



<b><u>Decision Ref:</u></b>	2022-0194
<b><u>Sector:</u></b>	Investment
<b><u>Product / Service:</u></b>	Self-Administered (SIPP) / Self-Directed
<b><u>Conduct(s) complained of:</u></b>	Delayed or inadequate communication Fees & charges applied Maladministration Value of policy at surrender less than expected or projected Switching funds
<b><u>Outcome:</u></b>	Rejected

#### **LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

This complaint concerns the Provider's closure of an investment fund in **2020**, which formed part of the Complainant's pension fund.

#### **The Complainant's Case**

The Complainant asserts that in February 2020, the Provider gave him "*ridiculously short notice*" when announcing the closure of the investment fund.

The Complainant says that the Provider did not offer him any "*in specie outkind transfers*" and then made a "*u turn after [he] sold most of [his] holdings*". He says that the Provider forced him from "*low-fee offerings to high-fee offerings which benefit the Provider and not the customer*".

The Complainant submits that the Provider advised him that there would be "*zero dealing costs*", however, he was charged commission when he sold his holdings in the investment fund.

The Complainant made further submissions to this Office by way of email dated **15 December 2020** stating there had been no communication from the Provider about the transfer of funds since **15 September 2020**. He states that the Provider omitted to reference within the timeline that *“all holdings would have to be liquidated to cash initially and the date that they changed their minds and said that there could be an in-specie transfer”*.

The Complainant states that this is important as he states that the Provider was forcing customers to sell their holdings at a time when the market was falling precipitously due to COVID-19.

The Complainant also states that the Provider did not complete the transfer of stock in *“3 to 4 weeks”* and this caused him to miss out on the gains to be made from investing €300,000 in the S&P 500 which had its *“best ever month”* in **November 2020**. He also states that as far as he knows, the Provider is charging him *“management fees”* even though it is not managing anything for him.

The Complainant submits that the Provider is *“relying on terms and conditions which they are not actually in possession of”* and that this is *“frankly ludicrous”*.

The Complainant also denies withdrawing €44,147 from his online trading account and is concerned as to where that money has gone.

The Complainant states that the Provider has not acted in the best interests of its customer, nor has it acted professionally and fairly pursuant to the **Consumer Protection Code 2012** (as amended) (‘CPC’). The Complainant also states that the Provider has breached the CPC in that it has lost the terms and conditions that apply to his pension product.

The Complainant states that the Provider made a *“profit-driven decision to terminate my specific pension arrangements”*.

The Complainant states that he was mostly invested in Exchange Traded Funds, tracking various indices and to get similar exposure on the Provider’s funds he would have to pay fees of up to 12.5 times, what he had been paying.

The Complainant submits that the Provider has *“not offered any explanation as to why they terminated”* the fund and he suggests that it was because it was making *“insufficient fees from the product and were force-moving their customers to higher fee offerings”*.

The Complainant made further submissions on **11 February 2020**. He states that he was charged a total of €5,696.46 in negative interest and management fees and he has not been able to manage his pension for the last twelve months because of the actions of the Provider. The Complainant also clarifies that he is not referring to the annual fund management charge when he is discussing fees charged; the fees he is referring to are the fees of the investments he had (0.06% in [redacted] ETFs [Exchange Traded Funds]) as compared to 0.5% in the Provider's offerings.

The Complainant states that the decision to close the fund was "*rushed and not thought through*". He points to the fact that the decision not to allow in specie transfers, when the closure was announced had the effect of forcing customers into cash and this decision caused him personally "*the greatest amount of financial harm*". The Complainant states that the decision by the Provider to subsequently allow in specie transfers, demonstrates that the Provider made a mistake initially and did not handle the process professionally.

The Complainant is seeking compensation of "*all management fees and negative interest payments to be refunded to me from February 17<sup>th</sup> to final closure*". He would also like compensation for "*the chaotic communication which led me into having half my portfolio in cash during a strongly rising market*".

### **The Provider's Case**

The Provider acknowledged receipt of the Complainant's complaint letter by way of letter dated **2 March 2020**. The Provider in its Final Response Letter dated **23 March 2020**, stated that its "*decision to close this fund was not taken lightly*" and that in light of the uncertainty that COVID-19 had caused, it had taken the decision to "*extend the action date on the fund*" from **7 May 2020** to **15 September 2020**.

The Provider referred to the options available to the Complainant including, "*in-specie transfers*" to an alternative pension provider or liquidating his holdings in the investments fund and transferring the proceeds to the Provider's cash fund while [he] considered his options.

In response to the allegation by the Complainant that the brokerage community were made aware, in advance, of the pending closure of the fund to customers, the Provider asserts that the "*brokerage community*" were not notified of this closure until **17 February 2020** at the earliest, a week before the Provider's direct customers were notified on 24 February 2020. The Provider also made clear that brokerage charges and commissions, charged after the investment fund was closed, would be refunded very soon and it apologised for any confusion caused as a result of this delay.

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The Provider made further submissions to this Office on **30 November 2020**, by way of formal response to the investigation of this complaint. In these submissions the Provider noted that it does not offer or provide investment advice on self-invested funds. It is for this reason that the Provider states that all correspondence sent to the Complainant regarding the closure of the fund in question, recommended that the Complainant speak with his Financial Adviser to discuss his investment options.

The Provider also states that because one of the pensions in question was a company pension plan, the Complainant would also have had access to the nominated pension trustees of that plan, to provide him with advice regarding his options, going forward.

The Provider confirmed that that the Complainant is invested in two types of pension plans with the Provider being:-

1 – [Redacted] *Bond for Personal Pensions.*

The Provider says that this is a unit linked life company pension, which offers customers various funds in which to invest, of various risk levels, in order to save for their retirement.

2 – [Redacted] *Company Plan.*

The Provider says that this is a unit linked company pension plan which also offers customers various funds in which to invest, of various risk levels, in order to save for their retirement.

The Provider explains that one of the funds available to its customers and indeed the fund in which the Complainant is invested, are self-invested funds, in which the Provider gives customers who are invested in the online trading account, delegated authority to trade in certain assets, with the main criteria being that the assets are listed on the main markets of regulated exchanges. Through this arrangement, customers have access to trade approved shares, bonds, Exchange Traded Funds (ETFs) and certain unit linked funds which are UCITs compliant.

The Provider says, with reference to the bond for personal pensions, that the sale proceeds were held on the Complainant's online trading account until November 2020, at which point they were recalled to his self-invested fund liquidity account, in order for the Provider to process his instruction to transfer his assets to another Provider, by way of an in-specie transfer.

The Provider, when responding in November 2020, advised that at that point the funds within the company plan were still in the Complainant's online trading account and would be transferred to the new provider, once all in-specie transfer requirements had been met (as the new provider was waiting on Revenue approval because this was a company pension plan).

The Provider states that the Complainant was made aware in the complaint response letter dated **23 March 2020** that he could transfer to the global cash fund, to avoid the negative interest charge of 0.6%.

The Provider states that its records show that the Complainant's broker had been in contact with the Provider on a regular basis since the fund closure announcement was made in early **2020**. As a result, the Provider states that it is satisfied that the Complainant received financial advice from his broker regarding his options, and how to proceed.

The Provider states that all literature issued to the Complainant, regarding his pension plans contained warnings which made it clear that the value of the plans could go down as well as up, and that there was a possibility he could lose all his money. The Provider states that this same literature made the Complainant aware that the Provider could decide to close a fund, at any stage.

The Provider clarifies in these submissions that it is not the *"pension product that is being closed by the Provider"*, rather it is the closure of *"an internal unit-linked life company fund"*. The Provider states that the governing terms and conditions of the fund reserve the right for the Provider, to close the fund.

The Provider states that it initially gave the Complainant 10 weeks' notice of the upcoming fund closure and that this was later extended to seven months' notice due to the impact of COVID-19. The Provider also notes that when it initially wrote to both the Complainant and the broker regarding the fund closure, it also enclosed a *"Questions and Answers"* document to assist the Complainant, when deciding on what to do, going forward.

The Provider states that all affected brokers were informed of the fund closure on **17 February 2020**, in advance of general customers being informed. The Provider states that this allowed the brokers to provide best possible advice to their customers, when contacted by them.

The Provider does not accept the Complainant's contention that the Provider forced the Complainant from *"low-fee offerings to high-fee offerings which benefit the Provider and not the customer"*. The Provider states that there was no requirement for the Complainant to move from a low fee offering to a high fee offering.

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Rather the Provider states that the Complainant had the option to *“switch into a range of alternative unit-linked investment funds”* as well as the option *“to transfer by way of an in-specie, to an alternative pension provider that offers stockbroking services”*.

The Provider notes that any trade charges associated with any sales as a result of the fund closing, were refunded to the Complainant and that these charges had been imposed due to issues *“beyond the Provider’s control”* relating to the stockbroking provider that was used by the Provider.

The Provider made further submissions to this Office dated **29 January 2021**. In response to the allegation of lack of communication, the Provider states that since **15 September 2020** the *“majority of communications are routed through the Complainant’s broker and servicing agent on his policy”*. The Provider states that it received the request to transfer these plans from the Complainant’s broker and all updates and requests for additional information were sent directly to the broker to discuss with him.

In response to the allegation of a delay in transferring funds, the Provider states that *“typically in-species take between four and eight weeks to complete in full”*. The Provider states that these transfers cannot take place until it has received all the documentation required and that it is also dependent on the receiving third party broker, processing any request to accept stock.

The Provider states that for the Complainant’s pension plan number xxx22\*\*\*, while the initial transfer was received on **16 September 2020**, the Provider did not receive a trading account reference until **4 November 2020**. In addition, the Provider states that there was an overdraft on the Complainant’s liquidity account which had to be cleared before the transfer could occur. Once the transfer request form was received, the Provider states that its stockbroking provider was contacted to initiate the transfer and the stockbroking provider contacted the third-party entity to arrange this on **10 November 2020**. The third-party entity had to discuss the matter with another entity and was not in a position to agree the transfer until **25 November 2020**. The Provider stated that transfer dates of **9 December 2020** were agreed and the transfers were settled on **21 December 2020** with the overall transfer plan finalised on **12 January 2021**.

With respect to the Complainant’s second pension plan number xxx20\*\*\* the Provider, when responding to this Office, stated that it was still waiting for confirmation of Revenue approval from the new pension provider in relation to the new pension plan. It pointed out that until it was in receipt of this, it could not proceed with the transfer.

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In respect of the withdrawal of €44,147 from the Complainant's account which the Complainant claims not to have known about, the Provider states that this money was initially held on the Complainant's platform security account and was recalled to his self-invested fund liquidity account, to allow the Provider to transfer the monies to the Complainant's liquidity account held with the new pension provider.

The Provider has re-iterated the reasons for the closure of the fund, as set out in the Frequently Asked Questions document, which was supplied to the Complainant and his broker, at the time when the Provider advised that the fund was closing. This document states that

*"after carefully evaluating multiple factors including the length of time on the market, asset levels, limited market demand and competitive positioning, the fund has failed to attract our expected level of interest among advisers and their customers. Based on the above factors a decision was taken to close the fund"*

The Provider made further submissions to this Office on **14 April 2021** stating that it did not receive confirmation that the Complainant's stocks had been successfully moved, until the end of **March 2021** and the delay was the result of communication issues between the third-party entity's stockbroking provider and the Provider's stockbroking provider.

### **The Complaint for Adjudication**

The complaint is that the Provider was guilty of maladministration in that it:

- Failed to provide the Complainant with sufficient notice when announcing the closure of the investment fund in **February 2020**;
- Failed to inform the Complainant of the options available to him and only informed him after he had sold his holdings;
- Forced the Complainant from *"low-fee offerings to high-fee offerings which benefit the Provider and not the customer*; and
- Advised the Complainant that there would be *"zero dealing costs"*, but charged him commission when he sold his holdings in the investment fund.

### **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

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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 **11 April 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. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

I note that the Complainant was invested in two types of pension plans with the Provider, both of which are unit linked life company pension plans which offer customers various funds in which to invest at various risk levels, in order to save for their retirement. The funds in which the Complainant chose to invest are self-invested funds where the Provider gives customers invested in the online trading account, delegated authority to trade in certain assets with the main criteria being that the assets are listed on the main markets of regulated exchanges.

The Provider seeks to rely upon sections of its updated Terms and Conditions which set out the Provider's right to close a fund and the notice to be provided in respect of a closure. In its initial submissions, the Provider stated that *"it is confident that the section in question, regarding the right to close a fund, has remained relatively unchanged"*. Although the Provider had difficulty locating the Terms and Conditions when responding to this complaint, when it ultimately supplied the Terms and Conditions that issued to the Complainant in **2012**, this Office noted one of the provisions relied upon by the Provider, at Page 10 of the updated Terms and Conditions which stated:

*"At any stage we can change the range of fund options that are available. We reserve the right to close a fund to new contributions or to close a fund entirely and move existing customers to other funds open at that time. If you are invested in that fund we will give you at least one month's advance notice."*



As can be seen from the above, the Terms and Conditions require the Provider to give 4 weeks' notice to a customer prior to closure of a fund. I note that in the case of the Complainant, an initial 10 weeks of notice was given, and this was then extended to seven months due to the onset of COVID-19.

I accept that the period of 10 weeks which was given initially was a reasonable period in the circumstances, beyond what was required of the Provider, in accordance with the terms and conditions. That 10-week period was then extended further to a period of seven months.

I accept the Provider's explanation that it told brokers that it was going to close the fund, shortly before informing all customers, in anticipation of customers who would seek assistance from a broker regarding their options.

In respect of the complaint concerning the fact that the Complainant had already sold his holdings prior to being informed of the option to transfer in-specie, I note that there was no obligation on the Provider to provide this in-specie option and that the Complainant took the decision to sell his holdings with the benefit of advice from his broker. In my opinion, there is no evidence to support the contention that the Provider's failure to offer in-specie transactions earlier, was wrongful or unreasonable conduct on its part.

I do not accept that the Provider forced the Complainant from *"low-fee offerings to high-fee offerings which benefit the Provider and not the customer"*. There was no requirement for the Complainant to move from a low fee offering to a high fee offering; the Complainant had the option to *"switch into a range of alternative unit-linked investment funds"* as well as, latterly, an option *"to transfer by way of an in-specie, to an alternative pension provider that offers stockbroking services"*. Notwithstanding the fact that the Complainant had sold most of his holdings by the time the option to transact in-specie was announced, he still had other viable options available to him and I do not accept, nor is there any evidence to support the suggestion that the closure of the fund was put into effect, with the aim of forcing him or any other customers to move to high fee offerings, thereby generating more revenue for the Provider.

In respect of any trade charges associated with any sales as a result of the fund closing, I note that these charges were refunded to the Complainant. The Complainant references a sum of €5,696.46 in negative interest and management fees which he claims he has lost out on as a result of the actions of the Provider however, I accept that the Provider cannot be held to blame for negative interest or for the application of regular management fees for the administration of a pension fund.

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The Provider made a decision to close a fund, as it was entitled to do, pursuant to the Terms and Conditions of the fund. In my opinion, the Complainant was provided with adequate notice of this closure and the closure had the practical effect that the Complainant, with the assistance of his broker, had to make a decision as to where to re-invest his pension funds. The Complainant made his decision and I do not accept that the Provider bears any responsibility in that regard, because of the strength of the S&P 500 in **November 2020**.

I accept that the closure of the fund resulted in some reduction of mobility in funds for the Complainant for a short period of time as well as some trade charges being incurred by the Complainant, but I am conscious that the reduction of mobility of funds, is simply a circumstance of the closure of the fund and that any charges incurred by the Complainant were refunded by the Provider.

The Complainant, in his submissions since the preliminary decision of this Office was issued to the parties, has indicated his dissatisfaction, and made further comments regarding the performance of the global cash fund. I accept the Provider's observation however, that the return on any fund is entirely different from the percentage management charge, which applied to the fund in question. I am also satisfied that the additional comments made by the Complainant regarding an early redemption fee imposed by his new provider (the provider the Complainant selected to transfer his investment to) is not a matter to be addressed in this complaint, which concerns only the conduct of this Provider.

I am satisfied on the evidence before me that there has been no wrongdoing by the Provider and in all of the circumstances, I take the view that this complaint should not 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.

**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)**

13 June 2022

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## **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.