



<u>Decision Ref:</u>	2022-0251
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Shares/Equities Investment
<u>Conduct(s) complained of:</u>	Delayed or inadequate communication Failure to provide correct information Failure to process instructions Value of policy at surrender less than expected or projected
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the provision of information regarding annual management charges for investment bonds, incepted in **2006**.

The Complainants' Case

The Complainants took out two investment bonds with the Provider, ending *559 and *004, in **2006**.

The Complainants note that they have not been contacted by the Provider since then, except in the form of annual investment statements. As a result, the first Complainant contacted the Provider on **27 January 2020**, with a number of questions. This included a request that the Provider set out the fund costs and charges that apply to the Complainants' bonds.

On **12 February 2020**, the Provider replied to the Complainants' questions.

The Complainants say that they have no complaint concerning mis-selling of the policies in 2006, nor do they have any problem with the performance of the investment. The Complainants state however, that they are unhappy with the Provider's reply to their request for a breakdown of the costs and charges.

The Provider has referred to the terms and conditions of the plans, and noted that the annual management charge would be dependent on which funds that the Complainants are invested in. The Provider noted that 1/12th of the annual management charge is taken from the Complainants' funds each month.

The Complainants are unhappy that the Provider set out the current management charges for each fund, and the applicable percentage, but did not give a monetary illustration of the charges.

The first Complainant wrote to the Provider on **6 March 2020**, as he was not satisfied with the Provider's response. He noted that the Provider hadn't given them the requested information, and that percentages quoted were inaccurate because they did not reflect the reduction in charges after 5 and 10 years.

The Complainants say that they became suspicious that the Provider "*HAD SOMETHING TO HIDE*".

The Complainants' response letter stated:

*"YOU GAVE ME DETAILS OF [Provider] CHARGES IN % TERMS. THAT IS NOT WHAT I ASKED FOR. I NOW REQUIRE THE AMOUNT **IN EUROS** TAKEN FROM THE ABOVE POLICIES FOR EVERY YEAR FROM 2006 TILL 2019. WHEN YOU GIVE ME THIS INFORMATION, I RESERVE THE RIGHT TO ASK YOU FOR THE DETAILED CALCULATIONS AS TO HOW THE DEDUCTIONS HAVE BEEN ARRIVED AT."*

The Complainants note that this letter was not acknowledged or responded to until **28 May 2020**. The Complainants state that this reply was "*RIDDLED WITH TYPOGRAPHICAL ERRORS*" and that the Provider had still failed to provide the requested information, as this correspondence set out the total charges for the funds from **2006 to 2020**, analysed by fund, and not by year.

The Complainants submit that they reject the statement of the Provider that the charges are legitimate and that they were clearly set out in the terms and conditions of the Complainants' products. The Complainants reiterate that they are looking for the management charges that the Provider has levied against their investments, and they state that this request is not unreasonable.

The Complainants note that the Provider stated that the charges are not levied directly against individual investment plans but instead, they are applied to the overall fund on a daily basis, and this is why the charge is not noted on individual annual benefit statements.

The Complainants however state that this is "*TOTALLY INADEQUATE*" as they were never told this and that the charges still affect the value of their investment. The Complainants are seeking a breakdown of the difference between the gross value of the fund and the figure used to calculate the daily unit fund.

The Complainants note that the Provider sent correspondence dated **21 August 2020**, which stated that the Provider had given the Complainants a comprehensive breakdown of the charges in monetary terms. The Complainants refute this.

The Complainants doubt the accuracy of the Provider's responses, and they outline an example of these discrepancies:

"IN RECENT YEARS [the Provider] IN THEIR ANNUAL INVESTMENT STATEMENT HAVE INCLUDED THE FOLLOWING "AMOUNT ADDED TO YOUR PLAN TO REDUCE YOUR FUND CHARGE". IN THE 2020 STATEMENT THIS FIGURE IS SHOWN AS €923.29.

NOW THE ANNUAL MANAGEMENT CHARGE HAS BEEN REDUCED FROM 1.5% TO 1%. THIS MEANS THAT THE AMOUNT OF €923.29 REPRESENTS .5% OF THE TOTAL CHARGE AND THE NET CHARGE THAT [the Provider] HAVE MADE AGAINST THIS POLICY IS DOUBLE €923.29 OR €1846.58.

SINCE 2013 [the first Complainant] HAS MAINTAINED A WEEKLY RECORD OF THE VALUE OF OUR TOTAL INVESTMENT WITH [the Provider] SPLIT OVER THE THREE FUNDS THAT OUR MONEY IS INVESTED IN.

*AS A RESULT WE HAVE CALCULATED THAT THE "AVERAGE" OF OUR INVESTMENT UNDER POLICY [ending *004] FOR 2019/2020 WAS €143766. THAT SHOULD HAVE RESULTED IN A MANAGEMENT CHARGE OF €1438 !!!!! THIS WOULD INDICATE THAT WE HAVE BEEN OVERCHARGED IN RESPECT OF THIS YEAR OF €409."*

The Complainants submit that the Provider should be able to produce an algorithm to calculate the information that they are seeking. They state that their policy documents do not prevent them from asking questions, nor entitle the Provider to refuse to answer such questions.

In **July 2021**, in response to the Provider's submissions to this Office, the Complainants stated that the management charges figure supplied by the Provider was meaningless. They submit that it must be related to the average value of their investment over the same period. The Complainants reiterate their request for information and note that *"THERE HAS TO BE SOME RELATIONSHIP BETWEEN THE AVERAGE VALUE OF OUR FUNDS OVER A DEFINED PERIOD AND THE NET FUND MANAGEMENT CHARGE FOR THE SAME PERIOD."*

The Complainants set out further figures for their funds relating to the period of **January 2021 to June 2021**. They asked the Provider to explain how the bonus figures in their funds are reached. The Complainants note that the Provider never offered to meet with them to discuss the matters raised.

The Provider's Case

The Provider states that the Complainants' policies were applied for through an independent financial broker. It notes the Complainants' submission that the Provider did not regularly contact them to check if they were happy with the performance of their plans.

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In its Final Response Letter of **12 February 2020**, the Provider explains that it does contact its customers yearly to see if they would like a financial review of their plans; however, this did not apply to the Complainants, because their plans had been taken out through a broker. The Provider notes that it sends Annual Benefit Statements to the Complainants, and that this correspondence contains contact information for the customer service team.

The Provider notes that section 3 of its **Terms and Conditions Booklet** states that a charge of 1/12th of the annual fund charge will be made each month, for each of the customer's chosen funds.

The Provider explains that fund management charges are not applied at the 'plan level'. Instead, they are applied at the 'fund level', on the funds in which the customers are invested, as a whole. This is undertaken by fund managers prior to the unit price being set. The Provider states that the investment value is determined by multiplying the number of units held by the Complainants in the fund, by the declared unit price, after the fund management charge has been deducted from the overall fund, as a whole.

The Provider set out the total charges applied to each relevant fund, over specified lengths of time as follows:

*"[Bond *559] - €75,750 Invested in August 2006 (€75,000 plus extra 1% allocation)*

Fund	Total Management Charge	Length of Time Invested
[Fund 1]	€2,750.53	Aug 2006 – Feb 2009
[Fund 2]	€ 432.10	Feb 2009 – Sept 2009
[Fund 3]	€6,527.01	Sept 2009 – May 2020
[Fund 4]	€7,449.76	Sept 2017 – May 2020
[Fund 5]	€4,141.12	Sept 2017 – May 2020
Total Management Charge	€21,300.52	Aug 2006 – May 2020

*[Bond *004] - €107,100 invested in November 2006 (€105,000 plus extra 2% allocation)*

Fund	Total Management Charge	Length of Time Invested
[Fund 6]	€3,137.81	Nov 2006 – August 2009
[Fund 3]	€2,592.42	Nov 2006 – Feb 2009
[Fund 2]	€ 317.10	Feb 2009 – Sept 2009
[Fund 1]	€8,252.13	Sept 2009 – May 2020
Total Management Charge	€14,299.46	Nov 2006 – May 2020

"

In supplying these details for the purpose of responding to the formal investigation of this Office, the Provider noted that this information had already been made available to the Complainants in **May 2020**.

The Provider states that for the investment bond ending *559, the Complainants have been invested in funds which hold management charges of 1.5% and 2.25%. It notes that these charges apply to the actual funds as a whole, each year, regardless of any agreement in place to credit units in the investment. The effect of this arrangement is to reduce the effects of the fund management charge. The Provider states that there are arrangements in place to reduce the effects of the charges to the Complainants, in the form of rebates. It notes that rebates have been applied to the Complainants' plan to reduce the effects of the 1.5% and 2.25% charges.

The Provider says that a similar rebate is in place for the fund in which the Complainants' bond ending *004 is invested. The Provider notes that the rebate reduces the effects of the charge on the Complainants, but does not reduce the fund management charges themselves.

In response to the Complainants' submission that they should have had a management charge of €1,438 (one thousand, four hundred and thirty-eight Euro) in **2019/2020**, the Provider states that the Complainants' calculations are not correct. It reiterates that the fund management charge is not a percentage of the value of the individual investments, but it is applied to the fund as a whole, before the unit prices are declared. As a result, it would not be possible for the Complainants to calculate their charges based on their investment value averages.

The Provider relies on the **Terms and Conditions Booklet** and states that it is satisfied that the Complainants were made aware at the start of their plan as to how the annual management charge would apply. It submits that the Complainants were made aware of the unit rebates that would apply to their investments in order to reduce the effects of these charges. It notes that there was a responsibility on the Complainants to read the documentation provided to them to ensure that they were happy to proceed with their chosen investments. The Provider acknowledges its own responsibility in reiterating this information to the Complainants, but also notes the responsibility of the Complainants' original financial adviser in explaining this information when the investments were incepted in 2006. The Provider says that notably, the first Complainant stated in phone call communications with it, that he does not have, nor need, a financial adviser. However, the Provider points out that these investment policies were set up through a financial broker.

The Provider states that it is not possible to confirm the Complainants' fund management charges in monetary terms in their annual statements. It notes that it can provide an estimate of the charges in rare circumstances; however, this is a long and manual process. It involves the Provider calculating the costs for each day since the investment started, obtaining the value for the fund each day, and the unit holding for each day. As unit holdings can change on a daily basis, the figures will never be exact. The Provider explains that, for this reason, it cannot provide a monetary figure for fund management costs, and that the estimates are always approximate figures.

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The Provider submits that it has complied with its obligations under the **Consumer Protection Code 2012**. It states that although *“the customer did not accept the information or believe the figures when provided, this does not negate the fact that the information was provided.”* It states that it is not feasible to provide the Complainants with the figure breakdowns that they have requested.

The Provider notes that there was a delay in responding to the Complainants’ request for information on **9 March 2020**. The Provider notes that this arose in *“unforeseen circumstances”*, referring to the COVID-19 pandemic, but it accepts that this was a failing in its customer service. The Provider offered a customer service payment of €500 (five hundred Euro) to the Complainants, which was rejected.

The Complaint for Adjudication

The complaint is that the Provider:

1. from January to August 2020, failed to provide the Complainants with specific monetary information, pertaining to the annual fund management charges, applied to investment bonds ending *004 and *559.
2. failed to clarify to the Complainants if the correct percentage of the funds’ value was used to calculate the fund management charges on investment bonds ending *004 and *559.

The Complainants want the Provider to supply *“details of [their] Management Charges ... on an annual basis and that this information to be included in the annual investment statement.”* They say that they are unsure of any financial loss to their funds to date, without the relevant information being given to them.

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.

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A Preliminary Decision was issued to the parties on **2 June 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 the Provider's **Terms and Conditions Booklet** which appears to date from June 2006. This set out the following on Page 5: -

Charges and Investment

Section 3

Each month we make a charge of 1/12 of the annual fund charge for each of your chosen funds. We take this charge from the investment price evenly over the month...

The annual fund charges on the [Investment Name Redacted] funds are as follows.

...

[29 separate funds are listed, with the Fund Charge for the first fifteen specified as "1.5%" and the Fund Charge for the next fourteen ranging between 1.1% and 2.25%]

...

The annual fund charges will reduce by 0.1% five years after the start date and fall by a further 0.1% 10 years after the start date. This means that you may have different levels of fund charge on different parts of your fund value if you have made extra investments at later dates. We allow for this reduction in charges by adding extra units to your investment each month."

I note that in **January 2020**, almost 14 years after incepting these investment policies through an independent broker, the Complainants wrote to the Provider seeking precise monetary breakdowns of the figures they have paid in fund management charges. The complaint is that the Provider has failed to provide this information and failed to clarify how the fund's value was used to calculate the management charges.

I note that the Complainants have been clear that they have no complaint concerning mis-selling of the policies in **2006**, nor do they have any issue with how their investments have performed. It is the Provider's reply to their request for a breakdown of the charges applied to these investments, that has given rise to this complaint. In that respect, I note that the Provider wrote to the Complainants in **May 2020**, with the management charge breakdowns quoted above. It explained that the charges are not levied onto the Complainants' individual plans, but are applied to the overall funds. I am satisfied that this reflects the information

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already set out at Section 3 of the **Terms and Conditions Booklet**, which notes that the charge to the Complainants, is a portion of the annual fund charge.

I understand that the Complainants were not satisfied with the detail of this response, but I accept that the calculation that is required to fully set out how the overall fund management charges are arrived at, is complicated in nature.

I take the view that during the Provider's initial correspondence with the Complainants, it communicated the relevant information that applied to the Complainants' investment policies, in an accessible way. In its submissions to this Office, it has explained in further detail, the basis on which these calculations are made. Consequently, I do not accept that the Provider has failed to communicate or clarify how the Complainants' fund management charges were calculated.

In relation to the Complainants' request that the Provider create an algorithm to calculate the specific monetary breakdown of their fund management charges, I have had regard to the Provider's submissions on the difficulty and inaccuracy of such a process. In my opinion, the Provider is under no contractual or regulatory obligation to produce such an algorithm and I accept that to do so would be overly burdensome on the Provider.

The Complainants have recently made the following submission, in support of their position:

"IN RESPECT OF THESE 3 FUNDS, THE FOLLOWING IS A SUMMARY OF THE BONUS UNITS ISSUED TO US IN THE CALANDER YEAR OF 2021 AND THE VALUE OF THESE UNITS BASED UPON THE UNIT PRICE AS OF THE 31ST. DECEMBER 2021.

	BONUS UNITS ISSUED DURING 2021	PRICE PER UNIT AS AT 31.12.21	VALUE OF BONUS UNITS IN 2021
FUND 1	209.53	2.569	538.28
FUND 2	536.67	1.984	1064.75
FUND 3	468.62	2.600	1218.16
	TOTAL VALUE OF BONUS UNITS ISSUED IN 2021		2821.19

QUESTION FOR [PROVIDER]?

IF YOU CAN CALCULATE THE VALUE WHICH WILL COMPENSATE FOR THE REDUCTION IN THE ANNUAL CHARGE OF .2% WHY CAN YOU NOT CALCULATE THE GROSS CHARGE AT 1.5%?

...

WE APRECIATE THAT [PROVIDER] TAKE THEIR CHARGE OF 1.5% FROM THE GROSS VALUE OF THE FUND BUT THERE HAS TO BE A RELATIONSHIP BETWEEN THE GROSS VALUE OF THE FUND AND THE VALUE OF OUR INVESTMENT.

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IN THE INVESTMENT STATEMENT THAT WE RECEIVED FROM [PROVIDER] DATED SEPTEMBER 2021 THE VALUE OF OUR PUN ON 13TH SEPTEMBER 2021 IS SHOWN AS €167907.34. NOW 1.5% OF THIS SUM EQUATES TO € 2518.61. IF YOU REDUCE THIS CHARGE TO 1.3% THE CHARGE REDUCES BY € 335.81. PLEASE ASK [PROVIDER] WHY THEY ARE GIVING US A CREDIT OF €1002.83 AND NOT €335.81."

The Provider has responded to the effect that:

"The Fund Management Charge is not applied at individual plan level i.e., it is not a per plan charge but is applied on the overall investment fund. The daily unit price for the fund is then declared after the deduction of this charge on the overall investment fund.

Unit rebates are then applied at individual plan level to reduce the impact of this charge. In effect this unit rebate increases the unit holding within the individual plan to reduce the effect of the charge applied to the overall fund level. The level of rebate can be determined by the provider as it is carried out directly at individual plan level during the administration of that plan.

*We have recently amended the format of our Annual Benefit Statements and the unit rebates applied to [Complainants'] investments to reduce the effect of the Fund Management Charge is now noted as "**Amount added to your plan to reduce your fund charge**". Before this format change this rebate was noted in their statements as "**Bonus added to your plan over the year**".*

They are the one and same item."

I accept in that regard that because the parties' contractual arrangements do not include fund management charges being applied at the individual plan level, the details which the Complainants are seeking are not readily available.

Instead, the charges are applied at the higher 'fund level', on the funds in which the Complainants have chosen to make their investments. In my opinion, the Provider has made reasonable efforts to explain this mechanism to the Complainants, and I do not accept that there is any evidence of wrongdoing by the Provider, because the information which the Complainants seek is not readily available, whether using an algorithm calculation, or otherwise.

The Complainants have not made a specific complaint to this Office about the customer service provided by the Provider. However, they have noted their grievances regarding the Provider's lack of contact, and the Provider has responded to this. I accept the Provider's submissions that it was not required to maintain contact with the Complainants, but that it provided the Complainants with annual benefit statements in the usual way, which contained contact details for the Provider's customer service team.

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I also note that the Provider offered a payment of €500 (five hundred Euro) for the delay in replying to written correspondence during the outbreak of the COVID-19 pandemic, which the Complainants may accept, if they wish. In those circumstances, I do not believe that the evidence supports a complaint of inadequate customer service.

Having regard to the above, whilst I appreciate that the calculation of the charges, is not as simple as the Complainants would wish, nevertheless, I accept that those calculations occur in the manner laid down at Section 3 of the Terms and Conditions booklet which was made available to the Complainants when they commenced those investments in **2006**.

The Complainants entered into these contractual arrangements on that basis, and in my opinion, there is no evidence before me that the Provider undertakes a process which is different from what is set out in the booklet. Accordingly, in the absence of evidence of wrongdoing by the Provider, I do not consider it appropriate to uphold the complaint.

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)**

28 July 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

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(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.

