



<u>Decision Ref:</u>	2021-0445
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Personal Pension Plan
<u>Conduct(s) complained of:</u>	Failure to inform of drop in value
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns the Complainant's investment plans with the Provider.

The Complainant's Case

The Complainant submits that he has been a customer of the Provider for many years and during those years, the Provider's representative (**M.**) periodically contacted him to review his investment policies. He submits that following these reviews, any investment changes that were deemed necessary, were carried out.

The Complainant states that he was not made aware when **M.** left the service of the Provider on **24 November 2017**. The Complainant submits that he should have been made aware of **M.**'s departure as this representative was his point of contact within the Provider and **M.** looked after his affairs with respect to the investment policies.

The Complainant states that because he was unaware of the departure of **M.**, he waited to hear from him throughout **2018** to arrange the usual annual review. The Complainant submits that he subsequently discovered that **M.**, with whom he had been dealing all those years, had left the service of the Provider and that **M.** was prevented by the Provider from contacting him to inform him of his departure.

The Complainant submits that as the Provider did not inform him of the departure of **M.**, he was not afforded an opportunity to review the investment plans in question, and to make any changes which may have been deemed necessary. The Complainant submits that the investment plan decreased in value by up to 7% which resulted in a monetary loss of

€17,562.61 from **4 September 2017** to **21 November 2018**. The Complainant submits that the Provider failed to inform him at the time that the funds in question were underperforming.

The Complainant states that he relied on the Provider, as his broker, to inform him of any fluctuations in the market which would have negatively impacted on his investment policies and to advise him if the investment policies had been subject to any change in circumstance, so that appropriate arrangements could be put in place to avoid any adverse change to his policies.

The Complainant submits that he has no doubt that if M. had remained employed with the Provider, M. would have contacted him to alert him to the drop in value of the investment fund, which in turn would have allowed him the opportunity to make an informed decision on whether or not he should remain in the investment fund. The Complainant argues that no such communication was issued to him and he remained unaware that he no longer had a specific person appointed by the Provider to look after his affairs. He argues that, nevertheless, the Provider continued to be paid for a service which, he submits, it did not deliver on.

The Complainant states that on **25 September 2018**, he contacted the product producer of the investment plans to request that the Provider be removed as agent on the plans, but this request was too late to avoid the losses incurred between **4 September 2017 and 21 November 2018**. Those losses, he submits, were a result of the Provider's failure to communicate changes in its relationship with him and its neglect of his affairs.

The Complainant submits that the Provider made no attempt to maintain the relationship he had with it, through its representative M. after M. left the service, and to inform him of this important change in circumstance.

The Complainant accepts that he received a list of holdings from the Provider in **February 2018** but submits he was under the assumption that the usual practice would follow i.e. that M. would contact him to arrange a review of holdings. The Complainant submits that the Provider is disingenuous in its response that the Complainant could query the progress of his investments with any other financial adviser. He argues that he was not aware that he needed to contact another financial adviser within the Provider, as he was not aware that the representative with whom he had been dealing for many years was no longer employed by the Provider.

The Complainant states that the Provider had a duty of care to continue to provide him with the most up-to-date values of his investment and that this had been the practice until the time M. left the Provider.

The Complainant argues that although the Provider was removed as agent on **25 September 2018**, he is seeking compensation up to **21 November 2018** as this was the earliest date he was able to move his investments from the policies in question, which could not be done until he changed the agency to a representative with whom he had a viable ongoing relationship. He argues that the Provider should be liable for the losses incurred up to the date

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of moving the investment in question, actions which he argues were taken with due speed once he became aware of the circumstances.

The Complainant argues that the first policy was taken out in **1991** with a different adviser. He argues that in **September 2002**, he appointed M. of a predecessor company to the Provider as his adviser. He says that he ceased making payments into this policy in **October 2010**. He says that the second policy was purchased in **2010** with the Provider's predecessor. The Complainant indicates his understanding that M. then became an employee of the Provider. He argues that the change of ownership had little effect on him and his relationship remained one managed directly and personally by M.

The Complainant does not agree with the Provider that it would be usual for contact to be made between the Provider and the customer, where there was concern on either side. The Complainant points to documentation from **2015** which indicates that a financial review was conducted in **September 2015** and in **May 2017** and that he otherwise received regular updates on his investments from M.. He argues that he did not realise that the letter received dated **8 February 2018** was sent by a different representative (**U.**) and not by M., and further that the letter did not refer to scheduling a review. He argues that he awaited direct contact from M. to initiate a review from **February 2018** until the date he became aware in late **September 2018** that M. was not in a position to do so.

Although the Complainant accepts the Provider's argument that the performance of the fund in question produced an annual return net of annual management charge of 3.7% between **2008** and **2019**, he argues that he decided to move his investment elsewhere due to the fund performance in **2017** and **2018**.

The Complainant wants the Provider to make restitution to him of his suggested loss of value of the investment funds of **€17,562.61**.

The Provider's Case

The Provider argues that the Complainant's investment products are personal pension contracts i.e. personal pension products that allow a self-employed person to invest in risk rated funds. The first policy commenced in **1999** and has a maturity date of **2026**. The second policy commenced in **2010** and has a maturity date of **2021**. The Provider argues that it is unaware of the current status of the contracts as it was informed by the product provider that it had been instructed to remove the Provider as agent on the policies, from **25 September 2018**.

The Provider argues that it acted as retail intermediary and advisor for the products and that the Product Provider is a separate entity. The Provider argues that its Terms of Business agreement is provided to its clients covering the services it provides. The Provider argues that its representative M. wrote to the Complainant on **10 August 2016**, to further explain the role of the Provider as adviser and to differentiate from the role of investment managers. In his letter, M. explained that the role of the advisers is to provide advice on the

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best investment managers to implement an agreed investment strategy and that they do not manage the investment but recommend, monitor and report on the agreed strategy.

The Provider argues that it has internal committees which meet regularly to consider providers and products. It argues that the pension product in question is available to its clients that need personal pensions and the product itself offers investors a risk spectrum from high to low depending on client needs. The Provider argues that it also considers complaints made in respect of particular products and that it is conscious that this is the first instance of a complaint being made to the FSPO in relation to this particular fund, by one of its clients.

The Provider argues that it provided a review to the Complainant of the product in question and the circumstances of the client on **29 April 2017**. It argues that he received further updates from the Provider on **24 October 2017** and **8 February 2018**. It argues that its Terms of Business agreement makes no reference to the provision of investment reviews.

The Provider accepts that it did not conduct a review for the Complainant in **2018** before he removed the Provider as his agent but it argues that, at all times, a consultant was available had the Complainant asked for a review of his circumstances. It submits that a change of investment would only be recommended where it was clear that the client's needs, objectives and risk profile has changed, or the risk profile of a fund changed (which was not the case here). It argues that, generally, when a client's circumstances change where they need advice, the client would be expected to contact the Provider.

The Complainant argues that the purpose of the update of **8 February 2018** was to present the Complainant with the present values of his holdings. It argues that each product provider also issues policyholders with an annual update which are sent directly to their home address. In addition, it argues that product providers (such as the one in question) have online portals where policyholders can track their investments.

The Provider argues that, according to its records, it did not agree to any ongoing service outside those detailed in the Terms of Business. It argues that typically an intermediary would be able to provide on the spot valuations and other duties if requested.

The Provider does not accept that the Complainant had an expectation that he would be contacted in **2018** for an annual review. He argues that there was no agreement setting out when contact would be made. It argues that it would be usual for contact to be made where there was concern on either side. It argues that as the product was approved, there was no concern from the Provider that the product was unsuitable. The Provider does not dispute that some reviews were done for the Complainant, but it argues that its Terms of Business sets out the services contracted for.

The Provider argues that the Complainant wants to recoup the loss that occurred on his pension products between **4 September 2017** and **21 November 2018** due to the Provider's failure to inform him of the departure of one of its representatives. It argues that the representative did not leave the Provider until **24 November 2017** and the portfolio was reviewed in **late April 2017** and updates subsequently provided. It argues it would be most unusual for the Provider to suggest another review within 12 months of **April 2017**. It argued

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that markets were rising steadily over **2018** and **2019**, with lower volatility than usual and it did not have concerns about the long-term suitability of the pension product in question that would have required its intervention.

The Provider argues that the Complainant could at any time, have contacted it to request a review or contacted the product provider directly to find out the value of investments. The Provider does not accept that it is responsible for causing the alleged loss. The Provider further argues that the Complainant has not previously taken action to change his investments with the product provider where the products have not performed particularly well. It argues that it is therefore questionable, on the balance of probabilities, that he would have responded differently and actually made any changes during the period being complained about. The Provider argues that it would not have recommended that course of action.

The Provider argues that an updated Schedule of Arrangements was sent to the Complainant on **8 February 2018** setting out the current values of all of his policies. It submits that would not be usual for it to report on short-term volatility.

The Provider does not accept that the pension product in question was underperforming. It argues that between **September 2008** and **September 2019**, the fund produced an annual return of 5.1% per annum gross of annual management charge or 3.7% per annum net of annual management charge. It argues that the dynamics of the fund are that the fund carries risks, to achieve expected returns greater than those available from deposits. The Provider argues that it does not make calls on the movements of markets in the short term. The Provider argues that in **late 2017/2018**, the Provider had not considered that short-term volatility deemed the fund in question to be underperforming and it argues that the fund had periods of over-performance which have to be balanced with the times when investments were not increasing in value.

The Provider argues that the Complainant was kept informed by it, in respect of the fund values, having received communications from the Provider and annual updates directly from the product provider for each of the policies. It argues that is not possible that the Complainant was unaware of the values. It argues that the dips in these funds are not unexpected, only the timing and the same is true of periods of growth.

The Provider does not accept that the Complainant relied on it, as his broker, to inform him of any fluctuations in the market which would negatively affect his policies. It argues that the Provider does not make any calls on short-term market volatility and that, in general, most investment recommendations are made with a minimum five-year time horizon in mind.

The Provider does not accept the Complainant's criticism that there was no longer a specific person appointed to look after his affairs. It argues that it is not reliant on any one representative for the service provided to a client and that if any issue had arisen in relation to the suitability of the product, it would have raised this with the Complainant. Similarly, if it had been approached for a review or regarding a change of circumstances, the Provider

would have responded. The Provider argues that it provided the service to the Complainant that it was contracted to provide.

In terms of the period for which the loss is being sought, the Provider argues that it covers a period when M. was still working with the Provider and providing updates, and also a period where the Complainant had replaced the Provider as his agent on the policies. It argues that it is difficult understand why a claim has been made for these periods. The Provider rejects the suggestion by the Complainant that he could not move the investments earlier than he did, and argues that any instruction directly to the product provider or from any adviser any time from **25 September 2018**, would have sufficed.

Further, it argues that it was not the case that when M. left, that the Complainant had nowhere to turn. It argues that its representatives continued to be available to the Complainant, including an adviser who the Complainant had dealt with previously.

The Complaints for Adjudication

The first complaint is that the Provider failed to inform the Complainant that the periodic reviews which had previously taken place with its representative, would not continue to occur upon the departure of that representative from the Provider.

The second complaint is that the Provider failed to inform the Complainant that the investment funds in question were underperforming, which resulted in a loss of €17,562.61.

Decision

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

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

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

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A Preliminary Decision was issued to the parties on **1 November 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, the final determination of this office is set out below.

I note that the Provider is the successor of an intermediary which the Complainant initially engaged as advisor for his investments. It appears that M. was the representative of the predecessor with whom he had dealt for a long number of years. It appears that the predecessor firm was taken over by the Provider in and around **2015** and M. became employed by the Provider. From **2015** on, the Complainant's contractual relationship was with the Provider, though he still dealt personally with M. in respect of his investments.

The Provider's '**Terms of Business**', which is the contract between the Complainant and the Provider in respect of its investment intermediary/advisory services, are noted to have been effective from **4 March 2013** and detail the services undertaken by the Provider as follows:

"0.3 These are our terms of business which shall govern our appointment by you. These terms of business apply to all Services (defined under the section below headed "Our Services") that we provide to you after these terms of business come into force, including any future Services provided in connection with insurance contracts that were placed by us, or any subsidiary of [the Provider], for you before these terms of business came into force.

0.4 For your own benefit and protection you should read these terms of business carefully before agreeing to them. If you have any questions about these terms of business please raise them with us, otherwise we will assume you are in agreement with them.

0.5 Our regulated business is the offering of broad based advice including:

- 1. advice in relation to the nature of each of the products set out below and advising you as to which product is suitable for your needs;*
- 2. identifying and selecting a suitable product producer, based on a fair analysis of the market;*
- 3. receiving and transmitting orders on your behalf for a product(s) to one or more product producer.*

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2. Our Services

2.1.1 Unless otherwise agreed in writing, the scope of our services (“Services”) is to provide life and pension, deposits, and insurance consulting services, to make recommendations to you on appropriate insurance contracts after we have assessed your demands and needs, to arrange and administer insurance contracts on your behalf and to provide ancillary related services which may include the administration of claims on insurance contracts which we have placed for you.

...

2.4 You understand and agree that we are not the insurer of any risk and that we do not guarantee or warrant either the availability of an insurance contract or the financial security, solvency or performance of an insurer or product producer. Whenever we offer you the opportunity to select from products offered by more than one insurer or product producer, the final selection of insurer or product producer remains with you. ... If during the period of the insurance contract which we have placed for you, we become aware that an insurer of that risk or the product producer ceases to be on our list of approved insurers or product producers for new business, then we will advise you of that fact. Unless we agree otherwise in writing, we will not have any further obligation to take any other steps to advise you of the ongoing security provided by your insurers or product producer as the case may be. ... If you are not happy with an insurer or the product producer or the security it provides, please let us know immediately.

...

2.6 Fair Analysis

Where [the Provider] acts as an intermediary, we advise our clients on the basis of a fair analysis of the market.

The Services will include, where we think appropriate, gathering risk information, creating submission documents and presenting your risk details to various selected markets that are suitable for the types of cover required and/or panels of insurers which [the Provider] considers suitable for your requirements and with whom [the Provider] has negotiated preferential terms for groups of customers. Having analysed the various responses from the market and negotiated pricing/cover details, we will present terms to you and proceed to arrange cover on your behalf as required with the insurer/s you choose from the options given. In addition, on an ongoing basis we conduct research, carry out tender exercises and nurture good relationships with insurers for the benefit of our clients.

...

3. Remuneration

3.1 In consideration of us providing the Services to you, we will be entitled to a service fee/or commission. Where a service fee is to be applied you will also receive a Letter of Engagement outlining the appropriate fees. ...

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3.2 If, in addition to the Services, you wish us to perform any services for you requiring additional resources, these will be subject to an additional fee. In the case of an additional fee payable by you, this will be discussed with you prior to an invoice being issued. If time permits, we will try to agree the additional fee before the services are commenced. If it is not possible to agree the amount of the additional fee in advance, we reserve the right to charge a reasonable fee for the additional services carried out which will normally be based around our standard hourly rate for the staff involved. ...”

On the basis of these Terms of Business, the Provider was engaged to advise the Complainant as to which products were suitable for his needs, and to identify and select suitable product producers. The Provider does not guarantee the performance of any product and I note that the final selection of product provider remained with the Complainant. Importantly, unless otherwise agreed in writing, the Provider had no ongoing obligation to advise the Complainant of the ongoing security provided by a product producer. Any additional services to be provided and requiring additional services were to be subject to additional fees, agreed in advance.

I note that there is nothing in the Provider’s Terms of Business that commits to conducting an annual or regular review of investments made by individual customers. There is nothing in the Provider’s Terms of Business that commits to notifying a customer where the value of a particular fund drops in the short-term.

By letter dated **25 August 2015**, M. of the Provider wrote to the Complainant alerting him that the Provider had recently received a reminder notice in respect of his Personal Pension Term Assurance Plan which, he indicated, was timely *“bearing in mind that we should undertake a review of your affairs at some stage during the course of the next month”*. The Complainant was asked to contact M. to arrange a meeting or to contact one of two named representatives, including U., to arrange a suitable date and time. I note that a Schedule of Arrangements was prepared for the Complainant dated **25 August 2015** which listed all of their policies held, and the start and maturity dates, the amounts of his contributions, and their current values. This Schedule included information on the current value of the two policies which are at issue in the complaint.

An updated Schedule of Arrangements was prepared for the Complainant dated **10 September 2015**. It appears from the correspondence submitted that a face-to-face review of the Complainant’s various investments was carried out by M. of the Provider, in **mid-September 2015**.

An Investment Options Report dated **September 2015** was prepared for the Complainant in respect of the fund that the two policies at issue were invested in. The Report provides information in respect of the fund, its risk rating (3 of 7), its volatility scale (medium), and its investment strategy. The Report set out information on the fund’s performance, noting a 1.83% growth between **January and September 2015** but loss of - 1.46% in the previous three months. The Report also sets out historical performance information from **2007**. In terms of performance gross of fees, the performance of the fund was noted as follows:

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- 2007: 7.31%
- 2008: - 4.63%
- 2009: 20.17%
- 2010: 11.23%
- 2011: 4.55%
- 2012: 8.24%
- 2013: 7.26%
- 2014: 9.23%
- Average of last 8 years: 7.92%

I note that M. sent a follow-up letter dated **16 September 2015** to the Complainant detailing the action points that had been agreed at the meeting. In respect of the two policies at issue, the letter recited that *“there are to be no changes to these Policies”*. Further information was enclosed in respect of certain policies (though not the two at issue). In respect of certain other investments, an intention to review the following year was set out as follows:

- Policies A and B – *“these Policies are to be reviewed in August 2016 as they will, by that particular stage, have qualified for [a special bonus]”*;
- Policies C, D and E – *“these Policies are to be reviewed in August 2016, although they remain in the [identified fund] until the relevant maturity date ie August 2021”*
- Policy J – *“this Policy is currently invested in [an identified fund] and in this regard I attach for your attention a Performance Summary to the 31st of August in respect of the various funds under their remit. Again, this fund is something that we can look into at our next review in August/September 2016”*.

I note that the letter of **16 September 2015** therefore anticipated a further review in **August/September 2016**.

A follow-up letter was sent by M. to the Complainant dated **2 December 2015** to inquire if he wished to follow up on an investment suggestion made by M. in the letter of **16 September 2015**.

By letter dated **31 May 2016**, M. wrote to the Complainant referring to an email from the Complainant dated **4 December 2015** (not submitted in evidence) and asking if the Complainant had progressed matters with regard to his investment in the fund at issue. M. asked that the Complainant confirm if he wished to proceed. The letter included a template request form addressed to the product provider of the two policies at issue, asking that funds under a policy or policies (to be identified) be switched to a fund or funds (to be identified).

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It appears that a further meeting occurred in **early August 2016**, during which the fund that the two policies were invested in, was discussed. M. wrote to the Complainant by letter dated **10 August 2016** as follows:

"I refer to our meeting last Monday evening in your home during which we had an opportunity to discuss the Schedule of the same date recently prepared by my colleague [U.]

I note your disappointment with regard to the returns from [third-party fund] since September 10th last year and indeed the drop in the [fund at issue] from [the product provider] and the [other third party fund] and I promised to revert with additional information based on our discussions. While I sympathise with your situation and your sense of frustration in relation to this particular matter our role, as outlined to you at our meeting, is that of Adviser as distinct from Investment Manager. By way of explanation . . . the Investment Managers role is to manage the assets and allocation of same of the investor, to aim to outperform the agreed benchmark for active strategies, and aim to perform in line with the benchmark for passive strategies. They will also aim to manage the investments within the stated risk parameters.

The Advisers role is to provide advice on a "best-in-class" Investment manager (between Equities, Bonds, Absolute Returns, Alternatives, Cash etc) to implement the agreed investment strategy. The advisors therefore research investment markets, Investment managers and particular investment offering to make the most appropriate recommendations to their clients.

It is important to note that the adviser therefore does not manage the investment, but rather recommends monitors and reports on the agreed strategy and Investment Managers.

.... In the meantime however you might kindly note that all the relevant queries have been sent to the relevant Insurers ie [[third-party provider]/the product provider/[third-party provider] and I will revert as quickly as possible with an update once the appropriate replies have been received.

...

Finally [Complainant] my colleague [P.] has included you on our mailing list for the Multi Asset Performance Funds and you should receive this on a monthly basis going forward. This will enable you to examine the performance of the various funds and help you be more informed."

In my view, the letter of **10 August 2016** is significant. First, it demonstrates that as early as in **August 2016**, the Complainant was concerned by the performance of the fund in which the two policies at issue in this complaint were invested. Despite his concern, however, no instruction was given to move his investment from the fund in question. Second, the letter explained the difference between the roles of advisor (ie the role of the Provider) and that of investment managers. It was explained that while an investment manager actively manages the assets of an investor, subject to agreed strategies and risk parameters, the

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adviser's role is to provide advice on the best investment managers, to research the market and to make appropriate recommendations to clients. The adviser "*does not manage the investment, but rather recommends monitors and reports on the most appropriate strategy and Investments Managers.*" Thirdly, the Provider agreed to include the Complainant in the mailing list for monthly fund updates, so that he could monitor fund movements.

A letter was sent from M. to the Complainant dated **20 April 2017**, indicating that the Provider had been recently reviewing a number of his investments and had prepared an updated Schedule. The letter stated that:

"This would be an opportune time for us to sit down and review the various investments currently in place"

The Complainant was asked to contact M. or U. in his absence to set up an appointment.

It appears that M. met with the Complainant and his wife in **late April 2017** to review the various investments. By letter dated **3 May 2017**, M. wrote to the Complainant to summarise the agreed action points from the meeting. All action points related to third party polices and there was no mention of the two policies at issue in this complaint, or the fund they were invested in. M. confirmed that he would contact the Complainant with recommendations in respect of a certain identified third party policy .There was also a reference to property investments which M. noted "*are to be reviewed in January of next year*". There was no other reference to future reviews.

By letter dated **24 May 2017**, U. of the Provider wrote to the Complainant referring to the letter of M. of **3 May 2017** and enclosing information in respect of a third party policy. The Complainant was asked to contact M. directly if he wished to discuss the investment further. He was also asked to contact U. if he had any queries.

By letter dated **28 June 2017**, M. wrote to the Complainant with further information concerning a special bonus structure potentially available with a third party policy, which M. had been trying to find more information on, since the last time the parties spoke. He explained the effect that switching the fund would have on the availability of the special bonus.

By letter dated **5 September 2017**, U. of the Provider wrote to the Complainant enclosing an updated Schedule of his policies. The letter stated that M. was "*on annual leave but will be in touch with you on his return*". A Schedule of the Complainant's policies dated **4 September 2017** has been submitted in evidence, which included up-to-date valuations on the two polies at issue.

By letter dated **24 October 2017**, M. wrote to the Complainant enclosing an updated Schedule of his policies. This may have been the same **4 September** Schedule previously sent by U.. In his letter, M. stated:

"If you have any queries regarding any aspect of same please feel free to contact me."

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There is no indication that the Complainant tried to contact M. at any point after receiving this letter. The Provider has submitted that M. left its employment on **24 November 2017**.

By letter dated **8 February 2018**, U. wrote to the Complainant enclosing an updated Schedule of his policies and asked that, if he had any queries, that the Complainant contact U. The Schedule is dated **7 February 2018**.

The starting point for the services that were agreed between the Complainant and the Provider is the Terms of Business. As set out above, the Terms do not provide for annual or regular reviews of a client's portfolio and do not provide for client notification in the event of a fall in funds values. The Provider instead provides recommendations for suitable products to meet the needs of clients. There is nothing in the evidence before me to suggest that the policies in question were not suitable for the Complainant when they were sold to him.

I accept that M. of the Provider conducted reviews of the Complainant's investment portfolio in **September 2015, August 2016, and April 2017**. The tenor of some of his letters suggest that M. was of the view that a review should be conducted annually. There was however no express commitment to conduct annual reviews of the Complainant's portfolio, and no suggestion in any communications from M. in **2017** before he left the Provider, that he would contact the Complainant to arrange a review of his investments in **2018**. I appreciate that a high level of service seems to have been provided to the Complainant by M. and that he was disappointed to learn that M. had left the Provider in **November 2017** without notification to him, but although the Complainant was entitled to move his business elsewhere once he learned of the departure of M., this does not mean that the Provider was lacking in the service it provided to him from that point.

The Provider has no regulatory obligation to inform customers of the departure of individual staff members. While it may have been useful to inform the Complainant of the departure of the person he had been dealing with for many years (and while this would have been appreciated by the Complainant in this case) I do not regard the Provider's failure to tell its client about the departure of one of its employees, to have been unfair or inappropriate.

Further, there is no regulatory obligation on an investment intermediary to conduct annual or regular reviews of investment portfolios, or otherwise recommend that a customer move an investment because the fund he has invested in (which is otherwise suitable for him in terms of risk exposure etc) is experiencing short term volatility and has dropped in value. The February 2018 update left the matter with the Complainant and it was up to him to peruse the update received, and to contact U. (or indeed M., which would have revealed M's. departure) if he wished to discuss.

Even if there had been a deficiency in the service provided to the Complainant in this matter, I cannot see a causative link between the departure of M. from the Provider and the Provider's failure to notify the Complainant of this and/or to schedule a review in 2018, and the drop in fund value experienced by the Complainant between **September 2017** and **November 2018**. First, M. did not leave the Provider's employment until **24 November 2017**. Second, at best, the Complainant seems to argue that a review should have been

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conducted by the Provider sometime after **April 2018**. Third, it is unclear and entirely speculative as to whether the Complainant would have switched funds at the time of any review **post-April 2018**. He had been concerned by the performance of the fund in **2016** and done nothing. Further, there is no evidence of any previous advice given by M. to the Complainant to switch funds where there was a short-term drop (and indeed a long-term drop) in fund performance. Fourth, the Complainant was or ought to have been aware during the relevant period of the drop in the fund value. The Provider wrote to him on **5 September and 24 October 2017** and again on **8 February 2018** with updated Schedules of his policies to include current valuations. The Complainant was also in receipt of annual updates from the product provider and had online access to daily fund values at his disposal. He also appears to have been signed up for a monthly newsletter from the Provider which set out fund movements. Fifth, the Complainant did not attempt to contact M. or anyone else at the Provider (including U. who had sent the most recent updated Schedule) to discuss the drop in fund value or to seek a review of his investments, before the Provider was removed as advisor in 2018.

In all of the circumstances, I do not accept that there is any reasonable basis upon which to uphold these complaints.

Conclusion

My Decision is that this complaint is rejected pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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



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

25 November 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.

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