An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2022-0103
Sector:	Investment
Product / Service:	Property Investment
Conduct(s) complained of:	Dissatisfaction with final fund value Failure to provide product/service information Failure to process instructions Maladministration
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants made an investment in a property portfolio managed by the Provider. The product was sold in 2004, by a different financial service provider (the "**Broker**").

The Complainants' Case

The Complainants submit that in **July 2004,** they were approached by a Manager of the Broker, to invest in property portfolios managed by the Provider.

The Complainants state that they were going to invest two amounts €1,000,000.00 (one million euro) in Property Portfolio A and €500,000.00 (five hundred thousand euro) in Property Portfolio B.

The Complainants state that the "*decision to invest was based on promotional material provided*." However, the Complainants say that due to onerous charges, in particular a 2% upfront fee, they availed of a cooling-off period and withdrew the €1,000,000.00 investment and decided to only invest €500,000.00 (five hundred thousand euro) in Property Portfolio B. The Complainants submit that they relied on the verbal assurances given by the Broker Manager to them that the 2% upfront fee wouldn't apply to their investment in Property Portfolio B, and on that basis, they went ahead with the €500,000.00 (five hundred thousand euro) investment.

The Complainants assert that units in the amount of €490,000.00 (four hundred and ninety thousand euro) were assigned by the Provider to the investment. This amounted to €10,000.00 (ten thousand euro) less than the investment amount. When the Complainants made their complaint to the Provider in 2018, they said that:

> *"[the Provider] "assigned" me shares in the US Property Fund, which amounted to €10,000 less than the investment amount. I was thus aware that there was €10,000.00 in my cash account, prior to any encashment of my investment*."

The Complainants assert that they began the encashment of the property units in three parts starting with the first transfer to their cash account in **November 2013**, the second in **August 2015**, with the final one occurring in **December 2017**. The Complainants state that in **2017** they realised that the initial €10,000.00 (ten thousand euro) was not accounted for.

The Complainants submit that the encashment of the property units went into cash units, which continued to be managed by the Provider without reference to the Complainants and which they say continued to lose money. They say that these units should have been placed at money market rates and not put at risk. They say in relation to the shortfall in encashment of their investment, that "*[Provider] lost approximately €3,560.00 in their cash fund and it also retained the un-invested cash balance in my account of €10,000.00 for its own account*."

The First Complainant contends that "*the taking of funds from my account or placing them at risk without my express permission was a gross injustice against me.*" The Complainants also submit that the Provider repeatedly failed in its annual statements, to itemise or clarify the specific amounts in charges or fees or any breakdown of the charges and to whom they were being paid.

The Complainants assert as follows:

> "*[On] 30th July 2004, accepted participation in [Property Portfolio B] through [Broker]. [Broker] interposed [Provider] who placed onerous terms with a 2% upfront fee availed of second thought provision to withdraw from the investment by letter of 16th August 2004. Contacted by my [Broker] representative by telephone and assured the onerous terms would not applied, proceeded again the a €500,000.00 premium which was accepted by [Broker] in a letter backdated to July 30th 2004 as I had reduced the premium by half to €500,000.00. [Provider] issued units to the value of €490,000.00 leaving €10,000.00 in my cash float. After some gains, the investment crashed in the 2008 collapse. [On] 15th September 2017, I began encashment of my property units and transfer to my cash account.*

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This process took place in three parts starting with 1st transfer in November 2013, 2nd in August 2015 and final on December 2017. I realised that the €10,000.00 balance initially still remained and was not accounted for. Also the encashment of the property units went to [Provider's] cash units which continued to be managed without reference to me and continued to lose value."

The Complainants seek to resolve the complaint through the refund by the Provider of an amount that the Complainants calculate as €24,572.62 (twenty-four thousand, five hundred and seventy two and sixty two cents). This figure is calculated by taking the figure of €10,000 and interest at 2% which they say is due on those monies, together with the interest at 2% which they believe they ought to have earned on the proceeds of their encashments, had those monies not been kept in the cash fund.

In April 2021, the Complainants said:

"I have reviewed the [Provider] response to my dispute. The position remains essentially the same wherein the main point in question is the 2% upfront charge being applied by [Provider]. I was making the investment with the clear understanding, due to a telephone conversation I had with my [broker] Manager, that no upfront charge would be applied.
I trust that despite my inability to produce written evidence for this situation common sense will prevail and you will be able to make a right and just decision."

The Complainants also subsequently stated in June 2021:

We continue to be confused as to the proper roles of [broker] and [Provider] in this investment and in how they saw fit to manage it.
We remain particularly offended that they failed to remove the 2% charge as we had discussed and see it as purposeless profiteering at our expense. with no risk to themselves. We have no further comment at this stage.

The Provider's Case

The Provider confirms that it supplied the investment policy, which was sold by the Broker acting in its capacity as a financial broker at the time, and not as a tied agent of the Provider. Provider confirms that administration of the investment since its inception has been carried out by the Provider.

In its letter dated **17 January 2018**, the Provider states that in **October 2013**, it received a signed instruction from the Complainants to extend their investment to **December 2016**. The Provider states that in **November 2013** a part encashment of **€42,216.00** (forty-two thousand, two hundred euro and sixteen cents) was made from the policy.

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The Provider says that the Complainants' funds were invested in the "Cash Fund" with effect from **27 January 2017**. It says that in **September 2017** an **Annual Statement** was issued to the Complainants which confirmed the value at that time. The Provider states that as the Complainants' policy was unit linked, the value is subject to fluctuation as the price of units, can go up or down. The Provider submits that in **December 2017** the Complainants fully encashed the policy and no exit tax was deducted from the value of the policy.

The Provider wrote to the Complainants, by letter dated **13 April 2018**, and said as follows:

> "*Your original investment contract was with [Provider] and the fund option selected was a [Broker] Banking Fund - [Property Portfolio B];*
> *You invested €500,000 in this fund on 03rd August 2004;*
> *There was a 2% (€10,000) upfront charge on this investment. I understand that you discussed this upfront charge with your relationship manager …. in November 2017;*
>
> *As the [Property Portfolio B] was wound down your investment monies were transferred to a cash fund by [Provider]. I note you encashed the first distribution in October 2013. However, the two subsequent distributions (in June 2015 and January 2017) were moved to the cash fund and stayed invested until you decided to encash the full amount in November 2017;*
> *The monies held in the [Provider] Cash Fund were subject to an Annual Management Charge of 0.50%.*
> *I have detailed the amounts invested in the [Provider] Cash Fund and your subsequent loss of circa €3,500. As above, this is largely due to the annual management charge of the fund, combined with negative returns from the cash fund over the period in question*."

The Provider asserts that:

> *"[The Provider] believes it is clear from the Return Form signed by [the Complainants] in 2013 that they were aware of and agreeable to the transfers to the Cash Fund and the risks of remaining in the Cash Fund in the longer term were brought to their attention on a number of occasions. While we appreciate that [the Complainants] may be disappointed with the outcome of their investment, we believe the Policy was provided and administered in accordance with agreed terms*."

The Provider submits that it "*is satisfied that it acted on the instructions of [the Complainants] to set up the Policy, effect switches between funds, and in processing encashments from the Policy*" and that "*the Policy was administered by the [Provider] in accordance with its terms*."

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The Complaint for Adjudication

The Complaint is that the Provider:

- Incorrectly applied a 2% upfront charge on their investment in 2004
  and
- Failed to invest their units in a money market rate on encashment from the property units, and put their funds at risk, resulting in a shortfall in the total encashment of the investment, on maturity.

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 **25 February 2022**, 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 Provider refers to the broker's Property Portfolio B **Fund Brochure** (being a geared property fund) which says, at page 8, as follows:

> "*The fees on the Portfolio are a 2% upfront fee and a 2.9% annual management charge on NAV. (This 2.9% annual management charge is equivalent to a 0.97% annual management charge when the effect of 66% gearing is combined with*

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> *investors' equity). There is also an incentive fee of 15% of gains in excess of 9.2% per annum net of all fees and 20% of gains in excess of 11.2% per annum net of all fees. The incentive is paid on gains on investors' equity after deduction of any upfront fee*."
>
> [my underlining for emphasis]

I also note that page 2 of the Broker's Investment Selection **Policy Conditions** states as follows under the heading *Management Charge*:

> "*An annual management charge is reflected in the price of the units allocated to the policy. The annual management charge varies depending on your chosen Investment fund(s). The annual management charge applicable to each investment fund chosen by you is stated in the Schedule*."

The First Complainant also asserts, by letter dated **23 January 2018**, that:

> "*I granted no right whatsoever to [Broker] or its subsidiary [Provider] to unilaterally place these funds at risk without approval from me*."

The Provider submits that the Broker sold the Policy to the Complainants in **2004** "*in its capacity as a financial broker*." The Provider also submits that "*while an insurance intermediary authorised to sell the [Provider's] products (and authorised to sell the products of other insurers at the time), [the Broker] was not a tied agent of the [Provider's] at the time. The [Provider] was the product provider*."

The Complainants submit that:

> "*The application form sent by [Broker] and on [Broker] letterhead paper, termed '[Broker] Investment Portfolio Application Form', was in fact a life assurance policy application which was through a [Broker] associated company [the Provider]).*
> *The promotional material did not reference [the Provider] in the structure as shown on the organizational chart ... The Fund Manager is shown as the [Company A], it is confusing that an assurance policy with [the Provider] was imposed here rather than a direct investment into the [Company A]. I still remain confused by this as it was not my intention to enter into assurance policy agreement with [the Provider] but rather an investment with [Company A]*."

I note the Provider's submission that "*[the Complainants] had met with [Broker Manager], on the 23 July 2004 before completing an application form to take out the Policy.*" I note the investment structure which highlights the links to Company A.

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I note the contents of the **[Broker**] **and Investment Portfolio Application Form** which clearly states the name of Property Portfolio B in large lettering at the top. I also note that the amount of the investment is noted as €500,000.00 (five hundred thousand euro) and I note that under the heading "*Fund Choice*" 100% is indicated as the amount to be invested in the Property Portfolio B.

This form is signed by the Complainants and dated **23 July 2004.** I note the First Complainants assertion that he "*granted no right whatsoever to [Broker] or its subsidiary [Provider] to unilaterally place these funds at risk without approval from me*." I am satisfied that the Policy was provided by the Provider and sold by the Broker acting in its capacity as a financial broker at the time. The Application Form clearly states at the bottom under the Complainants' signatures: *"Underwritten by [Provider]"*

Although the Complainant have indicated that they were confused about the structure of the investment, I note that the policy statements issued periodically to them, were issued by the Provider, confirming the total investment amount of **€500,000** on **3 August 2004**. Each such statement included the then current value as at that time, together with the then current value after tax, at the date of the statement.

I note in that respect that the value appears to have reached something of a high, in September 2007, when it stood at **€628,369** (net of tax of more than €38,000). Unfortunately, following the financial crash, the value appears to have fallen to some **€146,000**, by **August 2010**.

The Complainants submit by letter dated **9 May 2018** that after discussions in 2004, with the Broker Manager during which the onerous conditions were discussed, they were persuaded to proceed, albeit with a reduced Investment of €500,000.00, but that they did so on the clear understanding that this onerous 2% upfront charge would not apply. The Complainants point to the lack of signature confirming the acceptance of such a condition. The Complainants submit it is unclear who the charges are being paid to, and that they say they were not aware of the 2% upfront fee.

The upfront fee was applied at the time of the sale of the product in 2004, though it is suggested that the Complainants only became aware of this when they cashed out of the policy. This seems unlikely however, as they appear to have been immediately aware that *"[the Provider] "assigned" me shares in the US Property Fund, which amounted to €10,000 less than the investment amount"* though they say that they believed that *"there was €10,000.00 in my cash account, prior to any encashment of my investment*."

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It would appear unlikely to me that any investor, being aware of a standard upfront charge of 2% for an investment in a particular property fund, and having invested €500,000 in that particular property fund, and having been assigned shares in that property fund amounting to €10,000 less than the investment amount, would assume that the €10,000 remained available to them in their cash fund, and would also choose to leave those monies there, for more than a decade.

I do not accept that this was a reasonable understanding by the Complainants of the situation from 2004, and it is unclear to me why the Complainants formed the belief that they have indicated. I do however accept the Complainants' comment that at the relevant time in 2004, prior to the Central Bank of Ireland's Consumer Protection Cde, there was a distinct lack of clarity as to the identity of the recipient of the 2% upfront charge on the investment.

The Provider submits that:

> "*This upfront fee (amounting to €10,000 in the case of this investment) was agreed and received by [the Broker] and not the [Provider] at the time. As can be seen from the Policy schedule issued, the actual amount invested (referred to as the Single Investment Premium) was €490,000 as had been agreed between [the Broker] and [the Complainants] at the time of sale.*
>
> *The [Provider] was not privy to the discussions that took place at the time, but it is clear the documents detailed an upfront fee of 2% was to apply and the Policy schedule issued by the [Provider] made it clear that €490,000 was used to acquire units in the Fund*."

I note that the Complainants wrote to the Provider, on **16 August 2004,** and said as follows:

> "*We have reviewed the documentation concerning the above referenced Investment and decided, in accordance with the provision for having second thoughts not to proceed with this investment at this time. We have notified our financial advisor [Broker Manager] of our decision and will continue to review with her other possible opportunities which may arise.*"

The Complainants submit that:

> "*My first investment was terminated on account of this charge but reinstated at 50% of original premium on the understanding that the charge would not apply.*

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> *On reinvesting $50,000.00, $10,000.00 remained in my account and was not charged to an upfront payment either then or at any time in the life of the project. This was as agreed by my [Broker] contacts before investing on a revised basis of half the original premium*."

I do not however accept that there is any evidence available that €10,000.00 remained in the Complainants' cash fund and that it "*was not charged to an upfront payment either then or at any time in the life of the project*". In my opinion, the very contrary appears to be the case, by reference to the evidence noted below.

The Provider submits that:

> "*In its 13 April 2018 final response letter to [the Complainants] … we note that [Broker] confirmed that they gave a copy of the Fund brochure to [the Complainants] before they selected to invest. The brochure set out the charges that apply to an investment in the Fund. In particular, page 8 of the brochure states: 'The fees on the Portfolio are a 2% upfront fee*."

I note the contents of the Property Portfolio B **Fund Brochure** which says at page 8 that:

> "*The fees on the Portfolio are a 2% upfront fee and a 2.9% annual management charge on NAV*."

I also note the contents of the Broker's Investment Selection **Policy Conditions –** which says as follows under the heading *Management Charge*:

> "*An annual management charge is reflected in the price of the units allocated to the policy. The annual management charge varies depending on your chosen Investment fund(s). The annual management charge applicable to each investment fund chosen by you is stated in the Schedule*."

I am satisfied in those circumstances, in the absence of any contemporaneous evidence to the contrary, that any investment made, proceeded on the basis of those terms.

I also note that details of management fees applicable to the funds invested in at the time, were also set out in the **Annual Statements** from 2015 onwards.

The letter sent on **30 July 2004** from the Provider to the Complainants stated:

> "I *confirm receipt of your application for the sum of €500,000 dated July 29, 2004 payable to [Provider] which will be invested as follows:*

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Product: [Property Portfolio B] – Gross Amount: €500,000.00. This was the gross amount received. Some investments are subject to upfront charges as outlined to you by your [Broker] manager. Because of this the net amount invested may be less, but this will be detailed on your contract note/policy documents where applicable…I enclose our Terms of Business."

I also note the contents of the **[Portfolio Property B] Fund Policy Summary Page** (showing the Provider's logo and name clearly at the top) which says:

"*3. Contribution Details: premium: €500,000.00"*
"4. Policy Details: …Single Investment Premium: €490,000.00"
"Investment percentage: 98%."

I am also conscious that the **Summary Page** notes
In a letter sent to the Complainants by the Provider, dated **6 August 2004**, it stated:

"*Thank you for investing in the [Property Portfolio B] …. We are pleased to say that your Policy has been forwarded to your Broker, [Broker], for your attention. This document will have to be produced when claiming benefits, and should be kept in a safe place.*
We have pleasure in enclosing for your records:
- *A copy of your Policy Document*
- *A notice setting out specific information about your Policy*

Should you have any questions please contact your broker who will be happy to help you. We look forward to being of further service to you over the years ahead."

I note that appended to this letter is a copy of the **[Broker] Investment Portfolio Policy Schedule** which says as follows:

"*Premium: Single premium: €500,000.00"*
"Investment: Single Investment Premium: €490,000.00"
"selected funds: Property Portfolio B."

The Complainants' letter of **16 August 2004** does not reference their reason for withdrawal of the larger investment and doesn't reference the 2% charge. I also note the contents of an internal Provider email, dated **12 August 2004** which asks that account ending *130D (the Property Portfolio B Account), originally issued with a 3% commission, be reduced to 2%, suggestive of a reduction of 1% having been agreed with the Broker Manager on the upfront charge. It is unclear how a figure of 3% commission could have arisen, given the clear details in the brochure and policy conditions, referencing a 2% upfront charge, but however this arose at the time, it is clear that the deduction ultimately made was 2%.

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I am not satisfied that it can be inferred that because the Complainants wrote to the Provider to retreat from Property Portfolio A, that that constitutes evidence that they didn't wish to invest in Property Portfolio B, unless the upfront charge was cancelled. It appears to me from the evidence, that the Complainants were aware of the 2% upfront charge at the time when they made their investment decisions in 2004.

The First Complainant submitted, by email **8 December 2020**, that

> "*on reinvesting $50,000.00, $10,000.00 remained in my account and was not charged to an upfront payment either then or at any time in the life of the project. This was as agreed by my [Broker] contacts before investing on a revised basis of half the original premium."*

I am conscious that this sentence suggests that the First Complainant was of the opinion that €10,000.00 (ten thousand euro) was "retained" in his account and that this had been agreed with the Broker. For the reasons outlined above however, I do not accept that this was a reasonable opinion to have formed.

I note that the First Complainant specifically exhibits and refers to the **Funds Brochure** in his submissions when he says that "*the promotional material did not reference [Provider] in the structure as shown on the organizational chart (see image of page 3 of Exhibit B).*"

I also note the First Complainant's submission that *"my decision to invest was based on promotional material provided by [Broker].*" Any complaint by the Complainants regarding the conduct of the Broker in 2004, is not however a matter for the Respondent Provider to this complaint.

Insofar as the second element of the complaint is concerned, the Complainants assert that:

> *"[Provider] repeatedly failed in their annual statements to itemise or clarify the specific amounts in charges or fees or any breakdown of the charges and to whom they were being paid. This area still remains unclarified and renders my attempts at reconciliation of the charges futile*."

In that respect, the Provider submits that:

> "*With the exception of the year 2012, the Company issued annual benefit statements (ABSs) to [the Complainants] between the years 2005 and 2017. The format and contents of ABSs developed over the years but it can be seen from later ABSs issued, they contained details of the funds in which [the Complainants] with invested at the*

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> *time including applicable management charge, unit price, number of units and overall value of the unit holding in each fund*."

I am satisfied that the **Annual Statements** were issued regularly, and I note the contents of the **Annual Statements** which detail, "Chosen Fund", "Management charge (listed as 2.4% p/a)," "unit price," "number of units" and "value."

I am satisfied that the **Annual Statements** reflected that management charge and I take the view that it was not practical or necessary for the **Annual Statements** to reflect all terms and conditions associated with the policy, as these details were set out elsewhere.

The Provider says that:

> "*[As] confirmed in the Return Form signed by [the Complainants] in 2013, as funds became available to those who invested in the Fund, the funds were transferred from the Fund into the Cash Fund. This took place in stages between 2013 and 2017.*
> *The Cash Fund is another unit-linked investment fund that was available to [Broker] policyholders at the time and was a lower risk investment option. By investing in cash deposits, the Cash Fund involved less risk than investment funds such as the Fund.*
> *By switching funds that came available from the Fund to the Cash Fund, it afforded investors time to decide what they wanted to do next. When the first switch from the Fund to the Cash Fund took place in 2013, [the Complainants] selected to take their money by way of a part encashment.*
> *A second switch took place in 2015 and a third and final switch in 2017 after which time [the Complainants] fully cashed in their Policy*."

Importantly, I note the **Return Form** which says under Option A:

> "*Please **extend** the term of my/our investment up to a maximum of December 2016. I authorise my funds to be switched to the [Provider] Cash Fund as they become available. I understand a management fee of 0.5% p.a. will apply to this cash fund*."

I note that by internal Provider email, dated **20 November 2013**, it is clarified that:

> "*the instruction that we received from the clients on the 1st of October was to extend the term of there (sic) investment up to a maximum of December 2013 and authorising there funds to be switched to the [Provider] cash fund. There was no request to partial surrender there (sic) funds on this policy even though they had provided there (sic) bank account details. They effectively highlighted option A on the return form when it should have been option* B."

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I note that Option B stated as follows:

> "*Please fully Transfer my investment to cash immediately (tick box as appropriate below). I understand the realisable value will be lower than the current book value (as at July 2013) of my/our investment policy.*
>
> □ *Please fully switch my funds to the [Provider] Cash Fund within my policy. I understand a management fee of 0.5% p.a. will apply to this cash fund.*
> □ *Please fully transfer the cash proceeds to my/our bank account, details below*."

I note that a further box is ticked on the form that says "*please enclose the original policy schedule. (If the original policy schedule is unavailable/ lost please contact this office for a lost policy declaration form)."*

I am satisfied that both Option A and Option B authorised the transfer of funds to the Provider's cash fund. I note that the **Return Form** selecting Option A, is signed by the Complainants.

The Provider notes the following in relation to the **Return Form**:

> "*This was an overall authority given to the [Provider] by [the Complainants] when funds were being released from the Fund to transfer to the Cash Fund and a confirmation that an annual fund management charge of 0.5% applied to the Cash Fund. This charge is taken at a fund level and reflected in the unit price of the Cash Fund.*"

I am satisfied that this form gave the Provider the authority to switch the funds to the Provider cash fund. I am further satisfied that the Complainants were made aware of the management charge of 0.5% that applied on the form which they signed.

I note the contents of the **Annual Statements** and by covering letter to the Annual Statement dated **19 August 2016**, the following information was included:

> "*The [Provider] Cash Fund should only be seen as a temporary place for your money. In the current environment it is possible that charges will exceed investment returns. If you wish to consider other investment funds, we have a broad range of funds available to you including our innovative risk managed funds. It is important to understand that you will remain invested in the Cash Fund until we hear from you otherwise*."

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I note the Provider's submission that this warning accompanied the first page of the **Annual Statements** from 2015 onwards.

I am also conscious that the **Annual Statement** for 2017 contains the following warning:

> "*The [Provider] Cash Fund should only be seen as a temporary place for your money. In the current environment it is likely that charges will exceed investment returns. If you wish to consider other investment funds, we have a broad range of funds available to you including our innovative risk managed funds. It is important to understand that you will remain invested in the Cash Fund until we hear from you otherwise*."

The Provider submits that "*the important statements on the Cash Fund were designed to ensure that [the Complainants] understood that the Cash Fund should only be regarded as a temporary place for their money while they considered their options*."

I am satisfied that not only was the Provider authorised to switch the Complainants' funds to the Provider's cash fund, it took the additional step of including a warning in its **Annual Statements** sent to the Complainants, to highlight that leaving money in the cash fund, should be temporary and may not yield profits.

In those circumstances, I take the view on the evidence before me that no wrongdoing by the Provider has been established. Insofar as the Complainants are unhappy that their monies were not invested in a money market rate once they were switched to the cash fund, I am satisfied that the Provider followed the Complainants' instructions which are clearly outlined in the return form which they signed, and which the Provider was obliged to adhere to.

As the evidence before me discloses no wrongdoing by the Provider, I am satisfied that it would not be reasonable to uphold this complaint.

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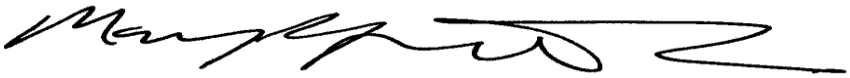
The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



MARYROSE MCGOVERN
Financial Services and Pensions Ombudsman (Acting)

23 March 2022

PUBLICATION

Complaints about the conduct of financial service providers

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.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.