



<b><u>Decision Ref:</u></b>	2019-0100
<b><u>Sector:</u></b>	Investment
<b><u>Product / Service:</u></b>	Personal Pension Plan
<b><u>Conduct(s) complained of:</u></b>	Misrepresentation (at point of sale or after) Maladministration
<b><u>Outcome:</u></b>	Partially upheld

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

**Background**

The complaint concerns a Pension Policy taken out by the Complainant in 1986. The dispute relates to the charges that were taken over the years from the payments in respect of life cover and permanent health cover. The charge increased from year to year and reached a stage where the charges exceeded the payment that was being made. In the latter years the excess charges were taken from the plan fund. Resulting in less monies being invested in the pension fund.

The Complainant seeks some restitution to his pension fund as he believed he was paying most of the payment to the pension.

The Pension product was sold by an Independent Intermediary in 1986 and was administered by the Provider.

The complaint is that the Provider did not correctly or reasonably communicate the benefit charges that were being deducted from the overall payment on annual basis.

**The Complainant's Case**

It is the Complainant's position that he took out a pension product with the Provider on 1<sup>st</sup> July 1986. The Complainant states that at the time he expressed the point that his primary purpose was to take out a pension. The Complainant says that he was persuaded to take out what he understood to be subsidiary premiums for some disability benefit (until 60) and Life cover. The Complainant says that he had pointed

out that he was single and looking for a pension and only subsidiary life and disability cover.

The Complainant submits that at the start he was told how much each premium would be for the Pension, Life Cover and Disability Benefit in the overall payment. The Complainant submits that annually he was asked if he wished to increase the premiums for inflation and it was indicated that each premium would increase by an agreed percentage. The Complainant says he agreed to this each year.

The Complainant says however, that from 1997 on, he was given no breakdown of the individual premiums, but just told that the total premium had risen by the agreed percentage, but the Provider did state that his individual premiums had each risen by the same percentage up to 26/05/2009.

The Complainant states that there was no disability cover after 19/10/2009, which was in line with the contract terms. The Complainant says that from 2010 on the statements did not state that the Life & Pension premiums had each increased by the same percentage. The statements were silent as to the actual breakdown of the payments that were being paid.

The Complainant says that the Provider argued while this complaint is made it took over from the original Provider that this policy was inceptioned with, in March 2014. The Complainant states that the position continued whereby there was no communication of the breakdown of the individual premiums. The Complainant submits that when checking his policy he found to his "*amazement and horror*" that the life portion of the premium was being increased all the time at the expense of the pension's element of the payment. The Complainant states that even worse the life policy was actually taking funds out of the pension fund and nothing was being added to his pension fund. The Complainant refers to a letter dated 26/05/2009 stating that each of the premiums was being increased by 5%. The Complainant says that he did not give permission for any changes to this position. He states that he never gave any company permission to alter the original policy position of increases only on each premium by the same percentage annually. He says that the additional increases were done totally against his wishes. The Complainant states that he would like to have this serious matter clarified and rectified if possible.

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

The Provider says that it understands that the Complainant is alleging that he was persuaded by his independent Broker, to add additional benefits to his main pension policy, which had subsidiary premiums for Life Cover and Disability Benefits. The Provider states that this resulted in an increasing amount of the overall pension contribution going toward his additional benefits over time, due to the annual indexation of these benefits, which was also an additional feature the Complainant chose at Application / Proposal stage. The Provider submits that the Complainant states that this reduced his pension retirement fund and alleges he was never made aware of

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the impact of the monthly charges for the additional benefits attaching to this pension over the duration of the policy.

The Complainant further alleges that he never gave any of the Providers permission to increase each subsidiary premium (for the various components of his pension) by the same percentage annually (Inflation Protection / Indexation).

The Provider's in its response to the complaint points to all the original Policy Documentation which it says clearly shows that this Pension Policy was sold to the Complainant by an independent Broker. That the Proposal / Application Form clearly shows the selection of ancillary benefits, in addition to his pension fund contributions and the fact that separate costs for each additional benefit selected would be levied as a first charge on the total pension contribution (Notes at the bottom of page 2 of the Application Form).

The Provider submit that with regard to the Inflation Protector feature, again the Application Form notes:

*'Where the Inflation Protector is selected the Sum Assured, total Disability Cover (including Premium Protection) and the level of Total Normal Contribution will be increased in line with the Consumer Price Index at each policy anniversary'.*

The Provider says therefore that the recommendation to add the additional benefits and any explanation of their impact on the overall accumulation of the Complainant's future pension fund was the responsibility of the Complainant's independent Broker. The Provider states that according to its records, the original Provider, did not provide the Complainant with any financial advice regarding the suitability or impact of adding additional benefits onto his Pension Policy.

The Provider states that it should be noted that due to the tax relief available for premiums paid to Revenue approved pension products, the inclusion of additional benefits such as Life Cover and or Permanent Health Insurance, is a very cost effective way of applying for these benefits and it is very common for customers to include these additional benefits onto their pension policies.

The Provider submits however it is important that the customer's financial advisor explain the impact of these benefits on the long term viability of their pension fund and that the Total Normal Contribution paid into the pension policy should be sufficient to allow for the separate funding of the pension amount the customer wishes to accumulate on retirement.

The Provider says that with regard to the ongoing provision of information about the level of each separate benefit and its associated premium, the Provider points to the initial annual Inflation Protector Letters, which provided the Complainant with a breakdown of the individual benefits and associated premiums for those benefits and

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how these would each increase each year by 5% as selected by the Complainant at point of sale.

The Provider's position is that following the merger of the initial Provider, the annual Inflation Protector Letters from 2003 on, continued to show the benefits increases each year without itemising the individual benefit premium increases. The Provider says however that the principle of each benefit premium being deducted from the overall pension contribution remained the same and the fact that the increased premiums would also impact on the pension fund.

The Provider submits that it is a fact that the Complainant engaged with the Provider regarding the ongoing cost of each of the additional benefits and their impact on the accumulation of his pension fund as early as October 2009 and again in April 2012 and finally in October 2014, yet the Complainant failed to take any remedial action to mitigate the impact of these benefits on his pension fund.

The Provider states that on the basis of the above it is therefore satisfied that the Complainant chose to add these additional benefits in the full knowledge that each came with its own separate costs, which would be deducted from the Total Normal Contribution to his Pension Policy and that the relative impact of these charges would increase over time, in line with the Inflation Protector feature he selected, as well as the Increasing Risk Cost associated with the life assured's increased age and risk profile.

The Provider submits that the Complainant had a number of opportunities to reduce or remove the additional benefits when he felt that they were negatively impacting on the accumulation of his pension fund and yet took no action in this regard.

### **Evidence**

The evidence shows that the Complainant signed the Proposal Form on 10 April 1986. Page 1 of this form confirms the following:

*"Notes: 1 The amount of premium protection above is the total normal contribution less the total initial premium to Disability Benefits. The cost of Term Assurance and or total Disability Cover (where applicable) is levied as a first charge on the total normal contribution. The net balance is invested for Pension Benefits".*

It is the Provider's position that when the plan commenced on 1 July 1986 the Complainant was sent the plan's Terms and Conditions. The Terms and Conditions Booklet outlines the workings of the Annual Premium Personal Pension Master Section 1 of this document, sets out the Nature of Policy:

*"1.Nature of Policy -This is a Life Assurance Policy"*

Section 3 deals with the Premiums, as follows:

*“3. Premiums*

- (a) (i) The Premiums payable under this policy in any year shall be the sum of the Mortality Charge as defined hereunder and such additional Policy Fee as may be determined by the Actuary.*
- (ii) The Mortality Charge shall be equal to the product of:*
  - (a) The sum Assured less the Benefit Fund under the corresponding Annual Premium Personal Pension Master as at the last day of the preceding Policy Year (if any) and*
  - (b) The appropriate mortality factor as specified in the relevant section of Table 1 or as increased by Sub Clause (iii) below. Such mortality factor being that corresponding to the sex, smoking habits and age next birthday of the Life Assured at the commencement of the current Policy Year and frequency of payments of premiums”.*

These sections from the Terms and Conditions advise that the plan is also a Life Assurance plan. This means that any payments that are made into the plan are made towards the cost of providing the benefits under the plan. Under section 3 the premium payment is based on a number of factors including age, sex and smoking habits of the Life Assured.

This was further outlined on the table of benefits included in the terms and conditions which stated that the Term Assurance Rates per €12,697.38 Death Benefit from age 32 to age 70. This table showed how the cost increases every year.

Evidence that the Provider relies on to show that the Complainant was aware of the cost of cover coming from the overall payments he made.

**16/10/2009** - Telephone call note of conversation between the Complainant and Provider.

*“[The Complainant] phoned, went through costs of cover of life and phi, this will expire on his 60<sup>th</sup> birthday. He is very unhappy that we were deducting so much for this cover, went over letters that were sent to him on indexation each year, still not happy, so advised to send in his complaint in writing”.*

**05/11/2009** – Letter from the Provider to the Complainant

*“Thank you for your request for information on the above mentioned policy.*

*The current costs and charges of your policy are as follows:*

*Policy Fee €6.88 per month*

*Life Cover €147.85 per month*

*Permanent Health Insurance €41.60 per month”*

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**23/04/2012** - Telephone call note of conversation between the Complainant and Provider.

*"Called [the Complainant] and confirmed he can reduce or cancel the LC".*

**28/09/2012** - Telephone call note of conversation between the Complainant's Broker and the Provider.

*".. Called from brokers, adv next prem is due 01/10 and instruction has been sent to the bank to monthly prem of €241.47. Adv LC prem split of €226.46 paying for LC and remainder going towards pension aspect of policy"*

**2<sup>nd</sup> July 2014** – the Provider's annual statement

*"Policy summary form 01/07/2013 to 30/06/2014*

*Premiums received €3,042.48*

*Benefit charges (€3,445.27)*

*Policy fee (€82,56)*

*Premium charges (€0.00)*

*Explanatory Notes:*

*Benefit Charges – this is the charge to cover the ongoing costs of the benefits provided by your policy".*

**17<sup>th</sup> October 2014** – Telephone call between the Complainant and Provider.

*"Adv that the premium is lower than the cost of LC so the surplus cost is deducted from the units".*

**24/10/2014** Projection Statement

*"Projected Values Assuming Growth Rate A Per Annum" – a table then sets out the "Total amount of premiums paid into the policy from date of projection" which was €2,129.76. The "Projected cost of protection benefits to date" was given as €806.48*

**June 2015** – Annual Premium Personal Pension Master statement

*"Your current benefits and payment details*

*Currently monthly cost - €380.47*

*Level of benefit ...*

*Your payment every month €266.22"*

**19/01/2016** – The Complainant's Broker to the Provider

*"Can you tell me what is the cost of his life cover per month?  
What is the breakdown going towards life cover and pension"*

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**19/01/2016** – Provider’s response to the above.

“The monthly risk cost is €339.55

The regular allocated premium is €266.22”

### **The Complaint for Adjudication**

The complaint is that the Provider did not correctly and reasonably communicate the benefit charges that were being deducted from the overall pension payment on an annual basis.

### **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 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<sup>th</sup> March 2019, 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, the final determination of this office is set out below.

### **Analysis**

The Complainant Plan was a Personal Pension Plan. However, it is evident from the documentation and the Terms and Conditions that the plan also provided Life Assurance and Permanent Health Insurance. This means that any payments that were made into the

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plan are used to cover the cost of providing the additional benefits under the plan. Under section 3 the premium payment is based on a number of factors including age, sex and smoking habits of the Life Assured.

This was further outlined on the table of benefits included in the terms and conditions which set out the Term Assurance Rates per €12,697.38 Death Benefit from age 32 to age 70. This table shows how the cost increases every year.

I accept that the evidence shows that on 5 November 2009 the Provider wrote to the Complainant and outlined the charges under the Annual Premium Personal Pension Plan. This letter advised that the current cost of the benefits under the plan were €147.85 per month for the Life Cover benefit and €41.60 for the Permanent Health Insurance. The Complainant does not appear to have further queried the cost of the cover following this letter.

It is the Provider's position that having reviewed the file in full it is satisfied that the plan has been administered in line with the Terms and Conditions of the plan.

I accept that the documentary evidence does not indicate that the cost of providing the benefits would remain fixed, but that the costs involved in providing the Complainant with the benefits increased as he grew older and upon the indexation of the premiums.

It is clear that the Complainant signed up for the Personal Pension Plan with Life Cover and Permanent health Insurance when he took out the plan in 1986.

The Provider would not be responsible for any alleged act or omission of the Independent Broker who arranged the policy.

I accept that from a review of the documents which were provided to the Complainant when he took out the plan that these documents confirmed how the plan works. I note from the Complaint Form that the Complainant's occupation is accountant and tax consultant, and I would have expected that he should have been in a position of having greater familiarity with the pension product, and how it operated.

I accept that the costs for maintaining the benefits were to be taken by unit deduction from the fund value and the cost of providing these increased as the Complainant grew older and with indexation increases. In that regard the Provider has administered the plan in line with the Terms and Conditions. That said, I do consider that the Provider could have provided greater advice over the years on the increasing cost of the benefits provided under the plan. The Provider has pointed to instances where it did provide this information. These instances are intermittent in nature. It is noted that for the most part, the Provider only communicated this information when it was specifically sought by the Complainant, or his Broker over the years. I consider that the fact that the life cover cost was increasing to such an extent that there was little or no contributions going towards the Pension Fund itself was important information that could and should have been communicated more fully and on a more frequent basis over the years. While I consider

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this position, I am also mindful that the Complainant had knowledge of what was happening as early as 2009 and does not appear to have taken any remedial action from then. It is also noted that the Complainant had the benefit of independent advice from his Broker and his Broker was aware of how the policy was operating.

Overall, I consider that this is a dispute where there could have been better and greater communication between the parties on how the Plan was performing and in relation to the division of the payments into the plan.

With regard to the provision of information to a consumer the Consumer Protection Codes state that a regulated entity must ensure that all information it provides to a consumer is clear and comprehensible, and that key items are brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information.

I accept that a key item of information, that is the cost of the life cover in comparison to what was going into the pension fund, should have been communicated more fully here by the Provider on an annual basis over the years, and in regard to this failing, I consider that a compensatory payment is merited.

Having regard to all of the above it is my Legally Binding Decision that the complaint is partially upheld and I direct the compensatory payment of €1,500 (one thousand and 500 euro).

### **Conclusion**

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €1,500, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant/s to the provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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.

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**GER DEERING**  
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

17<sup>th</sup> April 2019

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

ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.