



<b><u>Decision Ref:</u></b>	2019-0412
<b><u>Sector:</u></b>	Investment
<b><u>Product / Service:</u></b>	Pension
<b><u>Conduct(s) complained of:</u></b>	Misrepresentation (at point of sale or after) Fees & charges applied
<b><u>Outcome:</u></b>	Substantially upheld

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

**Background**

The Complainant is a limited company that set up a pension for its director. The Complainant engaged the Provider (a Broker against which this complaint is made) to arrange the Pension. The Complainant's director alleges that when he moved his pension to a new pension company in 2014, he was not correctly advised about the fees that were paid to the Provider.

The Complainant's complaint is that:

- i) the Provider never informed of the initial introducer fee.
- ii) the requests for fee alternatives were always referred back to the charging structures of the initial recommendation;
- iii) the Complainant never received a letter of recommendation outlining the remuneration or disclosing the fees involved.

The Complainant's desired resolution is that (a) on the basis that the Provider did not disclose the fee structure, the Complainant wants the Provider to return 85% of the fees, (b) the Complainant would like to be released from Underwriter Y's exit penalties (c) failing that, be released from the penalties that apply to the transfer value of the fund.

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

The Complainant's director states that all throughout 2014 he discussed changing from the then pension company (Underwriter X) to another company - with the intention to secure better terms which he believed to be available. The Complainant's director says that all through the process he asked about the Provider's remuneration and was consistently referred back to the initial recommendation.

In September 2014 the Complainant's director decided to switch to a new pension company (Underwriter Y) as recommended by the Provider and which took effect in November 2014.

The Complainant's director states that at a review meeting with the Provider in person on 1<sup>st</sup> April 2015, he queried a "cash in charge" figure on the plan summary and asked '*was this the broker's fee*' - and which, he says, was strongly denied by the representative. The Complainant's director states that subsequently, confirmation was received from the Provider in writing that there was a Broker "*Introducer*" fee from Underwriter Y.

The Complainant's director submits that in addition to this *hidden fee*, he then discovered that any exit penalties with Underwriter Y's policy applied to the full value of the fund transfer value and regular premiums. The Complainant's director's position is that he had been led to believe that any exit penalties applied only to the portion of the fund built up by the premiums paid to Underwriter Y.

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

The Provider states that the Complainant has been a client for many years. The Provider says that it not only provided the Complainant's director with financial advice over the years but have also been involved in the filing of personal income tax returns.

The Provider states that the Complainant's director had originally set up a company pension plan through the Provider's offices in 2008. This plan was with Underwriter X. The Provider submits that discussions surrounding the review of this pension contract began in 2012. It is the Provider's position that the Complainant's director had requested that the Provider seek to find a new contract, as he wanted to improve the charging structure. The Provider says that the Complainant's director's stated requirements for this were as follows:

- Overall reduction in management charges to 1%
- Securing an allocation of 100%
- Dropping the 0.6% plan charge that was attached to Underwriter X's contract.

The Provider states that as part of this instruction, the Complainant's director stated that he was prepared to move to another Underwriter in order to have these requirements fulfilled.

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The Provider says that the Complainant's director had originally started the process of reviewing possible options with Mr C who worked with the Provider up until 2013 at which point Mr M took over the file. The Provider says that all through this period the Provider had put forward options that may suit the Complainant's director in order to satisfy his requirements. The Provider says that these are evidenced in the email trail dating back from 2012 until the time the Underwriter Y's contract was finally set up in 2014. The Provider says that all through these emails, the issue of exit penalties were clearly noted.

The Provider submits that the Complainant's director had asked about providing a contract on a fee basis prior to the inception of the Underwriter Y's contract. The Provider says that in order to provide an option for this it had put forward the Option of a Small Self Administered Pension scheme for which the Provider would work on a fee basis paid directly by the Complainant. The Provider states that the Complainant's director had decided that this was "*far too expensive*" and so the other options discussed were progressed.

The Provider says that following on from this the Complainant's director asked that the Provider "*solicit or propose a plan*" for him to consider. The Provider submits that this proposal was sent out to the Complainant's director on the 24<sup>th</sup> of September 2014 with all of the relevant supporting documents.

The Provider states that the Complainant's director had said that he had been looking for alternatives at the time and so the Provider put forward what it felt would meet the stated requirements for the Complainant's director. The Provider says that these requirements were satisfied by the contract it eventually proposed and was set up in 2014 with Underwriter Y, which provided a 100% allocation rate (no contribution charge), and a base annual management charge of 1%.

The Provider submits that it had requested a meeting with the Complainant's director on the 23rd September prior to the proposal being sent out. The Provider says that the purpose of this meeting was to ensure that there were no issues or misinterpretations relating to the proposed new contract. The e-mail read:

*"I feel that it would be best to sit down and review the case in full with you as there are a number of issues that you need to be aware of with regard to the existing scheme and the proposed new scheme.*

*If we talk through the various offerings and review them against each other and versus the current contract we can then come to a combined decision as to which provider would offer the best solution and can move forward from there".*

The Provider's position is that the Complainant's director declined this meeting and so the proposal for Underwriter Y was sent out the following day for the Complainant's director to consider. The Provider says that this letter stated that the Complainant's director should contact the Provider if there were any queries on the proposal. The Provider states that the Complainant's director was under no obligation to accept the proposal at that time.

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The Provider submits that the Complainant's director has claimed that the exit penalties that applied to the new plan was "*the broker's fee*". The Provider says that this is not the case and that these exit penalties only apply in the event that the policy is encashed or transferred away from Underwriter Y in the first five years. The Provider says that the penalties do not apply where the plan remains for 5 years or more.

The Provider says that it did receive an introducer's payment from Underwriter Y at the time of inception. The Provider states that this would have been evidenced in the disclosures issued by Underwriter Y directly to the client along with copies of the policy schedule.

The Provider submits that this fee was not levied on the Complainant and so there was no monetary outlay for the Complainant. The Provider says that the management fee that is part of the contract was the lowest management fee offered by the Provider at that time.

The Provider says that the payment received by the Provider is separate from the exit penalties and this payment would be subject to clawback from Underwriter Y on early encashment or transfer in addition to the Complainant suffering the exit penalties.

The Provider states that on inception of the Underwriter Y contract, there was a full pack sent out to the Complainant including all of the disclosures. It says that in this pack, all fees were noted. The Provider says that the introducer's payment from Underwriter Y was not therefore a "*hidden fee*" as claimed by the Complainant. The Provider states that it should also be noted that the payment received by the Provider was not levied on the client.

The Provider states that on the policy schedule received in the above mentioned pack from Underwriter Y, the exit penalties which were clearly identifiable, and that the Cooling off period of 30 days was also clearly noted.

The Provider says that if the Complainant's director was not happy with the charges, exit penalties or any part of the new plan he could have exercised this cooling off period at which point the new contract would be unwound at no financial loss to the client (i.e. no exit penalties would have been incurred). The Provider's position is that the Complainant chose not to exercise this option.

The Provider states that it utterly rejects the claim that the Complainant was levied with any "*hidden fee or fees*". The Provider also reject the claim that the Complainant was unaware of the exit penalties applying on the new contract as evidenced from the numerous correspondence noting the exit penalties.

The Provider says that on inception of the new plan, the exit penalties were clearly noted and the Complainant was given ample time under the cooling off period to unwind the contract if he was not happy.

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## **Further submissions from the parties**

### **The Complainant's response to the Provider's submission**

The Complainant's director states that he had good reason to believe that the Provider would be trustworthy and that any fees or charges taken would be transparent and reasonable.

The Complainant's director says he did not expect that he would be subject to any 'under the table commissions' or have hidden introducer payments applied to the pension schemes.

The Complainant's director submits that regarding his apparent dismissal of a self administered pension scheme, the email correspondence dated 27 January 2014 in the Provider's submission shows that the Provider agreed that a Self Administered Pension Scheme would be uneconomic and strongly recommended the commissionable products. The Complainant's director says that to his mind a Self Administered Pension Scheme is not the only way a fee based remuneration system for a pension scheme could be put in place as he had requested.

The Complainant's director states that there was no disclosure of the "introducer's payment" by Underwriter Y in any form prior to, or at inception; nor in the welcome pack, nor verbally from the Provider.

The Complainant's director says that the first time this "introducer's payment" was confirmed to him was in the email from the Provider dated 15 April, 2015 – 6 months after the inception of the scheme in October 2014. The Complainant's director submits that this was instigated by him querying the cash in charge figure shown on the plan summary - the difference between the fund value and the transfer value - presented to him at the meeting with the Provider on 1<sup>st</sup> April 2015.

It is the Complainant's director's position that he did not receive a letter of recommendation showing the Provider's remuneration proposals or arrangements.

The Complainant's director states that the welcome pack shown in the Provider's submission is dated 24 November 2014. The Complainant's director says that the initial welcome pack he received was dated 22 October 2014. The Complainant's director states that this mentions an exit fee on the Regular Contribution, but not the transfer value.

The Complainant's director states that over 30 days after the cooling down period he received another note from the Provider dated 24 November 2014 which appeared to him to be identical to the 22 October note. The Complainant's director says that this note is the first time he would have become aware of exit penalties also applying to the transfer value of the fund and not just the regular contributions.

The Complainant's director submits that an astute advisor / provider would have drawn this to his attention.

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The Complainant's director says that neither of these welcome notes contain reference to the "Introducer's payment".

The Complainant's director refers to the Provider's note of 24 September 2014, shown in the Provider's submission under the heading of charges states:

- A Management charge of 1% which includes 0.25% payable to the Provider;
- An exit charge applied to the fund built up by regular contributions.

The Complainant's director says that it does not mention:

- the 0.25% fee on the transfer value subsequently disclosed verbally on 1<sup>st</sup> April 2015 and confirmed in writing on 14<sup>th</sup> April 2015;
- the 3.00% "Introducer's fee" subsequently disclosed on 15<sup>th</sup> April 2015;
- the exit penalties applying to the Fund Transfer Value.

As regards the Provider's Schedule of all charges and fees applied to the Investment product, the Complainant's director states that this schedule does not show:

- the 0.25% fee on the transfer value;
- the 3.00% "Introducer's fee" applied to the fund's value.

As regards the 1<sup>st</sup> April 2015 Meeting Notes submitted by the Provider, the Complainant's director states that he does not see reference in these notes to his request that he believed that 103% allocation rates were available in the market to which the Provider responded "then off you go".

The Complainant's director says that nor is there reference to the discussion as to why the Transfer Value Figure shown in the Policy Schedule was 5% less than the Current Value. The Complainant's director questions whether it was a broker's fee. The Complainant's director states that this was denied by the Provider who stated that their remuneration was just 0.25% of the transfer value and an annual 0.25% of the fund value.

The Complainant's director says that he does not agree with the Provider's statements that full information was provided at all times. The Complainant's director states that on the contrary he had to ask several times in writing before the Provider's remuneration was disclosed – 6 months after the inception of the policy.

The Complainant's director states that in fact, he suspects that he is still not in receipt of full disclosure on the Provider's remuneration – and says that the difference between the 3% "Introducer's Fee" and the 5% 'cash in charge' figure shown on the policy statement of 1<sup>st</sup> April 2015 has not been explained. The Complainant's director states that as noted above, he did not receive a letter of recommendation from the Provider.

The Provider's submission of 14 August 2017 in response the Complainant's comments:

The Provider states that there were no "under the table" commissions hidden from the Complainant's director. The Provider says that it has reconfirmed with Underwriter Y that

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all relevant disclosures were sent directly to the Complainant's director in a timely manner and with full details of all commissions payable and in line with the regulatory requirements.

The Provider says that the proposal of the Self-Administered pension was the Provider's proposed solution to the clients request for a fee based proposition. The Provider submits that the Complainant was actively looking at alternatives and did not need to accept the Provider's proposed offerings, fee based or otherwise.

The Provider's position is that the Complainant's director received the initial pack from Underwriter Y in October on inception of the regular premium contract for €1,200 per month. The second pack sent by Underwriter Y in November was on receipt of the transfer cheque from Underwriter X, which could only be sent by Underwriter X once the pension contract was in place (i.e. the regular premium part).

The Provider says that the first document does not note a transfer in amount whereas the second one in November notes the transfer in amount of €169,782.05 and is clearly identifiable. The Provider says that this also clearly states the exit penalties. The Provider states that the 30-day cooling off period applied to the transfer of funds is also from the November date.

The Provider states that the Complainant's director seems to be under the impression that the commission earned by the Provider and the Exit penalty applying to the plan are the same thing. The Provider says that these are not the same and that the commission earned is completely separate to the exit penalty

The Provider's says that in fact, were the Complainant's director to have transferred his plan he would have suffered the exit penalty and in addition the commission would be clawed back from the Provider. The Provider says that this demonstrates that they are not the same.

The Provider's position is that the Complainant's director has not suffered any financial loss on this plan. The Provider's position is that it has fulfilled the Complainant's director's stated requirements and provided a lower charging structure than was on his old pension contract. The Provider concludes that at no stage was the Complainant obliged to accept the Provider's proposal.

### **Evidence**

*20 September 2012 – The Complainant's director to the Provider*

*"Thanks for your note dated September 13<sup>th</sup>.*

*There are no changes to the policy other than I have reduced my salary to €48k which will help make the actuarial estimates look better!*

*However, before I make an appointment to review the policy you might recall from our last meeting at the end of April that we agreed we would take up the*

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*myriad of fees with [Underwriter X] and I would like to see movement on this in advance of renewing for another year. We talked about:*

- a) An overall reduction in the 0.75 – 1% Fund Charges;*
- b) Dropping the 0.6% Plan Management Charges;*
- c) Securing the allocation rate @ 100% from 97.5%.*

*...*

*I am quite prepared to move to another supplier if there are no concessions and will be happy to take your advice on this”.*

*20 November 2012 – The Provider to the Complainant’s director*

*“We can offer you a pension contract as requested below;”*

This letter detailed what Underwriter X and Underwriter Y were offering.

*27 February 2013 – The Provider to the Complainant’s director*

*“As promised after our last meeting I have reviewed various options and a summary of my findings are provided below. I would propose that we meet to go through these in full as the below information should not be taken as a recommendation but merely for information purposes at this stage”.*

*26 August 2014 – the Complainant’s director to the Provider*

*“Last time we considered this my options were:*

- Move to [Underwriter Y] at a better deal than I’m on;*
- Stay with [Underwriter X] with a new arrangement similar to [Underwriter Y].*
- Implement a SAPS which is far too expensive.*

*Are there any more options available to me now that time and the market has moves on?*

*Did you consider a fee option to recommend me to [alternative life offices]”*

*9 September 2014 – The Complainant’s director to the Provider*

*“Are you an agent or if acting as a referrer we can agree a fee?”*

*9 September 2014 – the Provider to the Complainant’s director*

*“[The Provider] would be the advisers and agents to the scheme not a referrer.*

*..*

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*With regard to the fee. We can arrange a fee if that is desired. This would be an annual fee that would have to be agreed. This is likely to be more expensive but I can provide you with a quote for this if this is what you want”.*

*23 September 2014 – The Provider to the Complainant’s director*

*“For the most part, the fundamental offerings that I put forward in my initial email still stand (see e-mail 26/08/2014).*

*There may be a slightly lower management charge available (i.e. – [Underwriter X] 0.9% as opposed to 1% quoted and [Underwriter Y] 0.75% on TV amount if transferred).*

*However what we need to do is to delve deeper in to this. For example, the base annual management charge on the [Underwriter Y] funds is 0.75% on the transfer value and 1% on regular premiums (100% allocation on both) however should you invest in their Multi Asset Portfolio fund which offer a good option there is an additional charge of .15% on this.*

*I can put together a proposal if you wish but I would prefer that we discussed the merits and demerits of each with you if possible.*

*If you would like me to put a proposal down before we meet that is fine and I will do so”.*

*24 September 2014 – The Complainant’s director to the Provider*

*“Send me your recommendation and we’ll take it from there”.*

*24 September 2014 – Provider to the Complainant’s director*

*“I will prepare a proposal and send it out to you by post”.*

*24 September 2014 – Provider’s Pension Proposal*

*“Following on from our numerous e-mail correspondences spanning back over 12 months, you have requested that I put forward a proposal for a new pension contract as you are unhappy with the existing [Underwriter X] contract in to which you currently fund”.*

The Provider then sets out for the Complainant’s director what product he already has and the charges and benefits under that contract. The Provider then advised:

*“.. you have stated that you would like to set up a new pension contract in to which you will fund future contributions and also in to which you will transfer the existing funds. You have stated that your key criteria for any new plan is*

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*to reduce or remove plan charge, a low annual management charge and 100% allocation on your contributions.*

*You should be aware that you will be giving up the potential loyalty bonus payable under the existing contract. The size of the loyalty bonus will be dependent on the number of years of contribution (potential 19 year to NRA) and the fund value at normal retirement age. i.e. 19 yrs\*.35%\*fund value = bonus payable”.*

#### *Requirements*

*You require a new pension contract that offers a 100% allocation on regular premiums.*

*You require a strong stable life office to provide the administration of this contract.*

*You require a strong online capability and resource so that you can monitor your pension regularly.*

*You require a low base annual management charge.*

*You require a wide range of investment funds in to which you can invest.*

#### *Proposal:*

*Based on the above requirements I am now recommending that you set up a monthly pension contribution of €12,00 per month through [Underwriter Y] using their .. contract.*

*...*

#### *Charges*

*The allocation rate on the new contributions will be 100%. This means that there are no entry charges on the premium each month and 100% of your premium is invested. Based on the existing contribution rate this would represent a saving of €360 per annum versus the existing contract offering an allocation rate of 97.5%. The allocation rate of 100% also applies to the transfer amount.*

*The base annual management charge on the contract will be 1% per annum which is very competitive. This includes 0.25% payable to [the Provider] for ongoing support and advice each year i.e. based on a fund size of €200,000 this would represent a fee to [the Provider] of €500 per annum which would be payable directly from the fund. This compares favourably to the existing contract that has a combined base annual management charge of 1.35% (plus additional for some funds).*

*...*

*As this is a new contract being set up there is exit penalties that would apply within the first 5 years. These exit penalties are applied if the plan is transferred to another contract, an exit charge will apply to the fund built up by regular contributions, as follows:*

*Years 1 to 3 **5%***

*Year 4 **3%***

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Year 5 1%

..

*I have enclosed a brochure and key features for you to read over in relation to the proposed contract. Once you are happy with the proposal I would be obliged if you could sign the declaration below along with the Terms of Business (enclosed) and return it to me at your conveniences as we require these for compliance purposes”.*

10 October 2014 – Provider to the Complainant’s director

*“In order for to move this forward I will need you to complete and return the [Underwriter Y] application form. I thought I had included this in the pack that I sent out but if not I have attached a soft copy to this email.*

*Once I receive the completed application I will bring it to [Underwriter Y] for processing. ... If you would like to come in and meet with me in order to go through the application and go through any queries that you have I would also be delighted to meet with you”.*

24 November 2014 – Underwriter Y’s Welcome Pack

*“The Pack includes*

- *A copy plan schedule which sets out the key features of the pension plan*
- *A terms and conditions booklet together with the letter of exchange & rules, which set out the plan rules in plain English*
- *A ...booklet which is a simple guide to how the plan works and which answers the most commonly asked questions about [Underwriter Y pensions] & pensions in general*
- *A Fund Guide which describes the funds available and the associated charges*
- *A Statement of Reasonable Projection for the member which gives estimated benefits at retirement*
- *A Trustee Training Workbook which explains your duties as trustee and how [Underwriter Y] can support you*

..

*Change your mind*

*The [Underwriter Y pension plan] is a pension plan that affords you and the member a wide range of options and allows you to customise the member’s pension to his or her specific needs. However, if you do not wish to go ahead with this plan you may cancel it by writing to [Underwriter Y]. If you do this within 30 days from the date we send this letter, we will refund any contributions you have made. ..”*

Plan Schedule

*“% of Total Regular contributions invested 100.00%*

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..  
%of Transfer Value invested 100.00%”

“Transfer value charges

..  
Please read your Terms and Conditions booklet for more details on the above charges

Transfer value exit charges

Years					
1	2	3	4	5	6
5.00%	5.00%	5.00%	3.00%	1.00%	0.00%

A plan fee will be deducted from your fund on a monthly basis. The fee is currently €4.68 a month and increases in line with the Consumer Price Index. ..  
Full details of the benefits and charges attaching to your plan are detailed in your Terms and Conditions booklet”.

15 April 2015 – The Provider to the Complainant’s director

“The 0.25% is payable annually to [the Provider] is built in to the 1% management charge on that portion.

I can confirm that [the Provider] received an introducer remuneration from [Underwriter Y] of 3% of the value of the transfer.

This was paid to [the Provider] directly from [Underwriter Y] and was not taken from your funds.

You will note the 100% allocation received by you.

This is paid by [Underwriter Y] to advisers as part of their distribution channel. For instance, if there was no independent financial adviser channel, [Underwriter Y] would have to take on more staff and not advisers). This would be a big increase in cost in terms of employment, office space, Bik etc etc.

[The Provider] offer independent advice to the client which would not be available via direct channels. Any amounts paid to [the Provider] are subject to clawback”.

15 April 2015 – The Complainant’s director to the Provider

“At no stage, despite my requests, did you tell me you were benefiting from the transfer amount.

It explains why you were keen to flip me from [Underwriter X] and strongly recommended [Underwriter Y].

And, of course, this fee does ultimately come out of my Fund. It also explains why the “Cash in Charge” figure is so high though you denied this contained your fees at our

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*last meeting. .. If I had known about the “introducer” fee – I would not have made the decision I did ...”*

### **The Complaint for Adjudication**

The complaint for adjudication is that there was not a full disclosure by the Provider of the fees and charges applying to the pension contract that was taken out with Underwriter Y in 2014.

### **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 25th November 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.

We received a correspondence dated 2<sup>nd</sup> December 2019 from the Complainant. In this correspondence the Complainant questioned the amount that was directed to be paid to him and the he had expected a greater amount to be directed in his favour. This communication was exchanged with the Provider.

The content of this submission however has not persuaded me to alter my previous preliminary determination and, consequently, the final determination of this office is set out below.

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## Analysis

I do not accept the Complainant's director's position that the Provider 'was *keen to flip*' him from Underwriter X to Underwriter Y to benefit from the transfer amount. The evidence shows that the Complainant's director gave instructions to the Provider to find him a new pension arrangement with a charging structure that was in line with what the Complainant's director deemed to be fair. This is evidenced from the Complainant's director's e-mail of 20<sup>th</sup> September 2012 where he stated:

*"Before I make an appointment to review the policy you might recall from our last meeting that we agreed we would take up the myriad of fees with [Underwriter X] and I would like to see movement on this in advance of renewing for another year. We talked about*

- a) Overall reduction in 0.75% to 1% fund charges*
- b) Dropping the 0.6% plan management charge*
- c) Securing the allocation rate @ 100% from 97.5%*

*I am quite prepared to move to another supplier .."*

I accept that the Provider in carrying out the Complainant's instruction, did what was asked of it by putting forward a full range of options, as follows:

- (i) a fee based option (using a Small Self Administered Pension product), which was rejected by the Complainant's director as being too expensive.
- (ii) The Provider advised on a scenario where it would be a referrer only, and advised that it may prove expensive (this option was not pursued further by the Complainant's director).
- (iii) Details were supplied by the Provider of a Pension Company which the Complainant's director specifically requested information upon.
- (iv) The Complainant's director was asked to identify a life office he may have a preference for, or a life office he would not deal with, to which the Complainant's director asked the Provider to *"solicit or propose a plan"*.
- (v) The Provider offered to go through the various offerings and review them against each other and against the then current contract. The Complainant's director's response was that he preferred to see something tangible prior to any meeting.
- (vi) The Provider then put forward a formal proposal on 30<sup>th</sup> September 2014. The proposal being Underwriter Y as the offer included the specific requirements of the Complainant's director.

From the above I accept that the Provider was operating on the Complainant's director's instructions and provided the Complainant's director with an option (Underwriter Y's offering) which he was free to reject or accept.

As regards the Complainant's director's claim that the exit penalties that applied to the new plan was *"the broker's fee"*. I accept that the exit penalties only applied in the circumstance where the policy was encashed or transferred away from Underwriter Y in the first five

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years. The penalties did not apply where the plan remained for 5 years or more. The level of penalties are set by the pension company and while the Complainant may see this as a way of re-covering any introductory fees, this is not explicitly the position.

The Provider's position is that the relevant disclosure of the introductory fee would have been communicated by Underwriter Y. In its submission the Provider says that it reconfirmed with Underwriter Y that all relevant disclosures were sent directly to the Complainant's director in a timely manner and with full details of all commissions payable and in line with the regulatory requirements. The Provider did not submit a copy of a fee disclosure document from Underwriter Y showing the disputed payment. Nor did it outline what were the relevant disclosures that were contained in this document. The Provider says the disclosures would have been sent directly to the Complainant by Underwriter Y. The Complainant's director's position is that he did not receive the relevant disclosure about the introductory fee.

Leaving aside the pension company's responsibilities in relation to the disclosure (as any alleged acts or omission of this company is not being examined here), there was no evidence submitted to this office by the Provider showing that the Complainant's director was made fully aware by the Provider of all the fees received by the Provider in relation to the new pension contract.

I consider that it was reasonable for the Complainant to expect that all payments relative to the pension contract should have been disclosed and should have formed part of the information supplied to the Complainant. In general the Underwriter and Intermediary are primarily responsible for supplying relevant details of fees and charges, but as with any contract the proposer would also show some interest in what payments were being made / received in relation to the contract, and the Complainant was free to enquire further into the fees and charges applying to the contract. That said, I consider that in the circumstances of this complaint greater disclosure by the Provider was required, particularly as the Complainant's director had specifically questioned the Provider as to whether it would be acting in the role of "referrer" in relation to any new pension company that it was recommending. The response received by the Complainant's director from the Provider was that it "would be the advisers and agents to the scheme not a referrer". The Complainant's director also showed much interest in knowing the varying ways that the Provider would be paid for its service when he was seeking to move to the new pension company.

However, I do not consider that the Provider intentionally hid the fact that it was receiving a payment from the new pension company for introducing the Complainant's director, or that payment was a deciding factor for the Provider when recommending this company to the Complainant's director. The evidence submitted does not indicate that the advice given to the Complainant's director to move the pension to Underwriter Y was incorrect advice, or that the Complainant was worse off with the new company pension.

The Complainant seeks (a) a return 85% of the fees (b) to be released from Underwriter Y's exit penalties or (c) to be released from the penalties that apply to the transfer value of the fund. I do not consider that a direction regarding any of these remedies would be fair and

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reasonable, but I do consider that a compensatory payment is merited. I consider that a compensatory payment is merited for the lack of a greater disclosure by the Provider in the particular circumstances where the Complainant's director had specifically sought out such information before moving the pension. The Complainant's director has not evidenced any losses in the move from Underwriter X to Underwriter Y. Any losses that the Complainant may endure due to any unwinding of the pension arrangement that the Provider put in place, would be because of the contractual arrangement and the Complainant's agreement to those terms and conditions, and the Provider cannot be expected to make a payment in that regard.

Having regard to all of the above it is my Legally Binding Decision that the complaint is substantially upheld and I direct that the Provider pay the Complainant the compensatory payment of €2,000 (two thousand euro).

### **Conclusion**

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially 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 €2,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant 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 December 2019

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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.

