



<b><u>Decision Ref:</u></b>	2020-0136
<b><u>Sector:</u></b>	Investment
<b><u>Product / Service:</u></b>	Cash Investment
<b><u>Conduct(s) complained of:</u></b>	Fees & charges applied Complaint handling (Consumer Protection Code)
<b><u>Outcome:</u></b>	Rejected

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

The complaint concerns the Complainant's investment plan with the Provider which she entered into in **February 2018**.

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

The Complainant submits that she attended a prearranged meeting with a representative of the Provider on **26 February 2018** to discuss investing €50,000 with the Provider. The Complainant submits that the Provider's representative, who she had met on this date, was anxious to complete the meeting by 2 PM. The Complainant submits that she was not in good health when the meeting took place and that the Provider's representative failed to fully inform her as to what she was agreeing to in relation to the investment of her funds. The Complainant submits that the Provider's representative was "*pushy*" and did not take due care when discussing the investment product with her. The Complainant submits that there was only one meeting in relation to the investment on 26 February 2018 at 11 AM.

The Complainant submits that one week after the transfer of the €50,000 into the new investment policy, she was informed by the Provider that an entry fee of €500 would be deducted from the investment amount. The Complainant submits that prior to investing in the policy, the Provider's representative did not advise her that this fee would be deducted from the €50,000 investment and she submits that there is no mention of the €500 entry fee within the investment documentation.

The Complainant states that had she been made aware of the €500 entry fee on the investment plan, she would not have proceeded with it. The Complainant states that upon receiving the Provider's correspondence notifying her of this fee, she tried several times to contact the Provider's representative in order to cancel the investment policy and the Provider informed her that its representative was too busy to discuss the matter. The Complainant submits that she did not hear from the Provider's representative again in relation to the matter. The Complainant says that she was phoning the representative to cancel the investment as she felt she had been totally misled during the meeting and was not in any way adequately informed about what she was investing her money in.

The Complainant submits that during the sale of the investment plan in **February 2018**, the representative who sold the policy failed to inform her of the full details of the investment, including the €500 entry fee. She says that when she enquired as to the names of the companies in which she was investing, the representative informed her that there were too many to mention and gave no further details on the matter. The Complainant submits that the representative acted with dishonesty during the sale of the policy, to achieve sales targets. The Complainant states that nowhere on any of the pages of the investment documentation is there a mention of the €500 fee and she says that the fee was not discussed with her. The Complainant submits that she was misled and "*totally taken advantage*" of because she is elderly and because of her "*lack of knowledge*" of investment products.

The Complainant submits that she was advised by the Provider that there was no cooling off period under the policy and she submits that there is no mention on the "*purchase confirmation*" document supplied around 26 February 2018 of the €500 fee applied to the policy.

The Complainant submits that she only received the details of the investment policy in **August 2019** despite many requests by her to receive this information, and she submits that she was left in "*limbo*" for 18 months.

The Complainant wants the Provider to refund her the full amount of €50,000 invested, plus interest.

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

The Provider states that the investment was sold to the Provider face-to-face in one of its branches. It states that an initial meeting in relation to the sale of the investment was held on Thursday **22 February 2018** and the investment was finalised during a meeting on Saturday **24 February 2018**.

The Provider submits that only agents who are suitably qualified to conduct the sale of the particular investment product are permitted to meet customers looking to invest funds in this type of product. It states that its agents have reference material available to them which details an overview of the benefits and risks associated with the product to ensure that such pertinent information is explained to potential investors prior to conducting any sale.

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The Provider states that the Complainant was also given the “investment advisory terms and conditions” which sets out the process in terms of how the meeting and sale will be conducted. It argues that the Complainant signed a declaration acknowledging receipt of this document on **24 February 2018**.

The Provider argues that it has demonstrated compliance with relevant provisions of the Consumer Protection Code 2012 (CPC). It argues that the supporting documents that were provided to the Complainant, during the initial meetings in February 2018, clearly demonstrate compliance with CPC provisions requiring that customers be given the terms and conditions attaching to products, including a breakdown of all charges that will be applied. It argues that the pertinent information was given to the Complainant as acknowledged in her signed declaration of receipt of the terms and conditions and the Fund Fact Sheet. It argues that the details of the fees and charges are readily and easily accessible in the branches and the Complainant declared that she had been provided with the terms and conditions attaching to the investment which included information on the associated fees and charges.

The Provider further relies on the Complainant’s acknowledgement that she had been provided with information in relation to suitable products, which details the entry fee and confirmed it would be 1% for the investment product in question. It states that this fund was deemed the most suitable for the Complainant and was the one she opted to invest in. The Provider argues that the Complainant acknowledged that she had received an overview of the suitable investment products, which included confirmation of the 1% fee. She also acknowledged receipt of the terms and conditions which explain that entrance fees are charged and deducted from the gross subscription amount. The Provider states that the key information document outlines that the maximum entry fee is set at 3.5% but that the fee associated with the Complainant’s selected investment fund was 1%.

The Provider argues that the “purchase confirmation” that the Complainant relies on, is an online printout produced following completion of the purchase. It argues that as the investment was finalised on Saturday, 24 February 2018, the purchase of the units could not be completed until the next business day i.e. Monday 26 February 2018. The document details the monetary value invested and the Provider states that the investment was sold face-to-face in a branch, while the actual transaction was conducted online.

The Provider argues that it is satisfied that the investment product at issue most suited the needs of the Complainant considering the information she made available in the risk questionnaire completed with its representative on 24 February 2018. The Provider argues that the Complainant answered questions to determine her knowledge and experience, personal financial circumstances and risk appetite and she was accordingly classified as ‘Defensive’. It states that on completion of the risk questionnaire, a list of suitable products was produced which detailed the products which were and were not suitable for her. It argues that this list of suitable products was compiled based on the responses given in the risk questionnaire. It argues that the Complainant, together with the investment adviser, signed to confirm that the Complainant had received an overview of the suitable investment products.

The Provider states that the investment product concerned, is an open-ended product and there is no cooling off period. It further argues that during a telephone conversation between the Complainant and a representative of the Provider on **14 March 2018**, the Complainant was informed that there was no cooling off period and that she could withdraw the funds at any time.

The Provider states that the Complainant initially raised the complaint on **7 August 2018** and following the telephone conversation with a manager on **8 August 2018**, the complaint was recorded as closed. It states that some two months later, on **12 October 2018**, a written complaint was received. It states that the complaint was responded to in writing on **15 October 2018**. Following this, the Provider states that on **18 October 2018** the complaints manager telephoned the Complainant to further discuss the matter. Following a request from the Complainant to speak to someone more senior, the head of quality assurance telephoned the Complainant on **22 October 2018** and reiterated the position of the Provider. Following this conversation, the Provider states that correspondence was received from the Complainant expressing dissatisfaction about the calls conducted. Following a review of the Complainant's correspondence, the Provider states that it was deemed appropriate to issue a final response. The final response letter was issued on **6 November 2018** and dealt with the Complainant's dissatisfaction with the telephone conversation of 22 October 2018. The Provider remains satisfied that this call was handled appropriately. The Provider states that it is satisfied that it complied with the provisions of the CPC in relation to handling of the complaint.

In relation to the Complainant's assertion that the February 2018 meeting was conducted in haste, the Provider references contemporaneous account notes which detail that two separate meetings were held with the Complainant in relation to the sale of the investment. The Provider states that the notes recorded on its system are date and time stamped automatically and these entries cannot be altered retrospectively. It states that the contemporaneous account notes, show that meetings with the Complainant occurred on Thursday 22 and Saturday 24 February 2018. Furthermore, it states that during the second meeting of 24 February 2018, declarations were signed by the Complainant which included timestamps. It states that the declaration on page 5 of the investment fund meeting document is timestamped 12.43 and the second declaration on page 15 is timestamped 13.34.

The Provider further relies on the contemporaneous account notes to confirm that the fees and charges were discussed with the Complainant during the initial meetings and prior to the Complainant signing the declaration concerned. The Provider sought a verbal statement from the agents who met the Complainant on the 22 and 24 February 2018. It states that one agent was on maternity leave and unable to discuss the complaint, but that the second agent who was present for the initial 22 February meeting has confirmed that she recalls that the entry fee was explained and the monetary amount was discussed. The Provider states that it is her recollection that a discussion took place about the fees and that it was suggested that an investment of €50,500 should be made if the Complainant wished to invest the entire €50,000 to the fund.

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The Provider argues that the Complainant was given a product information sheet which showed a breakdown of how funds in the investment product are invested. It states that during a telephone call with one of its agents on 25 April 2018, the Complainant was informed correctly that the funds were invested across multiple assets. During a meeting with the Complainant on 26 April 2018, the notes record that the Complainant enquired as to how the funds were invested and the agent explained this to the Complainant. The Provider refutes the suggestion that information was refused to the Complainant.

The Provider argues that the Complainant was not only provided with the purchase confirmation document that she has relied on, in addition, the entry fee was explained to the Complainant as detailed in the contemporaneous account notes and various documents given to the Complainant prior to the investment being completed. Written confirmation of the €500 fee was detailed in the confirmation of subscription document provided to the Complainant. The Provider argues that during a telephone call between the Complainant and its agent [Z.] on **25 April 2018**, the Complainant acknowledged receipt of the documents that set out the details of the investment.

### **The Complaints for Adjudication**

The first complaint is that the Provider failed to adequately inform the Complainant of the entry charge under the policy, prior to her investing funds into the policy.

The second complaint is that the Provider dealt poorly with the Complainant's complaint.

### **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 **23 March 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 consideration of additional submissions from the parties, the final determination of this office is set out below.

I have been furnished with the Provider's training reference material which it states is used by its agents in outlining key information in relation to investment products to customers prior to investment. The document details the key features of the investment product which is now at issue, and highlights in a box at the top of the document that a fixed 1% one-off entry fee applies to the product, with recurrent yearly management fees and no exit fee.

I have also been supplied with a three-page **Fund Fact Sheet** relevant to the investment product in question. On page 2 of the sheet under the subheading "fund overview" a subscription fee of 1% is set out along with ongoing charges including the management fee of 2.275%. I have also been furnished with a document entitled "**Investment Fund Meeting Documentation**".

Page 2 of this document entitled "purchase confirmation" refers to an investment amount of €50,000 and does not make any reference to a subscription fee. Page 5 of the document, entitled client declaration, was signed by the Complainant at 12.43 on 24 February 2018. The same page is signed by the Provider's representative at the same time and date. By her signature the Complainant confirmed that the information submitted to the Provider in connection with the application was "*true, accurate, complete and up-to-date.*" By her signature the Complainant also acknowledged that the advisory services provided to her by the Provider would be subject to the Provider's "*Investment Advisory Terms and Conditions*" which she had "*been presented with*" and had "*an opportunity to consider*". She further confirmed that by signing the application, she would be bound by the Provider's Investment Advisory Terms and Conditions.

Pages 6 to 10 of the Investment Fund Meeting Documentation contain a series of questions designed to determine the Complainant's risk profile. The answers given by the Complainant to these questions were imported and the Complainant's risk profile set as "**Defensive**".

On page 11 of the document, the Complainant signed a confirmation that the completed questionnaire was a true and fair account of her personal and financial circumstances, that she was satisfied that the information given to the Provider was accurately reflected in the questionnaire, and that she understood that the investment recommendation to be made, would be based on her answers as set out in the questionnaire.

Pages 12 and 13 set out a “list of suitable products” dated 24 February 2018 at 13.33. On the basis of the risk profile and additional requirements, a list of five suitable products was listed for the Complainant, including the investment product that the Complainant ultimately invested in. The key features of the investment product as listed on page 13, include the fact that it was an open-ended redemption product with no early redemption fee and a fixed 1% entry fee. It also indicated that the product was subject to 95% floor protection.

Page 14 contains a transaction instruction to invest €50,000 in the investment product in question. The document states that the main characteristics of the investment product, detailed within the list of suitable products, had been explained to and understood by the Complainant. It further stated that the transaction may be subject to fees and charges and referred to the Investment Fund Terms and Conditions for additional information.

A further declaration was signed on page 15, by the Complainant at 13.34 on **24 February** which confirmed the following:

- that she agreed with the information provided within this document and the suitable products document;
- that she received an overview of suitable investment products offered;
- that she received and understood the Key Investment Information Document;
- that she received and understood the product fact sheet; and
- that she received the Provider’s Investment Funds Terms and Conditions document and accepted the terms and conditions described therein.

The Investment Fund Meeting Documentation also contains a record dated 24 February 2018 of the meeting, as noted by [X.], the Provider’s representative. The note states as follows:

*“went through risk profile with customer – came out as defensive – went through options again – went through risks associated with all investment products, went through tax implications, explained that floor protection was not capital protection and that it reset every year and it could reset up or down. explained fees and charges with customer also. cust decided to roll teh (sic) e250k into 12 month fixed and transfer the interest to [a third party account]. put e50k into [chosen investment product] (she had transferred the (sic) funds from [third party Provider]). Copies of all docs to customer along with all terms and conditions – gave mobile number and my card and also [Z.’s] details to contact us at any stage. also will be referring her son into us as she said he has funds too.”*

On page 20 of the Investment Fund Meeting documentation entitled “**overview of fees and charges**”, the reader was referred to the Fact Sheet for each fund in relation to subscription fees or entry charges which was available on the Provider’s website, and to ongoing charges including management fees. Examples of the application of the fees were set out using the example of a 1% subscription fee.

In a Key Investor Information Document at page 22, the entry charge for the investment product in question was stated as a 3.5% maximum that might be taken out before the customer's money is invested. The document stated that in some cases the customer would pay less and for more information on the actual entry charges, contact was encouraged with the financial adviser. A withdrawal form for €50,000 was also signed by the Complainant.

In a statement made available by the second representative of the Provider, [Z.], on 10 September 2019, [Z.] explains that as per her contemporaneous notes she made a suggestion that the Complainant meet an investment manager. An appointment was made with an investment manager on 22 February and [Z.] states that she joined the meeting by way of introducing the customer to the investment manager [X.]. [Z.] states that a further meeting was arranged with the investment manager for Saturday 24 February at which point the Complainant agreed to invest €50,000 in the investment. [Z.] states that she was "*not fully in attendance at the meeting*" as she was also dealing with other customers in the branch that day. In relation to the question of fees, she states as follows:

*"As per contemporaneous notes input by Investment Manager all fees and charges were explained to the customer. I vaguely remember suggestion put to customer by Investment Manager to invest 50,500 in order that the full 50,000 would be invested after deduction of the 1% subscription fee."*

I have been supplied with a copy of the Investment Advisory Terms and Conditions. On page 8, under the sub-heading 'Fees and Charges', the following appears:

*"Entering into an investment advice relationship with [the Provider] is free of charge. For fees and charges for specific Investment Products we refer you to our Investment Funds Fees and Charges sheet (MiFID Fees and Charges Sheet) available on our website [redacted] or from your Investment Specialist."*

In the Provider's Investment Funds Terms and Conditions, the fees and charges are dealt with on page 8. This clause is couched in similar terms to the above and states that details of the fees and charges are set out in the Investment Funds Fees and Charges sheet which would be given to the customer by their investment specialist. In relation to entrance fees, the terms and conditions confirmed that the Provider charges entrance fees on subscriptions which are deducted from the gross subscription amount. It states that the level of the entrance fee can be found on the Key Investor Information Document and the Prospectus of the Investment Fund which are available on its website and available in hardcopy in branch.

In a Confirmation of Subscription with a settlement date of **2 March 2018**, the 1% entrance fee of €500 is set out with the net investment amount of €49,500.

It is clear that not all the documentation given to the Complainant in relation to her investment confirmed the exact entry fee that would be charged but I am satisfied that the documentation fairly discloses in a number of places that an entry fee would be applicable to the investment. I note that the more general Key Investor Information Document refers to a maximum entrance fee of 3.5%.

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Of particular relevance however, is the separate Fund Fact Sheet which, under the subheading “**fund overview**”, sets out the subscription fee of 1% along with ongoing charges. By her signature on the Investment Fund Meeting documentation, the Complainant confirmed that the key product information had been explained to her and that all relevant documentation, including the Fund Fact Sheet, had been made available to her. I cannot therefore agree with the Complainant’s contention that she was not informed of the 1% entrance fee prior to her decision to invest in the investment product in question.

While I acknowledge that there is a conflict between the evidence of the Complainant and the Provider in relation to whether or not the fee associated with the investment was explained to the Complainant at the meeting on 24 February 2018, I do not consider that it is necessary to hold an oral hearing in relation to this issue. Firstly, I am satisfied on the basis of the documentary evidence furnished, that the fact of and amount of the fee was highlighted in the informational documentation made available to the Complainant and which the Complainant acknowledged as having received. Secondly, I am cognisant of the contemporaneous note made by the Provider’s representative in which she confirmed that the fees and charges were explained to the Complainant, at the meeting of 24 February 2018.

Accordingly, I am unable to uphold this aspect of the complaint. I do not accept the Complainant’s allegation that the fee was not, or not properly, disclosed to her. I accept that the Complainant’s recollection of the meeting is that the fee was not discussed with her, but this is not borne out by the available information documentation, the Complainant’s signed confirmations, and the contemporaneous note of the meeting.

Since the Preliminary Decision of this office was issued to the parties, I note that the Complainant has submitted a letter she received in November 2019 from the Provider, regarding an error in the manner in which fees for 2018 had been displayed in the annual statement for 2018, received in 2019. The enclosed updated corrected statement was not included in the complainant’s submission, but I note that the covering letter in November 2019 confirmed, amongst other things, as follows:

**Reassure you**

***It is important to note that this error related to how the information was shown on your statement and has no effect on the fees and charges effectively paid by either you or the investment fund to your account. The fees and charges that have been applied to your investment fund account are correct for 2018.***

Consequently, I do not believe that the contents of this letter are such that this element of the complaint can be upheld.

A second complaint has been made in relation to the manner in which the complaint was dealt with by the Provider. I have been furnished with contemporaneous account notes in relation to the matter.

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A note from 16 February 2018 indicates that an appointment was made for Complainant to meet [X.] in the branch on 22 February 2018. The note from 22 February records that [X.] went through deposit and investment options and had booked a second meeting for 24 February. The notes suggest that the customer was considering whether to invest €50,000 in a protected fund to try it out and then to add more if she liked the fund. The note from the meeting of 24 February 2018 replicates the note already set out above.

In a note dated **14 March 2018** (some two/three weeks after the investment was made by the Complainant) the record states that the Complainant rang [X.] on her mobile to say that she wanted to withdraw funds from the investment because she was not too well, had been burnt before, and did not want to lose any money. The Complainant also indicated she was not happy with the €500 taken from the account as an entry fee. The note records that [X.] reminded the Complainant that she and [Z.] had both explained the charges in detail to her and had even discussed whether she should put €50,500 into the investment to cover the 1% entry fee. The notes states that [X.] explained that the fund had gone up from the time that the funds were invested and explained there was no cooling off period. She told the Complainant she could take the funds out of any time but that her advice was to leave it until she had made back her entry fee.

In a note from a meeting the following month with [Z.] on **26 April 2018**, [Z.] notes that the Complainant claimed she was never told about the subscription or management fees and had no idea how the funds were invested with a breakdown of categories. The note records that [Z.] explained how the funds were invested and explained the 95% fund protection feature. The note states that she also went through the subscription and management fees with the Complainant. A note from **24 July 2018** indicates that the Complainant rang the Provider again mentioning that she was unaware of the 1% subscription to the fund when she took out the investment and she enquired about the up-to-date value.

In a call on **7 August 2018**, the Complainant again complained she was unaware of the €500 fee and that she would never have taken out the product if she had been aware of this. The note also records the Complainant having stated that she contacted the investment adviser on multiple occasions to get in contact with her but to no avail. A further note indicates that [X.] returned her call on the same date but that the Complainant said that she did not want to deal with her, as she had not returned any of her calls. The note records that [X.] explained she had not received any messages from the Complainant but she could see that she had spoken to [Z.]. The note records that the Complainant requested the opportunity to speak to someone more senior.

A note from the senior manager dated **8 August 2018** indicates that a call was made to the Complainant who was advised that the 1% fee applies to all funds. The note also records that the complaint was resolved.

However, 2 months later, by letter dated **11 October 2018**, the Complainant stated that she was not in good health in February 2018 and that the €500 fee was not mentioned at any stage during the meeting. She states that upon being informed of the fee a week later, she was surprised and upset and tried to phone the representative several times to cancel the investment but that the representative would not take her calls on the basis that she was too busy.

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By letter of reply dated **15 October 2018**, the Provider stated that when the Complainant previously raised the matter of the 1% fee for investigation in August, she spoke with members of the complaints team and a senior area investment manager. The letter states that it was explained to her that the 1% fee applied to the investment, would have been discussed at the initial meetings in February 2018. The Provider stated that while it appreciated that the Complainant may not recall the fees being discussed, it stated that the recollection of the two staff members was that a discussion took place about the fees and it was suggested that in order to facilitate the investment of the entire €50,000, an investment of €50,500 could be made. The letter also highlighted that the risks and charges associated with the investment product including fees, were explained and that documentation in relation to the terms and conditions was provided to the Complainant. The Provider therefore stated that it was satisfied that she had been made sufficiently aware of fees and charges that would be applied. The Provider stated that accessibility is one of the benefits of the product in question and that the Complainant might wish to withdraw the investment at any time, which would be facilitated by the Provider.

By letter dated **22 October 2018**, the Complainant wrote to [J.], a representative of the Provider with whom she had spoken earlier that day. The Complainant accused [J.] of

*“ranting non-stop aggressively, pushing a lie down [her] throat about an investment that [she] was falsely led to make”.*

The Complainant states that when she tried to speak, she was aggressively cut across. The Complainant stated that the ‘take it or leave it’ attitude adopted was very upsetting. The Provider’s note of the call dated **22 October 2018** indicates that [J.] called the Complainant at her request and explained that the complaint was closed from the perspective of the Provider and referred the Complainant to this Office. The note states that a final response was required. Having listened to a recording of the call in question, I note that the Provider’s representative was quite firm with the Complainant and was clearly keen to avoid repeating the contents of a discussion which the Complainant had had with the Provider’s other representative over a 2 hour period on the previous Thursday. I do not accept however, as suggested by the Complainant that the Provider’s representative was *“ranting non-stop aggressively”*. The audio evidence made available to this office does not, in my opinion, bear out that suggestion.

An acknowledgement of the complaint was made **31 October 2018** and the Provider responded in detail to the complaint of 22 October, on **6 November 2018**. A timeline of events was recorded in accordance with the Provider’s contemporaneous account notes and appointment log in relation to the matter. The Provider stated that having reviewed all available telephone recordings, it was satisfied that all conversations were conducted in an appropriate manner. It acknowledged that while the Complainant did not achieve the resolution she desired, its view was that its agent spoke to her in a friendly and courteous manner despite the conversation escalating. The letter also set out the Provider’s position in relation to the information and documentation provided to the Complainant in relation to the 1% fee.

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A note of a telephone call from **14 November 2018**, indicates that the Complainant acknowledged that the entry fee was referenced in the paperwork provided but insisted it was not discussed in any detail with her during the investment meetings. It is clear from the available information that the Provider dealt with the Complainant's complaints promptly on every occasion, through calls, meetings, and letters. While I acknowledge the Complainant's assertion that she attempted to contact [X.] on a number of occasions after discovering the €500 entry fee, to no avail, it is clear from the contemporaneous records available from the Provider that the Complainant called [X.] on 14 March 2018 and that the question of the €500 fee was discussed with her. It is further clear that the matter was discussed on two calls with [Z.] on 25 April and further at a meeting with [Z.] on 26 April 2018.

Thereafter there were other phone calls and letters exchanged between the parties in relation to the issue. While I am not discounting the Complainant's contention that she had attempted to contact [X.] on more than one occasion without success between 3 and 14 March 2018, it is apparent that [X.] did in fact discuss the issue of the entry fee with the Complainant within a short time of when the Complainant became aware of the €500 fee. In addition [Z.], who was also present during the meetings, discussed the matter with her at a meeting on 26 April 2018, and further supplied her with information as to the investments made.

I am satisfied on the basis of the records made available to me that the Provider responded to every letter of complaint that was submitted by the Complainant, quickly and within the timelines contemplated by the CPC. It would also appear that the Provider phoned the Complainant upon her requests and provided her with senior management to speak to. Further, I am satisfied that in its responses to the Complainant, all of the issues raised by the Complainant were dealt with by the Provider, albeit that the Provider did not accede to her request to refund the amount of €500 entry fee to the investment. Accordingly, in all the circumstances as set out above, I am unable to uphold these complaints.

### **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  
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

24 April 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.

