



<u>Decision Ref:</u>	2021-0307
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Personal Pension Plan
<u>Conduct(s) complained of:</u>	Failure to provide accurate investment information Dissatisfaction with customer service Failure to provide product/service information
<u>Outcome:</u>	Substantially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The complaint concerns the Complainant's Pension Investment Plan with the Provider.

The Complainant's Case

The Complainant submits that in **September 2017**, with the assistance of his financial advisor, he transferred the sum of €242,079.11 from his personal pension plan to an investment fund administered by the Provider and that 100% of the funds were invested in a category 5 'High Risk Fund'. The Complainant submits that the Provider's investment funds were risk rated between **1** and **8**, with **1** being the lowest risk category and category **8** being of the highest risk investment fund.

The Complainant submits that during early **July 2019**, the value of the fund was at "*a near all time high*" and he made the decision to reduce the risk of his investment fund. The Complainant states that his financial advisor was unable to assist him, and he chose to initially reduce the risk profile of his investment fund to either a category **1** or a category **2** risk rating fund, until such time as he was able to secure professional advice. The Complainant submits that throughout the switching process, a number of issues arose with the Provider.

The Complainant submits that while considering his options to switch the funds, he went onto the Provider's website, where it was stated that **62** funds were available and the Complainant submits that only **61** funds were actually listed on the website.

The Complainant states that the Provider supplied a summary schedule upon clicking on each relevant fund, which he submits set out the details of the funds' performance and risk ratings and it also supplied a fact sheet which supplied further details of the relevant fund.

The Complainant submits that within the Provider's website only two of the low risk funds were rated as risk level **1** and that these were cash funds, and that the remaining low risk rated funds were risk **2** level.

The Complainant says that at that time he concentrated on the low risk cash fund with the intention to opt for a possible level **2** or level **3** risk fund upon the advice of a financial advisor. The Complainant submits that upon reviewing the low risk cash fund, he was unable to review the fact sheet of that fund due to an error message on the Provider's website which stated "*Page not found*".

The Complainant states that upon reviewing the fact sheet of another low risk cash fund, he noted that it was classified as a level **2** risk category and the summary schedule of that cash fund showed it to be a level **1** risk category. The Complainant submits that on **04 July 2019**, he telephoned the Provider to seek clarification of the two cash fund options and the risk levels associated with them. The Complainant submits that during this telephone conversation he noted that three of the remaining funds which had been listed on the Provider's website as being "low Risk" had a higher risk set out in the relevant fact sheets, than which had been indicated on the relevant summary of schedule for those investment funds. The Complainant submits that on the Provider's website, investment funds rated as 'Medium Risk' funds were included in the 'Low Risk' category.

The Complainant submits that it is his understanding that the correct level of risk of the investment funds is set out in the fact sheet rather than the summary of schedule of each investment fund. The Complainant says that when he informed the Provider's representative of the risk level discrepancies, between the summary schedules and fact sheets, the Provider's representative "*expressed surprise*" and he was unable to provide an explanation for the discrepancies. The Complainant states that the level of risk discrepancies on the Provider's website are not immediately obvious and are highly confusing and that they have the potential to mislead clients when accessing the information on-line.

The Complainant says that during the telephone call on **04 July 2019**, he was informed by the Provider that the transfer fund value of the investment fund, would be the fund value as at **02 July 2019**, and that during this call he instructed the Provider's representative to switch his funds into the level **1** low risk cash fund and he submits that this investment fund had no fact sheet available on the Provider's website.

The Complainant submits that the Provider issued the investment fund switch effective from **04 July 2019** as requested, though it did not use the fund value as at **02 July 2019** as previously advised by the Provider.

The Complainant submits that of the **61** alternative funds listed on the website, only **56** of the funds had fact sheets available to view online and of that figure he submits that he noted **22** discrepancies between the various schedules in the risk ratings. The Complainant submits that he informed his financial advisor of the discrepancies in the Provider's risk ratings of the different investment funds, and the Complainant states that his financial advisor found this information to be quite concerning as he states that he relies on the 'Risk' ratings as set out in the other available funds summary schedules.

The Complainant submits that the Provider failed to provide its final response to his complaint, pertaining to the discrepancies in its risk ratings of other available funds, within the 40 working day turnaround time.

The Complainant states that in addition to the Provider's discrepancies in its risk ratings of the available funds, he noted that the details of the 'Fund Charges' were not set out in either the summary schedule of a fund nor within the fact sheet document of each fund. The Complainant says that the charges of the funds range from 0.75% to 1.9% and that he contacted the Provider on **03 July 2019** to request details of the 'Fund Charges' for all options available to him and he was informed by the Provider that this information was not readily available. The Complainant states that he informed the Provider that he was making a formal complaint regarding the Provider's failure to supply him with immediate access to the fund charges.

The Complainant submits that on **10 July 2019**, he received the information from the Provider in relation to the fund charges. The Complainant says that the Provider's letter was dated **09 July 2019**, which was one week after he had requested the information and also one week after he had switched his funds into the new low risk investment fund. The Complainant states that the Provider's letter dated **09 July 2019**, did not mention his complaint regarding its failure to make this information readily available to him.

The Complainant states that on several occasions he had requested the Provider to supply him with the fact sheet to the low risk fund, to which he had transferred his investment funds. The Complainant states that on **07 August 2019**, the Provider issued him with the terms and conditions booklet of his low risk investment fund and within that documentation was a pre-published list of all the fund charges for all the switching options that were available to him. The Complainant submits that it is inexplicable that the pre-published information containing fund charges was not made available to him upon his request when he first transferred his funds into the investment fund in question on **03 July 2019**. The Complainant states that following receipt of this information, he contacted the Provider on **21 August 2019**, to reinstate his complaint regarding the Provider's failure to supply him with the funds terms and conditions that contained the fund charges that he had been seeking.

The Complainant states that he lodged other formal complaints to the Provider, which had not been addressed by it, including complaints regarding its failure to provide critical information in a timely manner, documents not being enclosed in correspondence including but not limited to the original 'Welcome pack' that was issued upon transferring

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his funds to the new low risk investment fund and its failure to provide specific information to him upon his request.

The Complainant submits that the Provider has failed in respect of its duty of care to him and it provided him with misleading and conflicting information, of a critical nature which he submits has compromised his ability to effectively manage his pension fund. The Complainant states that the Provider did not provide him with a reasonable minimum standard of professional service, and that it has breached the terms of the contract, arising out of its failures in its dealings with him and his pension fund. The Complainant says that the Provider informed him, in relation to the discrepancies between the online summary schedule and the fact sheets, that *“there can be difference from time to time”*... *“as different databases are used to calculate the risk ratings”* and he submits that this response is *“totally unacceptable”*. The Complainant states that there is no warning on either the summary schedule or the individual fact sheets that discrepancies may exist, and he contends that this failure to notify its customers of this discrepancy represents a *“gross negligence and a breach of the duty of care”* that it owes to its customers.

The Complainant submits that he intends to transfer his investment fund to another Fund Manager, and he states that he is not prepared to pay any exit charges as set out in the terms and conditions of the investment fund in question.

The Complainant submits that in order for an investor, such as himself, to select the fund that is most appropriate to them, the Provider must furnish accurate, non-contradictory information that is unambiguous, and he states that the Provider has failed him in this regard.

The Complainant submits that due to the complexities surrounding investment funds, which he states people struggle to comprehend, it is not sufficient for the Provider to place the onus on its clients to verify the accuracy of the information that they are trying to interpret and understand. The Complainant states that the Provider's integrity must be questioned, and he submits that there is no transparency in the manner in which the Provider conducts its business. The Complainant states that of the **22** discrepancies that he noted in the Provider's Risk rating, he submits that only one of those discrepancies has been rectified at the time of making his submission.

In the Complainant's submission of **03 June 2020** he states that the actual amount switched by the Provider was €100,009.42, despite his request that €100,000 should be switched into Fund 3.

The Complainant says it is perfectly and mathematically feasible to implement a switch for a precise amount, based on the effective unit prices as subsequently determined for the day designated for the switch and it is only because of the convoluted basis on which the Provider operates its switches that its system cannot match the client's instruction.

The Complainant submits that in the Provider's response it states that the gross value of the plan was €248,884.77, based on a pricing date of the **07 April 2020**. The Complainant however says , paragraph 5 refers to a pricing date of the **07 May 2020**, and asks which

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date is correct. The Complainant states that from his records it would appear that the value indicated relates to the latter date and not the former.

The Complainant submits that these two factual errors are indicative of his experience in dealing with the Provider and reflect the general attitude that appears, in his view, to permeate throughout the organisation, that is, accurate and timely information is not a priority. The Complainant states that facts are facts and there is absolutely no excuse for failing to be accurate or non-contradictory, especially when dealing with a financial institution.

The Complainant states that it is totally irrelevant from a client's perspective as to how discrepancies in the 'Risk Ratings' arise between the online 'Summary Schedule' and the individual fund fact sheets, and that is purely an internal matter for the Provider.

The Complainant says, equally it is unacceptable for a major financial institution, with substantial human and IT resources, to provide conflicting and contradictory information to its clients, and the public in general, on such a large scale in relation to key and critical information.

The Complainant states that he questions the Provider's statement that the discrepancies existed between **July 2019** and **September 2019**. The Complainant says he identified the discrepancies, on the **04 July 2019**, therefore says they existed on that date, and therefore they existed prior to the date. The Complainant submits it is possible that those errors always existed and nobody identified them until he did.

The Complainant states that he totally rejects the Provider's statement that 'these (discrepancies) have been corrected on his online services'. The Complainant says that this is not supported by the evidence that he supplied on **01 October 2019**, **24 October 2019** and **19 March 2020**. The Complainant states that the 'Risk' rating errors that are noted in these letters all postdate the Provider's end date of September 2019 for the existence of discrepancies.

The Complainant submits that even 10 months after he first raised the issue, a quick review of the online 'Summary Schedule' and corresponding fact sheets, where available, reveals the following discrepancies.

<u>Fund Name</u>	<u>"Risk"</u> <u>Per Schedule</u>	<u>'Risk'</u> <u>Per Fact sheet</u>
*****	5	6
*****	4	5
*****	5	6
*****	7	6
*****	7	6
*****	7	6

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The Complainant states that the discrepancies relating to three of the funds can be satisfactorily explained by virtue that the 'Summary Schedule' ratings are based on the Provider's own 'Risk' assessment whereas the fact sheets have been issued by another entity, which it appears rates the funds on a slightly different basis. The Complainant states however, excluding these funds there are still 3 funds where the actual 'Risk' rating, as detailed in the corresponding factsheet, is higher than that indicated on the 'Summary Schedule'. The Complainant says this implies that, not alone is the rectification of historic errors not being fully addressed, but there is still an ongoing problem which is resulting in new errors occurring.

The Complainant also notes that the particular Cash Fund still appears on the 'Summary Schedule' with a 'Risk' level of 1 and that there is now no fact sheet available. The Complainant says he was advised on the **04 July 2019** by Customer Services, that the appropriate 'Risk' rating is level 2.

The Complainant submits that overall, the Provider's statement is grossly inaccurate and misleading.

The Complainant questions the Providers' commitment to 'streamline the way information is presented and reduce the possibility of confusion'.

The Complainant submits that it is a very simple matter for the Provider to post a notice on the 'Summary Schedule' and 'Fact sheets' of the potential existence of discrepancies. The Complainant comments negatively on the Provider's comment that '...such notifications are being considered, as part of its ongoing improvement.'

The Complainant states that it took a total of **18** working days to obtain the relevant fact sheet for the Cash Fund, into which he had switched his funds on the **04 July 2019**.

The Complainant states that the inference in the Provider's reply that he was partly to blame for the delay in the correct document being sent to him is a deliberate attempt to try and transfer some of the responsibility for the shortcomings in the Provider's handling of this matter.

The Complainant states that a review of the recording of his conversation with the Provider's representative on the **23 July 2019** clearly shows that he requested a copy of the fact sheet and that there was no reference in the conversation to the plan 'Terms and Conditions'.

The Complainant states that the Provider has failed to grasp the basis of his complaint if its only response is to state that he was never told by the Provider that the onus was on him to verify the accuracy of the information on the online service.

The Complainant asserts that Provider never informed him, either verbally or in writing, that the Provider had informed him that the onus was on him to verify the accuracy of information.

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The Complainant states that the basis of his complaint is that the Provider has, through its failure to furnish accurate and non-contradictory information to him, placed the onus on him to verify the accuracy of the detailed information being furnished by the Provider to him.

The Complainant states that the Provider is erroneous in its statements that *'some information on the online service was incorrect for a time'*. The Complainant asserts that discrepancies existed up to time of his submission.

The Complainant submits that details of the Fund Management Charges should have been immediately available to him at the time that he was deciding on which fund he would switch into and not four working days after he instructed a switch to be made and also sought the information.

The Complainant states that the 'Terms and Conditions Booklet' that he was erroneously sent on the **07 August 2019** contained full details of the 'Fund Charges' for all the switching options that were available to him, and this document could and should have been provided to him when he sought details of the charges on the **03 July 2019**.

The Complainant states that he was advised in his telephone conversation with the Provider on the **03 July 2019** that details of the 'Fund Charges' could be found on its website, but was not given any details as to where on the website the information could be found, or which website for that matter, as the Provider appears to have a number of website links. The Complainant states that, up to the time of his submissions, he has not been able to locate this information.

The Complainant states that the 'Fund Charges' that he was provided with in his telephone conversation of the **04 July 2019** only related to the two or three fund options that he had narrowed his focus to, prior to contacting the Provider on that date for the purpose of finalising and implementing his switch choice.

The Complainant submits that when assessing the full range of switch options available to him prior to the **04 July 2019** he had to ignore the entire 'Fund Charges' issue and narrow his focus based on other parameters that he considered appropriate. The Complainant states that the full information should have been available to him as he assessed his options in respect of all of the 62 funds into which he could have switched.

The Complainant's position is that while the 'Fund Management Charges' are, according to the Provider, available online he has never been able to locate it, and equally has never been able to locate the plan 'Terms and Conditions'.

The Complainant states there was no 'Terms and Conditions Booklet' enclosed with the 'Welcome Pack' that he received on the **30 September 2017**. The complainant rejects the Provider's statement that the Welcome Pack sent to him shortly after his plan commenced contained 6 documents, as 'clearly noted in bold font' and that by virtue of his failure to notify the Provider at that time that the document was not included in the pack is proof that it was sent to him in the pack.

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The Complainant submits that he has maintained highly accurate and detailed record of all his financial transactions and dealings over the last 40 years and asserts that he did not receive the document.

The Complainant states that the 'Welcome Pack' that he received contained a cover letter dated 30th September together with two documents, that is, 'Plan Schedule' and 'Customer Information Notice', and a 'Your Welcome Pack at a Glance' brochure. The Complainant says that despite the cover letter stating that 6 documents were enclosed, the brochure states, under the heading 'In the envelope' that 'Your financial adviser gave you this before you started your plan' in respect of three of the documents, that is. the 'Plan Booklet', the 'Fund Guide' and the 'Terms and Conditions'.

The Complainant's position is that he recalls thinking at the time that he received the 'Welcome Pack' that it was not worth getting upset or annoyed about the matter and that he would query his broker about these documents at some stage in the future. The Complainant however says, because it was, in his view, a low priority matter at that time, he failed to follow it up. The Complainant submits that notwithstanding his omission in this regard the failure of the Provider, in the first instance, to include the documents in the 'Welcome Pack' has a striking similarity to its subsequent failure to enclose the plan 'Terms and Conditions' with its letter of the **25 July 2019**. The Complainant also submits, the contradictory information between the cover letter and the brochure is reminiscent of the discrepancies in the 'Risk' ratings which is at the core of his current complaints.

With regard to the Complainant's position that he did not receive the enclosures that were said to be included with a letter dated **09 January 2020**, the Complainant submits that it is contradictory that the Provider acknowledges, in this instance, that it cannot confirm with certainty that the documents referred to were enclosed with its letter of the **09 January 2020**, notwithstanding the fact that the letter notes that these documents are included, whereas in a previous reply it adopts an opposite stance and states that a document is deemed to be attached if it is referred to in the cover letter and not queried, at that time, by the recipient.

The Complainant states that he believes that his complaint in relation to the switch implemented on the **04 July 2019** has been misinterpreted. The Complainant says he accepts the Provider's comments that he was advised of the relevant pricing date being the **04 July**, and not the **02 July**. The Complainant submits it will be seen from telephone call of **04 July 2019** with the Provider, that he made enormous efforts to obtain precise and unambiguous clarification regarding the allocation of fund values upon switching funds. The Complainant says it will also be seen that the call handler herself did not have an adequate understanding and full knowledge of the process and potentially created more confusion than she resolved.

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The Complainant says his complaint relates to the Provider's failure to allocate the precise amount of €100,000 into the Multi Asset Portfolio Fund, as instructed by him and its failure to advise him, during his conversation of the **4 July**, of the prospect of this.

The Complainant states that the Provider's acceptance of its failure in its 'duty of care' is noted. The Complainant submits that an admission of a 'failure of duty of care' by the Provider implies negligence, whether reckless or deliberate.

The Complainant rejects the Provider's argument that this has not compromised his ability to effectively manage his pension fund. It is the Complainant's position that it is only as a result of thoroughness and diligence on his part that the decisions which he made regarding the switching of his funds were not negatively impacted by the failures of the Provider to provide accurate and unambiguous information.

The Complainant states the availability of alternative means of communication is totally irrelevant, in that if he opts to use the Provider's online service, he is entitled to expect that the information set out thereon is both accurate and the same as that which he would receive if he used an alternative means of communication.

The Complainant states that the clarifications issued to him in the telephone conversations with the Provider do not in themselves mean that the Provider did not deliberately set out to mislead. The Complainant says, that said, he accept that, on the balance of probability, the Provider originally acted solely in a negligent manner by allowing contradictory and conflicting information to be furnished to both himself and all its other clients who have invested in the same product. The Complainant however states, he would now argue that as the Provider has failed, in a timely manner, to fully rectify all the contradictory and misleading information on its websites / online services that this now constitutes a deliberate provision of contradictory, conflicting and misleading information and, as such, is totally inexcusable and indefensible.

The Complainant does not accept the Provider's assertion that the issues at the core of his complaint relate solely to 'service' matters. He rejected the Provider's offer of a 'Customer Service Award' of €1,500 in settlement of his complaints and is seeking an amount that will compensate him sufficiently so he can terminate his contract with the Provider and move his funds at no financial loss to himself.

The Complainant wanted the Provider to transfer the original value of the funds (at the time of the switch transfer in **July 2019**) of €271,808 to another provider of his choice without imposing any fine or penalty against him or his investment funds. In his last submission of 24 June 2021, he advised that he had retired and transferred his pension fund to another fund manager. The Complainant stated that the transfer took 6 weeks and was subject to an €8,089.81 "early withdrawal penalty".

The Provider's Case

In the Provider's submission of **14 May 2020**, the Provider states that the Pension Retirement Bond's start date was **28 September 2017**. The Maturity date of the plan is **06 January 2026**. Total amount invested was €242,079.77. The Provider states that in December 2019, the Complainant switched €100,000 of his pension to the Multi Asset Portfolio Fund 3 and the balance to the Multi Asset Portfolio Fund 4. The Provider states that the gross value of the plan, based on a pricing date of **07 April 2020**, was €248,884.77.

The Provider states that, as the Complainant's plan has been in place since 2017, there (was then) a 5% withdrawal charge (€12,444.25), should the Complainant wish to transfer the proceeds of his plan to another pension provider.

The Provider states that it accepts that small changes in risk ratings can result in conflicting information showing online. The Provider says it is committed to continually improving its online systems and as such, is working to streamline the way the information is presented and reduce the possibility of confusion in the future.

In relation to the information on its website, the Provider states that there can potentially be differences from time to time, in the risk ratings, "as different databases are used to calculate the risk ratings", the Provider states that at present, there is no warning or alert online, alerting the user to a possibility the risk rating on the Summary Schedule may differ slightly from that on the Factsheet. The Provider states that such notifications are being considered, as part of its ongoing improvements.

As regards the fact sheets and the accuracy of the information contained therein, the Provider states it is satisfied that the information on the Summary Schedule, is accurate at this time. The Provider says it undertook to correct these, when it was brought to its attention by the Complainant, that they were incorrect.

As regards the furnishing to Complainant with a copy of the Terms and Conditions of the new low risk investment fund, and the time taken to issue them, the Provider says that its records show that the Complainant originally requested a copy of the fact sheet for the Cash Fund on a telephone call to the Customer Service Department, on **23 July 2019**. The Provider says, when the request was sent to its Administration Team, by the Agent with whom the Complainant had been speaking, it noted that a copy of the Plan Terms and Conditions were to be issued. The Provider states that unfortunately, there was no mention of the fact sheet in question. As a result, a copy of the plan Terms and Conditions were sent to the Complainant, on **25 July 2019**. There was no reference to the fact sheet in question, in the letter.

The Provider states that its records show that on **30 July 2019**, it received an e-mail from the Complainant. In his email, he noted "*...information which I requested and which you purported to enclose with your letter, was not enclosed therewith*". The Provider says the letter sent to the Complainant on **25 July 2019** only made reference to the Terms and Conditions (as opposed to a fact sheet), the Terms and Conditions were re-sent to the Complainant on **07 August 2019**. The Provider submits that an e-mail was sent to the

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Complainant on the same day, apologising that the Terms and Conditions were not included in the original letter and stated that they had been re-sent. The Complainant responded by e-mail on the same day, clarifying that he had in fact requested a copy of the fact sheet for Cash Fund and was still waiting on this being received. The Provider says that the correct document was sent to the Complainant on **16 August 2019**.

The Provider states that at no stage did it inform the Complainant, that the onus was on him to verify the accuracy of the information on his online services. The Provider says it accepts that some of the information on his online services was incorrect for a time. The Provider however, says that when the Complainant made the Provider aware of the discrepancies, the Provider sought to clarify the risk ratings on the telephone and by letter, while its Complaints Department sought to rectify the online discrepancies as part of their investigations. The Provider states that at no stage was it deemed the Complainant's responsibility to verify the accuracy of the online information.

As regards the Complainant's request of **03 July 2019** for Fund Charges, the Provider states that the Fund Management Charges requested by the Complainant on **03 July 2019**, were sent to him on **09 July 2020**; four working days after the request was made.

The Provider also submits that the Complainant was informed that the information he requested regarding the Fund Management Charges, was available on his online services, during his telephone call of **03 July 2019**. The Provider states that the Complainant advised he had poor internet connection and as such, wished to obtain the information by telephone.

The Provider states it accepts that a full breakdown of the charges and fees attached to the relevant fund and full fund documentation, including the terms and conditions information, would be required by the Complainant or his financial adviser, in order to make an informed decision, on which funds to switch into. The Provider points out that when the Complainant provided his switch instruction during his telephone call of **04 July 2019**, he did so having received details of the fund charges on the same call. The Provider therefore says it is satisfied that the Complainant was in receipt of the Fund Management Charges applicable for the Cash Fund options, prior to deciding which fund to switch into.

The Provider states that in addition to the Fund Management Charges being available online, they are also included in the plan's Terms and Conditions and Fund Booklet, each of which were sent to the Complainant, when his plan started, as part of his Welcome Pack.

The Provider states that it understands from the Complainant's previous correspondence, he has advised that the Terms and Conditions were not enclosed in the original Welcome Pack, sent to him by the Provider, after his plan started. The Provider submits that its records show that the Welcome pack sent to the Complainant, clearly noted, in bold font, that it contained the following documentation, Plan Schedule, Product booklet, Fund Guide, Terms and conditions booklet, Customer Information Notice, Explanation of the benefits of Customer Information Line and Online Services.

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The Provider says it was recommended that the Complainant study each of these documents carefully, to ensure the product met with his expectations. The Provider submits that if as the Complainant notes, the Terms and Conditions were not included; it would be the Provider's expectation that, the Complainant would have contacted the Provider at the time and brought this to its attention. The Provider states it has no record of such contact being received by either the Complainant or his financial adviser. The Provider says, therefore, the Provider is satisfied that the document in question was included in the Welcome Pack that was sent to the Complainant.

The Provider was asked by this office that in circumstances where a fund fact sheet cannot be availed of by the customer on the online portal, if the Provider has a link to retrieve this information from its website. The Provider's response was that that at present, there is no such link online, directing the customer to the Provider's Fund Centre. The Provider says that such a link is being considered, as part of its ongoing improvements.

The Provider states: *"the relevant team has advised that there are plans to standardise the source of the data for the Summary page and Factsheets, as providing accurate information to our customers is a high priority for us"*. The Provider states that the referenced change is part of a larger, ongoing piece of work, which is being carried out to improve its online services for its customers, and at the time of making submissions, the action was not fully completed.

The Provider was asked by this office whether it enclosed the Response Letter dated **12 September 2019**, the Acknowledgement letter dated **15 November 2019** and the Form of Agreement, within its letter to the Complainant dated **09 January 2020**. The Provider's response is that while the letter in question does note that these are to be enclosed, the Provider cannot confirm with any certainty, whether or not this was the case. The Provider says while it is satisfied from the Complainant's letter to the Provider dated **08 November 2019**, that he did in fact receive the original Response letter when it was sent to him in September 2019. The Provider says it apologises if the copy of this letter and other enclosures, were not included when it was noted that they were, in January 2020.

The Provider was asked by this office whether it was satisfied that the Complainant was clearly informed on the telephone call of **04 July 2019**, that the transfer value of his funds would be effective as of that date and not **02 July 2019**. The Provider's response is that it is satisfied that the Complainant was made aware, that the value he was given on the telephone call of **04 July 2019**, €271,528.87 was based on a pricing date of **02 July 2019** and that while the fund would be switched with effect of **04 July 2019**, the Provider did not yet have the pricing date for the **04 July 2019**.

The Provider states it is also satisfied that the Complainant understood the pricing date he would receive at the time, as he commented on having to have "blind faith", to give a switch instruction, when he was not aware of the unit price for the date being used for the switch. The Provider says the Complainant also noted that in the event there was a large difference between the value he had received (on the call) and the value based on the pricing date of **04 July 2019** (used for the switch), he would be taking this further.

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The Provider submits that for, reference, the value of the Complainant's plan (based on the pricing date of **04 July 2019**), was in fact higher and the Complainant benefited, as a result, of not processing his switch, with effect of **02 July 2019**.

The Provider states that the value of the plan on **02 July 2019**, was €271,528.87; and the value of the plan on **04 July 2019**, was €271,808.51.

The Provider accepts that in this instance, there was a failure in its duty of care to the Complainant, in that the information presented to him online, was misleading and for this, the Provider has apologised. The Provider does not accept the Complainant's submission that this has compromised his ability to effectively manage his pension fund. The Provider submits that not all of the Provider's customers use online services, rather, they choose to contact the Provider directly, using the various media in place for this purpose.

The Provider gives the following examples; By telephone to its Customer Service line, open from 8.am to 8pm Monday to Thursday, 10am to 6pm on Friday and 9am to 1pm, on Saturday. By email to its Customer Service Email box. By post. By contacting their financial adviser, who in turn contacts the Provider.

The Provider submits that as there are several other avenues available to the Complainant (in the event he could not use his online services), to obtain information regarding his pension plan. The Provider asserts that it is clear that his ability to effectively manage the plan, has not been compromised as claimed. The Provider states that this is further evident by the fact that the Complainant not only contacted the Provider by telephone in July 2019 to obtain details on the available funds, but he was also able to monitor his plan and decide to switch out of the Cash Fund, in December 2019; to invest in the Multi Asset Portfolio Funds.

The Provider states that it is satisfied that it acted with due skill, care and diligence and in the best interests of the Complainant and that it did not recklessly, negligently or deliberately mislead him as to the real or perceived advantages or disadvantages of the investment fund in question. The Provider states that while it accepts that some of the information showing online, would have been confusing to the Complainant and it appreciates why he had to contact the Provider by telephone, for clarification, the Provider rejects the Complainant's claim that it deliberately attempted to mislead him. The Provider submits that if this was the case, he would not have received clarification, from either its Customer Service Department or its Complaints Management Team, when he contacted the Provider.

The Provider points out that the Complainant's online services was corrected after he made the Provider aware of the information being presented to him online.

With regard to the Provider's compliance with the Consumer Protection Code when dealing with the complaint, the Provider says it is satisfied it complied, based on the following.

- The Complaint was raised in July 2019.
- During the Complainant's telephone call of the **04 July 2019**, the Complainant was offered the opportunity to have his concerns regarding the documentation online, investigated by the Provider's Complaints Department;
- The complaint in question was acknowledged in writing, within 5 working days and set out the name and contact details of the investigator;
- While the complaint was ongoing, update letters were sent to the Complainant, at intervals of no greater than 20 working days;
- When the complaint was not fully resolved by the 40th working day (**30 August 2019**), a letter was sent to the Complainant, setting out the right to refer the case to this office, and advising when the Provider aimed to be in a position to respond to him; and
- A full written response was issued to him on **12 September 2019**, setting out the results of the Provider's investigations.

Complaint raised in November 2019

- Complaint was received on **12 November 2019** and acknowledged in writing on **15 November 2019**, again, setting out the name and contact details of the investigator
- Update letters were sent to the Complainant at intervals of no greater than 20 working days; and
- A full written response was issued on **09 January 2020**. Addressing all issues raised and offering a Customer Service Award, by way of apology to the Complainant.

The Provider submits that it is satisfied that it has complied with the provisions of the Consumer Protection Code, which are relevant to its administration of the Complainant's pension plan including those relating to information provision.

In relation to the fact that an amount of €100,009.43 was switched in his Multi Asset Portfolio instead of €100,000, the Provider points out the following;

"When the Provider is processing a fund switch request, it is done so based on a percentage amount of the fund. At the time of processing the fund switch, the fund value in the Cash Fund was €270,368.84.

Therefore, percentage of funds being switched into Multi Asset Portfolio..., was calculated as follows:

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$\text{€}100,000 / \text{€}270,368.84 \times 100\% = 36.986\%$

In line with our process, the 36.986% was then rounded up to two decimal places, that is 36.99% was to be switched into Multi Asset Portfolio This resulted in the following amounts being transferred into that fund.

Fund Name	Percentage of Fund
Multi Asset Portfolio ...	€100,009.43

Each of the Provider's fund switches are quality checked after the pricing date has been updated. We check to make sure the difference in value of the fund is not greater than 1% of the overall request.

In the Complainant's case, no changes were made, as the difference between his request of €100,000 and the actual amount transferred of €100,009.43 was only a difference of 0.009%".

The Provider states that as the Customer Service Agent with whom the Complainant spoke on **04 July 2019**, would not have had access to any of the above information, or indeed the pricing date of the 4 July, it would not have been possible for her to make the Complainant aware of how much would be switched, when it would receive the pricing date for **04 July 2019**. The Provider points to the following warning at the top of the Fund Centre:

"Fund Prices and Performance

Please use fact sheets as a guide to the structure of your fund.

Our fact sheets provide general information on the fund as a whole. As funds are released in a number of series, pricing information and graphs may not match the series you're invested in. For the most up to date and accurate pricing and risk rating information for your funds, please login to your online account".

The Provider submits that having reviewed all of the correspondence sent to both the Provider and this office, it is clear that the Complainant is unhappy with the service he has received from the Provider, both online and during his contact with the Provider's Customer Service Department. The Provider says it is also clear that the service surrounding the provision of information, would have caused a degree of confusion and inconvenience to the Complainant. The Provider states for this, the Provider is sorry and accepts a Customer Service Award is warranted in respect of the poor service the Complainant received.

The Provider states it understands the Complainant originally requested that he be allowed to transfer the proceeds of his plan without paying the early withdrawal charge, which was approximately €14,000 at the time. The Provider however, says the Complainant later notes that given the length of time it has taken, and will continue to take, for the matter to be adjudicated upon, he wishes to have the gross value of his

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pension when it switched between funds in July 2019, to be transferred to his chosen provider. The Provider says that this is, approximately €271,808, which carries a cost of approximately €35,368, bearing in mind the early withdrawal charge and recent losses in value. The Provider states that the basis for this request, is that the Complainant feels that the poor service he received, invalidated his contract with the Provider.

The Provider points out that the Complainant was not at a loss financially, as a direct result of the service complained of and that the contract in question (between the parties), is not based on the Provider's level of service. The Provider states rather it is based on plan's administration, by the Provider, in line with the governing terms, which were accepted by the Complainant when he applied for the plan in 2017. The Provider submits that it is clear that the plan has been administered in accordance with the governing terms and that all requests / instructions from the Complainant were processed in a timely manner.

The Provider says, it is also clear that the early exit charge is part of the contract into which the Complainant agreed to enter and is not a penalty he is incurring as a result of the Provider's service. The Provider states that it does not believe it is appropriate to grant the Complainant's request. In recognition of the service provided to the Complainant in relation to the information on his online services, the Provider increased its original offer of €500, to €1,500.

The Provider also states it is committed to continually improving its online systems and continues to streamline the way the information is presented and as such, reduce the possibility of confusion in the future.

The Complaints for Adjudication

The first Complaint is that the Provider failed to supply the Complainant with accurate and reliable information of a critical nature which compromised his ability to effectively manage his pension fund and it failed in its duty of care towards the Complainant.

The second Complaint is that the Provider failed to respond to the Complainant's complaints in a timely manner.

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.

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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 **13 August 2021**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

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

Analysis

As regards the Provider's processing of the Complainant's complaints, I accept that the Provider has kept to the required timelines, and when it was unable to complete its investigations within the said time frames, the Provider issued a letter advising the Complainant that he could refer the complaint to this office.

As regards the main complaint, I accept it is clearly evident that the Complainant has encountered many deficiencies and errors when trying to obtain information relative to the Provider's funds. I have set out some of the issues encountered by the Complainant below.

On the online account, the List of the funds that were said to be available for investing was **62**, but only **61** were visible to the Complainant.

Of the **61** alternative funds listed on the website, only **56** of the funds had fact sheets available to view online and of that figure the Complainant submits that he noted **22** discrepancies between the various schedules in the risk ratings.

When the Complainant wanted to review a 'low risk' fund, he received an error message on the Provider's website which stated "*Page not found*".

Upon reviewing the fact sheet of a 'low risk' cash fund, the Complainant noted that it was classified as a level **2** risk category and the Summary Schedule of that cash fund showed it to be a level **1** risk category.

In telephone call of **03 July 2019** the Complainant sought information relating factual information (not advice) on risk level of funds and charges. The Provider advised that it could not give the Complainant this information there and then, that it would take a number of days (7 to 10 days).

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On **04 July 2019**, the Complainant telephoned the Provider to seek clarification of the two cash fund options and the risk levels associated with them. During this telephone conversation he noted that three of the remaining funds which had been listed on the Provider's website as being "low Risk" had a higher risk level set out in the relevant fact sheets, than which had been indicated on the relevant Summary Schedule for those investment funds.

This was corroborated by the Provider's representative in the telephone call of **04 July 2019** when he tried to access the same information. **"It is a level 4 on the fact sheet" – "Mistake there"** and he then advised he would refer on to have the error remedied.

Regarding the availability of a fact sheet – the representative looked for the fact sheet and confirmed for the Complainant that he too got a message **"not found"**. The representative went searching and found it on another site.

The representative could not explain why there was a difference in risk rating.

In this call the Complainant pointed out to the representative that: **"Of 5 funds listed on low risk, 4 incorrect"**. This was not disputed by the Provider's representative.

The details of the 'Fund Charges' were not set out in either the summary schedule of a fund nor within the fact sheet document of each fund.

On **10 July 2019**, the Complainant received the information from the Provider in relation to the fund charges. The Provider's letter was dated **09 July 2019**, which was one week after he had requested the information and also one week after he had switched his funds into the new low risk investment fund. The Provider's letter dated **09 July 2019**, did not mention his complaint regarding its failure to make this information readily available to him.

On a number of occasions the Complainant had requested the Provider to supply him with the fact sheet to the low risk fund, to which he had transferred his investment funds. On **07 August 2019**, the Provider issued the Complainant with the Terms and Conditions Booklet of his low risk investment fund and within that documentation was a pre-published list of all the fund charges for all the switching options that were available to him (information he had been previously advised was not readily available).

There is no warning on either the Summary Schedule or the individual fact sheets that discrepancies may exist.

The Provider failed to allocate the precise amount of €100,000, as instructed by the Complainant and failed to advise him, during his conversation of the **04 July 2019**, of the prospect of the precise amount not being so allocated.

The Provider accepts there were discrepancies on the Complainant's online services between **July 2019** and **September 2019**. The Provider says that the discrepancy came

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about due to the fact that the rating on the Summary Schedule was being calculated using information from a separate source, to that from where the information for the fact sheets, was fed.

The Provider accepts, there was a failure in its duty of care to the Complainant, in that the information presented to him online, was misleading and for this, the Provider has apologised. I welcome the Providers acceptance of these deficiencies and its apology. I note the Provider does not accept the Complainant's submission that this has compromised his ability to effectively manage his pension fund.

The Provider states that while it accepts that some of the information showing online, would have been confusing to the Complainant and it states that it appreciates why he had to contact the Provider by telephone, for clarification, the Provider rejects the Complainant's claim that it deliberately attempted to mislead him.

I accept that no evidence has been produced to demonstrate that the Provider deliberately attempted to mislead the Complainant.

The Provider accepts that the service surrounding the provision of information, would have caused a degree of confusion and inconvenience to the Complainant.

The Provider accepts that there was no warning or alert on its website, alerting the user to a possibility the risk rating on the Summary Schedule may differ slightly from that on the fact sheet.

The Complainant originally requested a copy of the fact sheet for the Cash Fund on a telephone call to the Customer Service Department, on **23 July 2019**. Instead, a copy of the plan Terms and Conditions were sent to the Complainant, on **25 July 2019**. There was no reference to the fact sheet in question, in the letter.

It took **18** working days, on foot of the Complainant's request, for the Complainant to obtain the relevant fact sheet for the Cash Fund, into which he had switched his funds on the **04 July 2019**.

The Provider accepts it cannot confirm with any certainty, whether or not certain enclosures were included with its letter to the Complainant dated **09 January 2020**.

I accept that it is contradictory that the Provider acknowledges, in this instance, that it cannot confirm with certainty that the documents referred to were enclosed with its letter of the **09 January 2020**, notwithstanding the fact that the letter notes that these documents are included, whereas in a previous reply it adopts an opposite stance and states that a document (the Terms and Conditions document said to have been sent from outset) is deemed to be attached if it is referred to in the cover letter and not refuted, at that time, by the recipient.

The Complainant was advised in his telephone conversation with the Provider on the **03 July 2019** that details of the 'Fund Charges' could be found on its website, but was not

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given any details as to where on the website the information could be found, or which website, as the Provider appears to have a number of website links.

I accept that the full information should have been available to the Complainant as he assessed his options in respect of all of the **62** funds into which he could have switched.

While I note the Provider's representatives were courteous and did explain their difficulties in accessing and furnishing the information, I accept that greater assistance and a speedier response was required for this information. It is difficult to understand why this information could not have been sent to the Complainant on the same day as he requested it. Particularly when the Complainant had communicated his difficulties accessing this information from the Provider's website. I accept that to have to wait several days for information to action a switch of funds in relation to a pension product is unreasonable and unacceptable.

It is difficult to understand why the Provider's representative could not have mentioned earlier that the charges were also set out in the Terms and Conditions Booklet, that should have been supplied to the Complainant from the outset. I accept that this would have also opened up the discussion then, or later, as to whether the Complainant had received those Terms and Conditions or had them in his possession.

I accept that the creation of a link between the online portal and the Provider's website, where a fund 'fact sheet is not available on the former would have been helpful.

I accept that it would be helpful if the Provider could furnish adequate warnings to clients of the possibility of discrepancies occurring on its websites.

I accept that the Provider's position as to the availability of alternative means of accessing the investment information, is not a reasonable response to the matter, in that if clients opt to use the Provider's online service they are entitled to expect that the information set out thereon is both accurate and the same as that which they would receive if using an alternative means of communication.

As regards the Provider's failure to allocate the precise amount of €100,000, as instructed by the Complainant and its failure to advise the Complainant, during the phone call of **04 July 2019**, of the prospect of the precise amount not being so allocated, I accept this was unreasonable of the Provider. The Provider notes that the difference between the Complainant's request of €100,000 and the actual amount transferred of €100,009.43 was *only* a difference of 0.009%". However, I accept that no matter what difference in amount arose, the Provider should reasonably have advised the Complainant of the possibility of such a difference occurring both prior to making the switch, and then when the actual difference arose. I find no evidence of the Provider communicating this information to the Complainant.

I accept that where the Provider's system and processes cannot match the client's instruction, this should be clearly brought to the Complainant's notice, as something that might or could happen.

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I accept that when there was a drop in the fund value, and the Complainant had queried this on **12 July 2019**, this was a matter for the Provider to explain, and not a matter for the Provider to direct the Complainant to his financial advisor.

As regards the Provider's advice to the Complainant that its turnaround time for answering communication had changed, I accept that it was reasonable of the Complainant who had previously sent a communication with the expectation of a shorter time for a response, would have been alerted / updated by the Provider of this longer response period.

I accept it cannot be tested as to whether the Provider did in fact fail to enclose documentation said to have been sent to the Complainant. That said, the Provider has acknowledged that it could have happened on another occasion. The Provider's observation that the Complainant should have noted the absence of the documentation and queried same earlier, is also noted and I accept it is reasonable to expect that the Complainant would have taken that step, so as to fully inform himself of the product he was investing in.

I accept that the information that is required by a client to manage their investment should be reasonably readily available and easily accessible on the website furnished by a Provider.

I accept that it is not ideal to ask the Complainant to move from his online services to the main Provider website to obtain the specific information that should be available on the allocated site.

I accept that the level of issues and the Provider's responses to the matters raised by the Complainant undermined the very basis of trust that should exist between a financial institution and a client.

I accept that the Complainant's request for the fact Sheet in the telephone call of **23 July 2019** was clear and unambiguous, and the resulting sending of another document not asked for by him, did reasonably cause confusion and inconvenience to the Complainant.

I accept that the Provider's representative refusing to give her name when this was requested by the Complainant, was not a reasonable or correct response by the representative. However, I note the Provider accepts this and has addressed the matter.

The Provider refers to a warning that appears at the top of its "Fund Centre" site but does not have a similar warning on the site that the Complainant and other clients have access to in relation to their investments. I accept that it is not logical of the Provider to refer its clients from the Provider's "Fund Centre" to the client's own online account for more accurate pricing and risk rating information, when the client's online account had such deficiencies itself.

The Consumer Protection Codes require that a regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in

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plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information. A regulated entity must supply information to a consumer on a timely basis. In doing so, the regulated entity must have regard to the following: (a) the urgency of the situation and (b) the time necessary for the consumer to absorb and react to the information provided.

I accept that timely and accurate information was, reasonably required from the Provider when the Complainant was making decisions as to what funds he would invest in. This was particularly important when the investment decisions related to the Complainant's pension policy.

I welcome that the Provider accepts, there was a failure on its part in that the information it presented to the Complainant online, was misleading and has apologised and indicated its intention to remedy some of the matters raised and improve its information provision.

Notwithstanding this, I believe a sum of compensation is merited. However, I do not believe the redress sought by the Complainant is appropriate or proportionate. The Complainant has not furnished evidence confirming any loss as a result of the Provider's conduct. He has however, demonstrated considerable inconvenience. Therefore, I do not consider the €1,500 offered by the Provider to be sufficient in the circumstances. I believe a more appropriate sum of compensation to be €4,000.

For the reasons set out in this Decision, I substantially uphold this complaint because of the improper conduct of the Provider, and I direct the Provider to pay a compensatory payment of €4,000 (four thousand euro).

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld, on the grounds prescribed in **Section 60(2)(g)** *the conduct complained of was otherwise improper*.
- 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 €4,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

08 September 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.