



<u>Decision Ref:</u>	2022-0129
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Shares/Equities Investment
<u>Conduct(s) complained of:</u>	Dissatisfaction with final fund value Fees & charges applied Alleged poor management of fund Switching funds
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the Complainants' investment in an Investment Fund with the Provider.

The Complainants' Case

The Complainants submit that in **2014** they invested most of their life savings in an investment fund and they tracked the Investment Fund's performance values "*typically 4 values per week,*" up to **2019**.

The Complainants submit that in **February 2020** they contacted their financial adviser ("**FA**") and informed him about their decision to "*withdraw the fund.*" The Complainants assert that they expected to receive a cash amount of €421,664.46 (four hundred and twenty one thousand, six hundred and sixty four hundred and forty six cents) which was based on the investment fund's price, as at **31 January 2020**. The Complainants advise that when the FA presented to them, a "*document dated 3 February 2020,*" that they did not understand the difference between the sum of money they expected and the sum of money that was "*presented*" to them of just over €400,000. The Complainants assert that they never heard of the expressions "*bid price*" and "*bid value*" and that they subsequently expressed their "*surprise/ disappointment*" to the FA.

The Complainants submit that in a letter from the FA dated **21 February 2020** it showed that the cash value they received, included, they say, an "*early cash in charge*" of 5%. The Complainants contend that they were previously informed that there would be no early cash in charge applied to their investment fund, as from **December 2019**. The Complainants further contend that the FA said he would get back to them in relation to this however, "*he never did.*"

The Complainants advise that there is a difference of 5% between the "*expected*" value and the "*bid value*" for the amount of cash they received. The Complainants contend that the Provider has taken an "*early cash in charge of 5% contrary to the statement of no early cash in charge from 15 December 2019.*"

In their Complaint Form when asked how they wished for their complaint to be resolved, the Complainants stated that they would like their submission examined "*to see if my complaint is warranted.*" The Complainants also advise that they would like to receive a refund for the difference in value, between what they expected and what they actually received.

The Provider's Case

The Provider submits that the Complainants' investment plan was taken out in 2014 through the FA who was trading as [FA] *Financial Services*. The Provider submits that whilst [FA] *Financial Services* are a tied agent of the Provider it is regulated separately by the Central Bank of Ireland.

The Provider asserts that it was the Complainants' product provider, and its role was to put their plan in place, in line with their application and to administer in line with their Terms and Conditions.

In its **Final Response Letter** dated **7 April 2020** the Provider advises that it did not receive the "*excel spreadsheet*" attached to the Complainants' formal complaint letter and as a consequence, it cannot comment on whether the Complainants were looking at the correct prices or the correct "*series*" for their investment fund. The Provider asserts that it processes "*all switch requests*" on the day it receives them from its customers and that the Complainants' switch took place on **4 February 2020** when the price of the investment fund was €1.251.

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By letter dated **7 April 2020** and addressed to the Complainants, the Provider submitted that:

"Firstly, we did not receive any copy of the referenced Excel Spreadsheet attached to your formal complaint letter and so I cannot comment on what figures are represented therein. Neither can I confirm if you have recorded the correct [Fund 1] Unit Price which is the correct version of the fund you were invested in. Each Series of the [Fund 1] will have a different Unit Price and so you may not have been comparing like for like. Secondly it is unclear why, when your switch was actioned as of 4 February 2020, you should expect to be given the Unit Price of some arbitrary date in December 2019.... you have not been viewing the correct Series of the [Fund 1] on the [Provider] web site.... [Provider] process all switch requests on the day we receive the instruction from the customer and when we have obtained all necessary requirements needed to carry out the switch. Your switch occurred on 4 February 2020 when the published Unit Price for the [Fund 1] was €1.251. Your total Unit Holding in the [Fund 1] on that day was 321,881.27 units, which give a switch value of €402,673.47. This is the correct value on the correct day."

By letter dated **18 February 2020**, to the Complainants, the FA said:

" [Fund 1] in which you were invested did not have any entry fees, switching fees and no encashment charges were applied on the switch to cash, and subsequent withdrawal....The only charges were the annual management fees which are normal and included in all funds. Overall the after tax growth over a term of approx. 5 years represents good value in return for the level of investment risk."

The Provider in its response to the investigation of this Office asserted:

"On 4 February 2019 we received an instruction from [Complainants] (through their financial adviser [name]) to switch from [Fund 1] to the [Fund 2]. [Complainants] in their instruction at this time noted that they would be cancelling their investment in the near future. On 6 February 2019 we processed [Complainants] instruction with effect from the date that it was received (4 February 2019)."

[It appears that the Provider's repeated reference above to 2019, should rather be
to 2020]

The Provider maintains that it abided by its **Terms and Conditions Booklet** and advises that the "early withdrawal penalty" ceased to apply, after 5 years, on **28 July 2019** and it states that it is "fully satisfied that the switch value as of 4 February 2020 was processed correctly."

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The Complaint for Adjudication

The complaint is that the Provider incorrectly processed the Complainants' investment fund switch instruction, by applying a price and a charge that they did not expect.

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 **15 March 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.

I note that Section 2, of the Provider's **Terms and Conditions Booklet**, pages 7-8, says as follows:

"Unit-linking - Section 2

This section describes the way in which your money is invested and how we work out the value of your investment. This plan is unit-linked. Unit-linking is simply a way of working out the value of your plan on any particular date. You do not own the units. The plan will be linked to units in one or more of the funds listed in section 1. Each time you make a contribution we place units from one or more of the funds into the plan according to the terms of the latest fund link and in the way described in section

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4. We use the unit price of each fund to work out the number of units from each fund, which we will place in the plan. Our current policy is to use unit prices effective on the same working day we receive your contribution. We may change this policy in the future to use unit prices effective on a different date.

If you have chosen to invest in certain funds there may be a maximum amount that you are allowed to invest in each fund. The value of a unit (known as the unit price) will go down as well as up over time, depending on how the assets in the fund perform. We work out the price of units in all of the funds by using the market value of the assets of the fund and taking off the fund charge.

You can find details of how we work out fund prices in our Fund....Your fund value on any particular date will be equal to:

- the number of units we have placed in your investment from each fund; multiplied by
- the price for units of that fund on that date; and
- added together for each of the funds in your investment.

As a result, this fund value will go down as well as up over time as the unit prices change to reflect the value of the assets in the funds..."

Section 3, of the Provider's **Terms and Conditions Booklet**, pages 8-12, says as follows:

"In the following [Policy], part of the fund charge can vary. The following table shows, where relevant, the fixed charge, the estimated average level of the charge that can vary, and the total estimated fund charge

	Fixed Charge	Estimated average level of variable charge	Total estimated fund charge each year
	1.50%	0.15%	1.65%
	1.50%	0.15%	1.65%

The estimated average levels of variable charges indicated above are those expected over the long-term. The actual level of charges may be higher or lower than this. The section on variable charges below explains the reasons for this. Where the estimated average level of the variable charge is 0%, this indicates that the external managers may at some point choose to invest in assets which attract additional charges but the current expectation is that they will not. We won't increase these charges unless we need to do this because of an increase in the cost of dealing with the investment. If this happens, we will give you notice of the increase. If you want to take money out

of your investment within the first five years, we will take an 'early-withdrawal' charge from your fund value (see section 9). This does not affect your right to cancel in the cooling-off period we referred to in the introduction.

...

Variable Charges

As noted above the charge on a number of funds can vary and therefore is not fixed throughout the lifetime of your plan. The charge noted in the above table reflects our best estimate of the total charges we expect will be incurred by the fund over the long term. However, the actual charges you incur may vary for the reasons given below.

Funds are administered at an overall level by [Provider]. For some funds, a part or all of the assets are managed by companies (external managers) other than [Provider]. There are charges taken from these funds by both [Provider] and these external fund managers. The external fund managers take their costs and charges from the assets they manage. These charges are reflected in how the funds perform. The level of the charges they take, as a percentage of the overall fund, can vary for several reasons.

- The first reason is the fact that the percentage of the fund that is managed by external managers can change over time. The weighting of individual investment types may also vary over time. Where the fund invests in other funds, the overall fund charge will also vary accordingly. This split will change depending on the availability of the particular assets they are managing and also the level of money coming into and out of the fund. The actual level of the external manager charge will therefore vary depending on the weighting of these factors within the fund.*

- The second reason is that the level of the charges applied by external fund managers can vary according to the fund manager we choose in the future. We may also pay the external managers an incentive fee if they achieve positive investment returns on the funds they manage.*

- The third reason is that the funds managed by external fund managers may borrow to increase the amount of assets that the funds can invest in. Borrowing increases the chance of achieving improved returns if the assets perform well.*

However, it also increases the level of risk of the investment. The external managers' charges in relation to investments are based on the total value of the assets held including any borrowings made rather than on the funds they manage. The level of these charges as a percentage of the funds managed will depend on the amount of borrowing relative to the value of the assets held.

If the level of borrowing increases by more than the value of assets, the level of charges as a percentage of funds managed would increase. For example, a significant fall in asset values could result in a significant increase in the average level of this charge as a percentage of funds managed. This is because a fall

in asset values means that the amounts borrowed would represent a higher percentage of the fund value.

Equally, if the level of borrowing reduces by more than the value of assets, then the level of charges as a percentage of funds managed would also reduce. For example, a significant rise in asset values could result in a significant reduction in the average level of this charge as a percentage of the funds managed. This is because a rise in asset values means that the amounts borrowed would represent a lower percentage of the fund value.

Taking account of these factors, we estimate that the estimated average level of charges on the funds will be split as on the previous table.

The actual level of the estimated external manager variable charge, and therefore the total expected charge, may be higher or lower than this depending on the factors outlined above.

Some funds invest in other funds and the proportion invested in each fund may vary over time. Since fund charges vary between funds, the overall fund charge will vary depending on the weighting of individual investments in each fund. If the charges on individual funds vary, the overall fund charge will vary as a result.

Increase in charges We will only increase the charges given above, for one of the following reasons:

- there is an increase in the costs of dealing with the investment.*

If this happens, we will give you notice of the increase.

- the charges vary for one of the reasons given above in the section on variable charges..."*

Section 4, part 4.3, of the Provider's **Terms and Conditions Booklet**, page 13, says as follows:

"This charge is taken as a percentage of your fund value. It can be different for each fund that you are investing in. Each fund charge is shown in section 3 of this booklet. The charge is reflected in the unit price of each of the different funds you have invested in."

Section 4, part 4.5, of the Provider's **Terms and Conditions Booklet**, page 12, says as follows:

"4.5 Early withdrawal charge. If you want to take money out of your investment less than five years after you put it in, we will take an 'early-withdrawal' charge from your fund value (see section 9). This does not affect your right to cancel in the cooling-off period we referred to in the introduction."

Section 9, of the Provider's **Terms and Conditions Booklet**, pages 18-19, says as follows:

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“These sections explain how to withdraw all or part of your investment, and what happens when you do this.

You may cash in your investment at any time, subject to any delay period that may apply (see below), by writing to us at the address given in the introduction to this document. Once you have given us notice that you wish to cash in your investment you cannot change your mind. If you take your money out more than five years after you put it in, we will pay you the full fund value, less any tax that may be due. The cash in value you receive will be based on the value of your units in the fund at the end of any notice period.

However, if you want to cash in your investment less than five years after putting the money in, we will reduce your fund value by taking off our 'early-withdrawal' charge. This charge is a percentage of your fund value which depends on the number of years (or part of a year) between the date that you take your money out and the fifth anniversary of the date you put it in. This means that if you have made extra investments, you may have different early-withdrawal charges on different parts of your fund value. We don't make this charge if you cancel during the cooling off period which we refer to in the introduction. The percentages are as follows.

Year*	Early-withdrawal charge as a percentage
1	5%
2	5%
3	5%
4	3%
5	1%

**This refers to the anniversary of the date you put the money in.*

For example, if you made an extra investment during year 3 and you cash in all of your investment during year 4, we will take a 5% charge from your extra investment, but a 3% charge from the initial amount you invested.

We will also reduce your fund value by the amount of tax that we pay on the amount you withdraw. We explain this in the tax section (section 13).

The investment will end after you have cashed it in.

Before we can pay you money from your investment, we will need:

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- a filled-in claim form (you can get this form from any of our offices); and
- proof that you are entitled to claim the investment's proceeds (including these terms and conditions and the schedule).

If this plan has been assigned to a child, then a parent or guardian will need to sign a discharge and indemnity form for [Provider], if they plan to cash in the plan before the child's 18th birthday. The unit prices we use to work out the value due to you will be those that apply for the day we receive your filled-in claim form and any other documents we need..."

I note that the investment was initiated in **July 2014** and that the original investment amount was €25,422.67 (twenty-five thousand, four hundred and twenty two euros and sixty seven cents). I note that a follow up investment of €301,980.20 (three hundred and one thousand, nine hundred and eighty euro and twenty cents) occurred in **December 2014**, making a total investment amount of €327,402.87 (three hundred and twenty seven thousand, four hundred and two euro and eighty seven cent).

I note that an exit penalty existed for the first five years of the Complainants' policy.

The Complainants signed an Instruction Form on **4 February 2020** confirming their instruction to the Provider to switch 100% of the fund to the cash fund they had identified. I note in that regard, that the letter of instruction says a follows:-

"Current fund information: [Fund 1] – cash in value €370,000 (approx.) as at 31/01/2020".

I further note that on **6 February 2020** the Provider wrote to the Complainants confirming that the switch instructions had been actioned and certain details of the switch were set out in the Provider's letter as follows:

Units sold	Unit price	Switch charge
321,881.27	€1.25100	€0.00
Units bought	Unit price	
456,545.89	€0.88200	
Current units		
456,545.89		

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I further note that contrary to the approximate value referred to in the Letter of Instruction from the Complainants on 4 February 2020, the Provider's letter confirmed as follows:

The current surrender value of your plan is €402,673.47, based on fund prices as at 4 February 2020. This amount does not include exit tax if applicable. This value will change as fund prices can rise or fall over time depending on market movements.

Subsequently, the policy was surrendered on **13 February 2020** in the gross amount of €402,673.47, with tax on profits deducted at 41%, giving rise to a net amount of €371,812.52 (three hundred and seventy-one thousand, eight hundred and twelve euro and fifty two cent).

I note the Provider's submission that the Complainants' final value is based on the unit price of the day that their complete and valid surrender instruction was received on **13 February 2020**. The Provider has submitted the following table breaking down the fees charged and paid out:

Fund	Units Held	Unit Price	Gross Value
	456,545.89	€0.882	€402,673.47

Gross value at 13 February 2020	€402,673.47
Exit tax on profit gained at 41%	€30,860.95
Net payment	€371,812.52

I note that the Provider confirms that the net payment amount was paid by electronic transfer on **14 February 2020**. I note that the exit tax on profit gained at 41% was payable to Revenue.

I am satisfied that the only charge incurred by the Complainants was their annual fund management charge which *"is a standard charge to cover the administration of an investment fund"* that is *"levied as a percentage of the overall investment fund value and not at individual plan level."*

I also note the contents of Section 3 of the **Terms and Conditions Booklet** which details the percentage of the annual fund management charge fee of (1.65%) which applies to Fund 1. I note the contents of Section 3 and Section 4.3 of the **Terms and Conditions Booklet** which lays out the rules surrounding the penalty for early withdrawal charge which did not apply here.

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The Provider relies on section 2 of its **Terms and Conditions Booklet** which says:

“the value of a unit (known as the unit price) will go down as well as up over time, depending on how the assets in the fund perform. We will work out the price of units in all of the funds by using the market value of the assets of the fund and taking off the fund charge.”

I note that the Provider submits that both:

“switch request and cancellation were correctly processed in a timely fashion with these instructions taking place using the price of the day of receipt (4 February 2020 and 13 February 2020) respectively.”

In my opinion, there is no evidence that contradicts this assertion by the Provider.

The Complainants submitted evidence of a **Print Summary Plan** (ref. xxxxx799) which includes a reference (handwritten) that this is the *“presentation by FA to us 3rd February in our residence”*. I note that the total payment is listed as €330,676.90 on the **Print Summary Plan** and that the overall current value is noted at €400,742.18. However, I note that this is based off a price date of **31 January 2020** which is not the date when the Complainants surrendered their policy.

I also note that the contents of the Complainants’ **Excel Spread Sheet** make no reference to the unit prices on **4 February 2020** when they switched to a cash fund or on **13 February 2020** when they encashed the investment, and it ends at **31 January 2020**. Overall, I am satisfied on the evidence available that the net value of the fund was correctly paid to the Complainants and that no early withdrawal penalty was applied on the net payment amount, as the Complainants’ investments were more than five years in being.

I note that on **4 February 2019** the Provider received an instruction from the Complainants (through their FA) to switch from Fund 1 to Fund 2 (a cash fund). I note the contents of a form entitled **Fund Switch Instruction**, dated **4 February 2020** and signed by both Complainants which says *“we instruct [Provider] to switch 100% of the fund – plan number [details] to the [Fund 2]. I have reviewed the [Fund 1] and [Fund 2]. I will be withdrawing funds soon.”*

In response, the Provider, **on 6 February 2019** processed the switch instruction with effect from the date that it was received (4 February 2019). I note the Provider confirmed this switch in a letter dated **6 February 2020** and on **13 February 2020**, the Provider received an instruction from the Complainants (through their FA) to cancel their investment. In their

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instruction of **13 February 2020**, the Complainants confirmed that they were cancelling their plan to fund a house purchase.

I note the contents of the **Withdrawal Form** dated **13 February 2020** and signed by both Complainants. The Provider submits that on **13 February 2020** it sent a text message to the Complainants to acknowledge receipt of their instructions. The Provider relies on Provision 9 of its **Terms and Conditions** booklet which says that *“the unit prices we use to work out the value due to you will be those that apply for the day we receive your filled-in claim form and any other documents we need”* and on **14 February 2020** the Provider cancelled the investment plan as requested with effect from the date that the valid cancellation instruction was received (**13 February 2020**) and wrote to the Complainants that same day to confirm the actions taken.

I note the contents of the **2014 Declaration in Relation to Investment Advice Process** which says as follows:

“Particular focus and attention were given to the following matters when arranging the product:

- ◆ *product booklet and Customer Information Notice,*
- ◆ *setting aside money for expected and any unexpected short-term needs and also for emergencies,*
- ◆ *that the investment is a long-term commitment and we recommend that it is held for a minimum of 3 to 6 years,*
- ◆ *the nature and limitations of any guarantees that are included in the product,*
- ◆ *the risk that attaches to their investment,*
- ◆ *any restrictions on encashments (if applicable),*
- ◆ *any encashment penalties included in the product,*
- ◆ *fund value payable on death may be less than the amount invested (if applicable)*
- ◆ *setting up a Will*
- ◆ *offer to have a second person present at the review (if applicable).”*

I note that each of the above criteria are ticked and that the **Declaration in Relation to Investment Advice Process** was signed by both Complainants and the FA on **24 July 2014**. I am satisfied that the Complainants had the benefit of financial advice at the inception of the policy and that the evidence suggests that they were on clear notice of how the investment would work.

I note that the Provider states as follows:

“Their Welcome Pack which contained their plan specific Customer Information

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Notice, Plan Schedule, Plan Booklet, Terms and Conditions document and cooling off cancellation was issued to them at their home address of [home address] on 5 August 2014.”

The contents of the letter dated **5 August 2014** stated:

“This pack includes:

- your investment schedule which sets out the details of your [Policy]*
- a terms and conditions booklet which sets out the rules about how your investment works*
- a copy of the [Policy] booklet*
- a detailed customer information notice issued in accordance with the Life Assurance (Provision of Information) Regulations, 2001. You should read this notice carefully as it covers some of the details of your investment and your consumer rights.*
- An explanation of the benefits of Customer Information Line and Online Services.”*

I note, in particular, that this letter furnished the Complainants with the **Terms and Conditions Booklet**, and I am therefore satisfied that the Complainants were on clear notice of the information in the **Terms and Conditions** of their investment policy received by them in a timely manner.

The Provider received a written complaint from the Complainants on **19 March 2020**, and it acknowledged this complaint in writing on **20 March 2020** and issued a **Final Response Letter** on **7 April 2020**. I am satisfied that the Provider’s complaint handling was in good order in that respect.

Having considered the evidence available, I am satisfied that there is no evidence that the Provider failed to act in accordance with its obligations under 2.1 and 2.2 of the **CPC 2012**. I am further satisfied that the Provider made the charges, as referenced in the **Terms and Conditions**, clear to the Complainants and furnished details to them and in doing so made a *full disclosure of all relevant material information, including all Charges* and that such information was given in a *clear, accurate, up to date manner with key information brought to the attention of the consumer* in a timely manner, and in line with its obligations under 2.6, 4.1 and 4.2 of the **CPC 2012**.

In conclusion, I do not accept that the Provider wrongly processed the Complainants’ investment switch request or their subsequent investment encashment instruction and, in my opinion, there is no reasonable basis upon which it would be appropriate to uphold this complaint.

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Conclusion

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

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)

11 April 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,

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and
(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

