



<u>Decision Ref:</u>	2020-0179
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Shares/Equities Investment
<u>Conduct(s) complained of:</u>	Mis-selling (investment) Delayed or inadequate communication Complaint handling (Consumer Protection Code) Failure to provide warning re. Nature of investment Failure to consider suitability Value of policy at surrender less than expected or projected Failure to consider vulnerability of customer Product not suitable
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant attended one of the Provider's branches on **8 June 2017** to enquire about its deposit account interest rates. This visit culminated in the Complainant investing in one of the Provider's investment funds. In the time that followed, the Complainant became dissatisfied with the performance of her investment and the charges that were being incurred. The Complainant redeemed the investment on **31 July 2019**. The Complainant asserts that the investment was mis-sold to her by the Provider.

The Complainant's Case

The Complaint explains that following a pension adjustment order and the purchase of her new home, she had cash funds of €157,000. This represented the balance of the Complainant's *nest egg* and "... was the total cash on deposit to secure my future." The Complainant advises that she has no tolerance for loss and "... had purchased a *guaranteed annuity with pension funds which confirmed my need for guarantees and my attitude to risk.*"

The Complainant states that she visited the Provider's branch on **8 June 2017** without an appointment as she had just secured the purchase of her new home and wished to see if she could obtain a better interest rate on the money held in two deposit accounts with the Provider. The Complainant was introduced to the Provider's Investment Adviser and:

"Within a short space of time I was signed up for an investment. I did not complete a risk tolerance questionnaire, other than a verbal 'tick tick'.

I did sign a number of documents, one of which has now been produced which indicates that I was asked questions about my attitudes, but I do not believe this was completed with my input.

I was not invited to take time to consider the investment, and it was not suggested that perhaps I should have an adviser or friend with me to help with my decision to invest. My understanding was the investment would be safe and within three years I should see positive returns on my investment. I was quite excited by this prospect and especially when [the Investment Adviser] boosted my confidence by telling me that she herself had invested for her own daughter's college fees.

I left empty handed with no supporting or follow-up documentation."

The Complainant explains that during the following August bank holiday, she moved into her new home and in **September 2017**:

"I had time to settle down and consider my finances going forward. I realised I had insufficient understanding (and still do not) of the investment but I was still of the opinion that 95 per cent of the fund was protected, as had been clearly indicated to me. Also as I had absolutely no documentary evidence to prove to anyone or my children that I had this investment, I was frightened that it may be lost should anything ever happen to me. I called into the bank voicing my concerns and eventually a single page document was posted to me ... undated and with no covering letter or relevant supporting documentation."

The Complainant states that she felt compelled to visit the Provider again to voice her concerns about her investment and explains that:

"Several times I had full intention of withdrawing from the investment and willing to suffer a low loss and no gain. Each time I was reassured and told 'not to worry and not to lose sleep over it'. In fact [one of the Provider's agents], who I met over the summer months (not sure of the exact date) reassured me that other investors had come in voicing their concerns too but one of them had actually reinvested more money after discussion. So once again I felt reassured too."

/Cont'd...

During a telephone conversation with a second investment adviser on **7 November 2018**, the Complainant states she was advised that her investment was valued at €94,743 with a floor of €94,050. The Complainant states that on **21 November 2018**, she applied for an *Ombudsman pack*.

The Complainant states that she called to the Provider's branch to get an updated valuation and spoke to a second investment adviser who advised her that the investment was valued at €92,807.93 as there had been an adjustment on the investment floor since the **May 2018**.

The Complainant explains that:

"This was the first I heard of this adjustment and it is quite amazing since I had visited the bank on 14th May, 30th July and 14th August 2018 and I had spoken to [the second investment adviser] on 7th November 2018. No notification had been posted to my address."

The Complainant states that:

"All in all, I am soon to be an [over 70], single person with little financial experience. I find myself invested in a fund that has no guarantee to which I consider I was strongly encouraged to participate and from the outset with no consideration for my vulnerable status indicated by my age, my low financial experience, my recent civil status and my inability to shoulder any financial loss. The speed of the transaction to commit such a large portion of my nest egg was breath-taking and the lack of explanation and documentation and care and attention to me is wrong. Had I known my funds were not guaranteed I would never ever have made the investment as this is a fundamental requirement for me. I have approached the bank many times and it is only when I put my case in writing to the bank have I received any written responses."

In an email to this Office dated **15 September 2019**, the Complainant states:

"Another important point which I feel should be drawn to your attention as I myself hadn't realised this at the time of my initial Complaint to the Ombudsman. Part of the sizeable loss on my investment was a charge for 'product and distribution fees' of €2,222.28 for y/e 31/12/2018 on top of the entrance fee of €1,000. ...

They never sent me such a statement for p/e 15/06/17 to 31/12/17 or p/e 1/1/19 to 22/7/19, so I have no idea what the total of such fees have been. I was never informed that there were any fees except the original fee of €1,000.

On several recordings I requested up to date valuations and when they were given to me, no mention was made of the high percentage of loss to me caused by bank fees, but instead volatility of the market was quoted instead."

/Cont'd...

The Complainant further summarises her complaint in a letter to this Office dated **23 January 2020**:

"I had never heard of the product, was told nothing of its performance history, not advised to talk to a family member or friend about it, not told that it carried no 'cooling off' period; left without being given any literature on the product, not told that I could read about it or follow its performance on line; got no documented evidence that I have even made the investment, got no follow-up investment performance reports."

In resolution of this complaint, the Complainant advises:

"I would like to be in the same financial position as I was when walking into [the Provider's branch] on 8th June 2017."

The Provider's Case

Timeline of Events

The Provider explains that on **8 June 2017**, the Complainant attended one of its branches to discuss deposit rates and its agent also briefly discussed investment options. As the Complainant was interested in such options, she was referred to an Investment Adviser. The Investment Adviser conducted a *Great Conversation* with the Complainant which involved detailing the Complainant's current personal and financial situation and discussing suitable products. The Provider states that following completion of the risk questionnaire, the Complainant chose to invest €100,000 in a particular investment fund.

On **20 February 2018**, the Provider states that a meeting was held with the Complainant to discuss her investment. The Provider advises that the Complainant confirmed that she would leave the funds in the investment for the foreseeable future.

The Provider identifies a number of instances of contact with the Complainant.

No tolerance for risk

The Provider confirms that a risk questionnaire was completed with the Complainant on **8 June 2017** and, as per the responses the Complainant provided to the Investment Adviser, the Complainant's risk profile was classified as *defensive*. The Provider points out that in response to question 10 on the risk questionnaire, the Complainant declared, in the event that the investment was to fall in value, she would *"feel concerned and uneasy, but I would remain invested and monitor the situation closely."* The Provider advises that based on this defensive classification, a list of suitable products was suggested, which in this instance, included the portfolio chosen by the Complainant.

/Cont'd...

The Provider states that as the Complainant was aged over 65, the risk profile automatically defaults to a defensive profile however, the Complainant had the option to override this classification.

Completion of risk questionnaire

The Provider does not accept the Complainant's submission that she did not complete a risk questionnaire. In support of its position, the Provider refers to a copy a risk questionnaire signed by the Complainant and dated **8 June 2017**. The Provider rejects that the risk questionnaire was completed without the Complainant's input.

The Provider states that by signing the declaration the Complainant confirmed that the completed questionnaire was a true and fair account of her personal and financial circumstances and that it was understood that any investment recommendations made by the Provider were based on the Complainant's answers as set out in the questionnaire.

Opportunity to have a companion present

The Provider states that the Complainant remained free at all times to bring a third party to the meeting. The Provider explains that it always endeavours to ensure customers are offered the opportunity to have a third party attend any savings or investment meetings. According to its contemporaneous account notes, the Provider states that the Complainant attended its branch on **8 June 2017** with the intention of discussing deposit options and had the Complainant wanted a third party to attend any meetings to discuss financial matters, she was free to do so. The Provider notes that the Complainant did not opt to have a third party present on this occasion despite the purpose of the meeting being to discuss deposit options.

Failure to provide investment documentation and the Complainant's understanding of the investment

Referring to its supporting documentation, the Provider submits that the Complainant signed a declaration that she had been provided with the relevant information, including a list of suitable products, terms and conditions and the product factsheet. The Provider states that the Complainant met with the second investment adviser on **20 February 2018** who discussed the investment and demonstrated how to view an up to date value of the investment. The Provider states that it is recorded in the contemporaneous notes that the Complainant was satisfied to leave her funds in the account for the foreseeable future. The Provider submits that had the Complainant little understanding of the investment, there is no evidence to suggest any concerns were voiced at that point.

Unaware investment floor was reset annually

The Provider states the Complainant declared that she was provided with and understood the *Key Investor Information Document*. The Provider advises that the following paragraph is set out in this document:

“The floor price is set as follows: at 95% of the initial subscription price for the first year (i.e. up to and including 30 April 20[1]7), and at 95% of the net asset value on the last banking day of the previous April for each year after that. The fund does not provide any capital protection or capital guarantee*, nor does it offer a guaranteed return.”*

The Complainant's financial experience

In response to the Complainant's submission that she has little financial experience, the Provider submits that when completing the risk questionnaire, the Complainant provided answers which did not reflect her assertion that she had little financial experience or knowledge. It is recorded that the Complainant was familiar with 4 of the 5 terms relating to investments, occasionally caught financial news headlines, preferred a limited return, did not require funds back within 7 years and, should the investment fall in value, would feel uneasy but would remain invested and monitor the situation closely.

The Provider states that during a telephone call on **14 May 2018**, the Complainant confirmed she understood market volatility and referenced monitoring market influencing factors. In a telephone call on **23 August 2018**, the Provider states that the Complainant explained that she had been researching other products to invest in. The Provider submits that this demonstrates that the Complainant was comfortable with looking at investment opportunities and understood risk.

The Provider refers to a *Customer Care Note* dated **23 June 2015**, where the Complainant expressed an interest in investing in funds. The Provider states that following this conversation, details of its available investments were sent to the Complainant.

The Provider has also set out the step by step process followed by its agent when conducting face to face meetings regarding investments. The Provider advises that only suitably qualified agents are permitted to conduct the sale of the investment portfolio the subject of this complaint. The Provider explains that investment material is available to its agents which details the benefits and risks associated with the product.

In relation to the floor value, the Provider refers to the reference material made available to its agents, stating that this document contains a detailed illustration setting out two scenarios where the floor is reset at a higher level than the previous year and a lower level than the previous year. The Provider advises that it is practice and procedure to explain both scenarios to customers seeking to invest in the portfolio the subject of this complaint.

/Cont'd...

The Provider explains that it does not commit to contacting customers to notify them when the floor value is reset as the terms of the investment are clear and unambiguous, and were provided to the Complainant when the funds were initially invested. The Provider also states that quarterly fund statements were provided to the Complainant.

Consumer Protection Code and Markets in Financial Instruments Regulations

The Provider submits that it can demonstrate compliance with the relevant provisions of the Consumer Protection Code 2012 (the **Code**). The Provider states that a suitability questionnaire was completed with the Complainant in order to determine her appetite for risk and to determine the most suitable investment product for her financial and personal needs. In completing the questionnaire, the Provider advises it was acting with due care and diligence and in the best interests of the customer.

The Provider states that all pertinent information was provided to the Complainant and in signing the declaration she acknowledged receipt of this information.

The Provider explains that each of its branches has a designated investment adviser. The Provider states that it is fully satisfied that the agent in this instance was appropriately qualified and had the necessary knowledge and experience. The Investment Adviser conducted a *Great Conversation* to determine the Complainant's personal and financial circumstances prior to discussing and arranging the investment product ultimately chosen by the Complainant. By signing the *Declaration by the Investment advisory reference holder*, the Complainant declared that she was provided with all relevant information, including charges.

The Provider states it is satisfied that the documentation which was provided to the Complainant during the initial meeting in **June 2017** clearly demonstrates its compliance with provisions 4.1, 4.4, 4.21 and 4.22 of the Code. It states that the language used is clear, concise and unambiguous and written in plain English. The pertinent information was provided to the Complainant, as acknowledged in the signed declaration, the Terms and Conditions and Fund Fact Sheet. The Provider states that the Fund Fact Sheet demonstrates compliance with provisions 4.46 and 4.47 of the Code. Details of fees and charges are readily and easily accessible in the branches and the Complainant declared she had been provided with the Terms and Conditions attaching to the investment which included information on the associated fees and charges.

In relation to Chapter 5 of the Code, the Provider states that as the Complainant was an existing customer, her personal information was already recorded and as detailed in the contemporaneous account notes dated **8 June 2017**, up to date details about the Complainant's financial circumstances were recorded. The risk questionnaire captured the Complainant's requirements in terms of this investment and her appetite for risk. The Provider states that its procedure is to enquire about any changes in personal circumstances and the Complainant's up to date circumstances were recorded.

/Cont'd...

The Provider submits it is satisfied that the investment product chosen by the Complainant most suited her needs based on the information provided in the risk questionnaire. The Provider states that the Complainant was classified as *Defensive* and a list of suitable products was generated which listed the products that were and were not suitable for her. The Provider states that the Complainant and the Investment Adviser signed a declaration stating that the Complainant had received an overview of the suitable investment products.

The Provider states that a complaint was recorded on **26 November 2018** as this was the earliest date that details the Complainant's dissatisfaction in relation to the performance of the investment and any earlier notes indicate that while the Complainant had some queries in relation to the performance of the investment and was unhappy with its performance, it is recorded that the Complainant was satisfied that the queries had been addressed on each contact. The Provider states, referring to the Complaints File, that it sought to resolve the complaint in accordance with its obligations under Chapter 10 of the Code.

The Provider has also set out how it believes it complied with the Markets in Financial Instruments Regulations 2007 (**MiFID**) in its submission dated **14 January 2020** which is in similar terms to its submissions in relation to the Code.

The Complainant as a vulnerable consumer and cooling-off period

The Provider states that it is its policy to offer any assistance to any customer deemed vulnerable. In most cases, this involves ensuring a vulnerable customer has a third party present during any contact. The Provider advises that its policy regarding vulnerable customers is set out in the *Vulnerable Customer Documentation* and ongoing and regular training is provided to all relevant staff in the form of an e-learning course and completion of this course is monitored and mandatory.

The Provider explains that it had no reason to consider that the Complainant was vulnerable. The Provider states it is the Complainant's position that she should be considered a vulnerable consumer owing to her age. The Provider states that the Code does not oblige it to automatically deem a person vulnerable on the basis of age and it could be considered discriminatory to apply such a broad assumption. The Provider points out that the Complainant also refers to her low financial experience, civil status and her inability to shoulder any financial loss. The Provider states that this statement contradicts the answers contained in the risk questionnaire. The Provider submits that the Complainant demonstrated her experience of investment market trends during telephone conversations with various agents and noted that she regularly viewed details of the investment's performance on the Provider's website.

The Provider explains that the Complainant retained the right to request time to consider the investment and to return to the branch at a later date to complete the transaction. The Provider submits that there is no evidence or suggestion from the Complainant that undue pressure was placed on her to complete the transaction on **8 June 2017**. The Provider states, as this was an open-ended investment, the Complainant remained free to redeem the investment without incurring any penalty for doing so.

/Cont'd...

The Provider also explains that as this is an open-ended product, there is no cooling-off period and this was detailed in the list of suitable products provided to the Complainant.

Charges

The Provider states that the initial amount invested was €99,000 after deducting the 1% entrance fee of €1,000. The investment value can change on a daily basis owing to the nature of the product. The rising and falling value of the prices of the assets in the fund will determine the value of the fund which can change daily. The Provider has set out the value of the fund each time the Complainant contacted it requesting an up to date valuation and the value at the end of each quarter.

Nature of the investment

The Provider submits that, in acknowledging the ultimate loss to the Complainant, it was made clear to her that the fund was a medium term investment and a positive return would be expected to be achieved between 3 to 5 years. This was in line with the Complainant's answers to the risk questionnaire. The Provider explains that the Complainant chose to redeem the investment at a loss before the time that this particular product was expected to achieve a positive return. This was despite the fund evolution and past performance.

Offer of settlement

The Provider explains that in preparing its response to this complaint, it came to its attention that during a telephone conversation on **23 August 2018**, the Complainant was informed that the fund was 95% capital protected. The Provider states that this information was incorrect as the product information provided to the Complainant states that the investment was not capital protected. The Provider states that on this basis it is willing to offer to reimburse the Complainant "*... for any loss incurred exceeding the initial 5% floor protection which totals €1,304.*" I note that this offer was not accepted by the Complainant.

The Complaints for Adjudication

The complaints are that the Provider:

1. mis-sold the investment to the Complainant;
2. failed to provide the Complainant with documentation regarding the investment;
3. failed to provide the Complainant with statements of account;

/Cont'd...

4. failed to advise and/or explain to the Complainant the fees and charges she would incur; and
5. failed to treat the concerns raised by the Complainant in respect of her investment as complaints.

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 15 April 2020, outlining my preliminary determination 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, within the period permitted, I set out below my final determination.

Risk Profile Questionnaire

A *Risk Profile Questionnaire* was completed in order to ascertain the Complainant's risk profile. The questionnaire is dated **8 June 2017** and was signed by both the Complainant and the Investment Adviser. I will now set out the questions contained in the questionnaire and the answers selected in response to those questions.

/Cont'd...

“Q1: How many of the following terms are you familiar with? Inflation, Equity, Market Volatility, Currency Risk, Asset Allocation.

...

C: I am familiar with 4 of these terms.

...

Q2: Have you completed any transactions in investment products such as structured deposits, investment funds, bonds, stocks, unit linked life insurance plans, pension funds during the past four years?

A: I have not performed any transactions in such investment products.

...

Q3: Do you stay informed about financial and economic news?

...

B: I occasionally catch headlines of financial and economic news.

...

Q4: What is the total amount of money you have available for investment purposes?

This means the total amount of money, held with [the Provider] or other financial institutions, not tied up in any assets such as property or money earmarked for major expenditures over the next 3 years such as car purchase, educational costs ...

...

D: More than €150,000

Q5: How much monthly disposable income do you have?

This means money available each month after taking into account all income earned such as salary and rental income less any essential bills such as mortgage, rent, utility bills, food, clothing, health costs ...

A: I have no income left over.

...

/Cont'd...

Q6: Do you own or plan to buy a family home?

If you are planning future important property expenditures, it should be deducted from the money you have available to invest

...

D: I already own a family home.

...

In case any of the Account Holders is 65 years or older and the risk profile is calculated as 'Dynamic' or 'Very Dynamic', the final answer for this question will automatically default to 'Defensive'.

Q7: What is your Subjective risk profile?

...

B: Defensive ..."

The final three questions were based on a scenario and ask:

"Q8: Which scenario do you prefer for your investment?

...

B: Limited return, safety.

...

Q9: When will you need your invested money back for other purposes?

...

D: Not within the next 7 years.

Q10: How would you react if your investments were to fall in value?

...

B: I would feel concerned and uneasy, but I would remain invested and monitor the situation closely. ..."

On the completion of the questionnaire, the Complainant's risk profile was classified as *Defensive*. The following box on the questionnaire has also been ticked:

"The Investment Advisory Reference Holder(s) accept the proposed risk profile"

The questionnaire also contains a declaration signed by the Complainant:

"By signing below, the Investment Advisory Reference Holders confirm

- *consent to use the Information in the manner described above.*
- *that this completed Questionnaire is a true and fair account of their personal and financial circumstances at this date and that they are satisfied that the information given by them to [the Provider] is accurately reflected in this Questionnaire.*
- *that they understand that any investment recommendation made by [the Provider] will be based on their answers as set out in this Questionnaire and the additional requirements provided by you as part of the assessment of suitable products."*

Investment Advisory Application Form

The *Investment Advisory Application Form* in respect of the Complainant's investment is dated **8 June 2017** and has been signed by both the Complainant and the Investment Adviser. The second page of this form contains a client declaration and states:

"Client Declaration

I/We hereby apply to [the Provider] to become an Advisory Client in accordance with the terms of this application.

I/We confirm that the information submitted to [the Provider] in connection with this application is true, accurate, complete and up to date.

I/We hereby acknowledge any Advisory Services provided to me/us by [the Provider] will be subject to the [Provider] Investment Advisory Terms and Conditions which I/We have been presented with and have had an opportunity to consider. I/We confirm by signing this Application that I/We will be bound by the [Provider's] Investment Advisory Terms and Conditions."

/Cont'd...

List of Suitable Products

A list of suitable products was generated following the completion of the risk questionnaire. This document contains a list of products which have been deemed as either *Suitable* or *Not Suitable* for the Complainant. The details contained on the form in respect of the investment chosen by the Complainant are as follows:

*"[Investment Name]
Open-ended Redemption
Fixed 1% Entry Fee
No Early Redemption Fee
95% Floor Protection – Based on NAV value date last business day of April"*

Fund Factsheet

A copy of the investment's factsheet as at **28 April 2017** had been provided. The document sets out, amongst other things, the fund's composition and performance. It also conveys certain key information and warnings, in particular:

"Major Advantages

...

However ...

- *No fixed return*
- *No capital protection*
- *No fixed maturity date*

Investment Policy

[The investment] invests its assets in various asset classes ... The allocation is based on [the Provider's] investment strategy for defensive investors, which is determined every month.

...

Risk Profile

This product may be suitable for you, depending on your knowledge and experience of financial matters, your financial capacity and your investment goals. You should preferably have at least a defensive risk profile. ...

Warning: If you invest in this product you may lose some or all of the money.

/Cont'd...

...

Warning: The value of your investment may go down as well as up. ..."

Key Investor Information Document

The Key Investor Information Document (**KIID**) sets out certain information relating to the Complainant's investment and states as follows:

"The objective of [the investment] is (1) to achieve the highest possible return by investing in line with the investment strategy of [the Provider] ... and (2) monitoring the annual floor price.

The fund invests directly or indirectly in more risky assets ... and/or less risky assets ...

The target allocation is 30% shares and/or share-related investments ... and 70% bonds and/or bond-related investments ...

The floor price is set as follows: at 95% of the initial subscription price for the first year ... and at 95% of the net asset value on the last banking day of the previous April for each year after that. The fund does not provide any capital protection or capital guarantee*, nor does it offer a guaranteed return.*

...

Charges

These charges are used to cover, among other things, the management costs of the fund, including marketing and distribution expenses. They reduce the investment's ability to grow. You can find additional information on the charges in the 'Types of units and fees and charges' section in the information concerning this sub-fund in the prospectus.

One-off charges taken before or after you invest

Entry charge 3.50% This is the maximum that might be taken out of your money before it is invested or before the proceeds of your investment are paid out ...

Charges taken from the fund over a year

Ongoing charge 2.07% This figure for the ongoing charge is based on the charges for the year ending on 31 December 2016. This figure does not include transactions charges ..."

/Cont'd...

Terms and Conditions

The Provider has furnished a copy of the investment fund's terms and conditions. I will now set out certain sections of this document. At section III, it states on page 8:

"Investment Risk

The value of a [Provider] Investment Fund can change over time (i.e. can be subject to volatility) because of movements in market prices of the financial instruments the [Provider] Investment Fund has invested in. Potential investors should be familiar with the nature of the underlying securities in any [Provider] Investment Fund they plan to invest in. The Bank is not responsible for potential losses due to NAV [the price of one unit of the investment fund] fluctuations.

For more information on the risks associated with the [Provider] Investment Funds, please contact Your [Provider] Investment Specialist in one of our [branches], or refer to the Product Information on the website ...

Fees & Charges

Details of all the fees and charges applicable to [the Provider's] Investment Funds are set out in the our nvestment (sic) Funds Fees and Charges sheet (MIFID Fees and Charges Sheet) which will be provided to You by Your Investment Specialists.

The following fees apply to [the Provider] Investment Funds:

Entrance fees

The Bank charges Entrance Fees for Subscriptions (i.e. buy transactions). Entrance Fees are deducted from the Gross Subscription Amount mentioned on the Order Form for a Subscription. Consequently, the amount corresponding to the Entrance Fee is not invested in the [Provider] Investment Fund.

The level of the Entrance Fee can be found on the KIID and the Prospectus of the Investment Fund which are available on the Bank's website ... The KIID is also available in hard copy in our [branches].

Management fees

The Investment Fund Manager levies different charges and fees for the management of [Provider] Investment Funds. These charges and fees are paid directly by the [Provider] Investment Fund to the Investment Fund Manager and do not affect Your Default Subscription or Redemption Account(s). The Applicable Management Fee principles can be found in the KIID and the Prospectus of the [Provider] Investment Fund.

/Cont'd...

On an annual basis the Bank shall provide you with information about all costs and charges related to the [Provider] Investment Fund.”

Section VI of the terms and conditions states on page 13 as follows:

“Contract Notes

The Bank will confirm the execution of Your Transaction by means of a Contract Note which contains all details of the settlement of Your Transaction (see Annex II for an overview of the information available on a Contract Note). This note will be sent to You by post two business days after the NAV date application for Your Transaction.

Statement of Holdings

The Bank will send You quarterly a statement containing an overview of Your holdings in [the Provider] Investment Funds, including a summary of the Transactions in [the Provider] Investment Funds during the previous quarter. This statement will be sent to You by post. It is Your responsibility to check the accuracy of the contract notes and statements issued to You and to contact us immediately in the event that You believe the information to be incorrect.”

Transaction Form

The *Transaction Form* dated **8 June 2017** has also been signed by both the Complainant and the Investment Adviser. This form states:

“Assessment of suitability (not applicable for SELL transactions)

The main characteristics of this investment product, detailed within the list of suitable products, have been explained to and understood by you (investment advisory reference holders).

[The Provider] has assessed whether this transaction is suitable for your particular needs, objectives and circumstances and consider that this transaction is suitable.

Fees and charges

This transaction may be subject to fees and charges. Please refer to the [Provider] Investment Fund Terms & Conditions for additional information.

Declaration by the Investment advisory reference holders

By signing this Transaction Form, the investment advisory reference holders declare:

- I/We have agree with the information provided within this document and the suitable products document;
- I/We have received an overview of suitable investment products offered by [the Provider];
- I/We have received and understood the Key Investment Information Document (KIID);
- I/We have received and understood the Product Factsheet;
- I/We have received the MiFID client classification letter;
- I/We am/are not a citizen or resident in the United States of America (for tax purposes), nor a Belgian resident.
- I/We have received the [Provider] Investment Funds Terms & Conditions document and accept the terms and conditions described therein.”

Contract Note/Confirmation of Subscription

A copy of the *Contract Note* was provided by the parties. The layout of this document appears to be in the format as set out in Appendix II of the terms and conditions referred to above. This document is undated and it is unclear from the document itself and also the submissions of the parties as to precisely when it was received.

Telephone Conversations

The Complainant had a number of telephone conversations with the Provider following her investment. Recordings of these calls have been provided in evidence. I will now set out parts of some of these conversations.

On **14 May 2018**, the Complainant contacted the Provider to explain that it had been 1 year since she invested and that she was not happy with the risks associated with the investment.

The Complainant stated that “... *there is risk obviously, more than I had anticipated ... I know it’s the first year, you’re supposed to lose something and that’s ok ... I just don’t like the uncertainty ...*” The Complainant further explains that there was “... *risk there that I really didn’t anticipate ...*” The Complainant expressed the view that she did not think she was a suitable candidate for this investment. The Provider suggested that the Complainant come to its branch, however the Complainant questioned the need for a meeting and that her query could be dealt with over the phone. The Complainant was advised to wait until the market picked up and that there would be no penalty for withdrawing from the investment.

/Cont’d...

The Complainant was also advised that the value of the investment was caused by a *correction* and the investment value had subsequently recovered from this. The Provider advised the Complainant that there was also increased volatility in the market to which the Complainant asked whether this would be influenced by the political situation in America. It was explained to the Complainant that an investment of this nature should be looked at over a 3 to 5 year period. The Complainant referred to market volatility and the value of a bond over a 3 year period. The Complainant explained that she wanted her investment to get back up to a value of €100,000 before she cashed out.

The Complainant enquired about the value of her investment on **14 August 2018**, stating that she was contemplating terminating her investment. She also advised that she did not like the risk associated with this investment. The Complainant again enquired about the value of the investment on **22 August 2018**.

On **23 August 2018**, the Complainant advised the Provider that she had been trying to track the progress of the bond online and was trying to work out the best time to cash out as her investment was too risky. The Provider advised the Complainant that her money was invested in a low risk fund that was 95% protected and the most she could lose would be 5%. It was further explained that the fund had an average return of 3% after charges over a 3 to 5 year period.

The Complainant responded by suggesting that government bonds would yield a higher return. The Provider explained that the purpose of this fund was to achieve a return over 3 to 5 years. The Complainant then posed the question that if the fund did not deliver such a return this year, why would it do so the following year or the year after that.

On **7 November 2018**, the Complainant explained to the Provider that the money used for her investment was for her pension and that she could not afford to lose it. The Provider explained the drop in value was due to market volatility which the Complainant acknowledged she understood. The Provider advised the Complainant to view fund over a 3 to 5 year period. The Complainant suggested that this was not an appropriate investment for her. The Complainant pointed out that she was checking the valuation everyday online. The Provider advised the Complainant about the floor protection of her investment. The Complainant then spoke of the return she would have made if she invested in government bonds. The Complainant stated that she was talked into investing in the fund and that the sale of her house was underway at the time of her investment. The Complainant stated that she was going to withdraw from the investment after a number of months and that she should have done so but she wanted to see if the value would rise.

During a conversation that took place on **11 January 2019**, the Complainant was advised that her investment value was approximately €92,800. The Complainant stated she thought there was a ceiling on how much the value could drop. The Complainant was advised of the investment floor of 95% to which the Complainant responded: *"I know that. I am fully aware of that. I didn't think that would affect the floor protection."* The Complainant was under the impression that the floor protection of 95% was in respect of her initial investment of €99,000.

/Cont'd...

The Provider explained that the investment floor was reset the previous May. The Complainant expressed surprise at this. The Provider advised that it would be worthwhile for the Complainant to come in and review her situation. The Complainant explained that she was not “... familiar with half of this stuff ... I don't feel I understand it ... I don't understand what that means, the floor resetting ...”

On **12 July 2019**, the Complainant contacted the Provider looking for a monthly report in respect of her investment as she believed they were issued on a monthly basis. The Provider advised the Complainant that reports were issued on a quarterly basis.

Complaint to the Provider

The Complainant wrote a letter of complaint to the Provider on **23 November 2018** outlining her complaint as follows:

“I am writing to register an official complaint about my dealings with your bank in relation to this account. I am a [age] woman living on my own, and I do not believe I was afforded the care due to me as a vulnerable client.

I have called into the [Provider's branch] at least 6 times since June 2018 to express my concerns about this investment. [The Provider] have not followed up any of these meetings in writing. I believe that each of these meetings should have been recorded as a complaint and appropriate procedures should have been followed. I was never informed of my rights regarding complaints or access to The Ombudsman.

The investment was made in June 17. The enclosed letter is the only evidence I have received, despite a request for documents. ... I was persuaded by your representative, [the Investment Adviser] in [the Provider's branch] to make this investment. I was in the process of closing the sale of a property and the funds in question represented the balance of my pension.

- *There was no Attitude to Risk questionnaire completed and if there was, this would have indicated I have no tolerance for loss.*
- *Furthermore, I was not invited to bring a companion with me to attend meetings regarding this investment of a significant portion of my wealth.*
- *I received no 'reason why' letter or cooling off notice.*
- *I was not furnished with documentation about the investment and have little understanding of it.*

I feel that in all my dealings with [the Provider] I have not been afforded the protection due to me as a vulnerable client, with no investment experience and no capacity for loss. ...”

/Cont'd...

Statement from the Provider's Agents

The Provider has furnished statements from its agents with whom the Complainant dealt with during the course of her investment. These are set out below.

Mobile Financial Adviser

"My name is ..., on the 8th June 2017 I met with customer [the Complainant] in my previous role as a Mobile Financial Adviser in the [branch]; I have long since moved out of retail banking and I do not remember the meeting but going by the notes I put on the system on this date I can see that I discussed her general financial background which was normal practice when meeting a new customer including her existing current account and credit card situation and also potential opportunities for her to make save or money (sic) through deposits or investments with [the Provider].

After reading the notes I put on the system following the meeting I can see that I discussed her savings in both [the Provider] and [another financial services provider] noted the fact she wanted to discuss investment opportunities further with the [branches] Investment Executive which was common given deposit rates were low at the time.

When I met customers with large amounts of savings I would discuss the option of investments which could offer a higher return than what was on offer on deposit while ensuring that the customer was aware of the potential risks however my role would be to get a referral for the Investment Executive and set up an appointment at a time that suited the customer.

From here the Investment Executive would go into granular detail on the various investment options on offer/potential growth/risks etc and sell the product and do the paperwork etc. ..."

Investment Adviser

"Due to the significant time that has passed since the initial meeting I cannot recollect the details accurately in more detail than the notes provide

I am satisfied that the notes reflect the meeting"

Provider's Agent

"I met with the above named customer on 20th Feb 2018 following an inbound phone call request for a meeting about her investment statement.

Due to the fact the meeting was nearly 18mth ago my exact recollection is limited but I did note the interaction on our Internal banking system. (notes below)

/Cont'd...

The customer was looking for information on her investments. I went through the statement with her and show (sic) her how to calculate it against the online tracker available on [the Providers'] website. I also noted to her that the list of benefits and product information is available online on the website also if she needed a refresher on the product. I advised the customer that she had originally invested €100k (99k net after entry fee) ..."

Second Investment Adviser

"I have spoken to and met [the Complainant] on a number of occasions during my time in [the branch].

I spoke with her on 11 Jan 2019, as with a number of customers around this time [the Complainant] advised me that she wasn't happy with the performance of her investment.

She advised me that she didn't fully understand the investment that she was in and that the floor was due to reset in May and that it had reset downwards the previous May.

I asked [the Complainant] to attend an appointment with me to explain this fully and to outline her options going forward.

[The Complainant] declined.

[The Complainant] called the customer services team then and was passed to myself. I recall [the Complainant] agreeing to come in to meet with me.

Appointment was arranged for 22nd July 2019.

As with a lot of these review meetings we outline 3 options:

- 1. Leave the investment as is, let it try to recover, remember why we decided to invest.*
- 2. Move to another investment that doesn't cash out. One which is always invested.*
- 3. Make a full withdrawal – customer would end up crystallising her loss.*

Ms advised she was still not happy and requested to make a full withdrawal. She mentioned that she felt this wasn't explained to her fully at the time it was taken out and I offered to log a complaint, to which she declined.

I took the relevant forms to withdraw and ID, MS was transferring full balance to [another financial services provider]. ..."

/Cont'd...

Further Submissions

A number of further submissions have been made by the parties to this complaint. While I have considered all of these submissions, I note the following in particular.

In an email to this Office dated **1 November 2019**, the Complainant explains:

“They did not sufficiently inform me of the workings of this investment, i.e. capital not protected, the extra fees on top of the initial €1,000 ‘no pain no gain’ fee that [the Investment Adviser] informed me of, and the annual floor adjustment that I was only made aware of in November 2018. Plus supporting documentation had not been given to me until at least 6 months after I bought this product. Had I been given all of this information at the beginning I am quite sure I would never have signed up to it as I would have considered it far too risky and complicated. This was not my intention when I approached the bank initially for an improved interest rate on my deposit”

In a letter to this Office dated **23 January 2020**, the Complainant states:

“With regard to the ‘Key Investor Information Document’, I reiterate that that was never explained to me, the document was never handed to me to study. Charges were never explained.

The only mention of charges was when I realised it was £99,000 not £100,000 that was being invested. [The Investment Adviser] then mentioned the £1,000 ‘no pain no gain’ charge and I was led to believe that was the only charge. ...

I acknowledge I signed documents stating I understand ‘Key Investor Information Document’. I clearly did not understand the KIID at the time I was entering into this investment as it had not been explained to me nor had these documents been put into my hands to examine, take away, reflect upon or raise queries in relation to.”

In response to the Provider’s submissions, by letter dated **25 September 2019**, the Complainant remarks in respect of the Investment Advisory’s inability to remember the events of **8 June 2017**:

“However, I can remember the essential details of our conversation, especially things that weren’t said, that the capital on this investment was not guaranteed. I was also not told about ‘product & distribution’ charges or ‘floor adjustments’.”

In the same submissions, the Complainant states:

“Regarding my right to request time to consider the investment and to return at a later date to complete the transaction, I do agree this would have been prudent on my part. Perhaps it would have been helpful to have been reminded of this option.”

/Cont’d...

The Complainant also states:

“The remaining [Provider] documentation addresses product information, charges etc and does not require my input. I just wish to reiterate that I did not see any documentation in relation to the sale of the [investment] until after I had filed my official Complaint with the bank.”

The First Complaint

The Complainant states that the investment the subject of this complaint was mis-sold to her. The Complainant explains that during her visit to the Provider’s branch on **8 June 2017**, “[w]ithin a short space of time I was signed up for an investment ...” The Complainant maintains that she did not complete, as she states, an *Attitude to Risk Questionnaire*, and if such a questionnaire had been completed “... this would have indicated I have no tolerance for loss ...” The Complainant also states that she should have been classified as a vulnerable customer based on her circumstances. In further submissions, the Complainant states that the Provider “... did not sufficiently inform me of the workings of this investment ...” and “... supporting documentation had not been given to me until at least 6 months after I bought this product. Had I been given all of this information at the beginning I am quite sure I would never have signed up to it as I would have considered it far too risky and complicated.”

In order for an investment product to have been mis-sold, I consider that it must be established that the product was sold negligently or recklessly in circumstances where the product was misrepresented or where the product was unsuitable for the Complainant.

When the Complainant visited the Provider’s branch on **8 June 2017**, her intention was to enquire about its deposit interest rates as she was interested in obtaining a better return on her savings. Shortly after the Complainant arrived at the branch and made her enquiry, she was directed to the Investment Adviser. A *Great Conversation* then took place between the Investment Adviser and the Complainant. The answers provided during this conversation were used to populate a *Risk Profile Questionnaire* to determine the Complainant’s attitude to risk. This document was signed by the Complainant and the Investment Adviser. Following completion of the questionnaire, the Complainant’s risk profile was classified as defensive. I note this is the Provider’s default profile for anyone over 65 years of age. I also note that certain of the information conveyed by the Complainant during this conversation was recorded on the Provider’s internal notes dated **8 June 2017**. A *List of Suitable Investments* was then prepared for the Complainant and an investment was ultimately chosen.

The Complainant signed the *Risk Profile Questionnaire*, the *Investment Advisory Application Form* and the *Transaction Form*. By signing the *Investment Advisory Application Form*, the Complainant acknowledged that she had been presented with and had time to consider the Provider’s terms and conditions. When the Complainant signed the *Transaction Form*, she acknowledged that she received an overview of suitable investment products, received and understood the KIID, received and understood the investment Factsheet, received the MiFID client classification letter and received the terms and conditions.

/Cont’d...

While the Complainant asserts that she was not provided with these documents, I accept that, at the very least, by signing the above forms, the Complainant was made aware of these documents. Moreover, having signed the various documents, there is no evidence that the Complainant made any enquiries as to the documents referenced in the signed forms or that she be given these documents prior to making such a substantial investment or prior to leaving the branch. Furthermore, throughout her submissions, the Complainant states that she was unaware of the precise nature and the precise terms of her investment. I believe this is inconsistent with the information conveyed in the KIID, the Factsheet and the terms and conditions.

As outlined above, the Complainant signed the *Provider's Risk Profile Questionnaire*. Furthermore, I note that during the telephone conversations which took place between the Complainant and the Provider, the Complainant displayed, on a number of occasions, a level of investment knowledge beyond that which would be expected of a vulnerable customer. While the Complainant submits that the Provider failed to take into account her circumstances, the Complainant was aware of her particular circumstances but did not seek any independent advice or time to consider her investment. In her submission dated **25 September 2019**, the Complainant acknowledges that it may have been prudent to take time to consider the investment and complete the transaction at a later date.

Therefore, I do not accept that there is sufficient evidence to warrant the classification of the Complainant as vulnerable. Accordingly, having considered the evidence in this complaint, I accept that it was reasonable for the Provider to classify the Complainant as *Defensive*.

Once the performance of the investment began to falter, the Complainant became concerned and began to monitor the situation closely. This is in line with the answer to question 10 on the *Risk Profile Questionnaire*. However, the answer to this question also states that the Complainant would remain invested. Additionally, the answer selected to question 7, which asks when the Complainant will need the money invested back, is "*Not within the next 7 years.*" Furthermore, the Complainant was advised to view the investment over a 3 to 5 year period. The evidence demonstrates that the Complainant became very concerned with the investment's short-term performance and failed to appreciate that any increase in value was not going to be immediate. The Complainant redeemed her investment on **31 July 2019**, approximately 2 years after she invested. This is also somewhat contrary to the Complainant's statement contained in her Complaint Form where she states that "*[m]y understanding was the investment would be safe and within three years I should see positive returns on my investment. I was quite excited by this prospect ...*"

The Complainant wanted better returns than deposit accounts were offering. Despite the asserted shortcomings on the part of the Provider and an awareness of her particular circumstances, the Complainant nonetheless invested a substantial sum of money with the Provider. The investment's performance did not produce positive returns in the immediate term and the Complainant became very concerned and redeemed her investment on **31 July 2019**. While the Complainant became concerned at a much earlier point in time, her intention was to wait until the value of the investment increased her original investment of €100,000.

/Cont'd...

The Complainant began to regret making this investment once she saw its performance, however, I do not accept that this necessarily means the investment was unsuitable for the Complainant. Furthermore, in light of the documents signed by the Complainant and the various documents referenced in the signed documents, I have been provided with no evidence that the Provider mis-sold the investment to the Complainant. Accordingly, I am not satisfied that the evidence in this complaint supports the Complainant's position that the investment was mis-sold.

The Second Complaint

The Complainant states that the Provider failed to furnish her with documentation regarding her investment. The Complainant acknowledges that she signed a number of forms when she attended the Provider's branch on **8 June 2017**. However, she makes that point that she was not given any of the documents referenced in those forms. The Complainant also states that she left the Provider's branch empty handed with no documentation or evidence that she had made the investment and it was only when she attended the Provider's branch seeking such documentation that a single, undated page was posted to her.

The Provider submits that the various documentation outlined above was given to the Complainant as acknowledged by her when she signed a number of documents.

As stated in the previous section, the Complainant signed a number of documents and thereby acknowledged the existence/contents of various other documents which have been set out above. Furthermore, as I have already stated, I accept that, at the very least, the Complainant was made aware of certain documents. Moreover, having signed the various documents, there is no evidence of the Complainant making any inquiries in respect of the documents referenced in the signed forms or that she be given copies of these documents prior to making the investment or even prior to leaving the branch.

Throughout her submissions, the Complainant states that she was unaware of the precise nature and the precise terms of her investment. Again, in the context of the second complaint, I find this to be inconsistent with the information conveyed in the KIID, the Factsheet and the terms and conditions. Furthermore, I note that the agent who sold the investment to the Complainant, the Investment Advisor, does not have a clear recollection of events and accepts the Provider's internal notes in respect of her interaction with the Complainant on **8 June 2017**. In contrast to this, the Complainant states that she has a clear recollection of events. I also note that the Provider's internal notes do not provide any clarity or set out what documents were in fact provided to the Complainant on **8 June 2017**.

The Provider has not addressed the Complainant's submission that she had to call to its branch to request information regarding her investment and that a single, undated page was sent to her in the post. This letter has been furnished by the Complainant in support of her complaint. I also note that there appears to be no entry in the Provider's internal notes regarding this request.

/Cont'd...

At section VI of the terms and conditions, it states that a *Contract Note* would be sent to the Complainant in the form prescribed in Annex II within two business days.

I am satisfied, having viewed the template at Annex II and the document sent to the Complainant, that this undated document is the Contract Note. The Provider has not demonstrated that the requirement relating to the Contract Note, as set out in the terms and conditions, was complied with. In light of the evidence in this complaint, I am not satisfied that the Provider complied with this requirement.

While it is not entirely clear when the Complainant made her request for documentation, I am satisfied it is likely that such a request was made. However, I find the Provider's compliance with this request to be inadequate and the Complainant should have been provided with more than a single page document. The Provider should have ensured that the Complainant was furnished with all relevant documentation pertaining to her investment.

Therefore, I am satisfied that the Complainant was provided with certain documents on **8 June 2017**. At the very least, she was provided with the documents she signed. The evidence in this complaint does not suggest that the Complainant was presented with only one investment option.

This, in turn, leads me to believe that the Complainant was provided with the *List of Suitable Products*. However, I am unable to discern what other documentation the Complainant was provided with. Notwithstanding this, I am satisfied that there was no correspondence from the Provider acknowledging the Complainant's investment or any correspondence confirming the details of her investment. I am also satisfied, on the balance of the evidence, that the Complainant was not provided with all of the documents outlined above, either at the time of the investment or following her request for these documents.

The Third Complaint

The Complainant states that the Provider did not provide her with statements of account in respect of her investment. As per section VI of the terms and conditions, statements in respect of the Complainant's investment were to be issued on a quarterly basis. The Provider has furnished eight statements of account cumulatively covering the period **12 June 2017** to **29 March 2019**. It is not clear when these statements were sent to the Complainant as five of them are dated **4 September 2019**. It seems to be the case that this is the date on which the Provider downloaded these statements for the purpose of responding to this complaint.

The address contained on these statements is not the address given by the Complainant on her complaint form which I understand to be her current address. I note that around the time the Complainant made the investment she was in the process of moving home. Therefore, it is most likely the case that the address on these statements is the Complainant's former address.

/Cont'd...

I note that the Provider wrote to the Complainant at her current address on a number of occasions. From the documentation provided, the first such occasion was **30 November 2018** when the Provider acknowledged her complaint. This was followed by a Final Response letter dated **28 December 2018** and an *Investment Report* dated **30 June 2019**.

Based on the foregoing, I am satisfied that two addresses were maintained by the Provider in respect of the Complainant. I am further satisfied that the Complainant did not receive the quarterly account statements. While neither party has made any submissions or furnished any evidence regarding a change to the Complainant's address, I am satisfied the Provider was aware of the Complainant's current and correct address from at least **November 2018**, yet account statements after this date were addressed to the Complainant's former address. I am unable to discern when or by what means, the Provider became aware of the Complainant's current address. However, as noted above, I am satisfied that this was no later than **November 2018**. I do not accept that the Provider is responsible for the Complainant not receiving all of her statements, however, I am satisfied that the Provider is responsible for the Complainant not receiving statements after **November 2018**.

The Fourth Complaint

This aspect of the complaint concerns the Provider's failure to advise and/or explain to the Complainant the fees and charges she would incur on her investment. I am satisfied that it is reasonable to expect the Provider to make the Complainant aware of the fees and charges she would incur over the course of her investment.

Of the documents which I am satisfied the Complainant had sight of, I note that the *Investment Advisory Application Form* refers the Complainant to the investment terms and conditions which contains details of fee and charges. The *Transaction Form*, under the heading *Fees and charges*, specifically refers the Complainant to the terms and conditions for information regarding fees and charges. Finally, the *List of Suitable Products* states that there is a fixed entry fee of 1% associated with this investment. I also note that the Complainant acknowledges that she was aware of the initial 1% entry fee. Therefore, I am satisfied that it is reasonable to expect that the Complainant was aware or ought to have been aware of the fact that her investment would be subject to fees and charges beyond the entry fee.

In light of the information contained on the documents that the Complainant had sight of and the fact she was aware that there were some form of fees associated with the investment (i.e. the entry fee) and notwithstanding my findings in relation to the provision of documentation discussed above, I do not accept, on the basis of documentation and information presented to the Complainant on **8 June 2017**, that the Provider failed to advise and/or explain to the Complainant the fees and charges she would incur on her investment.

The Fifth Complaint

The Complainant submitted a complaint to the Provider on **26 November 2018**. However, the Complainant is dissatisfied with the fact that the Provider did not treat her earlier concerns regarding her investment as complaints.

The Complainant is also dissatisfied that she did not receive any written correspondence from the Provider in respect of her concerns. The Provider submits that while the Complainant had some queries in relation to the investment and was unhappy with its performance, its internal notes record that the Complainant was satisfied that the queries raised had been addressed during each point of contact.

It is quite clear that the Complainant was unhappy with the investment she entered into and that she did not totally understand it. The Complainant contacted the Provider on a number of occasions after **8 June 2017** with certain queries regarding her investment. These queries predominantly related to the investment's valuation and performance. For the most part, I am satisfied that the Provider adequately addressed the Complainant's concerns.

However, as identified by the Provider, during a telephone conversation which took place between the Complainant and one of the Provider's agents on **23 August 2018**, the Complainant was incorrectly advised that the investment was 95% capital protected. I accept that this information was incorrect.

Finally, I do not accept that the Provider was obliged to write to the Complainant each time she made contact with the Provider in respect of her investment. Firstly, because the Provider was satisfied with the manner in which it had dealt with the Complainant's queries (which I accept) and secondly, there is no general obligation on the Provider to do so.

While the Complainant did have concerns regarding her investment, I am not satisfied that these concerns constituted a complaint in respect of the conduct of the Provider. Rather, they related to the investment itself. This being the case, I do not accept that the Provider was required to treat each instance of contact as a complaint.

For the reasons outlined above, I uphold this complaint and direct the Provider to pay a sum of €3,000 to the Complainant.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2) (b), (f) and (g)**.

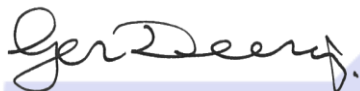
/Cont'd...

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant/s in the sum of €3,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

11 May 2020

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.