed to [Provider] Corporate Business, which is a different arm of the Provider’s company. The Provider submits that the Letter of Authority in question *“was received by [Mr R] and then taken to this to his Regional Office Co-Ordinator, who on sight of it, would have printed the plan documentation required by Ms R, to allow him to review the Complainants investments.”*

In terms of record keeping in respect of the meeting of **November 2014**, I note the Provider’s categorisation of the meeting as “informal” and one which did not require a record being taken and kept. Nevertheless, because the Complainants had been invited to attend the meeting with two individuals on behalf of the Provider, to essentially mark a “handing over”

/Cont’d...

of the advisory function, from one Agent to another, during the course of which at least some discussion must surely have taken place regarding the Complainants' financial matters, I take the view that there must surely have been some degree of formality involved. In any event, I believe that as a matter of good practice, a note of the meeting which at the very least identified the purpose and outcome of the meeting, ought to have been recorded and kept on file by the Provider, in accordance with its CPC obligations and that it is unsatisfactory on the part of the Provider not to have so done.

I note that some six months after the meeting of November 2014 on the **30 May 2015** the First Complainant emailed the Agent, as follows:

Hi [Agent],

You may remember talking to me in the recent past with your colleague [name]. At the time there was a possibility of [employer] offering me a redundancy package. My application was not accepted so therefore it will more than likely be 2-3 years to my retirement.

With this in mind you might advise me on my PRB which is due to mature in July of this year.

The PRB is invested in [Named Fund] 50% and [Named Fund]. Should I leave it as is for longer than July in the hope that it may improve there or should I immediately move it to me [Employer's] DC scheme.

Myself and my wife [Name] have investment funds with [the Provider] and are doing quite well at the moment.

They are invested in [4 named funds]

When we spoke to you last we talked about the risk of these funds and indicated that we might move the investments to medium to low risk funds. Can you recommend products that may fulfil our needs.

Look forward to hearing from you.

Having had regard to the content of this email, it does not appear to me to suggest that the Complainants had, up to that point, been awaiting correspondence from the Provider or been expecting advices in relation to their investments, which they noted were "*doing quite well at that moment*". If the Complainants had been awaiting follow up advices on their investment plans during the intervening period of over 6 months, I consider that one might reasonably expect to see some unhappy reference to such an expectation, and consequent failure of the Agent, to have so reverted.

Instead, by way of opening remark the Complainant amiably noted that the Agent, "*may recall*" having spoken with them "*in the recent past with your colleague*", and he included a brief reminder of what had been discussed. The email goes on to suggest that while the focus of the meeting had been on the First Complainant's potential retirement options, the Complainants had mentioned their funds, the risks attaching to them and that it was they who had indicated to the Agent at that time, "*that we might move the investments to medium to low risk funds.*"

/Cont'd...

It appears from the evidence available that it is only at this point, in May 2015, that the Complainants sought to follow up on their inclinations in this regard and more specifically enquired of the Agent, about *“products that may fulfil our needs”*.

The Complainants have submitted that, in fact, a further meeting with Mr R had taken place in early **May 2015**, which was not accounted for in the Preliminary Decision of this Office. The Complainants submit that within the above email of 30 May 2015, they are in fact referencing two separate meetings, the first line referring to the meeting of November 2014 and the latter part of the email referring to a further meeting which took place in May 2015. The Provider contends that no such meeting took place. Neither party have supplied a record of such a meeting or any correspondence regarding an arrangement of same.

The Complainants have submitted, with regard to their email of 30 May 2015, that

“The third part of the email clearly refers to the early May meeting when we refer to speaking to [Mr R]. We never indicated [previous advisor] attended that meeting. [Mr R’s] recollection statement to the ombudsman indicates we did not discuss investments at the Nov 2014 meeting (see attachment Statement from [Mr R]). This would further indicate that there had to have been an early May meeting as if we did not talk about investments at the November 2014 meeting when would we have spoken about them if there was no early May meeting.”

It is unclear what the Complainants’ position is in this regard; initially they submitted that the investments had been discussed in November 2014 but this most recent submission seems to suggest an acceptance of Mr R’s statement that there was no such discussion at that time. In any event, it appears that it was from May 2015, when the Complainants followed up with enquiries to Mr R, about switching funds.

By email dated **02 June 2015**, the Agent responded to the Complainants’ email of **May 2015** with advice on the Pensions element of the Complainant’s query and further advised that:

“If you send me an authorisation, signed by both of you, I can look at your investment. Can you quote the plan number on it.”

The First Complainant responded on the same date with a follow up query regarding his pension options and also asked whether they needed *“to send a signed letter of authorisation to you by post or can we scan a signed email to you”*

The Agent responded on the same date confirming that *“a scanned letter is fine”* and went on to address the pension query.

The First Complainant emailed the Agent again on **16 July 2015**:

*Hope you received the scanned authorisation from us ok.
With reference to the day we met up we had discussed our [Provider] funds with you with the view of looking at more secure and stable funds at this stage based on possible retirement in the next 2/3 years.*

/Cont’d...

I have not moved my PRB as of yet but hope to do so in the very near future. With that in mind the [Employer] DC Scheme has 8 different funds available to invest in and I would appreciate if you could give me some guidance as to the best funds to put my PRB in. the funds available are as follows:

[List of 7 Named Funds]

Look forward to hearing from you.

[Complainants]

As noted above, it appears that Mr R of the Provider received the requisite authorisation from the Complainants in or about **September 2015**.

On **21 July 2015** the Agent had emailed the Complainants, asking the First Complainant to ring him. A meeting was rescheduled and ultimately took place between the parties on **18 September 2015**. On this date the Complainants were furnished with a booklet containing details of the Plans which they held, the funds they were invested in and a list of the funds which were available to switch to, within each plan.

A Report issued to the Complainants, addressed to the First Complainant, on **24 September 2015**, following on from the meeting which had taken place. This referred to the fact that the First Complainant had advised, among other things that:

- *You have cash deposits of €67,000, and €114,000 in various [Provider] Investment Bonds, details of which I provided you*
- *You have a Defined Contribution Occupational Fund with a value of €813,000, relating to your current employment*
- *You are to be made redundant on the 31st October, and will receive a lump sum payment of €154,000, which will not involve you waiving your pension lump sum.*

It went on to identify:

“Your primary concern is to engineer an income after redundancy of €60,000 per annum, approximately €3,800 per month net. This is a joint income requirement and [Second Complainant] will continue to work. You indicated that you were not interested in considering an annuity at this time, but would instead prefer to purchase an ARF after taking your maximum lump sum.”

[emphasis added]

After taking redundancy, you will have the following assets (all figures are approximate and are for discussion purposes only):

- *ARF/AMRF €600,000*
- *Cash Current €67,000*
- *SCSB €154,000*

/Cont'd...

- Pension Lump Sum €200,000 €421,000
- Invested Funds €114,000
- [Second Complainant's] land/property €40,000

The report went on to state that:

"In the risk assessment, you both classified as a "3" conservative investors. The full description is below. The assessment should be used when considering both your ARF and invested funds. Our recommendation for the investment of funds is [M], and I am enclosing a factsheet which outlines the workings of this fund...

In relation to the ARF the charge structure would be as follows:

Allocation Rate

Early Exit Penalties

Years 1-3 5%

Year 4 3%

Year 5 1%

Annual Management Charge – Standard Funds 1.25%

Additional – [M Fund] 0.15%

In relation to an investment bond, the charge structure would be as follows, provided the initial investment amount exceeds €250,000:

Allocation Rate 101%

Early Exit Penalties

Years 1-3 5%

Year 4 3%

Year 5 1%

Annual Management Charge – Standard Funds 1.25%

Additional – [M Fund] 0.15%

From the above it appears that additional funds were to become available to the Complainants, for investment purposes and that it was in this context, that [Fund M] was recommended to them.

The Agent contacted the Complainants on **12 October 2019**, following up on the meeting and asking if they were ready to meet again as he was *"conscious that [First Complainant] you are leaving at the end of the month."* The Complainants responded by email of **13 October 2015** that they had:

"Understood from our last meeting that we would hear back from you with proposals in relation to our finances and a possible meeting would follow. Our most immediate concern was our investments with [the Provider] which you recognised yourself were in somewhat high risk funds. We were looking at changing them to [Fund M] and because the investments are already with [the Provider] and have been for many years that we would hope that you would take that into consideration with the cost of switching.

We will wait to hear back from you on both pension and investment proposals."

/Cont'd...

The Agent, on **14 October 2015**, confirmed that he had reviewed the pension options and the investments and *"thought we were planning to meet to go through it?"*

The Complainants have submitted that they had not received the report at this time. They say that:

"the report dated 24th September was not received by us until late October, ref. our email 13th Oct and [Mr R's] submission to you where he stated the report was not received and sent a second time. His emails of 12th and 14th October do not apply as we had not yet received his report."

Having received no response to his previous email, the Agent wrote to the Complainants by email of **11 November 2015** saying, *"I'm following up our meeting and my letter. Have you decided how you want to proceed?"*

The First Complainant replied to the Agent's email on **16 November 2015**, stating that he was:

*Waiting to hear back from [pension administrator] on my pension options. Seems to be taking them a while!
As discussed with you I was anxious to move my [Provider] investments from the higher risk funds to lower risk, possibly [Fund M]. I had suggested and hope that because our funds are already with [the Provider] for a length of time that you would take that into consideration and not charge full cost of transferring to [Fund M]
I had also asked for a review of our life policy based on the fact that we do not have dependants as such now.*

The Agent responded on the same date that, *"I'll have to see if I can get a concession. I'll be in [location] tomorrow and can get my file."*

The Agent then reverted on **18 November 2015**, advising that he had gone through their investments and had requested the charges. He went on to note that overall his advice was that it would be more advantageous to the Complainants to switch to a fund which was available to them within their Plans, to avoid incurring a fee. Further, as the investments were taken out prior to 2001, the tax arrangements attaching to them was more advantageous to the Complainants than their switching to a plan in which [M] was available. He stated:

I've just gone through your investments. I have requested the charges, just so I can do a comparison for completeness. However, I note that they were all taken out prior to 2001. Therefore the tax is paid on a 'net roll up' basis. This means that the tax is paid continuously as the fund grows. If you were to move them to a fund in which [M] is available, they would be taxed on a 'gross roll up basis'. This means that the tax would be paid on exit (or every 8 years if not encashed). There is a considerable advantage to you remaining on a net roll up arrangement, so I feel the best advice would be to try to suitably invest you in funds available within your existing contracts. We might handle the risk in the portfolio by including these and the ARF as a totality but I'll go through this when we meet."

/Cont'd...

Notably, the Complainants replied on **19 November 2019** that they:

“Thanks [Agent] for that. Will go along with what you have said and we’ll have a look at possibly combining the investments with ARF. Whatever is going to keep the cost and risk the lowest.”

The Complainants have submitted that within the Preliminary Decision of this Office:

“The ombudsman has made an error in relation to our email of 19th November where we said we would go along with what [Mr R] had said which was combining investments with ARF if this was to keep the costs and risks at the lowest, we were not agreeing to leaving our investments in our original contracts which were deemed to be high risk.”

I accept that the Complainants were not agreeable to leaving their investments within their original funds as they did not reflect their risk appetite. However, I also note that the advice of the Agent was that *“the best advice would be to try to suitably invest you in funds available within your existing contracts”*.

The Agent followed up on **02 December 2015** asking the First Complainant, to confirm what his plan was in relation to his pension as he was looking at his diary and in case the Complainant *“wanted to make any arrangements this side of the break”*.

The Complainant responded to the Agent’s email of **02 December 2015**, confirming that he would let him know as soon as he had heard from the pension administrator and they could arrange a meeting then. He stated:

*I was in contact with [pension administrator] today and they have said it will take a few weeks before they have my options ready.
Just wondering if you had a look at our [Provider] investments with a view of lowering their risk and what options there might be.
Will let you know from [pension administrator] and we can arrange a meeting then.*

There does not appear to have been any further communications between the parties. The Complainants submit that they had *“lost faith”* at this point. They have submitted that as the Agent did not revert with information on the fees issue, they were not in a position to make an informed choice at that point.

Fund Switch

The next item of correspondence between the Complainants and the Provider was a *“Fund Switch Request”* from the Complainants, by way of a letter signed and dated by the Complainants **07 February 2016** stating:

Please note that we wish to enact a fund switch on the above Policy with immediate effect.

/Cont’d...

*We request that all our units which are currently invested in the following funds:
[3 Named Funds]
Are transferred 100% into [Fund M]
Please advise [independent financial intermediary] that request has been granted.*

The Provider responded to the Complainant's independent financial intermediary, on **10 February 2016** that:

*Dear [Financial Adviser]
As per our telephone conversation the [M] funds are not available on this product.
The funds that are available are as follows:
[List of Named Funds]*

On **15 February 2016** the Complainants' independent financial intermediary then emailed the Provider, requesting:

In accordance with our client's instructions, can you please switch all current funds into 100% [C] Fund with immediate effect.

By letter dated **17 February 2016**, the Provider issued letters to the Complainants confirming the switch of Funds on Plans -223, -628 and -579.

The Complainants subsequently cashed all three plans in, in **June 2016**.

Fund Value at the time of Switching

The Complainants have submitted Annual Benefit Statements in respect of the Plans which issued to them in **February, May** and **October 2015** respectively:

-**223** confirmed fund value of €51,050.22 as at **13 October 2015**
-**628** confirmed fund value of €32,466.49 as at **12 February 2015**
-**579** confirmed total fund value of €18,628.04 as at **06 May 2015**
(**€102,144.75** in total)

When the Complainants furnished Switch Instructions to transfer their investment to [C] Fund, dated **15 February 2016**, the Provider issued confirmation of the switch on **17 February**. The Fund Values at the time were:

Plan 223 - €48,979.41
Plan 628 - €31,053.92
Plan 579 - €16,880.50 (**€96,913.83** in total)

This represents a total drop in value of **€5,230.92**, over the period of some 3 months, 12 months and 9 months, respectively.

(The value of Fund **223** had dropped by €2,070.81 between **October 2015** and **February 2016**. Fund **628** had dropped by €1,412.08 between **February 2015** and **February 2016**. Fund **579** had dropped by €1,747.54 between **May 2015** and **February 2016**.)

/Cont'd...

The Complainants then made the decision to encash each of the Plans 223, 628 and 579 and completed a withdrawal form on **03 June 2016**. By letter of **09 June 2016** the Provider confirmed that the amounts of €48,979.41 (223) €31,053.92 (628) and €16,880.50 (862) were the values of the Plans and the amount to be credited to the Complainants. (**€96,913.83** in total)

Within their Complaint Form to this Office, the Complainants asserted, but without furnishing any further details or documentation in this regard, that the investments had “peaked to higher values than stated” in the annual benefit statements they received and that “based on the highs of 2015”, they “estimate” that they suffered a loss of €10,800, as a result of the Provider’s acts or omissions.

After this Office issued a Preliminary Decision to the parties regarding this complaint, the Provider was requested to supply details of the relevant fund values between November 2014 and February 2016.

The Provider furnished the following details regarding the Complainants’ Investment Plans:

Plan -223

The Complainants were invested as follows;

1,161.87 units in the [Fund InE]

866.91 units in the [Fund IE]

2,448.92 units in the [Fund AM]

The value of their plan on the 1st of each month was as follows;

	[Fund InE]	[Fund IE]	[Fund AM]	Total Value
Nov-14	€11,244.57	€11,477.02	€22,170.07	€44,891.66
Dec-14	€11,420.02	€12,203.49	€22,402.72	€46,026.23
Jan-15	€11,781.36	€12,575.40	€22,730.88	€47,087.64
Feb-15	€12,221.71	€13,166.63	€23,678.61	€49,066.95
Mar-15	€12,900.24	€14,486.07	€24,547.97	€51,934.28
Apr-15	€13,124.48	€14,635.17	€25,050.00	€52,809.65
May-15	€12,911.86	€14,744.41	€24,844.29	€52,500.56
Jun-15	€13,161.66	€15,285.36	€25,143.06	€53,590.08
Jul-15	€12,787.54	€15,567.04	€24,589.61	€52,944.19
Aug-15	€12,816.59	€13,470.39	€24,854.09	€51,141.07
Sep-15	€11,863.85	€15,582.12	€23,234.62	€50,680.59
Oct-15	€11,777.88	€14,967.20	€23,250.05	€49,995.13
Nov-15	€12,682.97	€15,739.62	€24,503.89	€52,926.48
Dec-15	€13,245.32	€16,776.44	€25,123.47	€55,145.23
Jan-16	€12,529.61	€16,649.00	€24,437.77	€53,616.38
Feb-16	€11,989.34	€15,816.77	€23,703.09	€51,509.20

/Cont’d...

Plan -628

The Complainants were invested as follows;

3,323.76 units in the [Fund AM]

The value of their plan on the **1st of each month** was as follows;

	Total Value
Nov-14	€30,089.99
Dec-14	€30,405.76
Jan-15	€30,851.11
Feb-15	€32,137.44
Mar-15	€33,317.37
Apr-15	€33,998.74
May-15	€33,719.54
Jun-15	€34,125.04
Jul-15	€33,373.87
Aug-15	€33,732.84
Sep-15	€31,532.51
Oct-15	€31,555.78
Nov-15	€33,257.24
Dec-15	€34,098.45
Jan-16	€33,167.80
Feb-16	€32,170.67

Plan -579

The Complainants were invested as follows;

750.77 units in the [Fund AM] and

1.041.49 in the [Fund VM]

The value of their plan on the **1st of each month** was as follows;

	[Fund VM]	[Fund AM]	Total Value
Nov-14	€9,634.82	€6,796.72	€16,431.54
Dec-14	€9,735.85	€6,868.04	€16,603.89
Jan-15	€9,881.66	€6,968.65	€16,850.31
Feb-15	€10,327.41	€7,259.20	€17,586.61
Mar-15	€10,754.43	€7,525.72	€18,280.15
Apr-15	€10,989.80	€7,679.63	€18,669.43
May-15	€10,892.94	€7,616.56	€18,509.50
Jun-15	€11,046.04	€7,708.16	€18,754.20
Jul-15	€10,784.62	€7,538.48	€18,323.10
Aug-15	€10,896.07	€7,619.56	€18,515.63

/Cont'd...

Sep-15	€10,092.04	€7,109.79	€17,201.83
Oct-15	€10,090.99	€7,127.81	€17,218.80
Nov-15	€10,694.02	€7,512.20	€18,206.22
Dec-15	€10,998.76	€7,702.15	€18,700.91
Jan-16	€10,648.19	€7,491.93	€18,140.12
Feb-16	€10,272.22	€7,266.70	€17,538.92

The Complainants' response to the information furnished was that

"In relation to our investments and based on figures supplied by [the Provider] it is clear, not as [the Provider] has stated that we had no loss, but that we have incurred a substantial loss. Based on the surrender value of 17th February 2016 (€96,913.83) and the highs of 2015 (€107,944.59) we estimate we have incurred a loss of €11,030.76.

...We feel based on their performance we should be fully reimbursed and compensated for our losses."

It is important to note that the basis of the Complainants' complaint is that they were lower risk investors than was reflected in the risk profiles of the investments in which they were invested and that they had wished to reduce their risk profile but that as a result of a failure by the Provider to advise them in a timely fashion about de-risking options, they have incurred losses.

Having had regard to all of the evidence in this regard, I do not however consider that this complaint is borne out. Significantly, I am satisfied that the Plan/fund performance values set out above for the relevant period do not indicate a "loss". In fact, each of the Plans were higher in value in February 2016, when they first sought to encash them, than they were in November 2014, when the Complainants submit that they first made enquiries about changing investments. This does not demonstrate that they incurred a "loss" on their investments, as a result of having been invested in higher risk products than was appropriate to their categorisation as conservative/level 3 investors and the Provider's actions, prior to their switching investments.

I would also note as an aside that, as regards purported delays on the part of the Provider during the period in question, that the figures that the Complainants are pointing to as "*the highs of 2015 (€107,944.59)*" appears to be derived from the fund performance figures of December 2015.

The Complainants have submitted that the Provider did not pay sufficient attention to their requests to "*de-risk*" their investments and that "*each response from [the Provider] was biased toward [the First Complainant's] imminent ARF investment*".

Having had regard to the correspondence and evidence before me, I consider however that the detailed information provided by the Agent in relation to the First Complainant's retirement options were as a result of the Complainants having expressly requested ongoing information and advice from the Agent in this regard.

/Cont'd...

In terms of the timelines involved the Complainants have stated that:

“In November 2014, we were talking about de-risking our investments and by November 2015 [the Agent] was talking about leaving the funds where they were and combining them with the ARF which means a whole year had gone by and nothing had been done when it should have been simple to move the investment to [Fund M] as was discussed.”

Having had regard to the timeline and interactions between the parties, I do not consider it accurate to suggest that *“a whole year had gone by and nothing had been done”*. Neither, do I consider that it was advised to the Complainants that their investments could *“simply”* have been moved to [Fund M], as they suggest.

The recommendation of Fund [M], within the Report which issued to the Complainants on **24 September 2015**, appears to have been made at that time, in the context of the First Complainant’s upcoming retirement, and the funds which were to become available to the Complainants and could be used for a new investment. It appears that this was a cause of some confusion, however. Taking into account all of the circumstances, and the course of dealings between the parties, I consider that clearer communication from the Provider would have been beneficial.

In relation to the Complainant’s query regarding a switch to [Fund M] from their existing investments, in circumstances where the Agent had indicated that he would confirm details of the charge which would arise as a result and whether the Complainants may be granted a concession, he ought to have proceeded to do so. It does not appear from the correspondence before me that the Agent did revert with confirmation to the Complainants that they could not swap without incurring a fee, that the fee would not be waived, or to confirm what the charges would be.

I also accept, however, that the Agent said it would be bad advice to take this route and the Complainants had responded that they would follow his advice in this regard (to switch to another policy within the options available under their existing contracts). It may therefore have been misconstrued by the Agent that there was no need to follow on with details of the potential charges.

The Complainants further submitted that

“the ombudsman could have independently checked that the funds available to us in our original contracts were suitable for medium to low risk investors as we did with an independent advisor who confirmed that [the Provider’s] original advice was that these funds other than the cash fund were all high risk.”

The Provider was subsequently requested by this Office to confirm the risk profile attaching to those funds which were available to the Complainants to switch to, within their existing contracts at the relevant time. I note however that whilst the Provider responded with information as to respective fund performances, it did not identify the levels of risk attached to each of the funds.

/Cont’d...

The information supplied by the Provider:

Funds available to switch into	Performance between 1 November 2014 and 1 February 2016
[Fund AM]	6.915%
[Fund C]	0.00%
[Fund EE]	0.461%
[Fund FEE]	2.591%
[Fund HI]	9.087%
[Fund InE]	6.656%
[Fund IM]	6.878%
[Fund IE]	37.813%
[Fund NAE]	8.772%
[Fund PMG]	27.770%
[Fund SM]	4.326%
[Fund UE]	-1.118%
[Fund VM]	6.616%

I consider it unsatisfactory that the Provider has not made available the risk categorisation attaching to each of the funds in question and I agree that the risk profiles associated with each of funds would have been important information for the Complainants to have had regard to, when considering switching funds.

Whilst the Provider's position is that the Complainants had agreed to review the funds available for switching into and to then get back to Mr R with a decision, and that they never came back with a decision, I agree with the Complainants' contention that it would have been appropriate for the Provider/Mr R. to have identified the risk profiles attached to the list of the funds available for switching, within the information provided to them at the time, to assist them in making a decision on a switch.

I note however that this issue was not raised by the Complainants with the Provider at the time. I also accept that it was Mr R's intention to meet with the Complainants to look at the various options available to them and discuss the matter further, as can be seen from the above emails. However the Complainants subsequently ceased communicating with Mr R in December 2015.

Having had detailed regard to all of the evidence before me, I consider that the communication of the Provider could have been clearer in the above outlined respects. For the reasons set out above however, I do not accept that "*inaction and procrastination*" on the part of the Provider regarding the Complainants' wish to reduce the risk profile of their portfolio, caused the Complainants loss on their investments. I do not consider that there is therefore any basis upon which it would be reasonable to for uphold this aspect of the Complainants' complaint.

On the basis nevertheless of the identified shortcomings on the part of the Provider, in the level and/or standard of its communications, the standard of information it provided to

/Cont'd...

the Complainants, and its poor standard of record keeping, which I have set out above, I consider it appropriate to partially uphold this complaint.

For those reasons, as outlined above, I consider it appropriate to direct a compensatory payment by the Provider to the Complainants in the amount of €1,500 to conclude.

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 Complainants in the sum of €1,500, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants 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.



**MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

13 November 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.