An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2021-0300
Sector:	Investment
Product / Service:	Multiple Products/Services
Conduct(s) complained of:	Failure to provide correct information Dissatisfaction with customer service Maladministration Misrepresentation (at point of sale or after) Alleged poor management of fund
Outcome:	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants are company directors who make this complaint in their own name. The products at issue are described in the Complainants' submissions as occupational pension schemes and guaranteed income bonds. There are two principal elements of the complaint, the first relating to a guaranteed income bond that matured in 2011 and the second relating to the winding up of the Complainants' occupational pension schemes. The Provider, against which this complaint is made, acted as intermediary in relation to the pension schemes and investments that are the subject of the complaint.

The Complainants' Case

The documentation furnished to this office by the Complainants indicates that in June 2005, the Complainants invested in a geared investment with a life assurance Provider (the "**2005 bond**"). The Provider, against which this complaint is made was the intermediary. The Complainants explain that in 2006, they purchased a similar type financial service product from another life assurance Provider (the "**2006 bond**"), again with the Provider, against which this complaint is made, as intermediary. The Complainant states that both of these investments were either encashed or matured in 2009 and 2011 respectively.

Notwithstanding that any complaint concerning the advice given by the Provider to the Complainant at the time of the sale of the financial product in 2005 and 2006 may fall outside the jurisdiction of this office, the Complainant asserts that the Provider mismanaged the proceeds of the 2006 bond after it matured in 2011.

In its final response letter dated 4 April 2017, the Provider accepts that certain errors arose in relation to how it dealt with the maturity of that financial services product.

The Complainants argue that they invested €53,000 in June 2006 in a bond which matured in 2011 and despite numerous enquiries since that date, the Provider has been unable to categorically state the value of the investment or where the funds were. The Complainants argue that when an explanation was demanded in December 2016, the Provider informed them that the bond was encashed in 2014 and was worth approximately €11,000. The Complainants argue that they have not received any further communication on the whereabouts or the value of the investment.

The second element of the Complainants' complaint relates to the winding up of pension schemes associated with the company of which the Complainants were directors. The Complainants contend that at the time this took place, between November 2015 and March 2016, they were misled by the Provider regarding the transfer of the funds derived from their occupational pension schemes to retirement bonds. They say that they proceeded with the transfer of the funds to retirement bonds on the basis that there would be a 100% allocation of funds. They argue that the Provider did not make them aware of the costs and charges associated with the transfer. The Complainants argue that the advice they received was misleading and not in their best interests.

The Complainants argue that in November 2015, the Provider suggested that the pension funds associated with the company be wound up and transferred into retirement bonds. The Complainants argue that the Provider indicated that the advantages of this would be 100% allocation, lower management charges, and savings between 0.25% and 0.5% per annum. The Complainants argue that at the same presentation, the Provider informed them that the value of the policies was €353,128.37. Based on the information, the Complainants argue that they instructed the Provider to proceed with the transfer to retirement bonds in anticipation that the sum of money would be 100% allocated to the retirement bonds. The Complainants argue that at no stage did the Provider mention or discuss early encashment charges related to these policies. The Complainants argue that at the next review of the policy in October 2016, it came as quite a shock to discover that the amount of money transferred to the retirement bonds was €272,389.29. This represented a difference of €80,739.08. The Complainants accept that the original policies dipped in value between November 2015 and March 2016, but the Complainants state that they felt misled by the financial advice they received and feel that the recommendations were not in their best interests.

/Cont'd…

Further, the Complainants assert that they did not sign any document signifying agreement to or acceptance of the costs and charges associated with the transfer of the funds from their occupational pension schemes to retirement bonds, despite the fact that the Provider has produced a signed document which states the Complainants were aware of the transfer value being less than the current value of the schemes. The first Complainant indicates that he told the Provider's representative at that meeting that the Complainants had never signed the document in question and asked him to produce the original which he said he could not do as the original was with the product producer.

The first Complainant states that he asked the product producer for the original document but it has indicated that it only received an electronic copy.

After the maturity of the two investment bonds in 2009 and 2011, the Complainants argued that they received assurances from the Provider over the last seven years that the Provider would make up the shortfall on the original investment that they have yet to receive any recompense and, despite assurances, the €50,000 bond is only worth €34,240.36 as per the latest valuation.

In their Complaint Form dated 13 March 2017, the Complainants state that, notwithstanding a meeting with the Provider's representative in the interim period, at that time they had not received any response to their letter of complaint to the Provider dated 4 January 2017.

In a later submission of 2 July 2019, the Complainants argue that the Provider has not answered the questions raised by this Office in the course of its investigation and claim that it has behaved in a dishonest fashion. The Complainants argue that the transfer values of the pension policies were unknown until a document was received from the product producer dated 29 March 2016. The Complainants claim this document undermines the Provider's submissions that the Complainants signed a document at their home on 11 March 2016 indicating that the Provider's principal had explained the transfer value would be less than the nominal value of the policies. The Complainants argue that they were told that 100% of their funds would be transferred and that they did not sign the document dated 11 March 2016, and are of the opinion it is a "*cut and paste*" exercise. In respect of the 2006 bond, the Complainants argue that they invested in a 5-year bond in 2006 and received a cheque for €11,363.41 some 11 years later. They argue that the Provider lied about the value of the policy and despite the product producer paying out in 2014, the Provider failed to give them their money until 2017 despite requests. The Complainants submit that the Provider was acting in its own interests rather than theirs. They further question whether the platform they were encouraged to transfer their policies into was in fact free to switch between products and whether the Provider benefitted each time he switched between products.

The Provider's Case

The Provider argues that the investment losses on the 2005 and 2006 bonds resulted from the significant market downturn in 2008, 2009 and 2010 and not from any mismanagement on the part of the Provider.

/Cont'd…

It argues that its records include compliance completed at the time of taking out the geared bonds which highlights the possibility of negative returns depending on growth rate achieved. It argues that these are countersigned by the Complainants. The Provider argues that after the bonds matured, the Provider engaged with the Complainants to try and recover losses through future investment returns. It argues this proved difficult as every time markets dropped, the Complainants wanted the investment exchanged, which ultimately led to the current situation.

In the case of the pension arrangements, the Provider states that the investment situation was the very same. It argues that a decision was made to invest in a "*kickout*" note delivering a 21% per annum return and to restructure the pension and that both Complainants were made aware of the penalties of making the change. It argues that the documents were signed at the meeting at their home where the options and potentials were discussed. The Provider argues that the pension investment "*kicked out of its first observation delivering 10.5% after six months*". It argues that the follow-on investment was designed to deliver 7% after six months but the Complainants decided not to proceed and switched Provider. The Provider states that investment matured after six months as did the following one, delivering a 6% return. It argues that the Complainants, by sticking to the restructuring agreed, would have had their pension funds increased by 23.5% over 18 months. The Provider argues that this investment plan would have more than met its targets. The Provider argues that by changing the investment despite the Provider's advice to the contrary or by not following through on the agreed strategy, the Complainants have been wholly at fault for not having a higher pension fund.

The Provider states that it has accepted that there were errors in forwarding a maturity cheque to the Complainants, but not in the management of the investment. The Provider states that the bank that issued the loan over which security of the bond was held encashed the bond directly with the insurer without going through the broker and that the maturity cheque issued to the Provider without supporting documentation. It argues that this cheque was held until the Provider confirmed where it came from. The Provider states that the cheque was misplaced on the file until it reviewed the overall portfolio when the cheque came to light. The Provider states that it requested a fresh cheque from the lender and then gave it to the Complainants. The Provider states that at that point, relations had deteriorated between the parties to the point that at a meeting to discuss matters, the file that the Provider had prepared which included the cheque was thrown back. The Provider states that it then had to send the cheque back to the lender and requested that the lender issue a cheque directly to the Complainants.

The Provider states that it totally rejects the claim that funds were mismanaged. It further states that it does not accept responsibility for any loss in the investment that might have arisen between the first cheque being issued and the final cheque being sent to the Complainants.

The Provider states that it does not have a specific complaint file for the Complainants except for the original letter of 4 January 2017 and the correspondence from the dispute resolution services of this Office after the Complainants made the present complaint.

/Cont'd…

The Provider submits that its principal met with the first Complainant at its office on 7 March 2016 where the pensions and further options were discussed. It argues that the principal of the Provider then travelled to the home of the Complainants on 11 March 2016 and spent more than two hours discussing options and agreeing a plan. The Provider states that the principal covered the issue of penalties and argues that the penalty letter that Complainants claim is a "*cut-and-paste*" exercise was an original letter which it has requested from the product producer.

The Provider denies the claim that the transfer values were not known until 29 March 2016 as it argues that the value of a plan is obtained from the website of the product producer where nominal and transfer values can be obtained, enclosing an example printed from 6 October 2015. The Provider argues that all options were discussed, paperwork signed, and an investment strategy agreed over a two hour period.

In a later submission of 27 August 2019, the Provider enclosed an original letter held by the product producer in relation to the transfer from the pension funds which it refers to as a "*penalty letter*" and which the Complainants allege was a "*cut-and-paste*" exercise. The Provider refers to the Complainant's allegation that they were not informed until 29 March 2016 of the relevant transfer values. The Provider disputes this, claiming that it downloaded values from the product producer's website and argues that the Complainants were aware of the penalties. It argues that it always prints client portfolio values prior to a meeting. The Provider has submitted copies of the values, nominal and transfer, all dated 11 March 2016, which is the date the Complainants signed the paperwork. In respect of the value of the 2006 bond which the Complainants assert the Provider was untruthful in relation to, the Provider has submitted a number of reports issued by the Provider and separately by the product producer assertedly sent to the Complainants in 2010 showing a value of approximately €153,000, (showing a value of approximately €163,000) in 2013 and (showing a value of approximately €159,000) in 2014. The Provider argues that it is clear from its documentation that there was no fee to carry out fund switches in relation to the investment platform chosen and further submits copies of the commission structure to confirm that the Provider did not receive commission on fund switches.

In a later submission, the Provider states that it has provided a history of correspondence with copies of all documentation sent to the insurance company and receipts for them, including policy documents, AML documents, the investment rationale, and the successful kick-out of this first note in the new pension transfer bond. It argues that it has also sent the commission structures and various confirmations from the insurance company over switching costs. The Provider argues that it has always tried to do its best for the Complainants and the transfer to retirement bonds was fully documented and would have proved very successful if the Complainants had continued with this. The Provider argues that the insurance company sent most of the annual valuations, policy conditions and documents directly to the Complainants and asserts that there is no way they did not receive the relevant letters.

/Cont'd…

The Complaints for Adjudication

The complaints for adjudication are as follows:

1. That the Provider mismanaged the proceeds of the Complainants' guaranteed income bonds that matured in 2011 and thereafter until 2017;

2. That over a seven-year period, the Provider gave the Complainants assurances that it would "*make up the shortfall*" on the Complainants' original investment;

3. That the Provider misled the Complainants in respect percentage allocation and early encashment fees relating to the transfer of funds from their occupational pension schemes into retirement bonds at the time of the winding up of the occupational pension schemes related to the company of which they were directors; and

4. The Provider did not respond in a timely manner to the Complainants' complaint made on 4 January 2017.

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 20 August 2020, 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.

/Cont'd…

Following the issue of my Preliminary Decision, the parties made the following submissions:

1. E-mail, together with attachments, from the Complainants to this Office dated 10 September 2020.

2. E-mail, together with attachments, from the Provider to this Office dated 22 September 2020.

3. E-mail from the Complainants to this Office dated 30 September 2020.

4. E-mail, together with attachments, from the Provider to this Office dated 12 October 2020.

5. E-mail from the Complainants to this Office dated 22 October 2020.

6. E-mail from the Provider to this Office dated 22 October 2020.

Copies of these submissions were exchanged between the parties.

Having considered these additional submissions and all submissions and evidence furnished by both parties to this Office, I set out below my final determination.

Provider Delay and Failure to Answer Questions Raised

The first substantive matter that must be dealt with is the delay of the Provider in responding to queries and requests made by this Office and its ultimate failure to properly answer the questions raised.

By letter dated 6 November 2018, this Offers made a request for the Provider's formal response to the complaint which included a list of questions. Between December 2018 and June 2019, there was considerable correspondence between this Office and the principal of the Provider where several extensions were sought due to ongoing and documented medical issues being experienced by the principal. The legitimacy of these medical issues is not being questioned by this Office.

It is important to highlight, however, that all regulated financial service providers are obliged to liaise with this Office in respect of complaints and it is incumbent on any provider to fully respond to requests made of it, even if this means engaging third parties for assistance in individual circumstances which the Provider was encouraged to do in light of the medical circumstances of its principal.

Although detailed documentary evidence was submitted by the Provider under cover letter dated 19 June 2019, the Provider failed to respond to the list of questions raised by this Office.

/Cont'd…

By letter dated 20 June 2019, this Office wrote to the Provider pointing out that its response did not specifically address any of the items of evidence listed in the schedule nor did it answer any of the questions asked of the Provider. Despite this Office pointing out to the Provider that it had failed to answer any of the questions posed, no answers were received to these questions in any of its subsequent submissions. This is despite the fact that indications were given by the Provider that the principal of the Provider was working with his secretary to answer the questions, as well as to assemble the evidence requested, by letter dated 3 December 2018 where that the Provider indicated it was "*preparing answers to your schedule of questions and schedule of evidence*" and by phone on 22 March 2019.

No explanation was provided as to why the Provider failed to submit responses to the listed questions.

I note in its submission of 19 June 2019, the Provider indicated its belief that the paperwork submitted "*covered all the points in your summary of complaint*". This is not the case. The list of questions raised by this Office was specifically tailored to allow a full investigation of the complaints made in this matter and the present adjudication has been rendered much more difficult as a result of the Provider's omissions. I consider the scale of the omission in this case such that the Provider has failed to provide an explanation for the conduct complained of when it should have been given under section 60(2)(f) of the Financial Services and Pensions Ombudsman Act 2017. In so concluding I again acknowledge the health difficulties experienced by the principal of the Provider but, in my view, fair procedures were afforded to the Provider in this regard by way of the numerous extensions to the time limit for submission of the relevant response between December 2018 and June 2019. The medical condition of the principal of the Provider does not excuse the Provider from complying with its obligations to respond fully to an investigation by this Office and it failed to do so in this case.

I will now deal with each of the four complaints.

1. Failure to Return Proceeds of Bond Encashed in 2011

According to the documentation provided to me, it appears that the Complainants invested in a guaranteed capital return investment bond in or around March 2006 in the sum of the €153,000 for a period of six years. €102,000 seems to have been borrowed from a bank and the remaining €51,000 was invested directly by the Complainants. It appears that the sum of €141,117.04 to include capitalised interest was to be repaid to the bank after a period of 73 months (6 years and one month) from drawdown (around June 2012).

An account statement in respect of the Complainants from April 2006 indicates that the sum of €102,000 was drawn down. A statement of account dated 2 October 2014 indicates that a lodgement to the account in the sum of €159,421.18 was made on 17 November 2014. This changed the balance on the account from a debit balance of €146,470.42 to a credit balance of €12,950.76.

/Cont'd…

A debit transfer of €1,343.94 appears on 18 November 2014 and a cheque payment in the sum of €11,453.41 appears to have been made on 21 November 2014. This is then re-credited on the same date (that is, 21 November 2014), with a further small transfer of €90 then appearing dated 18 November 2014. No explanation has been given for these transactions. A further cheque payment of €11,363.41 appears on 16 December 2014 and a nil closing balance indicated. According to earlier account statements, a low level of arrears interest was applied to the account from 25 July 2012 in addition to standard interest.

A letter from the product producer dated 14 June 2012 states that a fund switch took place on 12 June 2012. There is no record of an associated request to switch the fund being made, though there may have been one.

By way of letter dated 18 August 2014, the product producer acknowledged receipt of a full encashment request from the Provider in respect of the bond in question. The letter indicated that the original deed of assignment was required before that entity could proceed to encashment. By email dated 13 November 2014, the product producer sent an email to advise the Provider that the encashment request finalised the previous day which it noted was being sent in place of copies of correspondence or cheques. The attachment indicated the client name as the surname of the Complainants, gave a description of the product which matches the bond invested, and indicated a date of encashment of 12 November 2014. The policy number indicated also matches the documentation before me.

A cheque in the sum of €11,363.41 in the names of the Complainants was sent by the bank to the Provider on 16 December 2014. This letter clearly identified the Complainants by name, both in respect of the names on the cheque and in the body of the letter. This correspondence is stamped as received by the Provider, but the date of receipt is unclear from the stamp.

Two main questions arise from the documentation submitted: first, why a request to encash the bond was not made between May 2012 and August 2014 considering that interest (including arrears interest) was accumulating on the loan balance of the Complainants, and second, why the refund of €11,363.41 was not returned to the Complainants or reinvested on their instruction in December 2014. In terms of the first issue, no explanation has been provided, though in fairness to the Provider, I note a letter from the product producer dated 12 June 2012 confirming a fund switch in respect of the relevant investment so it appears that some interaction may have taken place in respect of the relevant investment. As no proper explanation has been provided in respect of this issue, I accept that the Provider failed to implement the request that the bond be encashed between May 2012 and August 2014 when it ought to have done, so as to ensure that the funds were returned to the Complainants for reinvestment or otherwise.

In relation to the second question, the Provider has sought to argue that there was some failure by the bank issuing the cheque in question to enclose proper paperwork so that the customers to whom the refund related could be properly identified. I do not accept this explanation by the Provider.

/Cont'd…

It appears that an encashment request was made by the Provider in August 2014. Both in the bank's email correspondence of November 2014 and its letter of December 2014, the Complainants are clearly named so I do not accept that any delay arose as a result of mislabelling on the part of the bank. If there had been any confusion on the part of the Provider as to what the cheque payment related, it was incumbent upon it to follow up with a query to the bank. The Provider's explanation that the cheque was effectively misplaced on the file for a period of years is not acceptable. It is not even clear from the evidence submitted exactly when the Complainants finally received the proceeds of the cheque, though it seems to have been sometime around April 2017.

I am therefore of the view that the Provider failed to request that the Complainants' bond be encashed between May 2012 and August 2014 when it ought to have done. I am further of the view that the Provider wrongfully withheld funds to the value of €11,363.41 belonging to the Complainants between January 2015 and April 2017 (to allow the Provider sufficient time to process the onward payment or to consult the Complainants as to its reinvestment). There is no evidence before me that the cheque was encashed by the Provider and that it in any way profited from its mishandling of the cheque in question. While I am prepared to accept that the Provider's behaviour was inadvertent, it was nonetheless wrongful, and the Complainants are entitled to be compensated for their lack of access to their funds during the relevant period.

Accordingly, I uphold this aspect of the complaint.

For the sake of completeness and while it did not form part of the present complaint, I have been provided with no evidence to support the allegation of the Complainants that the Provider was untruthful about the value of the 2006 bonds. On the contrary, the documentation submitted by the Provider shows that the values it presented in 2010, 2013 and 2014 correlated with valuations from the product producer.

2. Assurances as to Making up Past Losses

The Complainants have argued that after the maturity of the two investment bonds in 2009 and 2011, they received assurances from the Provider over a number of years that the Provider would make up the shortfall on the original investment but failed to do so. This complaint is vague. It would seem reasonable for an investment intermediary to inform clients that its goal was to try to make up losses that occurred due to the financial crisis but it would seem unusual for any definitive commitments to be made in that regard as the Provider has no more control over the financial markets than the Complainants do.

In addition, the Provider has argued that the Complainants regularly insisted on switching investments against its advice and ultimately changed their financial service provider in May 2017 before the Complainants could reap the full benefits of the '*kick out notes*' that the Provider had encouraged them to invest in during 2016.

/Cont'd…

Documentation submitted by the Provider indicates that both Complainants invested in self-directed investment options in the form of oil certificates on 22 April 2016 in the sum of €140,000 for the first Complainant and €100,000 for the second Complainant. It appears from an email from the product producer in question dated 28 November 2016 that a 10.5% return was paid on these oil certificates after six months. The Provider has argued that the certificates in question would have yielded a high return for the Complainants if they had remained with the Provider.

Without the benefit of further evidence from the Complainants in relation to assurances made in respect of past losses, and in light of evidence to suggest that the Complainants did not follow through on the investment advice of the Provider, there is no basis on which I can uphold this aspect of the complaint.

3. Failure to advise on Allocation, Fees and Charges

The third aspect of the complaint is that the Provider misled the Complainants in respect percentage allocation and early encashment fees relating to the transfer of funds from their occupational pension schemes into retirement bonds at the time of the winding up of the occupational pension schemes in 2016. It appears that in March 2016, on the advice of the Provider, the Complainants wound up four pension schemes in respect of an employer company that had been (or was being) liquidated and transferred the value of those schemes into retirement bonds. There were significant penalties or costs associated with the transfer which the Complainants argue they were not informed of.

Two letters from the third-party product producer stamped as received by the Provider on 29 March 2016 record the value of the transfers of the pension schemes into the new retirement bonds. In respect of the first Complainant, the letter indicates a nominal value from four individual pension policies totalling €181,244.22. The letter sets out the "*initial unit deduction*" of €25,828.98 with no indication given of the relevant percentages, though the relevant deduction from each of the four policies is separately set out. The letter then indicates a transfer value for each of the four policies with a total transfer value of €155,415.25. Although this transfer value is in line with the transfer value noted on the application forms of 11 March 2016 (as set out below), a deduction of €25,828.98 represents an overall deduction of 14.25% of the nominal value of the pension policies, which is a very large penalty.

In respect of the second Complainant, a letter stamped as received by the Provider on 29 March 2016 indicates a nominal value from three individual retirement policies totalling €153,910.00. The letter set out the "*initial unit deduction*" of €32,230.97, again with no indication given at the relevant percentages though the relevant deduction from each of the three policies is separately set out. The letter then indicates the transfer value of each of the three policies with the total transfer value of €121,679.03.

/Cont'd…

Although this transfer value is again in line with the transfer value noted on the application form of 11 March 2016 (as set out below), the deduction of €32,230.97 from the retirement policies of the second Complainant represents an overall deduction of 21% of the original value, an even higher percentage penalty than that applied to the retirement benefits of the first Complainant.

The Complainants submitted four documents with a post Preliminary Decision submission together with the following comments:

1. *"…a document presented to us by provider entitled "retirement bond investment strategy" if you will note on page 2 a section "why do it" point 3, the provider mentions lower management charges but conveniently forgets to mention the transfer costs, something that continues throughout our dealings with him."*

2. *"… a document presented to us by provider entitled "documentation for transfer to retirement bonds" again you can see no mention of the "penalty letter" which I still maintain we did not sign, all other documentation is included."*

3. *"… a letter sent from the provider to [insurance provider] on 14th of March 2016, a few days after presenting us with "documentation for transfer to retirement bonds as you can see all documentation requested from us is included but now "confirmation that the members are aware of MVA on 4 of the schemes" is included. The provider did not request this letter from us, as he would have had to disclose the amount of money we would be losing and was well aware we would not have proceeded with this folly. "*

4. *"…a letter from [agent of the insurance provider] to us in May 2017 in response to a letter I sent to him querying the large amount of money involved , I think it is quite clear from his response the motivation the provider had to keep the costs of the transfer invisible from us , it transpires that the provider had previously taken a huge commission on original investment and was now motivated by the prospect of a further 5% of remaining funds."*

The Complainants go on in their post Preliminary Decision submission to point out that the €153,000 and €181,000 is approximately half the original sums invested, from 2007 to 2010 the value of the pensions halved, comment on the performance of the fund and comment generally on the conduct of the Provider, the fees charged and other matters already dealt with.

The Complainants state that they have requested a letter from the insurance provider which they state they have previously seen on the insurance provider's portal which the Complainants assert was sent to the Provider requesting details of the Complainants' home address for the purpose of sending documentation to the Complainants directly, rather than through the Provider. The Complainants state that this letter was not responded to by the Provider.

/Cont'd…

The Complainants suggest this was intentional suggesting the Provider *"did not want us to know figures involved".* The Complainants stated that they would submit a copy of this correspondence to this Office when they receive it.

The Complaints assert, "*Again this will demonstrate that the provider actively sought to keep the costs involved in this transfer from us. It also denied us the opportunity to avail of the 30 day cooling off period which we would have availed of if we had received the transfer costs letter which was sent to Provider on 29/3/16 and which was never forwarded and only appeared when this complaint was made.*"

The Provider responded to the Complainants' post Preliminary Decision submission and the correspondence as follows:

In relation to the letter seeking the Complainants' address The Provider responded:

> *"This point I do not understand and have never understood. The home address of [Complainants] has always been advised as [redacted] and all the Anti Money Laundering documentation (previously submitted) shows this. All disclosure letters, quotations and Cooling off notices and all additional correspondence would have been sent to that address by the Insurer. We have no copy of any letter requesting confirmation of the complainants address as their address had already been confirmed to the Insurer in the Anti Money Laundering pack submitted to the Insurer on 14th March 2016 (copies of same already submitted)."*

I note this Office has not been furnished with a copy of this correspondence.

In relation to document no. 1 above the Provider responded:

> *"Clients were advised of the transfer costs, signed the letter and received correspondence directly from Insurer including quotation, disclosure notices and cooling off letters outlining all the issues."*

In relation to document no. 2 above the Provider responded:

> *"That document is simply a summary of the documentation required. Both clients signed the penalty letter in their house on the previously advised date and we requested that the Insurer send us back the original which we submitted, This has already been referenced in the initial findings. The summary "documentation to wind up the scheme" is also agreed to in the letter of 11th March 2016"*

In relation to document no. 3 above the Provider responded:

> *"All this was explained in their house on the date previously advised and the letter confirming their awareness was signed. It was confirmed directly to them by the insurer along with quotation, disclosure notices and cooling off letters.*

/Cont'd…

> *Despite having received the disclosure notices, quotations and cooling off notices directly from the insurer (His home address was on the Insurers file from both the application forms and utility bills showing proof of residence – as already provided) the clients went ahead with the new contracts and the investment recommendations which delivered a 10.5% return on investment after six months. They were then given the opportunity to participate in a similar rollover investment offering a 14% per annum return which they refused (and which subsequently successfully returned 7% after six months). All the issues alleged by the complainants were subsequent to the first successful maturity which was six months into the new contract when all the facts were well established."*

In relation to document no 4 the Provider responded:

> *"… The insurer confirmed that there was no costs involved in switching between funds. I have also previously submitted documentation showing that the complainants were never satisfied with short term drops and continually changed their investment splits to a large extent negating an ability to put a longer term strategy in place."*

The Provider has submitted that he had a two-hour meeting with the Complainants at their home on 11 March 2016 at which meeting the Complainants' options as to the winding up of their pensions and the reinvestment of the funds in retirement bonds was discussed in detail. This was subsequent to an initial meeting with the first Complainant on 7 March where the policies and options were discussed. The Provider has submitted diary entries regarding these meetings and I accept that meetings took place between the parties on these dates. The primary conflict between the parties is as to what the Complainants were advised at the meeting of 11 March 2016 in respect of the costs associated with transferring the value from the pensions to the retirement bonds.

The Provider submits that the Complainants were made aware of all associated costs but were advised that it was worth the costs and the risk so that the pensions could be reinvested in the kick-out notes recommended as this would benefit them in the long term. For their part, the Complainants have argued that they were unaware that anything below the full value of the pensions would be transferred. Although there is a conflict between the parties in this regard, I am satisfied on the basis of the documentation submitted by both parties signed at that meeting on 11 March 2016 that I am in a position to make a determination on this issue in the absence of holding an Oral Hearing.

I have been provided with a copy of A Trustees Winding up Resolution dated 11 March 2016 signed by each of the Complainants as trustees of four individual pension arrangements. There are two lost policy declaration indemnity application forms signed by each of the Complainants and witnessed by the principal of the Provider dated 11 March 2016.

/Cont'd…

In respect of the first Complainant, there is a Pension Transfer Bond Application Form which indicates a transfer value of €153,400 in line with the transfer value of €155,415.24 ultimately recorded in the confirmation letter of the product producer dated 29 March 2016 above. The source of the transfer is confirmed as a defined contribution scheme which is being wound up. In respect of fund choice, 100% of the investment was made in "*cash*". The application was signed by the first Complainant as policyholder and the first Complainant as trustee on 11 March 2016. The application was also signed on behalf of the insurance intermediary by the principal of the Provider dated 11 March 2016. There is section at the end of the application form entitled "*For Broker Use Only – Single Contribution Financed Options*" in which the option of "F*inanced Option B*" is selected with "*Initial*" "*5%*" indicated from a suggested range of 0% to 5% and "*Fund Based*" "*0.5%*" indicated from a range of 0% to 0.75%. There is no explanation as to what this section is in reference to, though it seems to reflect the commission to be paid to the Provider of an initial 5% of the overall investment and 0.5% annually of the managed fund thereafter.

There is a comparable Pension Transfer Bond Application Form completed in respect of the second Complainant, this time with a transfer value of €120,670 again in line with the transfer value of €121,679.03 ultimately recorded in the confirmation letter of the product producer dated 29 March 2016 above. Again, the form indicates that the source of the transfers is from a defined contribution scheme which is being wound up. The chosen fund is again 100% in "*Cash*". The application was signed by the second Complainant as policyholder and the second Complainant as trustee on 11 March 2016. The application was also signed on behalf of the insurance intermediary by the principal of the Provider dated 11 March 2016. The final page of the application form has a similar 5% and 0.5% indicated in the section entitled "*For a broker Use Only – Single Contribution Financed Option"*.

The Provider has (belatedly) submitted print-outs of transfer values downloaded from the website of the product producer dated 11 March 2016 which it argues were printed in advance of the relevant meeting with the Complainants. I have cross-referenced the individual transfer values of the various pension schemes between the downloaded values dated 11 March 2016 and the transfer values ultimately allowed by the product producer in accordance with the letters of 29 March 2016 in respect of both Complainants.

I am satisfied that these transfer values from 11 March 2016 correlate with the values of the transfers ultimately recorded.

Though I accept that the relative deductions from the nominal values to transfer values are comparatively high, the quality of the Provider's advice to make the transfers is not at issue here. Instead, what is at issue is the transparency of the transfer values, associated fees, and allocation rates and whether these were properly notified to the Complainants. It would seem somewhat strange for the Provider to have taken the trouble to download transfer values for each of the various schemes on the day of the meeting with customers and not offer those transfer values to those customers for consideration at the relevant meeting. Further, the relevant transfer values were included in the application forms which were signed by both Complainants on 11 March 2016.

/Cont'd…

The Complainants also appear to have signed a letter dated 11 March 2016 which indicates that they were aware and accepted that there would be a reduction from the nominal value to transfer value in respect of the various schemes when transferred into retirement bonds.

The original of the letter dated 11 March 2016 has been provided to me, addressed to the product producer of the retirement bonds and referencing the numbers of the four pension schemes being wound up. This is referred to as a "*penalty letter*" by the Provider. The letter states as follows:

> "*We confirm we are aware that the transfer value is less than the current value on the above schemes. We confirm we wish to proceed with the Winding Up of the schemes*."

The original of this letter appears to be signed by each of the first and second Complainants and is stamped as received by the addressee, the product producer, on 15 March 2016. It is clear from the submissions of the Complainants that they dispute the validity of these signatures.

The Complainants, in a post Preliminary Decision submission, state:

> *"In his preliminary decision the Ombudsman refers to the pension transfer bond application forms, one for each complainant, and how these application forms contained the transfer values, I would contend that the only part of these forms presented to us at the meeting of 11/3/16 were the parts marked with X for our signatures, all other parts of the forms were blank , both the transfer values and the providers commission, I would ask the Ombudsman to review the pages with costs involved, and ascertain are they initialled or signed by us in any way ? you may think it was naive to sign blank forms but we had questioned the provider relentlessly on the costs involved and received his word on several occasions that 100% of funds would be transferred.*
>
> *This then raises the print outs of transfer values that the provider has (belatedly) submitted, a copy of which has not been forwarded to me. I would strongly deny that these print outs were presented at our meeting of 11/3/16 and would ask to see our signatures on these print outs as evidence that they were presented at the meeting. There is an over reliance by the ombudsman on this print out and an obvious error of fact.*

The Provider responded as follows:

> *"This has previously been covered, copies of the application forms were submitted and all the information was correct including details of remuneration over the previous three years submitted independently by the complainants accountant.*

/Cont'd…

The printouts were given but more Importantly in this matter all the quotations, disclosure notices and cooling off notices (the printouts) were separately sent to the complainants by the Insurer. This matter has already been alluded to in the Ombudsman's initial response. We have no control in asking what documentation is sent to the client. The Insurer will always send what is required by law."

The Complainants, in a post Preliminary Decision submission, state:

The penalty letter that was submitted to [life assurance provider] *is again an error of fact when it is taken in the context that we were unaware of transfer costs involved , there are no transfer costs included on the letter and if you accept no costs were included on application forms and no print out was presented it renders the penalty letter meaningless. Again I would maintain this is a letter signed for some other transaction and was dressed up to satisfy* [life assurance provider] *requirements as per attachment CCF 000262 , a letter to them on 14/3/16.*

The Provider responded:

"Our letter of the 14th March is simply a letter enclosing all the documentation required to set up the new contracts. It is a standard letter and has no relevance except to show that we sent all the original documentation to the Insurer. That is standard practice. The penalty letter is the original letter which is dated and is now contended relates to a different transaction!! The policy numbers are on the letter and I was involved in no other transactions other than fund switching instructions which is an entirely different form (copy of previously signed switching instruction attached for completeness). The narrative on this allegation moves from a "forgery" to a "cut and paste" to "I don't remember signing it" to "it refers to a different transaction". The original letter which we obtained back from the Insurer and submitted to the Ombudsman show clearly that it has original signatures, the Correct policy references, agreement to unwind the schemes – as proved by the signing of new Retirement Bond Contracts) and the date which quite clearly refute all the changing allegations. The Investment Strategy letter which was submitted was, if followed a very sensible strategy and the first investment delivered a return of 15.5% after 6 months. A further similar investment was offered but was not accepted successfully delivered a further 7% after 6 months as did a third investment. It also set out the facts of the situation which were not disputed at the time and the strategy proved to be successful. All my points in "Why do it" which were accepted did what they said they would. This letter in my view shows that we covered all the points relating to changing the structure which are accurate and the fact that the complainants have it is evidence that they received it.

The Complainants have requested that I review the pages of the document with costs involved and ascertain if they were initialled or signed by the Complainants. I would not expect that customers would be required to initial or sign the pages of a document to confirm they have received it.

/Cont'd…

As I am not a handwriting expert, I am not in a position to make any finding in respect of the Complainants' various assertions in relation to the signatures on the forms. I do, however, note that the Complainants continue to pose different scenarios as to how their signatures came to be appended to the document. I note this includes a suggestion that they naively signed a blank document. It certainly does not appear to me, as suggested at one stage by the Complainants, that these signatures are the result of a "*cut and paste*" job by the Provider.

It appears to me that the original letter submitted was actually signed. In the absence of further evidence on authenticity from the Complainants, I must proceed on the assumption that these signatures are genuine in that the Complainants have not proven otherwise (though I am not making finding to this effect as I lack the expertise to so do). Furthermore, if the Complainants are alleging forgery, that is not a matter for this Office and would more appropriately be dealt with by the Gardaí or the courts.

I nonetheless note that although the confirmation indicates that the transfer value is less than the nominal value on the schemes, there is no detail provided or acknowledged in relation to the level of the deduction or penalty and the specific nominal and transfer values are not recited. When this letter is read alongside the downloaded transfer value documentation dated 11 March 2016 and the application forms dated 11 March 2016, signed by the two Complainants, it provides strong evidence supporting the Provider's position and undermines the assertion of the Complainants that they were unaware or not informed of the costs associated with the transfers. Critically the application forms clearly show the net amount to be invested.

There is a further document that has been submitted in evidence. In a document entitled "*Preliminary Recommendations/March 2016*", due to the liquidation of the employer, the following is recommended by the Provider:

> *"(a) Wind up the pension schemes*
>
> *(b) Transfer them to Retirement Bonds*
>
> *Advantages:-*
>
> *Funds can be accessed from age 50 –*
>
> *New contracts can access Capital Protected –*
>
> *Can provide growth potential with very limited downside –*
>
> *No more worry about market dips –*
>
> *No cost – 100% allocation*
> *Lower Management Charges*
> *Savings between 0.25% p.a. to 0.5% p.a.*

/Cont'd…

. . .

I believe that these options provide the most flexible future structure with the best possibility for growth limited downside.

The pension strategy can be refined once the overall decision is taken."

This document – which indicates a 100% allocation in respect of the proposed retirement bonds – is signed by the principal of the Provider and by the first Complainant dated 14 March 2016 (that is, three days after the meeting of 11 March 2016 when the applications, resolutions and letter set out in detail above were signed). By his signature, the first Complainant acknowledged receipt of the Provider's recommendations and instructed it, among other things, to *"Wind up scheme – transfer to Buy Out Bonds*".

No explanation has been provided by the Provider as to what '100% allocation' refers to in this context. As set out above, however, it is clear from the application form dated 11 March 2016 that the transfer values including the approximate 20% penalties were understood when the transfer documentation was signed. I am therefore unable to conclude that this recommendation document dated 14 March 2016 was supposed to signify that there were no penalties or deductions associated with the transfer from the pension schemes to the retirement bonds. Rather, I consider that it was more likely that this reference was to the anticipated advantages of the retirement bonds (that is, in respect of future investment selections made from the retirement bonds) as one of the key advantages flagged by the Provider in its submissions was the greater flexibility afforded by transferring the relevant funds to the retirement bonds in question.

In light of all of the available evidence, I do not accept that this document of 14 March 2016 provides evidence that the Provider promised the Complainants that 100% of the nominal value of the pension schemes would be allocated in the retirement bonds. Rather the evidence before me suggests that the transfer values were notified to the Complainants when they signed the relevant transfer documentation on 11 March 2016.

As a result, I do not uphold this aspect of the complaint.

In relation to ongoing fees and commissions, I accept that these were notified to the Complainants. The relevant policy schedules set out the relevant information. In a policy schedule created by the product producer dated 24 March 2016 in respect of the first Complainant's policy, the schedule identifies a "*single contribution*" amount of €155,415.24 and an "*investment contribution*" amount of €154,373.96. The policy schedule further indicates a one-off policy fee of €52.50. 100% of the funds were identified as being invested in cash. The policy schedule indicates that the fund management charge of 0.75% per annum and a plan management charge of 0.75% per annum, giving a total annual charge of 1.5%. The policy schedule states that the plan management charge includes fund based commission. The policy schedule highlights early encashment charges of 5% in years 1 to 3, 3% in year 5 and 1% in year 5. The policy schedule indicates that the Pension Transfer Bond single contribution policy selected is also referred to as a "*Buy Out Bond*".

/Cont'd…

The policy schedule provides that the policyholder may not access the value of the policy to provide retirement benefits before age 50 and that the investment term of the policy is 12 years and two months. In respect of charges, the policy schedule indicates that the:

> "*contribution that we receive for your policy is multiplied by percentage allocation rate to arrive at the investment contribution, which the net amount that is invested for you in your chosen investment funds. Investment contribution may be more or less in the contribution we received depending on the basis of your policy*."

In a section entitled "*What Intermediary/Sales Remuneration is Payable*?" an illustrative table of the broker remuneration is set out (assuming a gross growth rate of 2% per annum):

Year	Premium payable in the year	Projected total Intermediary/sales remuneration payable in that year
1	€155,415.00	€8,642.00
2	€0.00	€778.00
3	€0.00	€781.00
4	€0.00	€785.00
5	€0.00	€789.00
10	€0.00	€809.00
12	€0.00	€817.00
13	€0.00	€137.00

The table does not indicate the percentages involved but the projected remuneration for year 1 approximates to 5.5% of the premium. (that is, the initial 5% plus an annual 0.5% as identified in the application form). A note appears under the table indicating that the remuneration "*includes remuneration based on the total volume and quality of business underwritten by your intermediary*" and that "*any value and quality based remuneration is financed out of standard charges for this product and does not result in any increase charges for your policy*". Furthermore, a 30 day cooling off period is indicated.

The policy schedule dated 24 March 2016 has also been provided in respect of the second Complainant's policy. In her case, the single contribution amount is identified as €121,679.03 with an investment contribution hundred and €120,060.70.

I accept, on the basis of the policy schedules submitted, that the annual charges of 1.5% and the commission rates were notified to the Complainants. Further, each of the Complainants had a period of 30 days from the inceptions of the policy to withdraw from the investment if these charges and commissions were not understood by them prior to their investment.

In these circumstances, I do not uphold this aspect of the complaint.

/Cont'd…

The Provider has submitted a copy of the investment policy conditions to rebut the Complainants' additional allegation that it may have profited from commissions in the switching of investments after the decision taken to transfer the pension funds to retirement bonds. This complaint did not form the basis of the present adjudication however, I note that section 12 of the policy conditions submitted appears to confirm that there are no fees associated with switches and therefore no additional charges to the Complainants upon the switching of investments.

4. Failure to Respond to Complaint

In a letter of complaint to the Provider dated 4 January 2017, the Complainants set out the various complaints made to this Office as set out and analysed above (that letter of 4 January 2017 forming the substance of their complaint to this Office).

The only response from the Provider to the complaint that I have been provided with is a letter dated 4 April 2017 which states as follows:

> *"I acknowledged your letter at a meeting on the 16th February 2017 and agreed that I would come back to you. My understanding was that we would keep in touch to solve the issues raised.*
>
> *I am now formally replying to your letter and a copy is being sent to the Financial Ombudsman.*
>
> *We discussed the winding up of the schemes from November 2015 until March 2016. I attach further copies of the recommendations, reasons why future advantages of the new arrangement. The documentation attached was signed and completed in your house on Friday 11th March over a period of almost 3 hours. We discussed the advantages of the new arrangement and albeit there was an initial penalty, the investment strategy of using Kick out Notes (not available under your existing plans). We agreed to invest in an Oil Notes Kick out plan which duly paid out again at 10.5% six months later. I have prepared a further investment which would have yielded a 6% semi-annual return which would have given you a 16.5% annual return.*
>
> *The discussion that you say became heated was because you would listen to nothing that I said and you became quite intimidating alleging that the documents were not signed by you. I gave you a full set of documents which you gave back to me. I cannot provide the originals as they were sent to [the product producer] along with the other documentation signed that evening (attached please find a further copy).*
>
> *I believe that I acted all times in your best interests in the new structure, even with the initial penalties, would have yielded much better result over the longer term – we achieved 10.5% over six months and could have had a further 6%.*

/Cont'd…

Over a 12 month period could have achieved a 16.5% return which as I said would have cleared the initial penalties and left us with a higher fund with much more flexibility moving forward.

I trust this covers the questions raised on pension matters?

…

[In respect of the 2006 bond] we were not able to separate out the funds like the [2005 bond] and it ran to maturity. The policy was encashed by [a third-party Provider], with no correspondence to us and they issued a cheque which unfortunately didn't link up with the encashment paperwork. Through an oversight of mine, it was left on the file and it wasn't until you raised the issue, did we realise what had happened. We requested a fresh cheque from [related bank] and it was with the paperwork that I gave you, which you handed me back. I did not realise this at the time. You then at a meeting on 16th January told me that you had contacted [the bank], who allegedly told you this cheque was cashed and you inferred that I had somehow cashed it. I returned to the office, searched for the cheque, found it, texted you a copy and told you I was sending to [the bank] requesting a fresh one be issued directly to you. I presume you have received it?

We accept that mistakes were made and that these funds should have been made available for investment and are willing to discuss appropriate reparation for the investment time lost.

There is a significant amount of paperwork with this letter and once you have had a chance to review, perhaps we could agree to meet?"

Under the Consumer Protection Code 2012, the Provider has the following obligations in respect of complaints received from customers such as the Complainants:

"10.7 A ***regulated entity*** must seek to resolve any ***complaints*** with ***consumers***.

10.8 When a ***regulated entity*** receives an oral ***complaint***, it must offer the ***consumer*** the opportunity to have this handled in accordance with the ***regulated entity***'s ***complaints*** process.

10.9 A ***regulated entity*** must have in place a written procedure for the proper handling of ***complaints***. This procedure need not apply where the ***complaint*** has been resolved to the Complainant's satisfaction within five ***business days***, provided however that a ***record*** of this fact is maintained. At a minimum this procedure must provide that:

a) the ***regulated entity*** must acknowledge each ***complaint*** on paper or on another ***durable medium*** within five ***business days*** of the ***complaint*** being received;

/Cont'd…

b) the ***regulated entity*** must provide the Complainant with the name of one or more individuals appointed by the ***regulated entity*** to be the Complainant's point of contact in relation to the ***complaint*** until the ***complaint*** is resolved or cannot be progressed any further;

c) the ***regulated entity*** must provide the Complainant with a regular update, on paper or on another ***durable medium***, on the progress of the investigation of the ***complaint*** at intervals of not greater than 20 ***business days,*** starting from the date on which the ***complaint*** was made;

d) the ***regulated entity*** must attempt to investigate and resolve a ***complaint*** within 40 ***business days*** of having received the ***complaint***; where the 40 ***business days*** have elapsed and the ***complaint*** is not resolved, the ***regulated entity*** must inform the Complainant of the anticipated timeframe within which the ***regulated entity*** hopes to resolve the ***complaint*** and must inform the ***consumer*** that they can refer the matter to the relevant Ombudsman, and must provide the ***consumer*** with the contact details of such Ombudsman; and

e) within five ***business days*** of the completion of the investigation, the ***regulated entity*** must advise the ***consumer*** on paper or on another ***durable medium*** of:

i) the outcome of the investigation;

ii) where applicable, the terms of any offer or settlement being made;

iii) that the ***consumer*** can refer the matter to the relevant Ombudsman, and

iv) the contact details of such Ombudsman.

10.10 A ***regulated entity*** must maintain an up-to-date log of all ***complaints*** from ***consumers*** subject to the ***complaints*** procedure. This log must contain:

a) details of each ***complaint***;

b) the date the ***complaint*** was received;

c) a summary of the ***regulated entity's*** response(s) including dates;

d) details of any other relevant correspondence or ***records***;

e) the action taken to resolve each ***complaint***;

f) the date the ***complaint*** was resolved; and

/Cont'd…

g) where relevant, the current status of the ***complaint*** which has been referred to the relevant Ombudsman.

10.11 A ***regulated entity*** must maintain up to date and comprehensive ***records*** for each ***complaint*** received from a ***consumer***."

Taking these obligations one by one, I accept that the Provider has complied with its obligations under provision 10.7 and did in fact seek to resolve the complaint with the Complainants both by organising a meeting on 16 February 2017 and by sending the letter of 4 April 2017 in respect of the complaint received from the Complainants by letter dated 4 January 2007. The Provider did not at that time offer a particular sum in compensation to the Complainants in respect of the errors that it made in the handling of their cheque, but the final response letter indicates an intention to resolve the matter with the Complainants by way of some form of compensation. Provision 10.8 is not applicable to the present case.

There were multiple breaches of Provision 10.9, including the fact that:

- no written acknowledgement of the complaint was sent within five business days or at all;
- no evidence of the provision of a named individual as a point of contact has been submitted;
- no regular updates on the progress of the complaint were provided at intervals of not greater than 20 business days;
- the complaint was not resolved within 40 business days and the Provider did not inform the Complainants of the anticipated timeframe within which it hoped to resolve the complaint or direct them to this Office; and
- the Provider did not inform the Complainants that they could refer the matter to this Office or provide them with the contact details of this Office.

In light of the scale of the breaches of Provision 10.9, it would also appear that the Provider does not have in place a written procedure for the proper handling of customer complaints.

In respect of provisions 10.11, I have not been provided with any form of attendance or other record of the meeting which took place on 16 February 2017 as one might have expected considering that the meeting was designed to deal with the complaint that had been received.

In all of the circumstances, especially in light of the breaches of provisions of the CPC 2012 identified in respect of its handling of the complaint received from the Complainants on 4 January 2017, I uphold this aspect of the complaint.

/Cont'd…

Redress

For the reasons outlined in this Decision, I partially uphold the complaint. I accept that the Provider failed to encash the proceeds of the 2006 bond between June 2012 and August 2014 and wrongfully withheld the proceeds of the Complainants' cheque in the sum of €11,363.41 between January 2016 and March 2017.

I further accept that the Provider failed to properly respond to the Complainants' complaint of 4 January 2017. I do not uphold the complaint as regards the asserted failure of the Provider to inform the Complainants about the penalties that would be incurred on the transfer of their pension schemes to retirement bonds or in relation to any alleged assurances made with regard to making up past losses. I also find that the Provider failed to provide an explanation for the conduct complained of when it should have been given. This includes its poor response to the investigation by this Office and the questions raised.

In my Preliminary Decision I indicated my intention to direct the Provider to pay a sum of €5,000 compensation to the Complainants for these failures.

In a post Preliminary Decision submission, the Complainants stated:

> *"I also would like to note that his response to your office and our complaint has been nothing short of scandalous and although you seem to concur, the financial penalty is not going to deter him from misconduct in the future. The provider as can be seen in your preliminary decision has been seen to be untruthful, untrustworthy, unprofessional and uncooperative, he has tried to mislead your office by only presenting documents when cornered, to try and piece together a credible explanation for his unprofessional conduct, instead of assisting the investigation by answering the specific questions which were put to him at the outset and then let your office carry out a full investigation of the facts.*

The Provider responded:

> *"These are scurrilous and malicious accusations with no bearing in fact. There were delays but these were down to a serious of severe and significant medical issues (previously advised) and whether the complainants like it or not are a point of fact. I do not accept that any of the points raised as being "additional" points of fact or errors of fact and in several paragraphs the complainants have strayed into areas of innuendo and vindictiveness which have no basis and to my mind have already been addressed in the Initial Response. It appears to me that this is a "last throw of the dice" to try and smear my name. It is totally unacceptable."*

In the interest of clarity, I would point out that I have not questioned, nor have I made any comment on the Provider's truthfulness or trustworthiness. I have taken issue with his unreasonable and improper conduct in dealing with both the Complainants and this Office in relation to this complaint.

/Cont'd…

It is for this reason that I am partially upholding the complaint and directing the Provider to pay compensation. This compensation is for the inconvenience that the Provider has caused to the Complainants. I would also point out that this direction for payment is not a "*penalty*". It is not the role of this Office to sanction or penalise financial service providers. That is the role of the Central Bank of Ireland.

I am partially upholding this complaint and I direct that compensation be paid by the Provider to the Complainants in the sum of €5,000.

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) (b) and (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 Complainants in the sum of €5,000, 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.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

6 September 2021

/Cont'd…

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.