



Decision Ref: 2020-0092

Sector: Investment

Product / Service: Bonds

Conduct(s) complained of: Mis-selling

Outcome: Rejected

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

The complaint relates to the alleged mis-selling to the Complainant of an investment.

The Complainant's Case

In January 2016, the Complainant invested €30,000 in a UK Property Fund on the advice of the Provider. The investment was made through an existing investment bond and the entire €30,000 was applied towards the UK Property Fund. The Complainant asserts that he was pressurised into making this investment and that the product was unsuitable for him given his risk profile.

The surrender value of the funds invested in the UK Property Fund was €26,975.46 on 5 July 2016, shortly after the Brexit referendum. In or around this point in time, the funds were transferred out of the UK Property Fund. The Complainant is seeking compensation in the amount of €3,024.54 which the Complainant describes as the “*loss incurred after the Brexit Vote*”.

The complaint is that the Provider mis-sold the Complainant the UK Property Fund investment. The Complainant seeks compensation in the amount of €3,024.54.

The Provider's Case

The Provider disputes that the Complainant was pressurised into making the investment.

The Provider maintains that the investment carried a low to mid-range risk designation which was entirely appropriate for the Complainant and in line with his various other investments.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 21 January 2020, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

Following the issue of my Preliminary Decision, the Complainant made a submission under cover of his e-mail to this Office dated 2 February 2020, a copy of which was transmitted to the Provider for its consideration.

The Provider has not made any further submission.

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Having considered the Complainant's additional submission and all of the submissions and evidence furnished to this Office, I set out below my final determination.

Analysis

The Complainant states in relation to a previous investment that had matured in the amount of €68,088.69, the proceeds of which were available for reinvestment:

"[The provider] advised me to invest the entire sum in a UK Property Fund where I would get a much better return. I was very reluctant to do so as I knew the forthcoming Brexit Vote was taking place in June and it was a high risk venture. Eventually on the 6/1/16 I agreed to transfer the sum of €30,000 and signed the document. He did his best to have the whole sum of €68,088.69 transferred to the UK Property Trust but I refused.

I am now aware that it would be more lucrative for the Company as they would be able to get an Annual Management Charge rather than a once off commission on a fixed term deposit."

The Complainant, in his letter of 5 January 2017 to the Provider, maintained that he was advised that the UK Property Fund was "a safe investment" although he concedes that he was "aware of the forthcoming Brexit Vote". The Complainant went on to state:

"I am complaining that this was not a low risk investment that I understood it to be. I was pressurised into effecting it..."

The Complainant's complaint thus relates to the figure of €30,000 which was invested in the UK Property Fund, the foregoing suggested to have been the result of 'mis-selling'. In essence, there are two components to the Complainant's complaint. In the first part, he argues that he was pressurised by the Provider into making the investment. Secondly, the Complainant argues that the product was unsuitable for him.

With regard to the first aspect of the complaint, I am not satisfied that the Complainant has substantiated any suggestion that the Provider pressurised him into making the investment. On the contrary the process leading up to the investment appears to have been quite slow and deliberate and considered. In this regard, the Provider first proposed the investment in the UK Property Fund orally in November 2015. This was followed by written advice on 02 December 2015 which included the following sentence set out as a standalone paragraph:

"If you are willing to accept investment risk, I recommend a regulated Investment Fund offered by an established and regulated Life Assurance Company."

The enclosures to this letter referring specifically to the UK Property Fund included the caveat that "the value of investments within the fund can fall as well as rise and is not guaranteed – you may get back less than you pay".

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A further meeting took place on 10 December 2015 and the Provider wrote again to the Complainant on 18 December 2015. The Provider wrote again in detail on 4 January 2016 (a copy of which was signed by the Complainant and returned to the Provider) following which the investment was made. This letter repeated the caveat set out in the enclosures to the 02 December 2015 letter.

The foregoing chronology does not support the contention that the Complainant was pressured. The Complainant was provided with ample advice and afforded ample time to make his decision. More significantly, I accept that the Complainant has failed to substantiate his suggestion in any way beyond the bald assertion. No specific detail has been provided.

With regard to the second aspect of the complaint, I do not accept that the Complainant was sold an investment that was inappropriate for him given his risk profile. The UK Property Fund carried a mid to low-range risk profile (3 out of 7 on the ESMA scale) identical to various other products in which the Complainant was invested. I do not accept the Complainant's characterisation of the fund as being high risk and it is clear that the Complainant was repeatedly advised of the risk that the investment could fall in value.

The Complainant in his post Preliminary Decision submission dated the **2nd February 2020** has submitted that my Preliminary Decision:

"...does not appear to address the correspondence and the telephone calls received from the Provider between the 29th June and the 5th of July, 2016 and the panic which ensued by the Provider to get me switched out of the UK Property Fund resulting in the losses already stated."

In relation to the above no call recordings were submitted as evidence during the investigation and adjudication of the complaint. I must therefore rely on the written evidence submitted.

The Complainant has stated that following the result of the Brexit referendum that a panic ensued by the Provider to remove him from the UK market. I have reviewed the Providers correspondence dated the **29th June 2016** it appears to be the Provider was informing the Complainant of the possible impact of the vote and that remaining in the market is not in their view advisable:

"Since the Brexit vote last week when the UK opted to leave the EU, Markets have been very volatile and we feel there is little potential for growth in UK property markets in the short to medium term. Due to this I would advise that you switch out of the UK Property Fund and have enclosed a Fund Switch Request to this effect. This will allow us to switch your money into a fund with a similar type of risk level but with better potential for growth."

As companies can delay encashment or fund switch requests from Property Funds for 6-12 months if there is a significant outflow of funds, please sign the enclosed form and return to me as quickly as possible, either in the enclosed envelope or by email to [email address given]

I will contact you again over the coming weeks when your switch has been completed to discuss this in more detail but please feel free to give me a call in the meantime”

The significant event from the point of view of the UK Property Fund was the Brexit referendum which took place in the UK on 23 June 2016. I will make two observations I might make regarding this matter. In the first part, it is clear that the Complainant was acutely aware of the impending referendum at the time he made the investment.

It seems clear to me that he would also have known, in advance of the referendum, that a vote by the UK to leave the EU would result in a drop in UK property values and an associated reduction in the value of the UK Property Fund. In this regard, I accept that his decision to invest was informed insofar as he was aware of this risk and chose to invest nonetheless.

Furthermore, the outcome of the referendum was an event that it was not possible to predict with complete accuracy. Indeed most pre-referendum forecasts and polls anticipated the electorate choosing to remain in the EU. As such, this event represented simply one of the vagaries of the market for which the Provider cannot be held accountable. The Provider at all times indicated that investments could decrease in value and, unfortunately, this event gave rise to such a loss (albeit that the Complainant’s overall portfolio with the Provider is in profit). Unfortunate though that was, this did not represent any breach of law or procedure on the part of the Provider.

For the reasons set out above, I do not uphold this complaint.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

2 March 2020

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Pursuant to *Section 62 of the Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,
and

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

