



<u>Decision Ref:</u>	2021-0195
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Shares/Equities Investment
<u>Conduct(s) complained of:</u>	Failure to provide product/service information
<u>Outcome:</u>	Partially upheld

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

The Complainant entered a pension plan with the Provider during **2017**. In **December 2018**, the Complainant raised certain queries regarding the application of a fund management charge to his pension plan.

The Complainant's Case

The Complainant explains that in **2017** his previous pension plan was wound up by its trustees and that he transferred these pension funds to the Provider with the assistance of a broker. The Complainant says he negotiated an agreed management fee of 1.05%, shared between the broker and the Provider. When the Complainant reviewed his annual statement from the Provider, he says he noticed that the management fee was stated as 1.10%, and this resulted in his query regarding the amount of fees being charged by the Provider.

The Complainant says the amount is not insignificant as the annual management fee is in excess of €5,000. The Complainant says the Provider's response was that it could not provide evidence that the management fee was being correctly charged, that the Complainant would have to "*trust the figure is correct*", and that the Provider was subject to scrutiny from the Central Bank of Ireland.

The Complainant says he finds it unacceptable "*in this current environment of finance house errors*" that the Provider cannot demonstrate to him the exact amount of charges being applied to his pension, that he has to trust the Provider, and cannot be provided with an accurate annual benefit statement.

The Provider's Case

The Provider says that the Complainant's 'Welcome Pack' consisted of the following documents:

- Plan Schedule,
- Plan Booklet,
- Fund Guide,
- Terms and Conditions,
- Customer Information Notice,
- Explanation of the Customer Information Line and Online Services.

The Provider refers to page 3 of the Welcome Pack document which it says informed the Complainant that the fund management charge applicable to his plan was 1.05%. However, the Provider says that page 38 of the Fund Guide and page 23 of the Terms and Conditions, clearly stated the standard fund management charge for the Complainant's fund (the **Fund**) was 1.10%.

In terms of the Complainant's position that it was originally agreed in a document dated **13 June 2017** that a 1.30% standard charge was to apply, the Provider says the document to which the Complainant refers is the original Welcome Pack which issued to the Complainant. The Provider advises that this incorrectly noted a total fund management charge of 1.30%.

The Provider says it was notified of this error on **19 June 2017** and alerted to the charges which should apply. The Provider says the correct document subsequently issued to the Complainant on **22 June 2017**.

In terms of referring the Complainant to his broker or financial adviser in respect of information requests, the Provider explains that specific payment amounts between the Provider and an independent broker or financial adviser are not for the Provider to disclose to a third party, and it is for this reason that customers are referred to their broker or financial adviser, who can, in turn, decide whether or not to provide the information to a customer.

Addressing the Complainant's position that the Provider expects him to trust that an estimated costs figure of €8,015.89 accurately reflects the exact management charges or fees applied to his plan, the Provider says it is important to note that fund management charges are not applied at plan level in that they are a charge to the Complainant's plan. Rather, the Provider says, the charges are applied at fund level (that is, on the fund as a whole), prior to the unit price being set by the Fund Managers.

The Provider says this means that the 1.10% fund management charge is applied to the value of the fund as a whole; that is, on the total units held within the fund by all investors invested in the same manner.

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In situations where a lower fund management charge had been agreed with a customer, the Provider says the same standard fund management charge continues to apply to the overall fund. However, the Provider reduces the impact of the higher standard charge by applying rebates to a customer's plan which brings the impact down to the agreed level.

Therefore, in the Complainant's case, the Provider says it applies a unit rebate in order to reduce the impact of the overall fund management charge (1.10%) by 0.05%. The Provider states that this ensures the impact of the charge to the Complainant is 1.05%.

With respect to being able to confirm the Complainant's exact fund management cost in monetary terms, the Provider says this would involve it calculating the costs for each day since the investment started. The Provider advises this would involve obtaining the value of the fund for each day as well as the unit holding for each day. As unit holdings can change on a daily basis with customers purchasing and selling units, the Provider says it is not feasible to do this.

The Provider says it is for this reason that in the event it provides a monetary figure for any fund management costs to date, these are always approximate figures.

Later in its Complaint Response, the Provider says that bearing in mind the fund management charge is a percentage of the overall fund value and the different levels of unit holdings that can be in place from one day to the next, it is not possible for the Provider to gather the requested information retrospectively and provide figures which are 100% accurate, and states that these will always be estimates.

The Provider says the fact that the charge in question would be a percentage of the overall fund value and that the unit price of the fund on any given day would be adjusted to reflect the charge, was made clear to the Complainant when his plan started and forms part of the contract into which he entered when he applied for the plan.

The Provider says it is its responsibility to administer the plan or fund in accordance with the governing terms of the investment and the figures agreed with the Complainant beforehand. The Provider states that it has no reason to doubt that any charges to date have not been calculated or applied correctly by the Fund Managers. The Provider states that it will continue to manage the Complainant's chosen fund in accordance with the original agreement and the Terms and Conditions.

The Provider advises that had the Complainant been unhappy with this aspect of his investment or the fact that he would have to trust the Provider's Fund Managers to manage the fund, it would be the Provider's expectation that the Complainant would not have proceeded with the investment. Rather, the Provider says, the Complainant would have cancelled it during the cooling-off period. The Provider submits that the fact this was not the case indicates that the Complainant was satisfied to proceed with the plan, in the knowledge that his charges would apply as a percentage of the overall fund and trusted they would be applied correctly.

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The Provider says it cannot comment on what the Complainant was advised of by his financial adviser in terms of fund management charges. However, the Provider refers to section 7.1, 'Fund Charges', of the Fund Guide and section 5.5 of the Terms and Conditions which were sent to the Complainant. The Provider says in light of these provisions, it is satisfied that it was clear in advising the Complainant that fund management charges would be applied before the daily unit price would be set and that the charge would be a percentage of the overall fund value.

The Provider says it is also satisfied as to how fund management charges are applied and notes that this process is not exclusive to the Provider, rather, it is the same across the industry.

In terms of the application of rebates, the Provider says the Complainant was provided with this information in the Terms and Conditions. Referring to the Plan Schedule, the Provider says it was confirmed that the total fund management charge that would apply to the Complainant's plan was 1.05% per annum which is clearly less than the 1.10% noted in the Fund Guide.

With this in mind, the Provider refers to section 5.4 of the Terms and Conditions and says it is satisfied that the Complainant was made aware that the lesser charge applicable to his plan would be facilitated by the application of unit rebates. The Provider also says that unit rebates have been applied to the Complainant's plan since its inception in **2017**.

In respect the Annual Benefit Statements, the Provider explains that the information recorded on these statements is pulled from various sections of its system. However, the levels of management charges are not recorded on the system as these are product/fund specific rather than plan specific. It is for this reason, the Provider says that the fund management charge noted in the Annual Benefit Statement does not consider any particular arrangement between the Complainant and the Provider, other than to provide a total of the rebates applied in the previous 12 months in the form of the 'Plan Bonus'.

The Provider says it is important to note that all documentation provided to the Complainant when his plan started was clear in setting out that while a fund management charge of 1.10% applied to his chosen fund, rebates would be applied to his plan to reduce the impact of this charge to 1.05%. The Provider says it should also be considered that the Complainant's Annual Benefit Statement noted a sum of money being credited to his plan over the previous year representing the rebates which applied.

The Provider says it is therefore satisfied that the Complainant would have understood that the charge noted was for the fund in question and not the actual charge which formed his contract with the Provider.

The Complaints for Adjudication

The complaints are that the Provider has:

Failed to adequately or clearly demonstrate the accuracy of the fund management charge, and the application of this charge, to the Complainant's Plan;

Failed to provide the fund management charge as a monetary amount as opposed to a percentage applied to the Fund; and

Stated an incorrect or inaccurate fund management charge on the Annual Benefit Statements provided to the Complainant.

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 15 April 2021, outlining my preliminary determination 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.

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Following the issue of my Preliminary Decision, the Complainant made a submission under cover of his e-mail to this Office dated 26 April 2021, a copy of which was transmitted to the Provider for its consideration.

The Provider has not made any further submission.

Having considered the Complainant's additional submission and all submissions and evidence furnished by both parties to this Office, I set out below my final determination.

Plan Documents

The Provider wrote to the Complainant on **22 June 2017** enclosing his Plan Welcome Pack, as follows:

"... Your welcome pack contains important information about your plan and we recommend you study these documents carefully to make sure the benefits are in line with your expectations. This pack includes the following:

- *A copy **plan schedule** ...*
- *An ... **PRB booklet** ...*
- *A **Fund Guide** ...*
- *A **terms and conditions booklet** ...*
- *A detailed **customer information notice** ...*
- *An explanation of the benefits of Customer Information Line and Online Services.*

..."

Behind the Plan Schedule is a document headed 'Details of other charges' and states as follows:

"...

Fund(s) Chosen	Unit Price	Units purchased	Fund Split	Yearly Fund Manager Charge	Yearly Administration Charge	Yearly Adviser Payment	Total Charges
[Fund]	0.250%	0.450%	0.350%	1.050%

Your fund details

The Yearly Fund Manager charge relates to the cost of managing the fund(s) you are invested in.

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The Yearly Administration charge relates to the costs of administering your policy.

The Yearly Adviser Payment relates to the remuneration payable to your adviser. ...

Please read your Terms and Conditions booklet for more details on the above charges or speak to your adviser.

...

Full details of the benefits and charges attaching to your plan are detailed in your Terms and Conditions booklet.”

Section 8 of the Customer Information Notice advises as follows:

“Variable charges

Funds are administered at an overall level by [the Provider]. For some funds, a part or all of the assets may be managed by companies (fund managers) other than [the Provider]. There are charges taken from these funds by both [the Provider] and these fund managers.

The fund managers take costs and charges from the assets they manage. ...

The level of the charges as a percentage of the overall fund can vary for several reasons.

...

Your Fund Guide contains details on all fund charges, including an example of the average fund charge for funds with variable charges, based on certain underlying fund mixes. ...”

In the PRB Booklet, the reader is advised at page 8 that the Plan may not suit an investor if, for example, they are not happy with the charges and choice of funds available. Section 4 of this booklet deals with Plan charges and states in respect of fund management charges as follows:

“Estimated Yearly Fund Manager Charge

This estimated charge will be shown on your schedule and is calculated as a percentage of your fund value at a given time.

It can be different for each fund you are investing in. The charge for each fund is shown in your separate ... Fund Guide”

Section 7 of the Fund Guide contains certain 'Fund Manager Charges Information' and states as follows:

"7.1 Fund Charges

This charge is calculated as a percentage of your fund value. It can be different for each fund that you are invested in. The fund charge for each fund is shown in Section 9 of this booklet and is reflected daily in the unit price of each of the different funds you have invested in. It is made up of 3 different charges as follows:

- (a) Estimated average fund manager charge ...*
- (b) Yearly administration charge*
- (c) Yearly adviser payment**

...

7.2 Estimated Average Fund Manager Charge

The estimated average fund manager charges shown in Section 9 are our best estimate of the total charges which we expect to apply to your fund over the long-term. The actual level of fund manager charges may be higher or lower than this. The reasons for this are explained later in this section.

If you receive a Client Information Notice ... for the purposes of the table of benefits and charges, [the Provider] use an estimated average level of the fund manager charge for each of the funds. However, this is as an example only and is not a contractually fixed charge. The fund managers deduct their costs and charges from the assets they manage. These charges are reflected in how the fund performs. The level of the charges, as a percentage of the overall fund, can vary for several reasons including:

- Where a fund invests in other funds, the overall fund charge will vary according to the proportion of the fund invested in each of the underlying funds and the specific charges for these funds. The underlying funds may also change in the future and different charges for the new funds may lead to overall fund charge changing.*
- A fund manager may charge a performance fee if they achieve certain investment returns on the funds they manage ...*
- The costs associated with managing a fund may vary and change over time. These costs include, for example, license fees where funds track a particular index, legal, accounting and marketing costs.*

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- *A fund may borrow to increase the amount of assets that the funds can invest in. Borrowing increases the chance of achieving improved returns if the assets perform well. However, it also increases the level of risk of the investment. The charges in relation to investments are based on the total value of the assets held including any borrowings made rather than on the funds they manage. The level of these charges as a percentage of the funds managed will depend on the amount of borrowings relative to the value of the assets held. If the level of borrowing increases by more than the value of assets, the level of charges as a percentage of funds managed would increase. For example, a significant fall in asset values could result in a significant increase in the average level of this charge as a percentage of funds managed. This is because a fall in asset values means that the amounts borrowed would represent higher percentage of the fund value.*
- *Equally, if the level of borrowing reduces by more than the value of assets, then the level of charges as a percentage of funds managed would also reduce. For example, a significant rise in asset values could result in a significant reduction in the average level of this charge as a percentage of the funds managed. This is because the rising asset values means that the amounts borrowed would represent a lower percentage of the fund value.*
- *Some funds can employ active asset allocation strategies to vary the portion of the fund invested in different asset classes or underlying funds. Changes in the underlying asset mix or the cost of implementing the active asset allocation strategy may cause the overall fund charge to vary as a result. Please refer to your fund factsheet for details of the current charges applying to these funds. ...”*

Section 9 of the Fund Guide provides further information in respect of fund management charges, in particular, it states:

“The fund manager charges on some funds are variable which means they can be higher or lower than the charges shown. Accordingly, the “Estimated Average Fund Manager Charge” shown reflects the best estimate of the charge [the Provider] expect the fund will have to pay over the long-term. However, the actual fund manager charge can vary from the amount shown.”

The Plan’s Terms and Conditions booklet, set out the percentage charges applicable to the Complainant’s fund, including the fund management charge, at page 23 of section 4. At page 28 of this booklet, it states that:

“Estimated average fund manager charge

The estimated average fund manager charges shown above are charges which we expect to apply to your fund over the long-term. The actual level of fund manager charges may be higher or lower than this. ...

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Reasons why the fund manager charge may vary in the future:

As noted above, the fund manager charge can vary and therefore is not fixed throughout the lifetime of your plan. The fund manager charge noted in the above table reflects our best estimate of the total charges [the Provider] expect will be incurred by the fund over the long term. However, the actual charges you incur may vary for the reasons given below.

The fund managers take their costs and charges from the assets they manage. These charges are reflected in how the fund performs. The level of the charges, as a percentage of the overall fund, can vary for several reasons.”

This section of the Terms and Conditions proceeds to outline essentially the same reasons as those stated in the Fund Guide. Having set out the various reasons, this section of the Terms and Conditions continues as follows:

“Taking account of these factors, the estimated average fund manager charge will reflect our best estimate of the total charges we expect will be incurred by the fund over the long term. However, the total charge may be higher or lower than this depending on the factors outlined above.

It is possible that the charge on some funds may vary in the future and therefore will not be fixed throughout the lifetime of the plan.

Some funds invest in other funds and the proportion invested in each fund may vary over time. Since fund charges vary between funds, the overall fund charge will vary depending on the weighting of individual investments in each fund. If the charges on individual funds vary, the overall fund charge will vary as a result.”

At section 5.3 (at page 37) of the Terms and Conditions, it states:

“5.3 Yearly fund charge

This charge is calculated taken (sic) as a percentage of your fund value. It can be different for each fund that you are investing in. ... The total fund charge is reflected daily in the unit price of each of the different funds you have invested in. ...”

Correspondence

It appears that the Complainant first raised a query regarding the fund management charges being applied to his Plan during a telephone call with the Provider on **11 December 2018**. However, a recording of this call has not been furnished by the Provider.

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In a letter to the Complainant dated **12 December 2018**, the Provider explained as follows:

“Unfortunately we are unable to provide a monetary amount for the annual management charge of your plan as previously explained it is taken out of the fund as a whole and not the individual plan.

The fund management charge is taken account of the bid/offer spread price. These bid/offer prices are declared net of the fund management charge. ...”

In response to this, on **11 January 2019**, the Complainant wrote to the Provider as follows:

“You advise that you are unable to demonstrate that the actual charge being applied to my fund is as agreed. My understanding of the agreement is that the charge to be applied is 1.05% (a negotiated reduction of 25 basis points from the 1.30% originally indicated to me) following the transfer of my [previous] pension fund to [a Provider] fund ...

I was also advised during the call of the 11th that the increase of 15.13 units in my plan per month was a rebate. I was advised that the reduction of 25bps referred to above was represented by the addition of c. 15 plan units per month to my original purchased units i.e. that I am charged the full value, but a rebate is applied to cover the negotiated reduction.

I have a number of issues that I am unhappy about and require further detailed clarification.

Firstly, I find it unacceptable that a significant charge (c. €5k pa in monetary terms) being applied to have a fund value of c €450k is not transparent and that [the Provider] cannot demonstrate to me that the charges applied are correct. This flies in the face of all Consumer Protection expectations regarding transparency and financial charges and is well below the standards that I would expect to be in place. I must insist that you clearly demonstrate that I am charged the agreed value.

Secondly the suggestion that the rebate by way of the monthly addition of c. 15 units to my plan represents in the negotiated charge reduction of 25bps does not stand up to the mathematical scrutiny. My attempts to extrapolate the actual charge using this suggestion that 15.13 units equals 25bps, does not add up - literally. It suggests a gross annual charge equating to c. 944 units are a gross annual charge of c. 0.26% p.a.

Finally, in trying to obtain an understanding of the application of charges, I noticed that on p3 of the annual benefits statement issued in April 2018, a table shows a yearly fund charge of 1.10%. This is incorrect and not in line with the previously agreed charge of 1.05%, further heightening my concerns about what is being charged. ...”

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The Provider issued a 'Response Letter' on **5 February 2019**, as follows:

“ ...

You want to make sure the correct charges are being applied to your plan

I understand from your letter dated 11 January 2019 that you received a reduction in management charges from 1.30% to 1.05% following the transfer of your pension from [the previous provider] to [the Provider]. My understanding is that you want to make sure the correct management charges are applying to your plan.

From my review of your file, I see your Financial Adviser ... agreed to leave the management charge at 1.05% instead of 1.30%. This meant that [the Financial Adviser] had agreed to take a smaller yearly payment of 0.035% instead of the standard yearly payment of 0.600%. The reduction in yearly payment allows for the 0.25% reduction that you had agreed with [the Financial Adviser].

However, I am unable to provide you with the payment amounts that [the Financial Adviser] receive. I would recommend that you contact [the Financial Adviser] directly and they will be able to review your request further.

As outlined in your Welcome Pack, which we sent you when your plan started, the current management charge that applies to your plan is 1.05%. However, I feel that it is important to explain that 1.05% is not a standard charge that usually applies to your [Plan]. The standard charge is usually 1.10%.

Therefore your Financial Advisor ... made a special arrangement for you to receive a management charge of 1.05%. This means that you will be charged the usual management charge of 1.10% and a rebate of 0.05% will be applied to your plan to allow for this arrangement. I refer you to Paragraph 5.4 where we explain that units will be added to your plan each month to reflect a reduction in your management charge.

...

You would like confirmation of the management charge as a monetary amount

I understand that you are requesting confirmation of the management charge as a monetary amount. Normally we do not provide the management charge in this format.

The management charge is deducted from the total funds, in your case the [Fund]. As the value of the funds change day to day it is not possible to provide the monetary amount day to day. We provide the amount of the management charge as a percentage as this does not change.

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The Annual Management Charge is applied to the fund as a whole and not levied on individual customers plan values directly. A separate calculation would have to be performed for each individual plan; this is not possible due to the volume of individuals invested in each fund.

We can explain this with the following simplified equation. The Unit Price of any fund is calculated daily by taking the total value of the fund divided by the total number of units in that fund on the day. This is the gross unit price. The Net unit price after the application of the Annual Management Charge is then calculated as follows:

$$\text{Gross Daily Unit Price} = \frac{\text{Total Value of Fund on the Day}}{\text{Total No of Units in Fund}}$$

$$\text{Net Daily Unit Price} = \frac{\text{Total Value of the Fund on The Day} - (1\% / 365)}{\text{Total No of Units in Fund}}$$

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

As stated above we do not usually provide this information due to the detailed calculations needed each time it is requested. In this instance I can confirm that between 9 June 2017 and 10 January 2019 the total estimated cost of the management charge on your plan was €8,015.89. It is not possible for us to provide this information during telephone calls and is not normally provided unless there is an exceptional circumstance.

...

You believe the correct rebate amount is not being applied to your plan

As explained previously in my response, the unit rebate that you were receiving does not reflect the 0.25% reduction that you had agreed with your Financial Advisor This reduction is reflected in the yearly advisor payment that [the Financial Adviser] receive.

The 0.05% Unit rebate that you receive each month is different than the 0.25% reduction that you agreed with [the Financial Adviser]. As outlined earlier the standard management charge on your [Plan] is 1.10%. This means that you will automatically be charged 1.10% even though your management charge should be 1.05%.

However to counteract this, you will then receive a unit rebate of 0.05% as unit additions to your plan each month to reflect this. I have provided the calculation of the unit rebate which is added to your plan on 10 January 2019 to show how the units are added each month.

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It is important to note that there are three separate fund elements to your plan; Employee Contributions, Employer Contributions and AVC Contributions. This means there is a separate calculation for each fund element. The formula for this calculation is as follows:

$$\text{Unit Rebate Calculation} = \frac{\text{Total Number of Units in Fund Element} \times 0.005}{12}$$

Fund Element	Units Before	Units Added	Units After
Employee Contributions	78,850.54	3.29	78,85.83 (sic)
Employer Contributions	196,897.20	8.20	196,905.40
AVC Contributions	87,332.23	3.64	87,335.87
Total	363,079.97	15.13	363,095.10

...

The incorrect management charge is noted on your Annual Benefit Statement

I can see in your letter of 11 January 2019 that you were concerned that your management charge is noted as 1.10% on your Annual Benefit Statement. I feel it is important to explain that the charges noted on any Annual Benefit Statement are the standard charges associated with your plan. As 1.10% is the standard charge for your [Plan], this is the charge that will be noted on your Statement.

Unfortunately the Annual Benefit Statements are not personal to your individual plan and do not note any special arrangements that may have been made on your plan with regard to the management charges. This is the reason why your management charge of 1.05% is not noted on your Statement.

I appreciate that our Statements should be less generic and should show any special arrangements that you have set in place. I am sorry this is not the case. However, I thank you for your feedback and I can assure you that I passed your feedback on to the relevant team.

Summary

...

It is important to note that the 0.25% reduction that you received is a reduction in the annual payment being paid to your Financial Adviser The 0.05% unit rebate reflects the adjustment of the management charge from 1.10% to 1.05%.

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I hope the calculations I have provided have assured you that the charges are correctly been (sic) applied to your plan. However there is also an element of trust to be expected with regards the correct charges being applied but it is important to remember that [the Provider] are audited and regulated by the Central Bank. ...”

This was followed by a further exchange of correspondence between the parties on **28 May** and **7 June 2019**.

Analysis

The Plan documentation issued to the Complainant as part of the Welcome Pack on **22 June 2017** explains that the fund management charge is an estimated charge and represents the Provider’s best estimate of the charge to be applied to the Complainant’s chosen fund. It is also explained that this charge is calculated on a percentage basis at fund level. The reasons why the fund management charge can vary and hence why it is an estimate is explained in the Fund Guide and the Terms and Conditions. This is the basis on which the Provider offered, and the Complainant accepted, the Plan.

I accept that the manner in which the fund management charge operates is adequately explained in the Plan documentation. However, as can be seen, a difficulty in calculating the precise amount of the fund management charge arises due to variable elements underpinning this charge, and because of this, the fund management charge is estimated by means of a fixed percentage of the fund value.

I note that the Provider explained in its Response Letter dated **5 February 2019** the manner in which this charge is calculated, provided the total estimated management charge for the period **9 June 2017** to **10 January 2019**, and explained the reason why it could not comply with the Complainant’s request for confirmation of the precise monetary amount in respect of this charge.

I understand from the Provider’s Complaint Response dated **28 May 2020** and the Response Letter dated **5 February 2019**, that it is possible to provide the information sought; however, this is quite an onerous task, which the Provider says, does not make it feasible to comply with these types of requests.

Owing to the manner in which the exact monetary amount of the fund management charge is required to be calculated, I accept that to provide such information would require the Provider to expend significant time and resources.

Further to this, in considering such a request, regard must be had to the fact that the Plan was offered and accepted on the basis that the fund management charge was an estimated charge, based on a percentage of the Fund value.

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In my Preliminary Decision I stated:

“In the circumstances of this complaint, I am not satisfied that the Provider is required to furnish the Complainant with exact figures in respect of the fund management charge. Leading on from this, I am not satisfied that the Provider has failed to demonstrate the accuracy of the fund management charge or the application of this charge to the Complainant’s Plan.”

In response to my comment above, the Complainant, in his post Preliminary Decision submission dated **26 April 2021**, states *“This is at the heart of my original complaint in that from my perspective the corollary is they have not definitely demonstrated the accuracy of the charge”*.

However, the Complainant details *“That being said, I am accepting that there is little point in pursuing the matter and accept the outcome”*.

He goes on to comment on my use of a double negative.

“I love the double negatives in para 15... it’s like a response to a ministerial question in the Dail”.

I accept that double negatives are not helpful and wish to clarify that I accept that the Provider is not required to furnish the Complainant with exact figures in respect of the fund management charge. Therefore, I do not accept that the Provider has failed, as has been asserted, to demonstrate the accuracy of the fund management charge or the application of this charge to the Complainant’s Plan.

There may be some basis for requiring the Provider to procure and furnish such information if there was a persuasive basis to suggest that the fund management charge was being incorrectly calculated or applied. This is not the case in relation to this complaint.

In terms of the Annual Benefits Statements, the Provider explains the reason the fund management charge of 1.10% is recorded on the Complainant’s statements and not his agreed charge of 1.05%, is that these statements are not personalised to reflect individually agreed terms such as in the present case.

The Provider’s evidence is that while the actual fund charge of 1.10% is stated in the Benefit Statements, the Complainant’s plan is effectively subject to a 1.05% charge as the 0.05% difference is accounted for by way of a rebate which is reflected on the statements as a ‘Plan bonus.’

In this respect, the Provider cites section 5.4 of the Terms and Conditions, as follows:

“In certain cases we may add extra units to your investment each month so we can reduce the effect of your fund charge.”

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Having considered the Terms and Conditions booklet furnished by the Provider, the above wording does not appear to be contained in section 5.4 and it is not clear where the Provider had gotten this version of section 5.4 from. Section 5.4 of the Terms and Conditions provided to this Office is titled 'Adjustments to yearly adviser payment' and does not contain any reference to rebates.

However, I accept that instances arise where the actual fund management charge is different from the fund management charge that applies to a customer's plan. Where the applicable fund management charge is less than the actual charge, such as here, the difference is generally made up by way of a rebate. In the context of this complaint, the actual fund management charge is 1.10%, however, the charge applying to the Complainant's Plan is 1.05%. As such, the Complainant receives a rebate of 0.05%. Further to this, the actual fund management charge is calculated by reference to the Fund value, whereas the rebate is calculated by reference to the Complainant's Plan value.

I accept that it is reasonable to account for differences in fund management charges by way of rebates. However, if such rebates are being applied to a plan and this is not an estimation, I believe it is reasonable to expect that the Provider would clearly show the Complainant the amount of his rebate and how it was calculated. Furthermore, I do not accept that it is reasonable to incorporate the rebate amount into the Plan Bonus on the Benefit Statement without first making clear that this is what the Plan Bonus comprises.

Looking at the **2018** and **2019** Benefit Statements, it is in no way clear that the Plan Bonus figure represents the rebates that have been applied to the Complainant's Plan. Therefore, I accept that this is likely to have caused confusion and concern for the Complainant in circumstances where the fund management charge was stated as 1.10% and not 1.05%. Furthermore, I believe that better efforts should have been made to properly identify and explain the amount of the rebate being applied to the Complainant's Plan and why the rebate was being applied.

For the reasons outlined in this Decision, I partially uphold this complaint and direct that the Respondent Provider pay the sum of €750 to the Complainant.

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 €750, 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**

16 June 2021

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.