Decision Ref:	2022-0018
Sector:	Investment
Product / Service:	Bonds
Conduct(s) complained of:	Mis-selling (investment) Delayed or inadequate communication Dissatisfaction with final fund value
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to an investment product and the suggested overcharging, maladministration and inadequate complaints handling by the Provider.

The Complainants' Case

The Complainants submit that in **May 2016** they invested in an investment bond product, offered by the Provider. In their complaint form to this office, the Complainants confirm that the product itself was sold to them by another financial service provider, not by the Provider.

The complaint concerns an investment period between May 2016 and June 2018. The Complainants say that during this period, their investment bond was invested in a [Type Redacted] Fund. The Complainants assert that the fund is rated by the Provider at the lowest end of its risk indicators, with the stated aim being to preserve capital. They assert that the fundamental aim of the fund to preserve capital was not achieved by the Provider and the Complainants' bond decreased in value over this period net of exit tax, by approximately 4%.

The Complainants state that the Provider applied a management charge of 1% which they submit is excessive for a fund of this nature which requires a lower level of management, compared to an actively managed fund consisting of a portfolio of shares, property, bonds and other investment.

The Complainants state that the Provider did not achieve the stated aim to preserve capital and they lost €6,860 over the period **May 2016** to **June 2018** while the Provider gained €3,557 in management charges.

In relation to complaints handling, the Complainants state that they made a complaint to the Provider on **7 August 2018** but felt compelled to send a second letter of complaint on **16 October 2018** as it had been over 8 weeks since the first complaint was sent to the Provider. A final response letter then issued on **19 October 2018.** The Complainants assert that the Provider did not address the complaints as speedily as it should have, in light of the circumstances of the complaint.

The Provider's Case

The Provider explains that the policy in question is a single premium investment bond that was set up on **25 June 2009** and fully surrendered on **5 September 2018**.

In relation to fees and charges applicable to the fund, the Provider asserts that these were applied in accordance with the applicable terms and conditions and policy provisions agreed.

In relation to the performance of the fund, the Provider states that while the fund aims to preserve capital, it is not a capital protected fund and consequently, the value of an investment with the fund can fall. The Provider states that its fact sheet highlights the fact that investors may get less back, than the original amount invested.

Finally, the Provider refutes the complaint of poor complaint handling and submits that it complied with its obligations in this regard, pursuant to the applicable provisions of the Consumer Protection Code 2012.

The Complaint for Adjudication

The complaint is that the Provider wrongfully or unreasonably applied excessive fees and charges and failed to properly administer the fund, such that the Provider did not achieve the aim of preserving the Complainants' capital.

The Complainants are also unhappy with the manner in which the Provider dealt with their complaint. They say that under the circumstances, they would expect, at the least, that the Provider would refund the management charges taken during the period May 2016 to June 2018.

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Decision

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

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

A Preliminary Decision was issued to the parties on **13 December 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.

The Complainants have explained that the product, while being a product offered by the Provider, was sold to them by another financial service provider. I note the chronology of events as follows:

2009

The Complainants' submissions make clear that the bond was set up in line with the instructions given to the Provider by their financial adviser. A copy of the investment bond application which was signed by the Complainants on **23 June 2009** has been supplied in evidence. The details of the Complainants' financial adviser are confirmed in that application form.

The application form authorised the Complainants' financial adviser to give investment instructions on their behalf and the financial adviser signed a declaration that the Complainants, among other things, had explored the available investment options with their financial adviser and their circumstances had been taken into account along their long-term needs, age and attitude to risk and the financial adviser declared that the policy was suitable for the Complainants.

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The financial adviser also set out that a Fund Based Renewal Commission of 0.5% of the fund applied. The financial adviser also directed that the policy was to be issued to the broker, as opposed to the Complainants.

The documents made available in evidence demonstrate that throughout the course of the bond, the Complainants' financial adviser was sending fund switch requests on behalf of the Complainants, from **May 2014** onwards. I note that the policy provisions furnished to the Complainants at the outset of the policy in 2009, have been supplied in evidence.

Provision 13.11 provides:

> *We will deduct a management charge from each fund. The charge is deducted each day after the fund has been valued and before the unit price is set. It is a percentage of the fund divided by 365 (366 in a leap). You can ask our chief office for the percentage that applies to each fund.*

Policy provision 3.1 provides:

> *All investment choices are made at your own risk so it is important to seek appropriate financial advice. [The Provider] is not responsible for the performance or solvency of the Providers of the investments available through the Synergy product range.*

Policy provision 7.15 provides:

> *If extra units were allocated to the policy under special terms when a contribution was paid and the value of those units are cancelled within 10 years of allocation to the policy, the value of those extra units will be deducted from the payment, as described in provision 14 (withdrawals).*

<u>2016</u>

On **29 April 2016**, the Complainants' financial adviser emailed the Provider and requested the Provider to switch the Complainants' funds into *"100% [Name Redacted] Fund"* for current and future premiums.

I note that the Provider executed this request in **May 2016**. It says that the annual management charge covers investment management expenses that are born by the [Name Redacted] Fund and this equates to 1% per annum.

It seems that the [Name Redacted] Fund did not exist in 2009 when the bond was incepted. However, I note that correspondence from the Provider to the Complainants between June 2016 and June 2018 expressly set out that the annual management charge for the [Name Redacted] Fund was 1%.

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In terms of other charges applied during this period, it is clear that an exit tax payable to the revenue was deducted at 41% in June 2018, when the policy was surrendered. No complaint has been made in that regard by the Complainants.

I note that, in addition, the Complainants' financial adviser's fund based renewal Commission of 0.5% of the fund, which the Complainants agreed to, was also applied throughout this period. It also appears that a further 1% charge was applied to the policy on encashment. This is because the policy was surrendered within 10 years of allocation.

The Provider has evidenced that 102% of the Complainants' contribution was invested in their policy at the outset and, accordingly, Policy provision 7.15 quoted above, became operative, because the units were cancelled within 10 years of the allocation date.

Having considered the charges applied and the tax deducted, I accept that the policy provisions within the terms and conditions clearly set out what these charges would be, and I accept that the charges were validly applied in accordance with those terms and conditions which had been agreed to.

The Complainants argue that the annual management charge was excessive given that, in their opinion, this was a low maintenance fund. The 1% charge was however a term of the fund, as agreed between the parties and if the Complainants believed at the time when they elected to invest in that particular fund, that the charges were too high, this was the time for them to raise any queries with the Provider regarding the level of the management charge, to explore whether an agreement might be reached to reduce it and, if not, it was open to the Complainants not to proceed with the investment switch.

In the event however, I note that the Complainants' financial advisor instructed the switch to the particular fund which attracted the management charge which is now the subject of the Complainants' complaint. I do not accept however, that the Provider has any case to answer regarding the application of those charges which were clearly set out to the Complainants and which had been agreed and in those circumstances, I take the view that there is no reasonable basis upon which the Complainants' complaint can be upheld against the Provider.

The Complainants also say that the fund underperformed and that this was as a result of maladministration by the Provider. The documentation furnished in evidence does not suggest however, that the [Name Redacted] Fund offered capital protection, a capital guarantee or a guaranteed return. In my opinion, the Complainants have not demonstrated by way of evidence that the loss in value of the fund was in any way attributable to any misconduct or wrongdoing on the part of the Provider. Whilst the aim of the investment was to preserve capital, I accept that the Provider gave no assurance to the Complainants that the capital amount they invested in this particular fund would indeed be preserved.

Firstly, it is not in dispute that it was an entirely different provider which instructed the product switch and it was not the Provider which advised the Complainants in relation to investing in the [Name Redacted] Fund.

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Secondly, the policy provisions, as outlined above, expressly stated that all investment choices were made at the Complainants' own risk and advised the Complainants that it was important to seek appropriate financial advice. The Complainants had the benefit, at all material times, of financial advisers. The policy provisions further set out that the Provider was not responsible for the performance of the investments available through the particular product range.

Thirdly, the Provider has furnished a detailed explanation as to the level of return between May 2016 until the surrender of the policy in September 2018. The Provider explains that the ECB has had a deposit facility with a negative interest rate since 11 June 2014 which has continually increased from -.1% per annum and was -0.4% during the period in which the Complainants' funds were invested in the [Name Redacted] Fund. The source of this information is stated to be the Financial Express in May 2020.

The Provider explains that investing in cash deposits in the environment of negative deposit rates from the ECB and with low to negative returns from bonds, can result in losses to those invested in such instruments, for some time going forward. The Provider further submits that because the fund is rated at the lower end of a risk indicator scale, this does not in any way mean that this is a risk-free investment fund.

In all of the foregoing circumstances, in my opinion, there is no evidence available to demonstrate any fault or culpability on the part of the Provider for the Complainants' disappointment in the performance of this particular fund. The Provider did not advise the Complainants to invest in this fund. The underperformance of the fund was clearly influenced by market factors. The Complainants were advised in 2009 by the Provider that investment choices were made at their own risk and that the Provider would not be responsible for the performance of investments. Consequently, there is no reasonable basis upon which in my opinion, this aspect of the complaint can be upheld.

The final aspect of the Complainants' grievance relates to the handling of their complaint by the Provider.

I note that in a letter received by the Provider on **10 August 2018**, the Complainants complained regarding the performance of the investment over the previous 2 years and the management charge of 1%.

On **17 August 2018**, the Provider acknowledged receipt of the letter of 10 August 2018. The Provider wrote again on 7 September 2018 to inform the Complainants that the investigation was ongoing. A further letter issued to the Complainants on **5 October 2018** to inform them that the investigation was near completion and that the Provider hoped to reply on before **19 October 2018**. In advance of that deadline, I note that on **16 October 2018**, the Complainants wrote again expressing their dissatisfaction with the Provider for its failure to deal with the complaint.

The final response letter then issued on 19 October 2018, as the Provider had indicated.

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Provision 10.9 of CPC sets out:

> *10.9 A regulated entity must have in place a written procedure for the proper handling of complaints. This procedure need not apply where the complaint has been resolved to the Complainant's satisfaction within five business days, provided however that a record of this fact is maintained. At a minimum this procedure must provide that:*
>
> *a) the regulated entity must acknowledge each complaint on paper or on another durable medium within five business days of the complaint being received;*
>
> *b) the regulated entity must provide the Complainant with the name of one or more individuals appointed by the regulated entity to be the Complainant's point of contact in relation to the complaint until the complaint is resolved or cannot be progressed any further;*
>
> *c) the regulated entity must provide the Complainant with a regular update, on paper or on another durable medium, on the progress of the investigation of the complaint at intervals of not greater than 20 business days, starting from the date on which the complaint was made;*

While I appreciate that the Complainants take issue with the outcome of the Provider's investigation into their complaint, it is clear that the Provider complied with the above provisions in the manner in which it addressed the Complainants' complaint. Accordingly, I accept that it adhered to and complied with its obligations under the CPC. Whilst no doubt the Complainants would have wished to receive the substantive response from the Provider within a shorter timeframe, I accept that the Provider was investigating the nature of the grievances expressed and I am satisfied that the Provider updated the Complainants in accordance with its obligations, when the final response letter was not forthcoming within 20 business days.

Having considered the nature of the Complainants' complaints against the Provider, I am satisfied on the evidence before me, that there is no reasonable basis upon which these complaints can be upheld.

Conclusion

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

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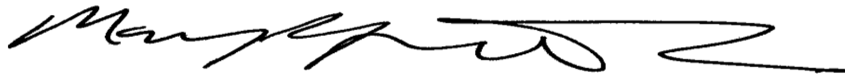
The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



MARYROSE MCGOVERN
Deputy Financial Services and Pensions Ombudsman

10 January 2022

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.