



<u>Decision Ref:</u>	2019-0081
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Bonds
<u>Conduct(s) complained of:</u>	Mis-selling Delayed or inadequate communication Failure to consider suitability
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant invested in BRIC Outperformer Bonds, with the Provider **November 2010** and **March 2011**, respectively. The Complainant's complaint is that she was mis-sold investment products by the Provider, which were not suitable to her requirements and subsequently lost 100% of the capital which she had invested, in the amount of €110,000.

The Complainant's Case

The Complainant submits that the BRIC investments in question were not suitable to her from a financial or risk appetite point of view - she submits that she retired from work in 2000 and since then has worked part-time. She submits that at the relevant time she was in receipt of a Pension of €6,000 per annum and a widow's pension (since 2008) and that her total pension per annum was €16,000.

In describing her previous investment experience, the Complainant submits, in a letter dated 18 July 2016 that, apart from an investment in 1983, and in 1994, in retirement funds, she had no other experience of investing. The Complainant submits that any other investments which she entered into, prior to her involvement with the Provider, were on the advice of her late husband and his brother, who, she submits, was an insurance and investment broker.

Within the same submission of 18 July 2016, The Complainant submits that she inherited some shares and some property in 2004 and 2009 and that she went to the Provider seeking advice regarding her assets. She says that she discussed with the Provider the level of risk that she was prepared to take with the investments. The Complainant submits that because of a) her age, b) her small pension of €6,000 per annum and c) a mortgage to pay off, her stated priorities were (a) *“not to lose the value of capital”* and (b) *“to increase the value of the portfolio if possible to provide for my retirement”*, of 20 to 30 years.

The Complainant submits that she assumed that any investment recommendations made by the Provider would, therefore, be in keeping with these objectives.

The Complainant further submitted that she was advised by the Provider that property and shares were high risk investments and that she should sell these and invest the proceeds in other investment opportunities. The Complainant submitted that she was also advised by the Provider not to pay off her mortgage on the basis that any investment made with the Provider would give a better level of return.

The Complainant submits that prior to her involvement with the Provider, she had suffered a bad investment experience whereby she had lost 100% of her capital and that she was anxious to avoid a repeat of that experience and that this had a bearing on her appetite for risk.

Regarding the sale of the BRIC bonds, which form the subject matter of the complaint - the Complainant submits that, further to a meeting with the Provider on 06 September 2010, a letter issued to her which confirmed that of the €200,000 she had available for investment, she wished for €150,000 to be placed in “safe” investments and a further €50,000 was available for “risk” investments. The Complainant submits that this risk *“was to be applied at a moderate risk”*. The Complainant says that she signed a letter of suitability in this regard on the 27th September 2010. She submitted that following this, it was recommended to her, by the Provider, to increase her stake to €100,000, despite her statement that she only wished to invest €50,000 in a moderate risk product.

The Complainant subsequently invested €10,000 in March 2011, in BRIC tranche II.

Categorisation of Risk

The Complainant submits that “BRIC I” was classified by the Provider as “medium” risk and BRIC II was categorised as “low-medium” risk. She submits that the Bonds were miscategorised by the Provider because, according to the Provider’s own classification system, “low risk” indicated a guarantee of capital with potential for modest growth while “medium risk” indicated a possible loss of some capital with good potential for growth.

The Complainant submits that this was set out in the correspondence which she received from the Provider which explained the different categories of risk, and that only the category of “high risk” described an investment with all of the capital at risk. The Complainant submits that the Provider’s classification of BRIC I and BRIC II as “medium” and “low-medium” risk, respectively, was incorrect and misleading. The Complainant says that, contrary to the

/Cont’d...

classifications attaching to the products, she lost all of the capital which she had invested, in the sum of €110,000.

The Complainant submits that the references within letters from the Provider to a *“strong degree of capital protection”*, and *“100% capital guaranteed at maturity”* were also misleading. The Complainant submits that by letter dated 31 May 2011 it was stated by the Provider that, *“The BRIC Outperformer continues to have full capital security.” ...“Investors will enjoy a significant return in addition to capital protection.”* The Complainant submits that by comparison, little mention was made by the Provider of the possibility of loss of 100% capital, and the Complainant contends that one would need to be a *“forensic financial analyst”* to decipher when a 100% capital guarantee is not a 100% capital guarantee. The Complainant submits that she understood that this was a service which the Provider was providing on her behalf.

The Complainant submits that when one goes to a financial advisor for advice about suitable products, one should be entitled to be confident that the advisor will not recommend unsuitable investments and that they have studied the small print, including any *“obscure clauses”* in promotional literature, which *“ordinary people”* will misinterpret.

The Complainant submits that she would never knowingly have invested in products that could lose 100% of her capital.

The Complainant notes the Provider’s assertion that she had previous experience of having invested in three similar risk products before entering into the BRIC investments. She has submitted that, if this were the case, then a high proportion of her investments were, in fact, non-capital guaranteed investments and that this was previously unknown to her. She submitted that *“it is now clear to me that a higher proportion of my capital was invested in high risk products contrary to her wishes as set out for safe investment and capital protection. These products were all recommended to me as the most suitable investment available on the market.”*

The Complainant submitted by email to this Office dated 07 January 2017 that *“according to [the Provider] I had 3 other similar investments. Did these have the same risk profile and if so why was a large proportion of my money invested in high risk products given my repeated request for safe investments”*.

The Complainant submits that when she received a letter from the Provider indicating that the value of the investments had dropped to approximately €60,000, she requested a meeting in order to discuss the options available to her.

The Complainant submitted that she *“wanted to encash the investment monies and safeguard the remaining value but I was told the advisor’s ‘father in law had also invested in this policy’ and that it would be safe in the long term as it had another year or two before maturity”*.

The Complainant submits however that the value at maturity was, in fact, €0. By email dated 07 January 2017 the Complainant says that *"I again took their advice as I felt they knew more about it than I did."*

The Complainant submits, by email dated 07 January 2017, that she was advised by the investment manager with the Provider, at the time [D.] to sell her mother's house which she had inherited, and shares, as they were high risk investments and that the Provider's investment products would be safer and she says that she followed his advice.

The Complainant submits that she ultimately lost all of the capital which she had invested in the BRIC bonds and that this is an appalling outcome, particularly in circumstances where she asserts that, from the outset, her stated aim was to preserve capital and gain modest growth to provide for her retirement.

The Complainant submits that the Provider failed to follow her stated priority of capital protection or to take into account her circumstances including her age, her small pension of €16,000 per annum, her mortgage repayments of €1,150 per month until 2019 and the need to fund her retirement for possibly a further 20 years.

The Provider's Case

The Provider submits that the BRIC investments which were recommended to the Complainant were consistent with the Complainant's objectives, risk profile, experience and financial situation.

The Provider has submitted that both BRIC I and BRIC II were *"a relative value trade between the emerging economies of the BRIC nations (Brazil, Russia, India and China) and the developed world (the US)." It submits that "the BRICs were designed around a specific investment concept - the outperformance of the BRIC's against the S&P500 over a 5 year term, with a potential early redemption feature"*.

It says that BRIC I and II were capital at risk products with an element of capital protection, which was dependent on the performance of the underlying investment strategy.

The Provider submits that BRICs I and II were built around specific *"event dates"*, which occurred every 6 months and that, if on specific 6 monthly event dates, the closing price of all the BRIC nations finished higher relative to the U.S., the investment would end and investors would receive back 100% of their initial capital with a 7% coupon for each event date passed.

The Provider submits that the manner in which the Products were structured meant that, if there was no early redemption by the investor, on the final event date if the closing prices of the BRIC nations had not fallen by 30% or more, relative to the U.S., investors would receive back their full initial capital. It says that if there was no early redemption, and if, on the final event date, the closing prices of the BRIC had fallen by 30% or more relative to the U.S., investors suffered a loss to their capital to the extent of the fall of the worst performing BRIC nation.

/Cont'd...

The Provider says that the investment did not, in fact, perform from early on in the investment and at maturity there was a 100% loss of investment.

It submits that it believes that the Complainant was aware of the risks involved, including the potential for a full loss, as well as a partial loss of investment monies. The Provider submits that it acted at all times in the Complainant's best interest and with due care and attention.

The Provider submits that a great deal of client care was given to the Complainant and that it engaged in numerous meetings with the Complainant with regard to all of her investments. The Provider submits that this makes it "*all the more incredulous*" that the Complainant did not understand the potential for a partial or full loss of the investment monies.

The Provider submits that the Complainant wanted to achieve capital growth, as evidenced by the relevant FactFind documents, and that she wished to take on risk in order to achieve a better return.

The Provider says that it believes that the Complainant understood the risks involved with the BRIC I and BRIC II investments and submits that an issue would not have arisen with regard to risk or suitability but for the loss of investment monies in BRIC I and BRIC II.

The Provider notes that within her letter to this office of 18 July 2016, the Complainant stated that, apart from an investment in 1983 and in 1994 in retirement funds, she had no other experience of investing. The Provider contends that this is inaccurate and that she had in fact invested in a number of products with other financial service providers before investing with the Provider, and that she had a substantial property portfolio.

In relation to the Complainant's prior investment experience, the Provider has submitted that the Complainant had a significant knowledge of how the Provider's structured products worked, having invested in a number of similar investments with the Provider which had similar risk profiles, payoffs and investment key features. The Provider submits that the Complainant had also invested in three similar capital at risk products, prior to investing in BRIC I and BRIC II.

It submits that the Complainant had also signed off on the "Reasons Why" letters and had reviewed the brochures in respect of these investments.

The Provider notes the Complainant's submissions that BRIC I and II, contrary to the Provider's classification of them as low and low-medium risk investments respectively, were in fact high risk investments but were "*portrayed*" as having "*100% capital guaranteed at maturity*". The Provider disagrees with the Complainant and submits that each Statement of Suitability which issued to the Complainant clearly stated that the investments had 100% capital protection at maturity only once certain conditions were met (i.e. provided none of the 4 BRIC indices underperformed the S&P500 by more than 30% at maturity).

/Cont'd...

The Provider submits that the investment recommendations were suitable to the Complainant from a risk appetite point of view. It submits that the Complainant “*must have been aware*” of the risks involved, as the level of risk was clearly identified and addressed, particularly in the Statement of Suitability, with the potential for a full loss of investment made clear.

With regard to BRIC I, the Provider submits that prior to the start date of the investment, the Complainant decided, unilaterally, to increase the investment amount from €50,000 to €100,000.

The Complainant subsequently invested €10,000 in BRIC Tranche II, in March 2011.

Risk Categorisation

The Provider submits that BRIC I was classified as Medium Risk and that BRIC II was classified as Low-Medium Risk, because of the level of conditional capital protection in place - the fact that capital was at risk at only on one date during the 5 years, i.e., at the maturity date, and there was the possibility for 10 early redemptions.

The Provider submits that the BRIC brochures, the Statements of Suitability and other supporting documentation clearly set out the risks and the potential for capital loss involved in the investments, including full capital loss, to the Complainant.

Encashment

Regarding the Complainant’s ability to encash the BRIC I and BRIC II investments, the Provider refutes the Complainant’s complaint that the Provider advised her against early encashment, by assuring her that the value of her investments would recover by maturity. The Provider says that there are no records on file that back up this statement and it submits that the only record that it has of the Complainant discussing an encashment of BRIC was on 18 July 2012. It says that at this meeting on 18 July 2012, the Complainant had a query regarding the BRIC investment and, per the file note, asked:

“if possible would there be any point in the remaining term that she encash it and that would guarantee her initial investment amount. She stated she felt uncomfortable at the moment with it and would prefer to take it out without any loss if she could”.

The Provider says that BRIC I and BRIC II were liquid investments with potential access on demand but that all relevant documentation also warned that any encashments during the investment term were liable to be realised at the price of the investment at that time, which may be higher or lower than any conditional guarantee which may apply at maturity.

The Provider submits that the Complainant was well aware of the encashment process, having previously encashed other investments, of her own volition, and submits that she would have known that if the investment was encashed early, any profit or losses would have been dependent on market conditions at the time.

/Cont’d...

The Provider submits that at a meeting on 31 July 2012 the Complainant “*went through all her investments in detail*” and discussed the encashment of a different product which she also held with the Provider. The Provider notes that the other investment was a 97% capital protected product and that the Complainant did not request to encash BRIC I and BRIC II at this meeting but rather wished to encash the 97% capital protected product.

The Provider submits that one of its advisors advised the Complainant that the decision to encash, or otherwise, was a decision for the Complainant to make herself and it was not the advisor’s decision to make for the Complainant. It submits that there was no request made either verbally or in writing by the Complainant to encash her BRIC I and BRIC II investments.

The Provider notes the Complainant’s statement that she was shocked to learn of the extent of her losses arising from the BRIC investments but it submits that the Complainant was constantly updated with regard to her investments and so there should have been no “shock” in this regard. The Provider submits that the Complainant was updated as to the performance of these BRIC investments on a regular basis.

The Provider says that it considers that compared to most other investors, the Complainant was very actively involved in querying her investments and investment levels and that there are a large number of file notes which reflect this. The Provider says that a great deal of time and client care was spent in assisting and advising the Complainant over the years.

The Provider submits that its belief is that the complaint has been made by the Complainant, not because the investment was mis-sold, but rather because of the ultimately poor performance of BRIC I and BRIC II. It submits that the Complainant was well aware of the risks involved both pre-sale and post-sale and that she chose to take on this risk in return for a strong potential return on her investments. The Provider submits that it was advised in all promotional and pre-sale documentation that there was the potential for a total loss of investment.

The Provider submits that it is of the opinion that the investments recommended to the Complainant were consistent with her objectives, risk profile, experience and financial situation.

The Complaints for Adjudication

The Complainant’s first complaint is that she was wrongfully advised by the Provider to invest in funds which were not suitable to her requirements, were miscategorised by the Provider and that as a result she has suffered significant losses, 100% of her capital, in the amount of €110,000.

The Complainant’s second complaint is that the Provider wrongly advised her against encashing the policies, whilst they still had value, assuring her that the value would recover by maturity.

The Complainant's third complaint is that the Provider wrongly advised her to invest the monies available to her rather than pay down her mortgage.



/Cont'd...

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 was satisfied that the submissions and evidence furnished disclosed conflicts of fact such as would require the holding of an Oral Hearing to resolve such conflict. An Oral Hearing took place over a period of three days, in 2018. The Complainant made the decision to represent herself at this Hearing whilst the Provider was represented by Counsel.

A Preliminary Decision was issued to the parties on **27 February 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.

I note that the Complainant first engaged the services of the Provider in 2005 and provided her with investment advice and managed her investment portfolio over a number of years. The Complainant contends that the BRIC I and BRIC II investments which she entered into, in 2010 and 2011, respectively, were not suitable to her.

Features of the BRIC Bonds

The Provider has outlined the key features of BRIC I and Bric II Outperformer Bonds, as follows:

The Provider submits that BRIC I and BRIC II Outperformer Bonds comprised a relative value trade between the emerging economies of the BRIC nations (Brazil, Russia, India and China) and the developed world (the US). It submits that "the BRICs" were designed around a specific investment concept - the outperformance of the BRICs against the S&P500 over a 5 year term, with a potential early redemption feature. The Bonds were a capital at risk product with an element of capital protection dependent on the performance of the underlying investment strategy.

/Cont'd...

There were specific “*event dates*” built in, which occurred every 6 months. If on specific 6 monthly event dates the closing price of all the BRIC nations finished higher relative to the US, the investment would end and investors would receive back their initial capital and a 7% coupon for each event date passed.

If there was no early redemption, then on the final event date, if the closing prices of the BRIC nations had not fallen by 30% or more relative to the US, investors would receive back their full initial capital.

If there was no early redemption, on the final event date if the closing prices of the BRIC had fallen by 30% or more relative to the US, investors suffered a loss to their capital to the extent of the fall of the worst performing BRIC nation.

The Provider has submitted that in each instance the investment did not, in fact, perform from early on in the investment and as a result, at maturity there was a 100% loss of investment.

BRIC Outperformer Bond I

The Complainant invested €100,000 in BRIC I in **November 2010**.

Prior to this, on **07 September 2010** the Provider had issued a letter to the Complainant, headed “Investment Recommendation”. This letter referred to a meeting which had occurred on **06 September 2010** and stated that:

Further to our meeting on 6th September we have outlined an investment proposal below based on an amount of €200,000. You expressed your desire that the majority of your funds to be in “safe” investments but that you are willing to invest up to €50,000 in a risk product.

...

We have included in the portfolio the BRIC Outperformer, which offers investors a play on the emerging markets of Brazil, Russia, India and China versus the US on a relative basis. We have included a Supplement on this product which we classify as medium risk.

We are due to meet on the 17th September at 10.30 where we will discuss this proposal further.

It is disappointing to note that there is no contemporaneous record held by the Provider of this meeting of **06 September 2010**, in circumstances where the Consumer Protection Code, 2006 set down certain requirements for the maintenance of consumer records:

49. A regulated entity must maintain up-to-date consumer records containing at least the following:

e) all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service; and

h) all other relevant information concerning the consumer.

/Cont’d...

There is a record of a subsequent client meeting, dated **27 Sep 2010** which states, inter alia, that *“in addition [the Complainant] had reviewed the material on the BRIC outperformer and had decided to invest 50k into the product”*.

The Complainant submits that she did not however understand that there was a potential for full capital loss and that she would not have entered into the investment had she been aware of this fact.

The Provider has submitted that the brochures in respect of BRIC I and II, the Statements of Suitability and other supporting documentation clearly set out the risks and the potential for capital loss including *“full capital loss”*. It further submits that the Complainant was advised to read the brochures for the investment products, in order to fully understand the associated risks and to ensure that the investments corresponded with her investment objectives and risk profile.

Letter of Suitability

The Provider issued a Letter of Suitability, dated **27 September 2010** in relation to a proposed investment of €50,000 by the Complainant, in BRIC I.

This letter stated as follows:

Based on our meeting to date and the information provided by you at that meeting, and following an analysis of your financial needs, I am recommending that you invest €50,000 in the BRIC Outperformer.

Current Objectives

Having reviewed your investment requirement it was noted that a lump sum investment for medium term capital growth was of interest to you. Specifically, you wish to participate in the BRIC Outperformer. You do not wish to review any other aspect of your financial planning at this juncture.

Having researched the market I believe this recommendation is in your best interest as it meets your needs and is consistent with your risk profile, investment objectives and wealth aims. You value having features such as liquidity and potential early dates structured into the product.

I believe that this product is most suitable for you for the following reasons:

You are comfortable with the idea of investing in Emerging Markets on a relative value basis;

You are prepared to take a moderate risk in order to achieve your financial objectives and this fits into your investment criteria; [my emphasis]

You are prepared to take up to a maximum 5 year investment approach which again fits into your investment criteria.

/Cont'd...

Key Features

The BRIC Outperformer, which has five underlyings; a basket of four emerging markets, Brazil, Russia, India and China (the BRIC countries) and the Base Index, the S&P 500 representing the developed world, has been designed to allow investors the opportunity to benefit from outperformance of emerging markets versus the developed world over a maximum five year period, with potential semi-annual coupon payments, while given a strong degree of capital protection and early redemption features. More specifically I am recommending the BRIC Outperformer to you for reasons:

- It has a 5 Year maximum investment term — potential for early repayment of capital on every 6 month anniversary; [my emphasis]
- It has 100% capital guarantee at maturity once certain conditions are met (30% barrier from relative difference between BRIC and BASE Indices at maturity only); It offers investors exposure to a difficult to access investment strategy and asset class that represent a source of significant opportunity in the current market; a relative value play and the emerging markets of the BRIC countries; [my emphasis]
- It has a potential semi-annual coupon of 7%;
- There are four different outcomes from investing in the BRIC Outperformer, three of which result in a full return of capital plus any accumulated coupons, and one which may result in a partial or full loss of capital; [my emphasis]
- The charging structure is clear and competitive in gaining exposure to this relative value play;
- **[The Provider] classifies this investment as Medium Level Risk.** [original emphasis.]

Understanding Risk

You should read the accompanying Key Features document and brochure to fully understand the associated risks with this investment and to ensure that the BRIC Outperformer corresponds with your investment objectives and financial profile. [The Provider] is making you aware of the following risks associated with any investment of this nature:

- There is no guaranteed investment return;
- You could get back less than you invest

Risk can be categorised as follows:

Low Risk

Indicates a guarantee of capital with potential for modest growth.

[my emphasis]

/Cont'd...

Medium Risk

Indicates a possible loss of some capital in return for good potential growth in the medium term.

[my emphasis]

High Risk

Indicates potential significant loss of capital in return for potential high growth.

[my emphasis]

[Provider's Name]

[The Provider] is responsible for the marketing and distribution of the product. [The Provider] is a multi-agency intermediary and is regulated by the Financial Regulator.

Additional Documentation

I have provided you with a Key Features document and full brochure which explains how the BRIC Outperformer works in more detail. Please read it carefully and make sure you understand the benefits provided by the Certificate. Should you have any further queries or require any further advice in relation to our discussion or any other financial planning needs, please do not hesitate to contact me at any time.

[my emphasis]

Attached to the letter was a document entitled "Appendix 1: Risk Factors". This stated that:

Investors should make themselves aware of the following risk consideration when investing. This is not an exhaustive list and you should contact your [Provider's] representative or your financial and tax advisers if you wish to discuss risk factors in greater detail. You should also refer to the terms and conditions of individual investments to understand potential risk factors.

[my emphasis]

Individual Risk Factors

Market Risk	Your expected return will be affected by movements in the price and volatility of the underlying investment. Investors should be aware of the factors which may affect the market risk of their investment.
Capital Risk	Your expected return of capital may be at risk for a full or part amount. Investors should be aware of the capital guarantees that are involved in their investment and any factors which may affect those guarantees.
Liquidity Risk	Your ability to access your investment may be limited. In some cases it may not be possible to access your investment before the end of the product term. Investors should be aware of the term of any proposed investment. Investors should also be aware of early exit mechanisms and secondary market facilities.

<i>Credit Risk</i>	<i>Your expected return is dependent on the parties involved in the investment being able to make good on repayment as set out in the terms and conditions of the investment. Investors should be aware of the creditworthiness of the parties involved.</i>
<i>Currency Risk</i>	<i>Your expected return may be adversely affected by movements in currency markets. Investors should be aware if their specific investment involves currency risk.</i>
<i>Tax Risk</i>	<i>Your expected return may be liable to tax. Investors should be aware of their individual tax liability.</i>

Overall Risk Assessment

<i>Low Risk</i>	<i>The combination of risk factors does not constitute an expected material impact on expected return of capital.</i>
<i>Medium-Low Risk</i>	<i>The combination of risk factors does not constitute an expected material impact on expected return of capital. One or more of the risk factors however, may result in expected return of capital to be affected though this outcome is considered to be medium-low.</i>
Medium Risk	<i>The combination of risk factors constitute an expected material impact on expected return of capital. While it is not expected that there will be a loss of capital one or more of the factors could result in a partial loss of capital.</i>
<i>Medium-High Risk</i>	<i>The combination of risk factors constitutes an expected material impact on expected return of capital. This could result in a partial loss of capital.</i>
<i>High Risk</i>	<i>The combination of risk factors constitutes an expected material impact on expected return of capital. This could result in a partial or full loss of capital.</i>

[my emphasis]

The Complainant ultimately decided to invest €100, 000 in this product and completed and signed an application form to this effect, dated **28 September 2010**.

The Complainant issued a cheque for the second €50,000 of the €100,000 investment some six weeks later on **09 November 2010**. A Second Letter of Suitability issued on **17 November 2010**, which was signed by the Complainant on **02 December 2010**.

This letter of **17 November 2010** begins by saying, “Based on our meetings to date and the information provided by you at those meetings, and following an analysis of your financial needs, I am recommending that you invest 100,000 privately in the BRIC Outperformer.

The letter goes on to say:

Specifically I believe this product is most suitable for you for the following reasons:

/Cont’d...

1. You are looking for returns greater than those available on deposit.
2. The BRIC Outperformer offers you a unique relative value exposure to emerging markets
3. The BRIC Outperformer offers a high degree of liquidity
4. The BRIC Outperformer fits with your needs for access to your investment and a need for income.

Amongst the Key Features identified within the document are:

It has 100% capital guarantee at maturity once certain conditions are met (30% barrier from relative difference between BRIC and BASE indices at maturity only);

...

There are four different outcomes from investing in the BRIC Outperformer, three of which would result in a full return of capital plus any accumulated coupons, and one which may result in a partial or a full loss of capital

[emphasis added]

[The Provider] classifies this investment as Medium Level Risk.

Regarding the decision to increase the investment amount from €50,000 to €100,000, I note that the Complainant, within the complaint submitted to this Office indicated that the Provider had recommended that she do so and she stated that:

“in the notes of my meeting with [Advisor] it clearly states that I wanted to put €150,000 in a safe investment and €50,000 in a moderate risk investment thereby safeguarding the capital as I was mindful of my previous 100 percent loss. However, in a subsequent letter of recommendation [name of advisor] recommends that I put €100,000 in BRIC disregarding my statement that I wanted it in a safe environment.”

However, in the course of giving evidence, at the Oral Hearing, the Complainant clarified this position, and I note the following exchange:

[Counsel] ... But you are saying when you decided on the 12th October to invest a further 50,000 you did that of your own volition. No-one put pressure on you to put in another 50,000?

[Complainant] And nobody advised me that it was not a good idea.

[Counsel] Exactly but your written submissions gave the impression that someone had put pressure on you to put in another 50,000?

[Complainant] Absolutely not.

I am therefore satisfied that it was the Complainant herself who made the decision to increase the amount of monies invested to €100,000.

/Cont'd...

BRIC Outperformer Tranche II

There is a Provider's Note of a client meeting on **24 January 2011**, which identifies that the Complainant had decided to invest €10,000 in the BRIC Outperformer Tranche II:

I did a FF update with [the Complainant] and we detailed her cash holdings. [The Complainant] had a considerable amount of cash and wanted to invest. I showed [the Complainant] both the [named investment product] and the BRIC Outperformer. As [the Complainant] already holds an investment into [sic] the BRIC Outperformer (tranche 1) she decided that a small investment into this product was suitable. [The Complainant] expressed a very keen interest in the [named investment product] given its high level of capital protection and relatively short term. [The Complainant] decided to invest 170k into the [named investment product] and 10k into the BRIC Outperformer. [The Complainant] signed the application forms and made cheques payable to Rxxxxxx. RWL to follow in the post.

[emphasis added]

The Complainant signed an application form dated **24 January 2011** for an investment of €10,000 in the BRIC Outperformer, Tranche II.

A "Reasons Why Letter" in relation to BRIC II issued to the Complainant on **03 March 2011**.

This letter stated that:

Having reviewed your investment requirement it was noted that you currently have a significant private lump sum of approx. €241,000 which you are willing to make available for medium term capital growth. You wish to consider approx. 75% of this lump sum for investment with the remainder being held on deposit. You are currently using both [third party bank] and [third party bank] for deposit services and do not wish to review this arrangement at the current time.

It is noted that your risk profile is medium low and that the management of your overall portfolio must be consistent with this profile. Ensuring sufficient liquidity in your portfolio and providing for income protection while not vital considerations are important for you. Your current portfolio has sufficient liquidity and access to capital to provide for any additional income needs.

[my emphasis]

Recommendation

I am recommending that you invest €170,000 in the [Named Investment Product] and €10,000 into the BRIC Outperformer (Tranche II). Having considered your current investment needs in conjunction with your overall risk profile and investment portfolio I believe this recommendation is consistent with your investment and wealth aims. Both investments offer liquidity and potential for income generation over shorter periods. In addition they fit with your existing portfolio in keeping the overall risk profile medium-low.

[my emphasis]

/Cont'd...

The letter goes on to say:

Specifically I am making this recommendation for the following reasons:

- *We discussed the need to align your portfolio with a strategy that provides for shorter dated investments offering liquidity and potential for income generation. Both BRIC Outperformer (Tranche II) and [named investment product] offer short investment horizons with daily liquidity;*
- *The recommendation does not affect the overall risk profile of your portfolio;*
- *You do not require access to this lump sum in the immediate future. It is noted that the combination of employment and pension currently funds your income requirements and there is no expected change in this requirement in the immediate future. In addition there are a number of investments which are expected to mature over the coming year;*
- *You already hold exposure to funds and capital at risk products which though at the lower end of the risk spectrum do not offer an explicit guarantee as provided by the [named investment product]. In addition the BRIC Outperformer (Tranche II) offers a relative value strategy which complements your existing portfolio without replicating directional market risk;*
- *You wish to achieve a return that is higher than prevailing deposit rates and are willing to accept an increase in risk in order to achieve this aim;*
- *You are familiar with the unique design and risk/return profile of these products having previously invested and made satisfactory returns*

[my emphasis]

...

More specifically I am recommending the BRIC Outperformer (Tranche II) to you for the following reasons:

- *It has a 5 Year maximum investment term — potential for early repayment of capital on every 6 month anniversary;*
- *It has 100% capital guarantee at maturity once certain conditions are met (30% barrier from relative difference*

[my emphasis]

- *It offers investors exposure to a difficult to access investment strategy and asset class that represent a source of significant opportunity in the current market; a relative value play and the emerging markets of the BRIC countries;*
- *It has a potential semi annual coupon of 7%;*
- *There are 4 different outcomes from investing in the BRIC Outperformer (Tranche II), 3 of which result in a full return of capital plus any accumulated coupons, and one which may result in a partial or full loss of capital;*

[my emphasis]

- *The charging structure is clear and competitive in gaining exposure to this relative value play*
- ***[The Provider] classifies this investment as Medium-Low Level Risk.***

/Cont'd...

Understanding Risk

You should read the accompanying brochures to fully understand the associated risks with this investment and to ensure that the [named investment product] and BRIC Outperformer (Tranche II) correspond with your investment objectives and risk profile. Please refer to Appendix 1: Risk Factors for a fuller explanation of risk.

The Provider] is making you aware that there is a potential loss of your initial capital. In the case of the [named investment product] this will be limited to 3% if the investment is held to maturity. In the case of the BRIC Outperformer (Tranche II) potential losses, while not expected are not limited. You should also be aware that if either investment is encashed early any profit or losses will be dependant on market conditions.

[my emphasis]

...

This Letter of Suitability was signed by the Complainant on **03 March 2011**.

Again, an appendix to the letter contained further details as to "Risk factors". The information provided in respect of "Medium Low Risk", is that,

"The combination of risk factors does not constitute an expected material impact on expected return of capital. One or more of the risk factors however, may result in expected return of capital to be affected though this outcome is considered to be medium low".

Stating that the expected return of capital may be affected, does not suggest a potential for complete loss of capital, and is somewhat at odds with the letter of recommendation itself, which says that:

"[The Provider] is making you aware that there is a potential loss of our initial capital. In the case of the [named investment product] this will be limited to 3% if the investment is held to maturity. In the case of the BRIC Outperformer (tranche II) potential losses while not expected, are not limited. You should also be aware that if either investment is encashed early any profit or losses will be dependent on market conditions"

[my emphasis]

The Complainant has submitted that the investments were miscategorised by the Provider, with reference to the information about risk factors in respect of high, medium and low risk investments within the appendices to the letters.

The Provider has submitted that the information furnished within the appendices to the letters comprised generic information as to risks and that the content of the letters of recommendation themselves, provided specific information as to the product risks, including the potential risk to capital.

While the risk factors attached to the letters are indeed generic, they are not in alignment with the features of the products as described within the letter of recommendation, and in

/Cont'd...

my opinion, this was poor practice by the Provider; including such details with such a letter was potentially misleading and confusing to an investor reading them.

However, I consider that it is somewhat determinative of the issue that the Complainant confirmed that she did not have regard to these categorisations until after she had already entered into the investments.

I note the following exchange in this regard, at the Oral Hearing:

[Complainant] So could I just interject there? In the medium to high risk it doesn't refer to 100% loss of capital.

[Counsel] All right.

[Complainant] It refers to "*partial loss of capital*", not 100%.

[Counsel] Yes.

[Complainant] It is a medium to low risk, "*one or more of the risk factors*" - sorry. "*The combination of risk factors does not constitute an expected material impact on the expected return of the capital. One or more of the risk factors, however, may result in expected return of the capital to be affected. Though this outcome is considered to be medium to low and the combination of risk factors for the low risk does not constitute an expected material impact on the expected return of the capital.*"

I have to confess I do find that a little bit difficult to interpret.

[Counsel] Yes. But you have accepted that you looked at that after the fact?

[Complainant] Yes.

[Counsel] Yes.

And subsequently:

[Complainant] To go back to the definition of "low risk" or "medium to low".

[Counsel] Yes.

[Complainant] Does not include a partial or full loss of capital. The risk that was given in the letter of recommendation categorised low risk as the full amount of capital was guaranteed, and the medium risk or the medium to low risk stated that there was just a moderate risk. Now, I don't know exactly where the page is. But, I mean, an investment in which 100% of the capital is exposed to loss is categorised as high risk. Which is different to what was in the letter of recommendation. So it is a bit confusing to know which this investment is categorised at.

[Counsel] What I'm putting to you is that it was explained to you that the BRIC, you could lose all of your capital.

[Complainant] Well then why was it categorised as --

[Counsel] Right. Well whether it was miscategorised, I'm putting to you that you knew that you could lose all of your capital.

[Complainant] I am saying that the information that I could lose 100% of the capital is confusing. If that had been put on the page 1 next to

/Cont'd...

where it was stated that there was 100% of the capital guaranteed - admittedly under certain circumstances - it should have been stated for fairness and for clear understanding that I was putting 100%, and it should have been put in writing, as opposed to just stated during a discussion.

[my emphasis]

I note that the potential for full loss of capital was put in writing, within the Letters of Suitability and the brochures to the investments.

On the basis of the foregoing, I consider that whilst it was highly disappointing and poor practice on the part of the Provider to issue what was essentially conflicting written information, I must conclude on the basis of the Complainant's own evidence, that the categorisation ascribed to the products, in conjunction with the information contained within the appendices to the Letters of Suitability, did not in actuality have a bearing upon the Complainant's understanding of the risk features at the time of her entering the investments.

"100% guaranteed at maturity once certain conditions are met"

There are statements within both Letters of Suitability to *"[the product] has 100% capital guarantee at maturity once certain conditions are met (30% barrier from relative difference)"*

The Complainant, both within the written submissions to this Office and by way of oral evidence placed a great degree of emphasis upon the Provider's use of the phrase *"100% capital guaranteed..."* The Complainant contended that one would need to be a forensic financial analyst to decipher *"when a 100% capital guarantee is not a 100% capital guarantee"* and submits that she understood that this was a service which the Provider was providing on her behalf.

However, the Complainant by way of oral evidence confirmed that at the time of entering into the investments in question, she in fact understood and was aware that she could lose some of the capital invested. I note the following exchange in this regard:

[Counsel]: *Finally, I just have to put to you again, just in conclusion, that at all times when investing in BRIC 1 and 2, that you were aware that you could lose either some or all of your money?*

[Complainant]: *Some.*

Having considered this issue, I find it difficult to reconcile these two positions. If the Complainant knew at the time of entering into the investments that she stood to lose some of her capital, it is difficult to understand how she also believed that it was *"100% capital guaranteed at maturity"*, on the basis of the documentation furnished to her.

I do not, on balance therefore, accept that at the time of entering into the investments, the Complainant understood that her capital was 100% guaranteed at maturity.

/Cont'd...

I will turn now to examine the overall suitability of the investment for the Complainant, looking firstly at the Complainant's investment objectives.

Investment objectives.

The Complainant says the "core issue" of her complaint is that the Provider ignored her repeatedly stated preference, in questionnaires and at meetings, for safe low risk investments that would not put her capital at risk.

By email dated **07 January 2017**, to this Office, the Complainant stated that:

*[The Provider] has stated that I wanted 8-12 percent return on my investments. This is completely incorrect .
Due to my aversion to risk I did not expect a v high return
See the questionnaire that they filled out on my behalf which indicates I would be happy with 4-8 percent. (Their suggested figure not mine).*

Within Section 10 of the FactFind dated **27 October 2010**– "Attitude to Risk and Return", the "wealth aim" boxes which are ticked are: Wealth Protection, Wealth Growth and Income, with a handwritten note which says "Income Important".

In terms of the expected yearly returns, the box "4%-8%", is ticked by way of answer.

In response to the question, "How would you classify your overall attitude to risk" the box ticked is "Low –Medium".

I note that directly underneath this it states: "**Note:** if you consider yourself a Low or Medium risk investor, you can still invest in a high risk product as long as your overall portfolio mix satisfies your risk profile. This applies to all risk categories."

The Complainant has submitted that the content of the FactFind was not an accurate representation of her objectives. She acknowledges however that she signed the document and I note her signature, dated 27 October 2010.

Contrary to the Complainant's assertions at the Oral Hearing, I note that within the written submissions received from the Complainant, one of her stated objectives was to achieve income in order to fund her retirement.

By email dated 07 January 2017 Complainant referred to the "need to provide income for possible 20 or 25 more years retirement".

The Complainant stated at the Oral hearing, that:

"I had a very small pension from the [pension scheme] and I was really concerned because at this stage I was sixty and I needed to make provision for my retirement."

When was asked about the priorities, as recorded by the FactFind, and whether income was important, the Complainant's response seemed initially at odds with her written submission and what her objectives were in this regard; the Complainant was quite insistent that her priority was safety:

[Counsel] Do you see the box that's ticked 'wealth growth'?

[Complainant] **Yes.**

[Counsel] Are you saying that now doesn't reflect what you wanted?

[Complainant] **It doesn't reflect what my priorities were.**

[Counsel] Right?

[Complainant] **And neither does the income.**

[Counsel] Right?

[Complainant] **Okay. My whole priority was wealth protection.**

[Counsel] Right?

[Complainant] **The wealth growth was not a priority. The income was not a priority and the mixture of the above, 'income important'.**

[Counsel] Right?

[Complainant] **That was not a priority. My priority was to safeguard the capital I had. I had ended up at the age of 50 with zero, well not zero, a potential pension of 16,000 per annum.**

[Counsel] Right?

[Complainant] **With a mortgage of 450,000.**

[Counsel] Yes.

...

[Counsel] But why would someone write that in?

[Complainant] **Oh gosh, now I don't have the answer to that.**

[Counsel] Well I understand that [D] will say he filled in this document?

[Complainant] **Okay.**

[Counsel] Do you think he just made this up, he made this all up, is it?

[Complainant] **I would think that probably [sic] said would I like wealth growth. Of course I would say, yes, I would yes, I would like wealth growth. Would I like an income, of course I would.**

On balance, and on the basis of all of the evidence before me, I accept that whilst the Complainant wanted some of her monies in safe investments, that she also wished to achieve income from her investments and that income was indeed important to her at that time.

I note that the letter which issued dated **07 September 2010** from the Provider which confirmed that, of the €200,000 she had available for investment, she wished that €150,000 be placed in "safe" investments and she was making a further €50,000 available for "risk" investments.

The following evidence was given in this regard by the Complainant at the Oral Hearing, as regards the BRIC investment and her risk appetite:

/Cont'd...

[Complainant] At the meeting with [the Provider] sorry, I would have expressed the fact that I wanted a safe investment but that was my priority but on questioning whether I was prepared to take a risk I would have said I will take a risk with a small amount of the capital but not with the whole.

[Counsel] So you've said that is it?

[Complainant] That's what I would have said to the questioning about whether I wanted to take a risk. I didn't volunteer myself that I wanted to take a risk.

[Counsel] Okay?

[Complainant] But it's clear now. That would have been on his suggestion or his [financial advisor's] questioning. I wanted a guaranteed product for most of my investment, for the bulk of it but that a small amount of my investment I was prepared to take a certain risk with that.

[Counsel] But if we look at the letter of the 07th ... Have you got that [Complainant]?

[Complainant] Yes.

[Counsel] This is a letter that we've opened earlier and the second line "*You expressed your desire that the majority of your funds to be in safe investments but that you were willing to invest up to 50,000 in a risk product.*"

[Complainant] So the three products are listed and then "*We have included the portfolio the BRIC Outperformer which offers investors a play on the emerging markers of Brazil, Russia, India and China versus the US on a relative basis. We have included a supplement on this product which we classify as medium risk.*"

[Complainant] Yes.

[Counsel] I have to put to you that it is quite clear from this letter that you have said you want one risk product. You were going to put 50 grand in to it and they're telling you that the risk product is the BRIC Outperformer. Isn't that quite clear from the letter?

[Complainant] **Yes, it is actually.**

[Counsel] Right. So now all that's between us at the moment is that you knew this was a risk product. You knew you could lose some of your money but you didn't know you could lose all of the money. That's where we're at, at the moment?

[Complainant] **Yes.**

[my emphasis]

It appears to me, on the basis of the foregoing, that the Complainant wished to invest some of her monies in a risk product and that the risk product in question which was recommended was BRIC I. The Complainant wished to take a "moderate risk". I further note that the Complainant knew, upon entering into the investment, that at least some of the capital was at risk.

/Cont'd...

I will turn now to examine the appropriateness of the investments for the Complainant from a financial point of view.

Suitability - Complainant's Financial Position

I have examined the issue of whether the Provider conducted due diligence to satisfy itself that the investments were suitable to the Complainant from a financial point of view, including whether the Complainant was in a position to absorb such losses, in the event of a worst case scenario.

The Complainant maintains that the answer is no, whilst the Provider has submitted that based on the FactFinds which it completed with the Complainant, it understood that the investments were suitable to her from a financial point of view and because of her substantial assets, in the event of a worst case scenario, that she could absorb the loss.

I note in this regard that a "Checklist for Selling to Client at Normal Retirement Age (60+) and Vulnerable Client", was completed and signed by the Complainant. It is an undated document but the Provider states that this was "logged onto the system" on 27 October 2010. I have reproduced the checklist as completed, below:

MATTERS ADDRESSED WITH CLIENT	YES	NO	N/A
Third party family member or independent advisor present		✓	
Product Booklet and Customer Information Notice Explained	✓		
Capital required for short term needs and emergencies (covering the full period of investment)	✓		
Current and potential income requirement	✓		
Evaluation of other assets to ensure investment is appropriate Explanation of the long-term nature of investment policies. (Min 3-5 years)	✓		
Nature and limitations of any guarantees that are included in the product	✓		
Assessment of attitude to risk	✓		
Risk attached to an investment	✓		
Restrictions on encashment	✓		
Explanation of encashment penalties applying, if appropriate	✓		
Explanation of impact of gearing, if appropriate	✓		
Explanation of market value adjustments, if appropriate	✓		
Explanation of stock market volatility	✓		
Explanation of 'worst case' scenario if investment doesn't perform	✓		
Explanation of what happens on death – warning in fund value and when investment can be encashed	✓		

/Cont'd...

Explanation of "wrapped" product if appropriate	✓		
---	---	--	--

With regard to "**Explanation of worst case scenario if investment doesn't perform**", (to which I have added emphasis) and the confirmatory tick which appears beside it, the Complainant contends that an explanation that her capital was at risk was not explained to her, whilst the Provider maintains that it was.

As regards her financial position, the Complainant has submitted that she has been in receipt of a [pension scheme] Pension of €6,000 per annum since her retirement in 2001 and that she has worked part time, but with no regular work. The Complainant submits that she has been in receipt of a widow's pension since 2008 and submits that the combined pension amount, which she is in receipt of, is €16,000 per annum. In a written submission dated **18 July 2016** the Complainant stated that she purchased a house in 2004, with a mortgage of €450,000, repayable over a 15 year period, and that at that time she still owed €53,000 on this mortgage. On the foregoing basis, she submits that investments were not suitable to her from a financial point of view.

The Provider, meanwhile, submits that at no point does a "*FactFind*" or a File Note which it has on file, state that the Complainant was retired. It submits that there is a File Note dated **27 September 2010** which refers to her "*semi-retirement*" in the future, but not the immediate or near future.

I note from the documentation furnished as part of the within complaint, including within Section 3 of the Fact Find dated **27 October 2010**, titled "Employment Review", that the Complainant's occupation is recorded and her status "employed". Her employer is noted as "various practices", and on a contract basis. Her Gross Salary (for 2009) is stated to be €42,000:

The Provider's position is that it was satisfied that the Complainant had the net worth to bear any potential loss as she was working as a locum, and had a property portfolio, of circa. €970,000 (which included her Private Dwelling House and 4 investment properties and land, with a mortgage of €119,000 on the PDH and a mortgage of €220,000 on one of the Buy to Lets). It further submits that the Complainant had access to cash in the event of an emergency (in the form of deposits and "substantial cash assets").

At the Oral Hearing the Complainant was asked by Counsel for the Provider about the value of her overall portfolio:

[Counsel] And I think your portfolio they will say was 1.5 million. That you had is it four investment properties, a family home. You held a mortgage on the family home and one investment property but they were both in positive equity. You had no mortgages on the other three investment properties. You had five acres of land in [location] with planning permission, is that all correct? That you had €241,000 in the bank, is that right?

[Complainant] Yes.

/Cont'd...

The below table contains the details recorded within Section 4 of the Fact Find of 27 October 2010, entitled “Property Review – Own Home, Residential and Commercial”:

Date of Entry on FF	Owner	Asset Type	Current Value	Rental Income	Monthly Repayment	Financing Details	Note
27/10/10	[Complainant]	Family Home	410,000			[REDACTED]	Mortgage of 119,000 outstanding
27/10/10	[Complainant]	Investment Property	270,000		850	[REDACTED]	Mortgage of 220,000 outstanding
27/10/10	[Complainant]	Investment Property	70,000			None	Surgery Property
27/10/10	[Complainant]	Investment Land	100,000			None	5 acre site with planning in [location]
27/10/10	[Complainant]	Investment Property	70,000			None	Share (50%) in a pub and site in [location]
27/10/10	[Complainant]	Investment Property	50,000			None	House in [location]

With regard to the above, it was clarified by the Complainant by way of oral evidence that she was not in fact the outright owner of the surgery, and the two properties at the end of the table, and that, rather, she owned one third of the surgery property, a half a share in the 5 acre site and a half share in the house. The Provider’s position is that it was unaware of this until the Complainant presented this in evidence at the Oral Hearing and this issue became the subject of some of discussion at the oral hearing:

- [Complainant]** I didn't own all the other properties at the time.
- [Counsel]** But did you tell [the Provider] that? Well they now have a fact find which tells them that you own all these you are telling us that you only owned half of the properties.
- [Complainant]** No, there was no question that I told them I owned the whole of the property. I had a half share in all the inheritances.
- [Counsel]** So you are saying the fact find is -- I read out the fact find to you earlier.
- [Complainant]** The only property that I owned, apart from my family home and 5 acres in [location], the --

/Cont'd...

- [Counsel] But I'm instructed that you never told [the Provider] that you only owned half of those homes.
- [Complainant] **Sorry, the only property that I owned fully at this stage was my mother's house and that was the only - because I didn't have a mortgage on the other properties.**
- [Counsel] Yes, we accept that. That's in the fact find, that you had a mortgage on two properties. I said that to you already. The issue here is that this is the first time that my clients are hearing that you only owned half of the investment properties?
- [Complainant] **I don't see the relevance of that.**
- [Counsel] It does because when they are deciding on whether BRIC is a suitable investment for you they have to look at your whole portfolio, which they put at 1.5 million on the basis that you owned all of the beneficial interests in those properties, and if you only owned half of them that reduces down your portfolio, which then reduces the amount of money that you should be putting into medium risk investments.
- [Complainant] **Well when the valuation would have been put on the properties that I had a part share in that would have been specified, because the valuations would have been totally different if I owned them 100%, rather than just 50%.**
- [Counsel] So you are saying they had the correct valuations?
- [Complainant] **I presume so.**
- [Counsel] The fact find says "*50% in a pub and a site in [location]*".
- [Complainant] **That's correct.**
- [Counsel] But the other ones don't say -- so the family home, you owned all of that with a mortgage; is that right?
- [Complainant] **Yes.**
- [Counsel] Then it says "*investment property, mortgage of 220,000 outstanding.*" Then it says: "*Investment property: Surgery property.*" How much of that did you own?
- [Complainant] **One-third.**
- [Counsel] But you never told [the Provider] that?
- [Complainant] **Well I would have specified that I owned a share because I inherited that from my husband.**
- [Counsel] But isn't it strange that the next one they say "*Investment property: Share 50% in a pub and a site in [county]*".
- [Complainant] **Yes, that's correct.**
- [Counsel] Why would they have put in the 50% there but not put in the third of the surgery if you told them?
- [Complainant] **It could have been an oversight. I don't.**
- [Counsel] And what about the 5 acres?
- [Complainant] **Because I only inherited one-third of my husband's estate.**
- [Counsel] And what about the --
- [Complainant] **Sorry? The other -- I inherited the house, a half share in my mother's house, I inherited one-third of my husband's estate, I**

/Cont'd...

inherited a half share in a cousin of mine who died, I think it was around 2008.

[Counsel]

Can we just go back to these properties. So what about the 5 acre site with planning in [location]?

[Complainant]

Yes, I inherited that.

[Counsel]

All of it?

[Complainant]

No, a half share.

[Counsel]

Why doesn't it say half share in here?

[Complainant]

I don't know.

[Counsel]

All right. A house in [location]?

[Complainant]

That was a half share.

[Counsel]

But isn't it strange that one of them says "*half share in a pub and site in [location]*" and none of the others talk about half shares or one-third shares? I'm putting it to you that you didn't tell [the Provider] that.

[Complainant]

Well I can't remember specifically. But I'm 100% clear that I only inherited a half share.

[Counsel]

I'm not disputing that. I'm not in a position to dispute that. But what I'm saying is that the investment advice that you get from [the Provider] depends on you giving - them having an accurate fact find, which they thought they had, which you denied ever reading. But now it doesn't even look like it is accurate because you didn't tell them how much of the shares that you had in the properties.

[Complainant]

That's speculation.

[Counsel]

It is not speculation because --

[Complainant]

It is, because I would have told -- I mean, if I had told them that I had a half share in the pub in [location] and there was another property -- a house in [county] -- and there was another property and shares as well in that legacy, I inherited a half share in all of those. In any property -- and they would have been valued, there would be a valuation attached to --

[Counsel]

So are the valuations correct?

[Complainant]

I don't know what the valuation was given.

[Counsel]

But sure, you were the person giving them to [the Provider]. Who can know other than you?

[Complainant]

I would have given a rough estimate as to what the values were.

It appears from the foregoing that when assessing the Complainant's financial position the Provider was under the apprehension that the Complainant had greater property assets than was in fact the case.

I am satisfied that there was a responsibility on the Complainant to accurately represent her financial position for the FactFind and I accept that this issue is of relevance insofar as the Provider's assessment of whether BRIC was a suitable investment to the Complainant from a financial point of view, was conducted on the basis of the information that was made available to it by the Complainant.

/Cont'd...

Section 6 of the FactFind of **27 October 2010** is entitled “*Pension Review and Self Administered Pension Schemes*” and sets out the following information:

Date of Entry on FF	Owner	Product Provider & Policy Number	Fund Name & Asset type	Investment Amount	Start Date	NRA	Current Value	Financing Details	Premiums & Frequency
27/10/10	[C]	[3 rd Party Provider]	[REDACTED]			65	54,798		None
27/10/10	[C]	[3 rd Party Provider]	[REDACTED]			60	160,000		None
27/10/10	[C]	[3 rd Party Provider]	[REDACTED]			65	43,159		None
27/10/10	[C]	[3 rd Party Provider]	[REDACTED]				10,500		None
27/10/10	[C]	[3 rd Party Provider]	[REDACTED]				50,000		None

Further notes were added to the FactFind on **24 January 2011**. The Note states: *[The Complainant] has considerable cash assets and wishes to invest in low-medium risk investments*”

There is a table at section 5, which identified the Complainant’s cash assets:

Date of Entry on FF	Owner	Life Company & Policy Number	Fund Name/Asset type	Investment Amount	Date	End date	Current Value	Financing Details	Note
24/01/11	[C]	[3 rd Party Provider]	Deposit Account	103,000					Demand Deposit Account
24/01/11	[C]	[3 rd Party Provider]	Deposit Account	64,000					
24/01/11	[C]	[3 rd Party Provider]	Current Account	74,000					

/Cont’d...

		Provide r]							
--	--	---------------	--	--	--	--	--	--	--

Complainant's Knowledge and Past Experience

The Complainant has submitted that she was not an experienced or knowledgeable investor but that:

"[the Provider] has tried to portray me as an experienced knowledgeable investor in my own right, on the grounds that I had made 3 investments over a period of 20 years prior to the year 2000".

The Complainant submits that these investments were entered into on the recommendation of her brother in law, and that this *"hardly demonstrates extensive knowledgeable investing experience"*.

The Provider's position is that the Complainant was, in fact, an experienced investor - and that at the time of investment in BRIC I and BRIC II, the Complainant in fact held a number of investments, as well as shares and pension investments with various Providers.

I have had regard to the following document furnished by the Complainant, by submission dated 18 July 2016. The document itself is undated but is headed *"[the Complainant's] current and prior investments"*, and relates to the period when the BRIC investments were *"live investments"*:

Name of Investment	Type of Investment	Investment Date	Investment Amount	Product Provider	Status	Date Encashed/ Date Matured	Value of Encashment/ Value at Maturity	Current Valuation, where applicable	Profit, Y/N
MATURED/ENCASHED - STRUCTURED PRODUCT INVESTMENTS									
[REDACTED]	Personal	21.05.2009	50,000	[REDACTED]	Matured	21.05.2010	60,500	n/a	Y
[REDACTED]	Personal	15.12.2009	50,000	[REDACTED]	Matured	15.12.2010	61,000	n/a	Y
[REDACTED]	Personal	02.07.2010	50,000	[REDACTED]	Matured	05.07.2011	60,000	n/a	Y
[REDACTED]	Personal	25.09.2011	170,000	[REDACTED]	Encashed	14.08.2012	159,035	n/a	N
[REDACTED]	Personal	23.11.2011	65,000	[REDACTED]	Encashed	29.07.2013	69,816	n/a	Y
[REDACTED]	Personal	16.08.2011	50,000	[REDACTED]	Encashed	05.11.2012	62,055	n/a	Y
[REDACTED]	Personal	16.09.2011	50,000	[REDACTED]	Encashed	06.11.2012 (€8k)			Y
[REDACTED]	Personal	30.03.2012	90,000	[REDACTED]	Encashed	8.15.08.2014 (€42k)	€75,031.20	n/a	Y
[REDACTED]	Personal	03.04.2012	70,000	[REDACTED]	Encashed	15.08.2014	44,825	n/a	Y
[REDACTED]	Personal	04.09.2012	158,000	[REDACTED]	Encashed	26.11.2014	57,260	n/a	N
[REDACTED]	Personal	04.09.2012	158,000	[REDACTED]	Encashed	04.09.2014	168,270	n/a	Y
Total:									
MATURED/ENCASHED INVESTMENTS PRODUCED BY OTHER FINANCIAL SERVICE PROVIDERS									
[REDACTED]	Personal	10.08.2007	50,000	[REDACTED]	Matured	13.09.2013	50,768	n/a	Y
[REDACTED]	Personal	26.10.2007	50,000	[REDACTED]	Encashed	22.11.11	18,401.85	n/a	N
[REDACTED]	Personal	01.11.2007	50,000	[REDACTED]	Encashed	09.02.2012	33,066.80	n/a	N
[REDACTED]	Personal	10.04.2008	50,000	[REDACTED]	Encashed	22.11.11	37,192.95	n/a	N
LIVE INVESTMENTS									
[REDACTED]	Personal	23.02.1990	1,905	[REDACTED]	Live	n/a	n/a		6,354
[REDACTED]	Pension	31.01.2008	51,000	[REDACTED]	Live	n/a	n/a		27,775
BRIC Outperformer	Personal	17.11.2010	100,000	[REDACTED]	Live	n/a	n/a		0
BRIC Outperformer (Tranche II)	Personal	18.03.2011	10,000	[REDACTED]	Live	n/a	n/a		0
[REDACTED]	Personal	16.08.2013	50,000	[REDACTED]	Live	n/a	n/a		49,715
[REDACTED]	Personal	29.11.2013	50,000	[REDACTED]	Live	n/a	n/a		46,380
[REDACTED]	Pension - PRB	04.07.2006	€6,500	[REDACTED]	Pension Drawdown	27.08.15	Tax Free Cash €2,403.72 - Balance transferred to [REDACTED] €7,211.15		*exercised cancellation right and returned funds to [REDACTED]
[REDACTED]	Pension	01.12.1983	€23,097	[REDACTED]	Pension Drawdown	27.08.15	Tax Free Cash €21,903.11 - Balance transferred to [REDACTED] €65,709.32		*exercised cancellation right and returned funds to [REDACTED]
[REDACTED]	Pension	01.04.1934	33,835	[REDACTED]	Pension Drawdown	27.06.2012	Tax Free Cash €10,478.25 - Balance transferred to [REDACTED] of an [REDACTED] €31,434.74		n/a
[REDACTED]	Deposit	Please refer to statements attached. Balance is zero.							
POLICIES CANCELLED OR POLICIES WHERE AGENCIES WERE RECENTLY TRANSFERRED FROM - Transfer of Agency (TOA)									
[REDACTED]	Personal	12.05.2008	50,000	[REDACTED]	Cancelled within 90 days - €50k returned	n/a	n/a	n/a	n/a
[REDACTED]	Pension - TOA	08.10.15		[REDACTED]					
OTHER POLICIES NOT SOLD THROUGH [REDACTED] AND NOT UNDER [REDACTED] AGENCY:									
[REDACTED]	Personal			[REDACTED]					
[REDACTED]	Personal			[REDACTED]					

Section 5 of the FactFind dated 27 October 2010 is entitled "Investment Review" and features a table setting out details of the investment policies held by the Complainant at that time.

Date of Entry on FF	Owner	Product Provider & Policy Number	FundName & Asset type	Investment Amount	Start Date	End date	Current Value	Note
27/10/10	[C.]	[3 rd Party Provider]	Shares				23,340	
27/10/10	[C]	[Provider]	[REDACTED]	50,000	Dec 2009	Dec 2014	61,000	Potential Annual Early Redemption

27/10/10	[C]	[Provider]	[REDACTED]	50,000	Aug 2010	Aug 2015	55,000	Potential Semi-Annual Early Redemption
27/10/10	[C]	[3 rd Party Provider]	[REDACTED]	50,000			50,000	
27/10/10	[C]	[3 rd Party Provider]	[REDACTED]				23,617	
27/10/10	[C]	[3 rd Party Provider]	[REDACTED]				38,210	
27/10/10	[C]	[3 rd Party Provider]	[REDACTED]				5,664	
27/10/10	[C]	[3 rd Party Provider]	[REDACTED]				0	Geared Investment. No value.
27/10/10	[C]	[3 rd Party Provider]	[REDACTED]				4,484	

I consider it significant that at the time of entering into the BRIC investments, the Complainant had previously entered into investments with the Provider which had a similar structure and risk profile to the BRIC investments, and which were also classified as “Medium Risk” investments.

The Provider has submitted that as a result of this, it understood that the Complainant had a significant knowledge of how its structured products worked, having made investments with similar risk profiles, payoffs and key features. It submits that the Complainant had also signed off on the “Reasons Why” letters and had reviewed the brochures in respect of these three other earlier structured investments.

I note that the investment and returns received by the Complainant, in the three previous structured investment products which had conditional capital protection at maturity were as follows:

Product Name	Amount	Status	Return	Encashment Value	Start Date	Maturity Date
--------------	--------	--------	--------	------------------	------------	---------------

/Cont’d...

Xxxxxxx Bond conditional capital protection Medium Risk	€50,000	Matured	€60,500	n/a	21.05.2009 5 year term with early redemption	21.05.2010
Xxxxxxx Bond conditional capital protection Medium Risk	€50,000	matured	€61,000	n/a	15.12.2009 3 year term with early redemption	15.12.2010
Xxxx- XXXXXXXXXX —conditional capital protection Medium Risk	€50,000	Matured	€60,000	n/a	02.07.2010 5 year term with early redemption	05.072011

The Provider submits that these products had a similar structure, risk profile and potential pay off to BRIC I and BRIC II, which had the following features:

Product Name	Amount	Status	Return	Encashment Value	Start Date	Maturity Date
BRIC Outperformer -Conditional Capital Protection Medium Risk	€100,000	Matured	€0	n/a	17.11.2010 5 year term with early redemption	24.11.2015
BRIC Outperformer (Tranche II) — conditional capital protection -Low Medium Risk	€10,000	Matured	€0	n/a	18.03.2011 5 year term with early redemption	18.03.2016

The Complainant's position is that just because she had entered into such investments previously, did not mean that she had an understanding as to the risk features involved.

/Cont'd...

The Complainant has submitted that she was not even aware that she had previously entered into investments which were “capital at risk”, previously. The Complainant stated by way of written submissions to this Office, that if this was the case and her capital had in fact been at risk with these other investments, she had been unaware of this position.

At the Oral Hearing the Complainant was questioned about the three previous, similarly structured, “capital at risk” products:

[Counsel] And you see that the first one you put in in May 2009. The next one in December 2009 and then the third one July 2010. So they were all prior to BRIC, isn't that right?

[Complainant] **Yes.**

[Counsel] And did you understand when you put those monies in that the first one was for five years. The next one was three years and the next one was for five years. Did you understand that?

[Complainant] **I probably did, yes.**

[Counsel] You did, yes and then they all ended up paying out good money. You see there you made 10,500 on the first one. 11,000 on the second one and 10,000 on the last one and they all paid out in a year. Did you not for a moment say what, how did I just get all that money after a year when I thought my money was in there for five years and three years. You just said, without being facetious, that I've just won the Lotto?

[Complainant] **Precisely**

[Counsel] So you didn't for a moment question [J] or [D] as to why if I had put in for five years am I suddenly is the whole thing over and I'm being given 10, 11, €10,500?

[Complainant] **No, I didn't question it. I was very pleased that I got such a good result.**

[Counsel] Well I am putting it to you that these were the same risk products and they differed in the sense that they were, I think compared to the European market barrier, but basically if any of the indices went under 50% at any time you were going to loose all your money. And you're telling the Ombudsman you didn't know any of that?

[Complainant] **Gosh, I don't think I was actually aware that there was so many products that I had risked 100% of my capital.**

This surprise demonstrated by the Complainant at the Oral Hearing was somewhat unconvincing in circumstances where the Complainant had expressed similar surprise previously by way of written submissions, and indicated that she had been unaware of the nature of these investments. By email dated **07 January 2017**, to this Office, the Complainant stated that:

“According to [D] I had 3 other similar investments. Did these have the same risk profile and if so why was a large proportion of my money invested in high risk products given my repeated request for safe investments.”

/Cont'd...

She submitted, in this regard that, *“it is now clear to me that a higher proportion of my capital was invested in high risk products contrary to my wishes “*

This point was addressed by Counsel for the Provider when the Complainant expressed fresh surprise at the fact that she had invested in “capital at risk” products previously:

[Complainant] I don't think I was aware that I...I mean how much money had I risked there, 150,000?

[Counsel] Yes and you made, in one year you made...

[Complainant] On something that could lose 100%?

[Counsel] Yes. In one year Euro 31,500? [sic]

[Complainant] Well that would not have been compatible at all.

[Counsel] Right?

[Complainant] Investing in something that will ... investing in something that will ... investing in something that could lose 150,000,

[Counsel] Yes?

[Complainant] And then another one that could lose 100,000. I mean I was exposed to huge risk there?

[Counsel] Yes and I am putting it to you that you knew what risk you were exposed to and the fact that you had got this windfall shortly before the BRIC meant that you were willing to do the same again on the BRIC which was in fact, the BRIC was a safer investment than these investments because the only date that you had to be concerned about was the maturity, which was the very last date of the BRIC. It was only if they were down and that's why you say and [Y] said to you that there was another one or two years. So it could come back because it was all about the last date. The 17 November in BRIC I and I am not sure, some date March I think, in relation to BRIC II but whereas in those other investments if at any stage any of the indices went underneath the European Barrier, underneath 50%, your money was gone?

[Complainant] Well all I can say is that I absolutely would not have been aware that I was risking all that money in ... now I have no evidence to prove it because there would be no statement to say that I am not prepared to lose my money but I mean in view of my past experience and in what I had said you know my risk profile and everything, I mean ...

...

[Complainant] I did not know that those products were at a 100% risk and I absolutely stand over that.

[Counsel] Do you remember addressing this in writing?

[Complainant] No, there is no record.

[Counsel] You didn't address this issue in writing to the Ombudsman?

[Complainant] Because I'm only learning of it now today.

[Counsel] But I'm saying you did. That's the point. You have addressed this issue already in writing to the Ombudsman?

[Complainant] About the [other named investment] and the other ones?

/Cont'd...

[Counsel] About these three that you said in writing I didn't know I was taking that risk and in fact now [the Provider] are even more to blame because they put me in all this risk that I didn't even know. You've put that in writing to the Ombudsman?

[Complainant] Absolutely and I stand over that.

[Counsel] So why are you here today?

[Complainant] I stand over that.

[Counsel] I know but why are you today appearing in shock when I put this to you as if it's the first time you've ever heard. It isn't the first time you've ever heard it?

[Complainant] It is the first time it was put to me that I knew it.

[my emphasis]

The Complainant's exhibition of fresh shock at discovering that she had invested in capital at risk products previously, in circumstances where she appeared to forget that this issue had in fact been "addressed in writing" previously, is a little surprising and suggests that her recollection of these details is unreliable.

In examining the extent of the Complainant's investment experience, I note that the Complainant was described by the Provider as a very "engaging" client, who took a great degree of interest in understanding her investments.

An advisor with the Provider, [D] gave the following oral evidence in this regard:

"Engaging in terms of trying to understand the products. We always took our time to go through the – and structured products have an advantage in terms of - like I said, there are set outcomes. So you know what the outcomes are and then you can actually discuss around, well, which outcome is likely to occur and why. So, structured products arguably can be broken down a little bit easier than a lot of funds and so on. In terms of engaging, I mean we had a lot more meetings with [the Complainant] than a lot of our other clients. As I said they always took place in the office and they were typically longer meetings than normal because we typically went through a lot of, you know, the different issues, that [the Complainant] may have extra cash, she may have been worried about the pension side, and we would have discussed around that."

The Complainant has acknowledged that she engaged in regular meetings with the Provider.

Complainant's Understanding as to the Risk to Capital

As noted above, the Complainant has confirmed that she knew that some of her capital was at risk when she entered into the BRIC investments, but submits that she was unaware that *all* of the capital was at risk. In examining this issue, I noted the following exchange between the Complainant and Counsel for the Provider in the context of the issue of encashment (which is an aspect of the Complainant's complaint that I will deal with below).

/Cont'd...

Counsel enquired of the Complainant *"But are you saying at this stage you realised you could lose all your money?"*:

[Complainant] **Well I was afraid.**

[Counsel]

Right. Did you ever ask the question? If we go back - I mean, I was going to go through all the performance updates because you said you weren't kept up to date. But if you go back to page 29, which is the update in June of 2014, which is about a month before that meeting. So if you look at that update, now you are down to minus 93%, 94%. Did you realise at that stage you could lose it all?

[Complainant] **Well it was looking pretty like it, wasn't it?**

[Counsel]

Right. So at what stage? Because you have told us you never knew you could lose all your money. At what stage did you know you could lose all your money?

[Complainant] **I didn't realise that a product that could lose all my money was being recommended to me.**

[Counsel]

Right. At what stage did you realise you could lose all your money?

[Complainant] **I don't know. As the value started going down.**

[Counsel]

Well when it was down 10%?

[Complainant] **When it was down about 60%.**

[Counsel]

Right. So that meeting in July of 2012. When it was down 60%, it was at that stage you knew you could lose all your money?

[Complainant] **Well I was getting concerned about the performance and whether**

[Counsel]

Well did you know or didn't you know?

[Complainant] **I didn't have a clear idea that I could lose the whole lot.**

[Counsel]

Well when did you have a clear idea?

[Complainant] **Probably when it was down to minus 70 or whatever you said there, minus --**

[Counsel]

94%.

[Complainant] **94. Okay.**

[Counsel]

But did you not express shock? So if that was --

[Complainant] **I did.**

[Counsel]

But was that the first time that you realised so, in June of 2014, when it was down 94%? Would you not have said in the meeting on the 17th July, that's here, 'I have just realised that I can lose all my money'?

[Complainant] **I don't recollect exactly when I was aware or when I realised that the whole thing could -- that I could lose the whole investment.**

[Counsel]

But isn't that something that probably should stand out in your mind? I know it is confusing with all the dates and the meetings and the investments.

[Complainant] **It is.**

[Counsel]

But one thing should probably standing out in your mind. You seem very clear about this meeting, about [advisor] mentioning his father-in-law.

[Complainant] **Yes.**

- [Counsel] And [advisor's] contribution. But you don't seem to have any memory where it suddenly went off in your head, as it were, that my god, I could lose everything. How is that not in your memory bank?
- [Complainant] Well it isn't.**
- [Counsel] And I'm saying to you the reason why it is not in your memory bank is that you knew from the outset that you could lose all your money?
- [Complainant] No.

I find it somewhat unusual that the Complainant could not identify in any general sense the point in time at which she realised that all of her capital was at risk. Given the significance of such a discovery, in circumstances where she submits that her understanding at the time of placing the investments was that this could not happen, I would have expected to see some type of record of the Complainant having contacted the Provider to express her anger/concern/surprise/disappointment if she had suddenly realised for the first time that she could in fact lose all of her capital.

In further examination of this issue of the Complainant's understanding as to the risks I will turn to consider the relevant information which was furnished to her by the Provider.

Risk Information

The Provider submits that a great deal of client care was given to the Complainant and that it engaged in numerous meetings with the Complainant with regard to all of her investments. The Provider has submitted that this makes it "*all the more incredulous*" that the Complainant did not understand the potential for a partial or full loss of the investment monies.

The Investment Manager with the Provider at the time [D] gave oral evidence that:

[The Complainant] was a very good client of ours. We had quite a significant amount of engagement, probably more than other clients. What was particular I suppose about the meeting was they always took place in our office and never outside. To that extent then we would have had ample time to go over the investments. Our approach was always -- we put particular effort into writing up the brochures and performing investment analysis and taking a portfolio view for all clients, and all clients would have been taken from start to finish. [The Complainant] was quite engaged with the different investments, as you can see from the amount of investment that she did with us. So, I would have said, you know, contrary to what I would have heard from [the Complainant] yesterday, I can state that we would have gone through the brochures in quite an amount of detail and there was always ample time at the meeting to discuss and debate and analyse.

The Complainant also gave oral evidence that such meetings took place but denied that the details of the risks were given sufficient emphasis:

I agree that, I certainly agree with, we did sit down, we had long discussions, before I made any investment we would have had an hour's discussion, I don't dispute that for a moment, contrary to what [Counsel] alluded to this morning. I did not maintain they

were rushed meetings but what I did maintain was that the same amount of time or detail or care was not given to going into the detail of the risks.

There appears to be consensus between the parties that lengthy meetings and discussions took place regarding the Complainant's investments, however the Complainant was unclear as to how much of the brochures were gone through with her by the Provider.

The Provider's position (as per the oral evidence of [D]) as to whether the Complainant might only have read the first page or whether he might have gone through some of the brochure but not all of the brochure, that the warnings weren't explained, [D] stated "*I can't say anything except completely reject it. I mean, you know, I sat down with all my clients and went through the brochures. I mean, that was my job.*"

He went on to state:

"... we would have had done a huge amount of products with [the Complainant]. For me, I mean, for me I can't understand how, having had so many meetings, having gone through similar types of products, that [the Complainant] simply did not read any of the -- or did not take in all the work we did around going through the brochures."

...

You know, we have a responsibility to our clients, I mean we took that very seriously, I took that very seriously and there is no way for any client would I pass them a stack of documents to sign without having due process and consideration of their own requirements."

Another advisor with the Provider, [A], in the course of giving oral evidence, described it as "*strange*" that the Complainant did not understand that she could lose all of her capital with the BRIC investments on the basis that, "*I was reviewing it all the time with [the Complainant], and I was, you know, we discussed how it had decreased in value, and [D] had come in to meetings on a number of occasions, going back over the investment, he gave a lot of time to [the Complainant], explaining again, you know, how the BRIC worked and that. So I just found that very unusual.*"

The Complainant has submitted that information was not clear or understandable and, further, that she did not read it in detail as she understood that the Provider would not recommend a product to her that was not in keeping with her investment objectives.

I have had regard to the details contained within the BRIC brochures and supplements which were furnished to the Complainant.

The Information Contained within the BRIC Brochures

BRIC I

In the brochure for **BRIC I**, I note that there is a box on the front page of the brochure which, among other things, states:

/Cont'd...

Capital Protection: Capital fully protected provided the worst performing BRIC index does not fall 30% or more than the Base Index at maturity. [original emphasis]

Risk: Medium

I also note that the brochure features warning boxes throughout, as follows:

On page 8:

Warning: The value of your investment may go down as well as up and you may not get back the amount you originally invested

On page 10:

Warning: These figures are estimates only. They are not a reliable guide to the future performance of this investment. The value of your investments may fall as well as rise. This product is not guaranteed and some or all of your capital may be lost.

On page 14:

Warning: the value of your investment may fall as well as rise and your attention is specifically drawn to the section "risk factors" in this brochure and the base prospectus. Prospective investors should be able to bear the economic risk of an equity investment and be able to withstand a total loss of capital. This product is not guaranteed and some or all of your capital may be lost.

On page 18:

Warning: The value of your investment may go down as well as up. If you invest in this product you may lose some or all of the money invested.

Similar warnings appear within the supplement to the brochure, which is a shorter document. On the final page of that document, page 12, the following appear:

Warning: The value of investments and the income from them can go down as well as up. This product is not guaranteed and some or all of your capital may be lost

WARNING: Investors should consult the full brochure for an understanding of the risks associated with this product. Prospective investors should be able to bear the economic risk of an equity investment and be able to withstand a total loss of capital.

WARNING: past performance is not an indicator of future returns. The value of your investments may fall as well as rise. This product is not guaranteed and some or all of your capital may be lost

WARNING: This document is for marketing purposes only. Investors should refer to the risk factors in the base prospectus and carefully consider the Terms and Conditions of this investment as it pertains to their individual risk profile and investment needs.

/Cont'd...

Investors should also be clear on the involved parties and associated indemnities as contained within the brochure.

BRIC II

Within the brochure pertaining to the **BRIC II**, there is a box on the front page which states, among other things:

Capital Protection: *Capital fully protected provided the worst performing BRIC index does not fall 30% or more than the Base Index at maturity.* [original emphasis]

Risk: *Low-Medium*

There are also a number of “warning boxes” throughout. On page 8:

Warning: The value of your investment may go down as well as up and you may not get back the amount you originally invested

On page 10:

Warning: These figures are estimates only. They are not a reliable guide to the future performance of this investment. The value of your investments may fall as well as rise. This product is not guaranteed and some or all of your capital may be lost.

On page 18:

Warning: the value of your investment may fall as well as rise and your attention is specifically drawn to the section “risk factors” in this brochure and the base prospectus. Prospective investors should be able to bear the economic risk of an equity investment and be able to withstand a total loss of capital. This product is not guaranteed and some or all of your capital may be lost.

On page 21:

Warning: The value of your investment may go down as well as up. If you invest in this product you may lose some or all of the money invested

I accept that the brochures make it clear that there is a risk to the capital invested.

As noted above however, in making the decision to invest, the Complainant has stated that she did not pay any significant level of attention to the detail in the brochures or information documents with which she was furnished and that she was relying entirely on the Provider to provide the correct advice.

I note, in this regard, the following exchanges which occurred during the Oral Hearing:

[Counsel]	Do you accept you got the brochure and the BRIC Outperformer and the supplement?
[Complainant]	Yes, presumably so.

/Cont'd...

[Counsel] And again there practically word for word on the last, with all the warnings that we went through are all in in there again. Do you accept all that?

[Complainant] **Yes, I do.**

[Counsel] And that all those warnings in there said that you could lose some or all of your capital?

(WITNESS NODS)

[Counsel] But again you didn't read any of those?

[Complainant] **Not in detail.**

[Counsel] Right. So you did read them?

[Complainant] **I would have read a proportion of them. Because again I think the same -- you know, I had the same reassurance at the initial stages or the initial discussion about the capital protection so I presumed that they were the same as the previous.**

[Counsel] And did [D] go, at the meeting on 24th January did he go through the brochure with you?

[Complainant] **Not the full brochure.**

[Counsel] The supplement?

[Complainant] **I don't remember which one it was. But we wouldn't have gone through the whole, the entire brochure. I don't know how many pages are in it.**

...

[Complainant] **But I just want to emphasise the point that the way it was done was that I had signed the documents prior to having the opportunity to go through the document. I did that because I trusted the advice I was getting.**

[Counsel] And if we go back to the application form then, the document, that above your signature is the warning, "*the value of your investment may go down as well as up. You may get back less than you put in. If you cash in your investment before a maturity date you may lose some or all of your money you put in.*" I mean that's a big box with a warning?

[Complainant] **It is, yes and I accept that and I should have been far more careful about reading everything I signed.**

[Counsel] Right and if we go back then to the brochure then... So I was going to go through all of the document just to show that there was a risk that you could lose some of your capital but I'm putting it to you that that's outlined again on that page. That even the final line which explains it again about the 70% and it says, it gives you the formula but at the end it says 'you should be aware that investing in BRIC Outperformer can result in capital loss' and then if you turn the page at page 10 and again it gives you examples of how you can in effect make money but the last example, scenario four is an example where someone invests a 100,000 and they lose 50% of it. Do you

/Cont'd...

see it there, scenario four and there's a graph. Can you see the last graph. That's the graph but if you look underneath where it says sample returns?

[Complainant]

Oh yes, I see it.

[Counsel]

And if you look over it gives you different scenarios. Scenario one is where someone makes 14%. Then 21%, then 0% and then they lose 50%. Can you see that?

[Complainant]

Oh yes, yes.

[Counsel]

And I have to put to you that that's giving you a visual as it were on the words. That here's a visual and to even make it simpler

[Complainant], that in fact there was the sum that you ended up investing, a 100,000. So here was an example. Look it says 100,000 minus 50,000. Now we're down to 50,000?

[Complainant]

Yes.

[Counsel]

And then in the box, which is important because a big box again warning:

"These figures are estimates only. They are not a reliable guide to the future performance of this investment. The value of your investments may fall as well as rise."

And this is the important line:

"This product is not guaranteed and some or all of your capital may be lost."

Now I have to put to you that that's quite clear, that as a lay person, I have no investment experience but when I'm drawn to the box with the warning and I certainly will, whatever if you say the graphs are confusing or the calculation, the formula is confusing, certainly this warning box which says that some or all of your capital may be lost but as an educated and intelligent [professional], that you are able and capable of understanding that?

[Complainant]

The whole reason I went to financial advisers was because I was aware that I did not have the expertise or the knowledge to assess investments. Now I accept that throughout the brochure, now that I've been going through it in detail, there are warnings that a 100% of the capital was at risk. I accept that.

[my emphasis]

The Complainant's approach of only "going through it detail" at this point in time, was not a prudent approach to investing what were sizable sums of money. I note that in examining the brochure during the course of the Oral Hearing the Complainant could understand the risk to capital detailed therein.

I am satisfied that although the Complainant was reasonably relying on the advices given to her by the Provider, there was also a responsibility upon her as an investor to reasonably

/Cont'd...

satisfy herself that the investments in question were suitable to her needs by reading through the sales literature, prospectuses, and/or other offering documents, that were made available to her, before making the investments.

Having had regard to the information regarding the potential for full loss of capital, as set out within the Letters of Suitability together with the warnings contained within the brochures and the fact that the Complainant met with the Provider to discuss, I am satisfied that the documentation that was furnished to the Complainant was sufficiently informative as to the risks applicable to the investments, and that the Complainant was an educated and professional person capable of understanding them, when she examined them.

Risk Categorisation of the BRIC I and BRIC II

As outlined above, one aspect of the Complainant's complaint is that the products were miscategorised and that the classifications of "medium" and "medium low" risk, respectively were inappropriate and misleading.

I would note again in this regard the following evidence which was given at the Oral Hearing, which is set out at page 18 of this Decision, but is worth examining again:

[Complainant] So could I just interject there? In the medium to high risk it doesn't refer to 100% loss of capital.

[Counsel] All right.

[Complainant] It refers to "*partial loss of capital*", not 100%.

[Counsel] Yes.

[Complainant] It is a medium to low risk, "*one or more of the risk factors*" - sorry. "*The combination of risk factors does not constitute an expected material impact on the expected return of the capital. One or more of the risk factors, however, may result in expected return of the capital to be affected. Though this outcome is considered to be medium to low and the combination of risk factors for the low risk does not constitute an expected material impact on the expected return of the capital.*"

I have to confess I do find that a little bit difficult to interpret.

[Counsel] Yes. But you have accepted that you looked at that after the fact?

[Complainant] Yes.

[Counsel] Yes.

And, then:

[Complainant] To go back to the definition of "low risk" or "medium to low".

[Counsel] Yes.

[Complainant] Does not include a partial or full loss of capital. The risk that was given in the letter of recommendation categorised low risk as the

/Cont'd...

full amount of capital was guaranteed, and the medium risk or the medium to low risk stated that there was just a moderate risk. Now, I don't know exactly where the page is. But, I mean, an investment in which 100% of the capital is exposed to loss is categorised as high risk. Which is different to what was in the letter of recommendation. So it is a bit confusing to know which this investment is categorised at.

[Counsel] What I'm putting to you is that it was explained to you that the BRIC, you could lose all of your capital.

[Complainant] Well then why was it categorised as --

[Counsel] Right. Well whether it was miscategorised, I'm putting to you that you knew that you could lose all of your capital.

[Complainant] I am saying that the information that I could lose 100% of the capital is confusing. If that had been put on the page 1 next to where it was stated that there was 100% of the capital guaranteed - admittedly under certain circumstances - it should have been stated for fairness and for clear understanding that I was putting 100%, and it should have been put in writing, as opposed to just stated during a discussion

Having examined in detail the Letters of Suitability and the brochures pertaining to the investments, I am satisfied that the risk to capital was indeed also set out in writing.

At the Oral Hearing, upon being asked to explain why BRIC I was categorised as medium risk and BRIC II was categorised as low/medium risk, by the Provider, [D] responded as follows:

I'm not sure actually exactly. I mean, we would have had an investment committee again around that at [Provider] and we would have had discussed. I am imagining the reason for it was that recessed it in light of the what would have happened in the markets over that period of time, relatively stable as far as I remember, and also the fact that, you know, we felt the barrier actually was very strong at 30% and constituted a low/medium. We would have had a debate around that and discussed it internally.

He also stated that:

in terms of reaching a medium level term of risk, we believe with the level of capital protection, 30% barrier, that means you could have a swing of 30% without it impacting your capital protection, and the fact that the strategy performed so strongly over a number of years and given the context of where the global economy was at the time, we felt that there was a medium level of risk.

The Provider's evidence as to categorising the products was that the approach that was taken was trying to anticipate, based on back testing, how the investment was likely to perform and to take a view on the likely outcome and how it was likely to return or not, for investors.

In making a decision to classify a product in which all capital was at risk, as either “medium” or “medium/low”, whilst also issuing information which explains medium risk as having the potential to result in a partial loss of capital and low/medium not mentioning capital loss, was in my opinion poor practice on the part of the Provider and had the potential to cause very real confusion to a potential investor.

In evidence, [D] agreed that, at the very least, the information that was being given didn't align as between the brochure and the letter:

In terms of how good we were at that time into the future, you could argue to say that we should have classified it at high risk but we didn't know what the future was, except for what our analysis told us. As the strategy didn't perform, it was then our obligation to make sure we continued to inform and discuss with clients. ... I believe an analysis of medium was correct. I think it could be fairly argued that the description of medium at the back of our appendix 1 is not consistent with that.

[my emphasis]

This acknowledgment by the Provider is very disappointing and unsatisfactory and I am minded of the Provision of the Consumer Protection Code 2006 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.

However, I accept that although the risk categorisations ascribed to the products were misaligned with the risk factors detailed in the appendices to the Letters of Suitability, these did not affect the Complainant insofar as her oral evidence clearly confirmed that she did not read these details and therefore did not become aware of this misalignment until a time *after* she had already entered into the investments. Consequently, I cannot find that these misalignments could have influenced her decision to invest or affected her understanding as to the risks involved. I also accept for the reasons outlined above in some detail, that the features and risks specific to the investments were furnished to the Complainant.

Assessment of Suitability

The Provider submitted that it assessed the suitability of the BRIC investments to the Complainant on the basis of the Complainant's portfolio as a whole.

Overall, on the basis of the foregoing considerations, as set out throughout the course of this Decision, and on the basis of the Provider's understanding of (i) the Complainant's financial position, (ii) her investment objectives as recorded by the FactFinds, (iii) her previous investment experience, including the fact that the Complainant had invested in three similarly structured investments prior to entering BRIC, I consider that the Provider did not act unreasonably in determining that BRIC I and BRIC II were suitable products for the Complainant. In this regard the original recommendation by the Provider was for an

/Cont'd...

investment of €50,000, in BRIC I, but 6 weeks later, it was the Complainant who decided that she wished to invest the larger amount of €100,000.

On balance, therefore, I am satisfied that the products in question were not mis-sold to the Complainant. Consequently the first complaint is not upheld.

There are two further ancillary matters which also formed the subject of the Complainant's complaint to this Office, to which I will turn now.

1. Encashment

The Complainant's second complaint is that the Provider wrongly advised her against encashing the policies, whilst they still had value.

The Complainant has submitted that she considered encashing the BRIC investments but that she was advised against this, by two advisors on behalf of the Provider, and as a result did not proceed to encash them.

The Complainant submits that when she received a letter from the Provider which said that the value of the BRIC investments had dropped to €60,000, she requested a meeting with the Provider in order to discuss her options. She submits that she met with [L] who undertook to ask [D] and that she subsequently met with [D] and [A] in this regard.

It is difficult to identify which letter the Complainant is referring to, which triggered this meeting but I note that regular performance updates issued to the Complainant. In respect of BRIC I, these issued on 31 May 2011, 30 November 2011, 06 June 2012, 23 November 2012, 24 May 2013, 27 November 2013, 05 June 2014, 26 November 2014, 26 May 2015 and the maturity certificate was dated 24 November 2015. These issued in respect of BRIC II on 30 March 2011, 27 September 2011, 20 March 2012, 25 September 2012, 27 March 2013, 29 October 2013, 04 April 2014, 09 April 2015, 22 September 2015 and the maturity certificate was dated 24 March 2016.

I note that the performance update of 06 June 2012 stated that the encashment value was "- 45%". There is a File Note of the Provider completed by [L] dated **18 July 2012** which stated that, "*if possible would there be any point in the remaining term that she could encash it and that it would guarantee her initial investment amount. She stated she felt uncomfortable with it at the moment and would prefer to take it out without any loss if she could. I told [the Complainant] that I would find that out for her and send her an email on it*".

At the Oral Hearing I asked the Complainant about this note and her response was that it was not accurate, as she had never for a moment thought that she could encash it at the original investment amount:

[Complainant] **So I would query that. Her statement that I wanted to -- that I would "encash it and that would guarantee her initial investment amount."**

/Cont'd...

[Ombudsman] Okay. Well just for the sake of completeness I'll continue reading it.
[Complainant] **Yes.**
[Ombudsman] She, and that's you [Complainant], *"she stated she felt uncomfortable at the moment with it and would prefer to take it out without any loss if she could. I told [Complainant], that I would find that out for her and send her an email on it."*
[Complainant] **Yes.**
[Ombudsman] So that's the meeting that you are referring to?
[Complainant] **Yes.**
[Ombudsman] Though you are not satisfied that the first sentence is accurate?
[Complainant] **"And that she encash it and that would guarantee her the initial investment amount." Now I never for a moment thought I could encash it at the initial investment amount because of my previous early encashments.**

[my emphasis]

I note in this regard that the Complainant had some experience in encashing policies with the Provider and had made encashments on other policies during the term of the BRIC investments.

She was asked about her previous experience in this regard, by Counsel for the Provider at the Oral Hearing. I note the following exchange in this regard:

[Counsel] And just to put it formally to you that you, and maybe you had reasons, but you were able to make a decision. There is a list of them and they are in the spreadsheet. The [named investment product] that we talked about, you decided to encash that on the 14th August, the [named investment product], which we saw the letter in relation to, that you decided to encash that on the 29th July. Two [named investment products] that that you encashed, part of on 5th November 2012 and 1st August 2014. The [named investment product], which is one which you entered into – we saw in it a file note just before this -- in 2012, which had the same risk elements that the BRIC had and the [named investment product] and the other two, the medium risks, and you went into that after the BRIC and then you decided to encash that yourself on the 24th November 2014. The [named investment product] that you encashed on the 4th September 2014, the [named investment product], 9th February 2012 and the two [named investment products] 22nd November 2011. So you were well capable of encashing a product if you wanted to, whether it was for to help your daughter or your son or because you thought it was losing money for some other reason; isn't that fair to say?

[Complainant] If I had a reason to encash.

[Counsel] Yes.

Despite her earlier evidence that she never believed for a moment that she could encash the BRIC investments at the original value due to her previous experiences in this regard,

/Cont'd...

under cross examination the Complainant appeared to adopt a different position and suggested that she did not understand the encashment process:

- [Counsel] ... And then we are back to this idea of "*continues to have full security at this time*". And I have explained to you and I believe that you understood what that meant at the time. You have disagreed with that.
- [Complainant] **Well I'm still not clear --**
- [Counsel] Right?
- [Complainant] **what the meaning of that exactly is. If it continues to have security of the capital at that time, if I wanted to encash it at that stage would it have been done without a loss? Because if it is –** *[my emphasis]*
- [Counsel] It would have been, because that is clear in – that there was early redemption dates and that was all explained to you, in particular, if the indices weren't below 30% that you could encash without penalty. And it was set out as one of the three options in the brochure, in both the BRIC 1 and the BRIC 2, in the supplement to BRIC 1 and the supplement to BRIC 2.
- [Complainant] **So if I had wanted - if I had decided at any stage that I wanted to encash.**
- [Counsel] Once the indices didn't go under 30%. But I'm not going to explain it to you here because our case is that you understood it. You are saying you didn't understand it.
- [Complainant] **Well my case is that I'm still learning.** *[my emphasis]*

This appears to be in conflict with the Complainant's previous evidence that she never thought that she could encash the investments without a loss.

The Provider's position is that it would always leave that decision to an investor themselves. It further submits that there was no request made verbally or in writing by the Complainant to encash the BRIC I and BRIC II investments. It says that Complainant had experience with making previous encashments and that therefore, she would have understood how the encashment process worked.

In considering this issue, I have examined the Complainant's previous experience with encashing policies:

I note that there is a detailed Client Meeting Note of the Provider dated **31 July 2012** recording a meeting with the Complainant which took place the previous week. The Note states that at this meeting, the Complainant was thinking about encashment of another, different investment product and it illustrates the considerations which the Complainant applied in this regard, as follows:

we also went through all her investments in detail and she had another look at the [named investment product] as this is where a large amount of her money is held she had discussed cashing this in previously with [D] but said she would leave it she asked me about it again as this is one of the investments where she has most of her money and I told her that because the price of cotton is down she may only get back 97% and we also discussed that there was a cash in price of circa 93.5 to 93 which would mean her taking a risk of circa 4% to make money she feels she could make this up in the [named investment product] and I left the decision totally to [the Complainant] as it was not my decision to make and she stated that as the BRIC had sloed [sic] down she would like at least one of these larger amount to be making good money she told me to go ahead with the encashment but I told her next Thursday to go through it all again before she decided.

[my emphasis]

There is further evidence of the Complainant considering her investment/encashment options, by way of File Note dated **24 July 2013**, completed by [A]:

I had a meeting today with [the Complainant] where she expressed dissatisfaction at the BRIC and [D] met with her and explained the details and she is happy with this and she wishes to take her profit on the [named investment product] as she feels she will put it into the [named investment product] as she likes the lock in returns"

There is a further File Note, by [A], dated **17 July 2014**.

[The Complainant] called in to meet [D] and I last Thursday and her form was very poor. She is very disappointed with BRIC. [D] went through her investment in detail and explained how he felt she had a well diversified portfolio and that she still had time on the BRIC. She wanted to encash about 170K as she is giving her daughter money for her house. I explained again to her how the lock-in worked and how the encashment value worked and also she stated she was unsure but I told her we went through all this last year when she was encashing the [named investment product] then. She stated she might encash the [named investment product] also and reinvest but she was going to encash the [named investment product] for the house and I told her this was a call she would have to make for herself, and she filled the encashment forms but told me she would ring me when the encashment was going ahead. I spoke to [D] afterwards as I felt she understands in full and [D] agrees."

From these file notes, I am satisfied that the Complainant had considerable experience in reviewing her investments and in making a considered decision on whether to encash or not.

The Complainant's complaint is that, with the BRIC investments, she wanted to encash but that she, "was assured that this would be a mistake as [D.] was sure the value would recover. He stated that his father in law had also invested in BRIC and he had given him the same advice. [A] pointed out that it had another year or two before maturity."

The evidence given by [D] was that:

/Cont'd...

“ In terms of encashing or not, I mean, I have no recollection of us trying to talk [the Complainant] out of the encashing. Ultimately it would have been her decision.”

He stated that, *“If I mentioned my father-in-law, it was in an anecdotal matter, I would imagine.”*

[A] stated in evidence that:

No, I wouldn't have said it would be safe in the long run. I could have said there was time on the investment, which there was, there was two and a half years. As [D] explained, that investment was for five years, so if you pulled out while it was down after two years, you know, the investment could come back. You could never say it was guaranteed to come back because you couldn't say that.

The Complainant crossed examined [A] on this issue:

[A] **I never advised you against encashing.**
[Complainant] Well you mentioned that 'oh, it has plenty of time to run'.
[A] **I'd agree with that.**
[Complainant] Yes.
[A] **And it had two and a half years, and that's correct, I would agree with that.**
[Complainant] Yes. Yes.
[A] **But I never said do not encash it.**
[Complainant] Oh, no, I am not putting words in your mouth. I am saying that you said it has plenty of time to come up, now, and the, the obvious conclusion from that is that, well, you weren't advising me to encash it certainly.

I note the Provider has submitted that it had no vested interest in the Complainant not encashing, and that it did not stand to gain or lose on the basis of her encashment. On the balance of probabilities, I accept that [D] told the Complainant that his father in law had invested in BRIC and that [A] indicated that there was still time to run on the investments however I do not consider that these statements made by the advisors in 2012 were intended to comprise advice not to encash, nor do I accept that such statements formed the basis for the Complainant's decision not to encash before the products matured, in 2015 and 2016, respectively.

I have come to this conclusion having had regard to the evidence, including the contents of the various file notes which demonstrate the considerations and deliberations previously employed by the Complainant in deciding whether to encash a policy. I am satisfied that these demonstrate that the Complainant was able to consider the position and take a view as to whether to encash. I have also had regard to the Complainant's encashment history and her own acknowledgement that she was "well capable" of encashing if she had reasons for doing so. I am satisfied that she had, for her own reasons, made the decision to encash a number of other investments during the term of BRIC I and II but equally, for her own reasons, decided not to encash the BRIC investments.

/Cont'd...

Ultimately, I am satisfied that this aspect of the complaint cannot be upheld.

The Complainant's third complaint is that she was wrongfully advised by the *Provider* "to invest rather than pay down my mortgage" and that "property and shares were high risk investments and that I should sell these during the recession and invest the proceeds".

Advice to Sell Property

In oral evidence the Complainant clarified the issue and that "I was only advised to sell my mother's house." She also clarified that the alleged advice in question occurred in 2009 and was not related to the BRIC investments.

As regards the advice which the Complainant submits that she received in this regard, the Complainant said, "And I followed through on that advice. I put the house up for sale and it was sold approximately two years later."

I do not find any written record of such advices being sought or given but there is a letter which was produced in evidence by the Complainant at the Oral Hearing, which is dated **07 September 2011** and which states:

"in relation to the offer you have on your house, in terms of a cash flow situation we would advise selling. Property prices in Ireland may take years to recover."

I note that there is an apparent contradiction then on the face of it, with regard to the written submissions furnished by the Provider on 25 November 2016 that "The Advisor confirmed that he never advised on selling shares or property."

Upon being questioned at the oral hearing about the apparent conflict, the advisor whose signature appeared on the letter, distinguished between a situation where the advice was simply advice to sell, and a situation where an offer had been received on a property which was already up for sale, and said:

"Well, again I would put the caveat there that, you know, in terms of if there was advice given, you know, and we told her to sell the house, but if she just came to us and said that, there's an offer on the house, should I sell it. I would agree if we had told her to sell it initially, but if she just came to us with an offer and saying, should I sell it, I will disagree."

His evidence was that such advices might relate to a cash-flow situation, where an analysis has been done that cash-flow was needed and that the advice may have been given in that context.

The investment manager at the time [D] gave evidence that his recollection was that the Complainant had been considering for a long time whether to sell the property but that he had not told her to sell. In relation to statement within the letter regarding "the offer you have on your house" he stated that:

/Cont'd...

"the Complainant was consistently focused on income and retirement income. I think this letter says:

"In relation to the offer you have on your house, in terms of cash-flow situation we would advise selling."

So, I would say, based on that and from what I can recollect, this was about an offer on her house. I mean, we would never recommend selling a house. But in this case, in terms of a cash-flow situation, realigning her portfolio, I am imagining that this would have released up cash for her and, as we said there, you can use for living expense or to consider other investments."

Save from the assertions made by the Complainant and the oral evidence presented by each of the parties, no further evidence has been tendered as regards this aspect of the Complainant's complaint.

In considering the issue, the Complainant's complaint is that she was advised by the Provider to sell the property and that she did so and incurred a loss. No details regarding this loss were made available.

The Complainant gave evidence that she had read a newspaper article which recommended that if a person had the funds to do so, they should pay off an outstanding mortgage on a property but that she was unsure whether this was the best course of action. She says that she asked the Provider for its advice in this regard and was advised by [D] that it would be better to sell the property and redeem the mortgage from the proceeds of sale and that any remaining funds could be invested.

The Complainant submits that she opted to follow this advice rather than the advice that she had read in the newspaper and decided to sell the property. In the absence of any further evidence in this regard however, I don't consider that this can reasonably be said to have resulted in the sale of the property in question, at a loss in 2011 after having placed in on the market in 2009.

I do not find any reference to advices in respect of the sale of this property within the voluminous documentation furnished as part of the within complaint, save for the above letter adduced in evidence at the Oral Hearing, of 07 September 2011.

With regard to that letter, it appears that the reference to the advice to sell was with particular regard to *"In relation to the offer you have on your house, in terms of cash-flow situation we would advise selling."* I accept that the particular reference was made with regard to "cash flow", in terms of the Complainant's portfolio. Having considered the issue, I do not find that there was anything necessarily wrongful or unreasonable with this advice, on the basis of the evidence before me.

I therefore do not consider it appropriate to uphold this aspect of the Complainant's complaint.

/Cont'd...



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
DIRECTOR OF INVESTIGATION, ADJUDICATION
AND LEGAL SERVICES**

22 March 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**

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