



<u>Decision Ref:</u>	2020-0256
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Bonds
<u>Conduct(s) complained of:</u>	Dissatisfaction with final fund value Delayed or inadequate communication Fees & charges applied Failure to consider vulnerability of customer Product not suitable Mis-selling (investment)
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant purchased an investment bond in **October 2017** (the **Bond**) from an Investment Provider through an intermediary, the Provider, against which this complaint is made. The Complainant subsequently formed the view that the Bond was unsuitable to her needs and circumstances, and that the Provider failed to treat her as a vulnerable consumer when recommending investing in the Bond. The Complainant also maintains that the Provider did not explain the charges and penalties associated with the Bond.

The Complainant's Case

The Complainant is represented in this complaint by her son. The basis of the complaint is set out in a letter dated **10 September 2018** which accompanied the Complaint Form submitted to this Office and is signed by the Complainant and her son.

In this letter it is explained that when the Bond was sold to the Complainant, she was 76 years of age and she *"... is a vulnerable consumer in that she is unable to absorb and understand large amounts of complex financial product information."*

The Complainant and her son are seeking a refund of the full amount invested in the Bond on the following grounds:

- “1) *Due to her age and general health my mother is a vulnerable consumer and [the Provider] failed to take this into account.*
- 2) *The product was/is unsuitable for my mother’s needs and circumstances and she never intended to invest in this product. [The Provider] failed to take into account my mother’s changed needs and circumstances at the time he sold the product. Her husband and my father passed away 2 years ago. Moreover, she then had to leave her job due to a family dispute which [the Provider] was well aware of meaning that she no longer had a salary. In his letter to my mother dated 2nd July 2018 [the Provider] stated that ‘the idea of taking out the Investment Bond was initiated by yourself [the Complainant] and [the Complainant’s husband] (my father)’. However, [the Provider] seems to miss the point that there was a significant change in my mother’s needs and circumstances between 2014 and 2017 – not least that [the Complainant’s husband] passed away 12 months prior to the Bond being effected. As a Financial Services provider he should be well aware that people’s needs and circumstances change all of the time. What might have been suitable in 2014, when my father was alive, might be entirely unsuitable in 2017. This product was sold on the basis that it was to provide a future income for [the Complainant’s daughter] (my sister) and was of low risk, my mother now lives with [her daughter]. [The Provider] also points out that my mother and father had other similar investments with him over the years. That may well be the case, but our complaint concerns this particular investment and the fact that my mother’s changed circumstances were not taken into account.*
- 3) *No other family members were present at point of sale, which I feel, given my mother’s age and vulnerability, should have been the case.*
- 4) *She was not advised of the exorbitant annual management fees attached.*
- 5) *She was not advised that there are Exit Penalties attached. In fact, we now understand that its is (sic) possible to set up an investment bond without Exit Penalties. Why did [the Provider] not give us the option of effecting the Bond without Exit Penalties?*
- 6) *She did not understand the risks attached to the investment.*
- 7) *It was never explained to me or my mother that the Death Benefit attached to the Investment Bond was the Surrender Value and NOT the amount invested. [The Provider] had a duty of care to point this out to us and he failed in that regard.*

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- 8) *A report issued to my mother by [the Provider] in January 2018 stated that the current value was €611,395 ... To our dismay, we then discovered from the product provider ... that the actual surrender value was €569,705.03. This is extremely worrying and raises the question as to why the surrender value was not disclosed in January 2018 in said report?*
- 9) *In response to our complaint [the Provider] states that my mother received all relevant information such as a breakdown of costs and statement of suitability etc. That may well be the case, but at 77 years of age (76 at time of sale) she was/is unable to absorb or understand large quantities of written complex financial information. At the very least we feel that, not only should [the Provider] have arranged to have a family member present at point of sale, but he should have arranged a meeting with my mother and other family members when all the policy documentation, statement of suitability etc. were at hand in October 2017."*

The Complainant and her son also believe that the Provider failed to comply with the spirit of the **Consumer Protection Code 2012** in its dealings with the Complainant. In respect of **Clause 2.6** it is stated that the Provider failed to make full disclosure of all charges, commissions and risks associated with the Bond prior to sale. The Provider exerted undue pressure and influence on the Complainant contrary to **Clause 2.9**. At the point of sale and/or when documentation issued to the Complainant, the Complainant was not offered assistance nor was a family member invited to attend as provided for by **Clause 3.1**.

Referring to **Clause 3.17** and a letter from the Provider dated **2 July 2018**, the point is made that the Provider "... states: 'the commission (paid by) [the Investment Provider] was offset against fees for ongoing tax advice and estate planning'. [The Complainant] has always discharged all fees due in a timely manner. Prior to the sale of the Investment Bond [the Provider] did not disclose to my mother that the commission to be paid to him was in any way connected to another service which he offered. This begs the question: is the return on an Investment Bond sold by [the Provider] dependent on whether fees have been discharged for other services?"

It is submitted that the Provider breached **Clause 4.57** as it did not and has never disclosed the commissions received from the Bond. Finally, citing **Clause 6.16**, the parties advise that the Complainant requested a statement in respect of the Bond in **December 2017** which was received on **10 January 2018**. It is stated that the statement "... does not show the number of units held nor does it show all charges or surrender value." The statement "... also contains a note in [the Provider's] handwriting which shows a GAIN of €11,395.00 ... In fact, the Investment Bond had at this time a surrender value of €569,705.03 which represented a loss of €30,295.00. This is a clear attempt by [the Provider] to mislead my mother by (a) not disclosing commission/charges and (b) showing a gain when in fact the Bond was making a significant loss."

The Provider's Case

Background

The Provider explains that he was introduced to the Complainant and her husband in 2002. He states they were extremely wealthy individuals.

The Provider states that over the years, the Complainant attended between 35/40 meetings which discussed financial products and performances and had in depth conversations on allocation rates and management charges.

In **2014**, the Complainant and her husband were anxious to set up a fund in favour of their daughter who had [number redacted] children and who had not benefited from their wealth to the same extent as their son. The Complainant and her husband wanted to give their daughter the benefit of an investment while at the same time retaining control over it and the Provider was asked to present various options. Over the following 12 months, the Complainant's husband's illness progressed and this delayed their wishes. The Complainant's husband sadly passed away in [date redacted] **2015**.

The Provider explains that in late **2015**, the Complainant sought its assistance with her husband's affairs. Throughout **2016**, the Provider worked with the Complainant's solicitors to quantify her assets for probate and other issues. In late **2016**, probate was granted and the Provider made the first significant investment for the Complainant valued at approximately €860,000. The Provider advised that throughout this period, the Complainant's son attended numerous meetings and like the Complainant, is also an extremely wealthy individual and *"... was able to talk in great depth about fund performances, management charges, commissions and exit penalties as he had his own Broker."*

In **2017**, the Complainant contacted the Provider with a view to investing money for her daughter's benefit. The Provider submits, referring to the complaint file, that the Complainant's son was fully aware of the investment; attended a meeting in **August 2017** when the final decision was made with regard to the investment (five months after the *Reasons Why* letter issued); contacted the Provider in **October 2017** to give it the *green light*; and arranged for the funds to be in the Complainant's account in order for the cheque to issue.

Suitability of the Bond

The Provider strongly disputes the Complainant's contentions regarding the suitability of the Bond and explains that as deposit rates were extremely low and the outlook was for rates to remain low, an alternative for the Complainant to generate income for the benefit of her daughter would be an investment bond that could have the potential to achieve a higher growth rate than deposit rates in order not to erode the investment.

The Provider points out that the Complainant had substantial cash savings and investments including her pension. The Complainant had also informed the Provider that she was in the process of selling the family home for approximately €650,000 and downsizing to an apartment costing around €400,000. The Provider advises that following the sale of the family home and the purchase of the apartment, the Complainant would have funds in the region of €1.97 million which did not include her pension.

On **26 September 2017**, the Provider wrote to the Complainant outlining her bank accounts and a proposed strategy. The Complainant's son telephoned the Provider on **3 October 2017** to advise that he had read the Provider's letter and understood the contents. The Complainant's son informed the Provider that he would arrange for the Complainant to put notice on her deposit account and for the cheque to be issued for the Bond.

An *Attitude to Risk* questionnaire was also completed which assigned a risk profile of 3 to the Complainant. The Provider explains that the proposed risk profile of the Bond was slightly higher at 3.75 which was highlighted in bold print on the *Reasons Why* letter and stated that as the Complainant wanted to take an income of 4% from the Bond, the Provider suggested fund diversification in order to potentially achieve a higher growth rate of 3% so as not to erode the capital of the Bond. However, taking the Complainant's cash into consideration, the overall risk strategy was less than 2. The Provider states that the investment was split 75% in the Bond which had a risk profile of 3 and 25% in Irish property which had a risk profile of 6 and Irish property had been a steady performer.

The Provider states that a meeting was held in **May 2017** as the Complainant wanted to execute the proposed strategy that had been initiated in **2015** before her husband passed away. A *Reasons Why* letter dated **25 May 2017** was prepared and sent to the Complainant. A further meeting was held in **August 2017** at which the Complainant's son was present. The *Reasons Why* letter was explained and the Complainant's son agreed that the Complainant should take out the Bond. It is submitted that both the Complainant and her son were made fully aware that the Bond was a medium/long term strategy and the 5 year exit penalty was explained. The Provider states that the Complainant's son remarked that as deposit rates were low it would be better to invest in a bond and that the Complainant has no immediate or short-term need for access to the money as she had adequate cash available to her. The Provider states that it was also pointed out that fund values rise and fall.

A further letter dated **26 September 2017** was sent to the Complainant. The Complainant's son telephoned the Provider on **3 October 2017** to advise that he had read the letter and that he would arrange for the funds to be available for a cheque to issue. The Provider explains that the Complainant had also been provided with the *Key Features* document which outlined the risks involved and contained details of early exit penalties. In addition, the Provider explains that after the Bond was taken out, the Investment Provider sent the Complainant a *Cooling Off Notice* on **20 October 2018** which would also have included management charges, exit penalties, Terms & Conditions, and notice that the Complainant could cancel the investment within 30 days.

The Provider also submits that the Complainant was aware of the objectives of the investment as the Complainant had instructed the Provider that she wanted to continue with the Bond which both she and her late husband wanted to do prior to his death as they wanted to have a vehicle that would generate income for the benefit of their daughter.

Exit Penalties

The Provider disputes that it failed to advise the Complainant of the exit penalties associated with the Bond as it states that these were discussed at previous meetings and also at meetings which took place on **16 May 2017** and **31 August 2017**. The Provider advises that the Complainant's son was present at the August meeting and had a number of queries regarding exit penalties. The Provider states "*[t]he investment structure has been similar that had been applied over the past 16 years. [The Complainant and her husband] never had a history of early encashments.*"

Additionally, the exit penalties were outlined in the *Reasons Why* letter dated **25 May 2017** which was signed off by the Complainant and exit penalties were also highlighted in the *Product Brochure*.

Misleading Information

The Provider appears to suggest that the Complainant and her son demonstrate the loss regarding the surrender value and submits that "*... early surrender penalties are not a loss unless it is enacted which of course would be their decision.*"

The Provider also disputes that a misleading report was furnished to the Complainant on **10 January 2018**, explaining that the report "*... clearly highlighted that the gross value had made a gain of €11,395 since the commencement of the Investment Bond on the 18th of October 2017.*" The Bond had early exit penalties in the first 5 years which both the Complainant and her son were made fully aware of. The Provider submits that "*[t]o include the exit penalty on this Report would indicate that there had been no gain on the initial investment which would be misleading as the Bond had made a gain.*"

In response to the Complainant's query as to why the Provider did not offer the option of "*... effecting the Bond without Exit Penalties*" the Provider states that "*[i]f there had been no exit penalties the gross allocation rate that the Complainant would have received would have been 100.5%. There was also a 1% Government Levy so the allocation rate would have been 99.5% before commission. The Provider rebated 1% commission in order to cover the 1% Government Levy so that 100% of the investment could be invested for the Complainant.*"

The Provider states that details surrounding commission and charges was clearly indicated on the *Reasons Why* letter and was also spoken about at the various meetings. In addition, the charges were contained on the policy schedule which the Provider and Investment Provider sent to the Complainant along with a *Cooling Off Notice*.

The Provider submits that the Complainant's son was also an experienced investor who had agreed that the Complainant take out the Bond and had discussed his own fund management charges/commissions with the Provider at previous meetings.

Management Fees

The Provider disputes that contention that management fees were not advised to the Complainant. It states that these fees were explained at the various meetings and also disclosed on the *Reasons Why* letter and the policy schedule.

Previous Dealings with the Complainant

The Provider states that the Complainant and her husband had taken out numerous investment bonds in the past which also contained exit penalties. In addition, the Complainant had taken out investment bonds in trust for her grandchildren.

Concluding Submission

The Provider submits that it did not miss-sell the Bond to the Complainant. It states that the Complainant had indicated at previous meetings that she wished to complete the proposed investment which had been discussed with the Complainant and her husband. The Complainant wanted her daughter to receive an income which could be provided by taking a regular income from the Bond as deposit rates were extremely low and the Complainant could have better growth potential compared to deposit rates. The Complainant also felt that her son had received generous amounts of remuneration from the family business unlike her daughter.

The Provider again points out that the Complainant's son was present at the meeting when the proposed Bond and *Reasons Why* letter were discussed and had contacted the Provider on **3 October 2017** to agree that the investment in the Bond be finalised.

Further Submissions

A number of further submissions have been made by the parties. In particular, I note that in a submission dated **12 December 2019**, it is submitted on behalf of the Complainant that neither the Complainant nor her son received the documents appended to the *Reasons Why* letter outlining the charges and exit penalties. It is also stated that the product brochure and the *Customer Vulnerability Statement* were not sent to the Complainant or her son. The submission also disputes the contents of the Provider's memos of the meetings between the parties.

The Complaints for Adjudication

The complaints are that:

1. The Provider failed to take into consideration the fact that the Complainant was a vulnerable consumer;
2. The Bond was unsuitable for the Complainant given her needs and circumstances;
3. The Complainant never intended to invest in the Bond;
4. No family members were present at the point of sale;
5. The Complainant was not advised of the annual management fees;
6. The Complainant was not advised of the exit penalties;
7. The Complainant did not understand the risks associated with the Bond;
8. The Provider failed to explain that the Death Benefit attached to the Bond was the surrender value and not the amount invested;
9. The Provider furnished incorrect and/or misleading information in the January 2018 Report; and
10. The Provider failed to comply with a number of provisions of the Consumer Protection Code 2012.

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.

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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 7 July 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.

Meetings

As the evidence of the parties demonstrate, a number of meetings were held between the Provider and the Complainant and her husband during the course of their relationship and latterly, with the Complainant's son. The Provider has furnished a number of memos of these meetings. The Complainant disputes the accuracy of these memos but goes no further than this. The Complainant has not identified what aspects of these memos are inaccurate or incorrect nor has a correct version of events been provided.

30 September 2015

"A second meeting was arranged for 29th September 2015 at their home. Present was [the Complainant's husband] and [the Complainant] ... The meeting lasted approximately 30 minutes.

[The Complainant's husband] said that he had around 7 bonds with [a financial services provider] and wanted to transfer the agency to us and to review them. ..."

2 March 2015

"A meeting was held at [the Complainant's husband's] house on Tuesday 24th February 2015 at 9.30. Present was his wife ... and the meeting lasted approximately an hour.

[The Complainant's husband] was very happy with the existing investment strategy and the performance of the funds. He had made a gain of approximately €105K in the past year. He was also interested in investing more in Property Funds and it was agreed that these changes would be made in the Summer of 2015 ..."

30 June 2015

"A meeting was held at [the Complainant's husband's] house on Thursday 25th June 2015. Present were [the Complainant's husband] and his wife ... The meeting commenced around 9.45 and lasted approximately an hour.

[The Provider] said that they were targeting funds that had capital appreciation and had earnings within the funds. Both [the Complainant's husband] and [the Complainant] were very happy with the overall performance of the pensions and they were only a smart (sic) part of their overall assets.

The conversation then moved to succession planning and gifts for their daughter. ..."

25 August 2016

"A meeting was held in [name of city redacted]. Present was [the Provider] and [the Complainant]. The meeting was held over lunch ...

[The Provider] explained to [the Complainant] that probate was about to issue and explained that [her husband's] ARF pension would be transferred into her name and for the short-term he suggest (sic) that they be invested into a low risk Cautious Multi Asset Fund with [financial services provider] as this would be a holding position until an investment strategy would be prepared for her. Her general statement of affairs was also reviewed.

[The Complainant] said that she wanted 4% of the pension at Christmas time as this was what [her husband] used to do.

[The Provider] explained the commission terms that [the financial services provider] would pay [the Provider] and that we did not charge fees for the work.

It was agreed to meet up again in a couple of weeks when probate had issued."

24 February 2017

"[The Provider] met [the Complainant] at her home on 23rd February 2017 and the meeting lasted one and a half hours.

She was very happy with the ARF and they went through the Report."

14 March 2017

"[The Complainant] phoned [the Provider] on 6th March 2017 and a meeting was arranged for Monday 13th March 2017 at 12.30 ... Present was [the Provider] and [the Complainant's son] attended along with [the Complainant]. The meeting lasted over an hour.

[The Complainant's son] queried the fund management charges and [the Provider] explained that these were discussed prior to the new ARF being taken out. [The Complainant's son] queried the 5 year early surrender penalties and [the Provider] said that Pensions were long term investments and not short term but if he wanted to switch pensions to another provider then there would be penalties but that [the Provider] would try and match the allocation rate with the penalties involved.

[The Complainant's son] then discussed why [the Provider] was getting 0.7% commission and [the Provider] said the [it] was getting 0.5% trail commission and that [the Provider] had not charged any fees with regard to the pension as our remuneration was purely commission. Again, [the Provider] explained to [the Complainant's son] that the Reason Why letter was discussed together with charges/commissions prior to any action being done and [the Complainant's son] seemed to be happy with that explanation. [The Complainant] wasn't bothered with all of [her son's] queries and was happy with her pension."

16 May 2017

"[The Complainant] phoned [the Provider] and requested a meeting which was held in [name of city redacted] on Monday 15th May 2017 at 12.45 which lasted over an hour. ...

She wanted a system for her money. [The Provider] went through her pension investments and each fund was gone through together with the performance and that she was taking 6% per annum paid in December. [The Provider] explained the money that she had made back from outset.

[The Provider] is working on a tax plan for her with regard to her children. Her late husband had initialised this over 2 years ago but had died before completion and [the Complainant] wanted this to continue.

She also told [the Provider] that she wanted an Investment Bond FOR 500k from which her daughter would receive an income. [The Provider] said that he would research this to see if this was feasible.

She had approximately €240K in her c/a, €18K in ... savers account, €417K in more deposit accounts and a large sum in ... fixed term accounts and she is going to send [the Provider] copy certificates.

She wanted something medium to low risk and she had been profiled as a '3' and her overall pension funds had a profile of '3.7' and was well diversified due to the fact that she has to take out 6% per annum."

1 September 2017

"A meeting was held in the [hotel] on Thursday 31st August 2017 at 12.30. Present was [the Complainant] and her son ..., [the Provider]. The meeting lasted over an hour and a half.

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The Reasons why letter was explained and [the Complainant's son] agreed that she would take out the Bond and was made fully aware of the early surrender penalties for the first 5 years. [The Complainant's son] said that [the Complainant] was selling the PPR and was expected to get in the region of €850K and that she had just purchased a 2 bed apartment in [location] for €400K.

[The Complainant's son] said the deposit rates were extremely low and that it would be better to invest in a Bond which had the potential to achieve a better growth rate than deposits and that if [the Complainant] wanted to take an income from the Bond at a later stage that she would but in the meantime, she had no immediate or short-term need for access to the money as she had plenty.

After the sale of the house she would have approximately €1M in her deposit account and there was a maturing ... Bond for another €570K in September 2018."

16 October 2017

"[The Complainant's son] phoned [the Provider] on 3rd October 2017. He had read our letter of the 26th of September and understood the content. [The Complainant's son] and [the Complainant] then both spoke to [the Provider] understood that 2 cheques would need to be written from the 2 bank accounts and that he would arrange for [the Complainant] to put notice on the 30 day deposit account with [the bank] as she would need the funds to the sale of the apartment.

On the 12th of October as the cheques hadn't been received in the post, [a representative of the Provider] phoned [the Complainant] who told her that she had closed one of the current accounts which she had opened last May and transferred the money into one bank account as it would be easier to manage. [The Provider's representative] said that she was in [location] on the 13th of October and if [the Complainant] wanted to she could go across to [the Complainant].

[The Complainant] was delighted ... A meeting was arranged for 12 noon at the [hotel] which lasted 2 hours. [The Complainant] said that she did not need to set up a regular income at present but this might change in the future. ..."

May 2018

"A meeting was held in [hotel] on 15th May 2018. Present was [the Complainant] and [the Provider]. [The Complainant's son] had prior commitments and did not turn up. Meeting lasted approx. 2 hours ...

[The Provider] brought up the Investment and performance and [the Complainant] did not appear over interested about it. She said that [her son] was putting pressure on her to switch brokers to his broker and she didn't want to do it but didn't want to let him down. She said that [her son] didn't want to attend meetings to do with his mothers affairs any more as he had told her that he was busy.

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She said that she had a good relationship with [the Provider] and wanted to know if she switched brokers if she could maintain the personal relationship. [The Provider] told her that he had been acting for her late husband and [the Complainant] for nearly 20 years and would be very disappointed to lose her business at this stage."

Personal Financial Review

A financial review was carried out by the Provider in **August 2016**. The following declaration is signed by the Complainant and dated **24 August 2016**.

"I confirm that I have read through this document and it accurately reflects the information provided by me. ..."

I note in the personal details section describes the Complainant as widowed. The Complainant's attitude to risk is classified as 3.

Consumer Vulnerability Statement

The Provider has furnished a *Consumer Vulnerability Statement* dated **17 May 2017**. This statement acknowledges that the Complainant was bereaved since **October 2015**. The statement also states:

"Capable of Making Decisions: Yes, instructed [the Provider] that she wants an investment as small part of her net worth (around 3.5m) & doesn't want deposit

Limited Capacity to Make Decisions (ie mental illness/ intellectual disability)" No

Reasons Why Letter

The Provider wrote to the Complainant on **25 May 2017** in the form of the *Reasons Why* letter. This letter states:

"Important Notice – Statement of Suitability

This is an important document which sets out the reasons why the product recommended is considered suitable, or the most suitable, for your particular needs, objectives and circumstances.

Dear [Complainant],

I refer to our meeting held in [location] on the 15th of May ...

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We reviewed the fund performances of your pension with [pension provider] and the overall risk profile of your pension is '3.7'. '1' being Low Risk and '7' being Very High Risk. You had completed an Attitude to Risk Questionnaire last August which profiled you as a '3'. However, you said that you hadn't changed your risk profile since then.

...

You stated that you wanted to take out an investment vehicle with a view to trying to achieve a higher growth than deposit rates are currently low and the outlook remains for them to remain low and I would suggest that you invest €600,000 into an Investment Bond in this regard.

Recommendations for Consideration

Bearing in mind your instructions, I have researched the marketplace on your behalf and would suggest that you take out this Investment Bond with [the Investment Provider] as they have a wide range of funds that matches your risk profile. In particular they have a [fund] which has a risk profile of '3' which targets to achieve a return of 4% per annum over cash, measured over a rolling four year period. This type of fund with the other Life Companies has a higher risk profile. Please refer to Appendix 2 with regards to details of [the Investment Provider].

Proposed Investment Strategy

As you wished to take a regular income of 5% per annum paid monthly from the Investment Bond, I would suggest that you invest into the following funds:-

<u>Fund Choice</u>	<u>Investment Amount</u>	<u>Risk Profile</u>
[Investment Provider Fund]	€450,000	'3' Low/Medium Risk
Irish Property	€150,000	'6' High Risk

...

Investment Bond Risk

The risk profile of the suggested investment strategy for the Investment Bond is '3.75' which is higher than your risk profile of '3'. However, as you wanted to take a regular income of 4% from the Bond, I have suggested that you diversify in order to potentially achieve a higher growth rate of 3%.

However, the overall risk profile including your Pension, ... deposit accounts and your State Savings would reduce the risk profile down to '2.5' which is slightly lower than your risk profile of '3'.

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[Investment Provider Fund]

Details

This is a multi-asset fund and invests in a number of external funds managed by expert Investment Managers and chosen by [the Investment Provider]. The aim is to achieve a return of 4% per annum over cash, measured over a rolling four-year period.

Irish Property

...

Please also find enclosed Fund Fact Sheets, Product Booklet together with Key Features document for your information and retention.

Please also refer to Appendix 1 with regard to allocation rates/charges/penalties etc.

...

I trust that you will find this letter helpful but should you have any queries, please do not hesitate to contact me.

I would be grateful if you could sign a copy of this letter by way of acknowledgement and return to us for our files."

The Complainant signed this letter confirming that she had read it. A number of warnings were printed under her signature.

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

Warning: The income you get from this investment may go down as well as up.

Warning: Past performance is not a reliable guide to future performance.

Warning: This investment may be affected by changes in currency exchange rates.

Warning: Risk level is not guaranteed."

Appendix 1 to this letter comprises a table detailing information regarding *Early Surrender Penalties, Fund Management Charges, Fund Switch Charge, Government Levy and Commission Terms.*

A Fact Sheet in respect of the Investment Provider's fund was also enclosed with the *Reasons Why* letter. The *Fund Description* section gives a brief description of the fund, advises that it is subject to incentive fees and contains a warning that a prospective investor may lose some or all of the money they invest. The *Fund Facts* section highlights that the volatility/risk of the fund is 'medium'.

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In terms of fees and charges, the second page of the Fact Sheet states:

“Fund returns are quoted before taxes and after a standard annual management charge of 1.38%. The fund management charge and product charges will vary depending on the terms and conditions of your contract.”

The Provider wrote to the Complainant on **26 September 2017** outlining the amount proposed to be invested in the Bond and requested two cheques to initiate the investment.

Application Form

When completing the investment in the Bond, the Complainant signed a *Saving and Investments Declaration and Consents* on **13 October 2017**. Section D of this form, which has been signed by the Complainant, states:

“I acknowledge and understand that my investment will not begin until [the Investment Provider] has received and accepted a fully completed application form ...

I confirm I have received the plan booklet. I understand that this declaration together with the other declarations and consents I have given in this application is my application and will form the basis of any contract accepted by [the Investment Provider]. I understand and agree that my contract with [the Investment Provider] will be based on:

- *The declarations and consents in this application*
 - *All personal details given by me ...*
 - *The plan terms and conditions*
 - *Payment by me of the agreed premium(s)*
- ...”*

Correspondence from the Investment Provider and the Provider

The Investment Provider wrote to the Provider on **20 October 2017**. This letter enclosed a copy of the *Investment Schedule* and advised that a copy of this schedule had been sent to the Complainant. The letter also requested that the Provider send a copy of the schedule to the Complainant. By letter dated **23 October 2017**, the Provider wrote to the Complainant enclosing a copy of her policy document. I note that the Provider has also furnished a *File Checklist* dated **23 October 2017** which records the policy documents as having been sent to the Complainant on the same date. The *Investment Schedule* provides, amongst other things, the following information:

“Your investment details

The rules of your investment are set out in your terms and conditions booklet.

/Cont’d...

...

Your fund details

The yearly fund charge will be deducted on a daily basis and will be reflected in the price of the fund.

...

The yearly plan charge will be deducted on a monthly basis from the fund you build up with this single contribution.

...

A full list of all the charges on your plan is given in your Product Booklet, Fund Guide and Terms and Conditions booklet.”

Product Booklet

The purpose of the Bond’s Product Booklet states as follows:

“This booklet will give you details of the benefits available in the [fund]. It is designed as a guide that allows us to explain the product to you in short and simple terms. There will be more specific details and rules in your Terms and Conditions booklet which you should read carefully.”

Suitability

Section 2 of the Booklet contains, amongst other things, a number of warnings:

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

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

Warning: This product may be affected by changes in currency exchange rates.

Warning: Past performance is not a reliable guide for future performance.”

In a box beneath this, the Booklet advises:

“... Before deciding to invest in [the fund] you should read the separate Fund Guide booklet which aims to help make your investment decision easier by explaining the funds by their level of risk and giving you full information on each fund.”

On the following page titled *Is This Plan Suitable For Me?* the Booklet sets out a *Suitability Snapshot* containing two columns: one listing reasons why the investment might be suited to a prospective investor and the other listing reasons why it may not be suitable.

/Cont’d...

Charges

Section 3 provides information on how the fund works and repeats the warning cited above. At page 9 of section 3, the Booklet advises that charges may apply in the event a plan is cashed-in and directs the reader to section 4, *Charges and technical information*. The reader is also directed to the *Important Information* section of the *Fund Guide*.

Section 4 describes the charges associated with the investment fund as follows:

“1. Yearly Fund Charge

The fund charge each year will depend on the fund, or mix of funds, that you choose to invest in. We take this charge as a percentage of your fund value at a given time. It can be different for each fund you are investing in. We take the charge from the fund each month and this is reflected in the price for each fund. You will find a full list of the charges of each fund, available through [the fund], in your separate Fund Guide.”

...

2. Yearly Plan Charge

This charge, if it applies, will be shown on your plan schedule. We take it as a percentage of your fund value and it could be up to 0.5% a year. We cancel units every month to pay this charge. If it appears on your schedule, it applies as well as the yearly fund charge above.

3. Charge If You Cash In

Early cash-in charges

We have designed [the fund] for an investment term of five years or more. However, if you decide to cash in any money from your plan in the first five years of the plan, you will have to pay the following early cash in charge on the value of your fund.

<i>Years 1 to 3</i>	<i>5%</i>
<i>Year 4</i>	<i>3%</i>
<i>Year 5</i>	<i>1% ...”</i>

Death Benefit

Death benefit is discussed at page 11 of section 4 as follows:

“If you die, we will pay 100.1% of the fund value of your [fund], less any tax that may be due. The amount we pay could be more or less than the original amount you invested. ...”

/Cont'd...

Customer Information Notice

Section 5 is titled *Customer Information Notice*. This section contains information about the fund and advises the reader to consult the plan schedule, terms and condition, and personalised customer information notice for full details about the investment. It is also advised that these documents be read carefully as certain exclusions and conditions may attach to the benefits and options chosen by a particular investor.

The following information is then set out:

“1. Make Sure The Policy Meets Your Needs!

... Unless you are fully satisfied as to the nature of this commitment having regard to your needs, resources and circumstances, you should not enter into this commitment. ...”

2. What Happens If You Want To Cash In The Policy Early Or Stop Paying Premiums?

...

If you want to take money out of your plan within the first five years an early withdrawal charge will apply to the amount you receive. We will reduce your fund value by the early withdrawal charge. This charge is equal to 5% of the cash-in amount in years one to three, 3% of the cash-in amount in year four and 1% of the cash-in amount in the fifth year. ...

The value of your investment may go down as well as up. Therefore your cash-in value may be less than the payment you have made.”

Subsection 3 provides two illustrations of the performance of a portfolio for a typical bond and sets out the costs and benefits for the duration of the illustration period. Towards the end of subsection 3, the Booklet outlines the circumstances in which incentive fees may be incurred.

Details surrounding intermediary/sales remuneration is contained in subsection 4 together with an illustration and advises that information regarding an investor’s specific investment will be set out in their welcome pack.

In terms of the returns on an investment, subsection 5 advises:

“... What your fund will be worth depends on the rate at which your investments grow. You could end up with a fund of more or less than these projected amounts. ...”

/Cont’d...

The Booklet advises at subsection 8 that:

“... You may cash in your investment in full or in part at any time. ... If you cash in more than five years after the start of the plan you will receive the value of your investment, less any tax due. However, if you want to cash in your investment less than five years after the start of the plan, we will reduce the value of your investment by an early withdrawal charge. This charge is equal to 5% of the value of your investment in years one to three, 3% of the value of your investment in year four, and 1% of your investment in year five. No charge will apply after the fifth year. ...”

This subsection continues by outlining the variable charges associated with a fund, how they arise and how they can vary. The reader is also directed to the Fund Guide for information on all fund charges and illustrations.

Finally, I note that following the variable charges paragraphs, the Booklet contains a paragraph on page 23 outlining an investor’s right to cancel their investment within 30 days of receiving details of the investment from the Investment Provider.

Terms and Conditions

The terms and conditions for the Bond advise as follows:

“You should read the document carefully as it contains detailed and important information.”

Cooling-Off

At page 2 of the terms and conditions, investors are advised of the cooling-off period and the right to cancel the investment within 30 days.

Fund Value

At section 2, *Unit-linking*, the manner in which the Bond’s value is calculated is set out on page 8 as:

“• the number of units we have placed in your investment from each fund;

multiplied by

• the price for units of that fund on that date; and

• added together for each of the funds in your investment.

As a result, this fund value will go down as well as up over time as the unit prices change to reflect the value of the assets in the funds.”

/Cont’d...

Fund Charges

Section 3, *Funds and Unit Prices*, explains how the Bond works and deals, firstly and quite extensively, with fund charges. While I do not intend to set out every aspect of this section, I note the following:

“Each month we make a charge of one twelfth of the yearly fund charge for each of your chosen funds. We take this charge from the unit price in your fund(s) evenly over the month. This charge goes towards the costs of:

- *setting up and administering the investment;*
- *paying sales and commission costs ...; and*
- *the expenses of managing your investment.”*

This is followed by an extensive table detailing fund charges on the Bond which sets out the *Panel of Funds, Standard Charge, Estimated average level of variable charge and Total estimated fund charge each year.*

At the end of this table, it is stated that:

“The estimated average levels of variable charges indicated above are those expected over the long-term. The actual level of charges may be higher or lower than this. The section on variable charges below explains the reasons for this.

...

3.1 Variable Charges

As noted above the charge on a number of funds can vary and therefore is not fixed throughout the lifetime of your plan.

The charge noted in the above table reflects our best estimate of the total charges we expect will be incurred by the fund over the long term. However, the actual charges you incur may vary for the reasons given below.”

Section 3.1 continues by explaining the reasons why actual charges may vary. Section 3.3 states that charges may increase if there is an increase in the cost of dealing with the Bond or the charges vary for one of the reasons identified in section 3.1. Finally, it is also stated that incentive fees may be charged by fund managers and sets out the circumstances in which such fees may be deducted.

Charges

Section 4, *Charges*, sets out the charges associated with the Bond.

In particular, it states:

“4.3 Annual fund charge

This charge is taken as a percentage of your fund value. It can be different for each fund that you are investing in. Each fund charge is shown in section 3 of this booklet. This charge is reflected in the unit price of each of the different funds you have invested in.

4.4 Yearly plan charge

If this charge applies, it will be shown on your plan schedule. This charge is taken as a percentage of your regular payment fund value and/or your single payment fund value (if applicable). This will apply as well as the fund charge referred to in sections 3 and 4.3.

We will take one twelfth of the plan charge every month by cancelling units from the unit account. We will cancel units from the unit account in the same percentage as the latest fund link for new regular payments we have been told about.

In certain cases we may add extra units to your investment each month so we can reduce the effect of your fund charge. If this applies to you, you will find details in your schedule. This reduction may be different for annual or single contributions, or for additional future contributions you make.

4.5 Early withdrawal charge

If you want to take money out of your investment less than five years after you put it in, we will take an ‘early-withdrawal’ charge from your fund value (see section 9). This does not affect your right to cancel in the cooling-off period we referred to in the introduction.”

Death Benefit

Section 7 deals with death benefit and states:

“This section gives details of the benefit we will pay if an investor named in the schedule dies.

On the date we are told about the death of the life assured on the second of the lives assured (if there are two shown on the investment schedule), we will switch the fund value to the Life Claims Cash Fund on the unit price on that day.

We do not charge for the switch.

/Cont’d...

The death benefit we pay will be 100.1% of the value of the Life Claims Cash Fund based on the unit price on the day we receive all the documents we need. ...”

Encashment

Section 9 describes what occurs when funds are withdrawn from the Bond:

“... If you take your money out more than five years after you put it in, we will pay you the full fund value, less any tax that may be due.

The cash in value you receive will be based on the value of your units in the fund at the end of any notice period.

However, if you want to cash in your investment less than five years after putting the money in, we will reduce your fund value by taking off our ‘early-withdrawal’ charge. This charge is a percentage of your fund value which depends on the number of years (or part of a year) between the date that you take your money out and the fifth anniversary of the date you put it in. This means that if you have made extra investments, you may have different early-withdrawal charges on different parts of your fund value. We don’t make this charge if you cancel during the cooling-off period which we refer to in the introduction.

The percentages are as follows: ...”

Missing Documents

It is stated by the Complainant that they did not receive the documents appended to the *Reasons Why* letter. These documents include the Fund Fact Sheets, Product Booklet, the Key Features document and details of the Investment Provider. The Complainant also states that she did not receive the Customer Vulnerability Statement. However, it is not asserted that the Complainant did not receive the terms and conditions or the Investment Schedule.

In the Timeline of Events prepared by the Provider, it is stated that:

“[The Investment Provider] sent the Cooling Off Notice to [the Complainant] on 20th October 2017. Brokers do not receive a copy of the Cooling Off Notice but we understand that in the Cooling Off Notice it includes a copy of the Investment Schedule which sets out the details of the Investment Bond ie fund selection, unit price, unit purchased, fund split, yearly fund charge, yearly plan charge and the total amount. We also understand that it will show the investment amount, a note that the value of your investment can rise and fall and your original investment is not guaranteed.

[The Investment Provider] would also have sent the T&C Booklet, an Investment Booklet, a Fund Guide, a Detailed Customer Information Notice. Also in the Cooling Off Notice, [the Investment Provider] would have stated that [the Complainant] can cancel the investment within 30 days of the date of the Cooling Off Notice."

The Complainant indicated her dissatisfaction with the Bond by letter dated **28 June 2018**. I note from the Complainant's correspondence that it was not suggested that she did not receive any of the correspondence or documentation outlined above, rather that certain matters regarding fees and penalties were not explained to her or her family. It is also acknowledged in a letter to the Provider dated **8 July 2018** that the Complainant's memory of the meetings between the parties is unclear: *"On reflection with [my son] as my memory of these meetings is unclear ..."* Further to this, in the Complainant's submissions, it is stated that:

"In response to our complaint [the Provider] states that my mother received all relevant information such as a breakdown of costs and statement of suitability etc. That may well be the case, but at 77 years of age (76 at time of sale) she was/is unable to absorb or understand large quantities of written complex financial information. ..."

Despite stating that the Complainant did not receive the Product Booklet, the Complainant signed the *Saving and Investments Declaration and Consent* dated **13 October 2017** which contained the following acknowledgement: *"I confirm I have received the plan booklet."*

I would also note that the Product Booklet is referenced in the *Reasons Why* letter and the Investment Schedule. The Fund Fact Sheet is also referred to in the *Reasons Why* letter. This letter was also discussed at the meeting which took place on **1 September 2017** which was attended by the Complainant's son.

If documents were missing, especially those referenced in the *Reasons Why* letter, it is difficult to understand how the meeting on **1 September 2017** could have been properly conducted without such integral documents being discussed. Moreover, I find it difficult to reconcile the fact that the Complainant would enter into the Bond without first seeking to ascertain the information contained in those documents.

I would also consider it prudent for the Complainant to read the *Reasons Why* letter. If she did and I am satisfied she did (particularly as she signed the letter acknowledging she had read it), she would have been aware of the existence of the other documents and information.

I note it is not suggested that the Complainant did not receive documentation from the Investment Provider as identified in the above passage from the Timeline of Events. This would appear to comprise the documentation stated to have not been received from the Provider.

Therefore, it would appear that, on the balance of probability, the Complainant received, or at the very least was made aware of, the documents referred to in the *Reasons Why* letter.

/Cont'd...

In terms of the Customer Vulnerability Statement, I would consider this to be an internal document and completed as part of the Provider's due diligence process. It is not necessarily a document the Complainant needed to see prior to the sale of the Bond.

The First Complaint

The first complaint is that the Provider failed to take into consideration the fact that the Complainant was a vulnerable consumer. It is stated that *"[d]ue to her age and general health my mother is a vulnerable consumer and [the Provider] failed to take this into account."*

Chapter 12 of the **Consumer Protection Code 2012** (the **Code**), defines a *vulnerable consumer* as follows:

"... a natural person who:

- a) has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example, hearing impairment or visually impaired persons); and/or*
- b) has limited capacity to make his or her own decisions and who requires assistance to do so (for example, persons with intellectual disabilities or mental health difficulties)."*

I do not accept that the Complainant's age alone is something that would classify her as a vulnerable consumer. It is stated that the Complainant was 76 years of age when she entered into the Bond. I note that there is no suggestion that she was a vulnerable consumer in the years or months that preceded this when investment decisions were being made and meetings taking place with the Provider regarding her and her husband's investments and financial position. All at a time when the Complainant was in her 70s.

The Complainant's *general health* is also cited as a reason for her vulnerable status. However, beyond this simple statement, no information or detail is given as to precisely how the Complainant's general health made her a vulnerable consumer. I also note that no medical evidence has been provided in support of this either. As such, I am not satisfied that there was anything about the Complainant's general health that was made known to the Provider, or that the Provider ought to have been reasonably aware of, that would require it to treat the Complainant as a vulnerable consumer.

Neither am I satisfied that the Complainant's change in circumstances, indicated in the Complainant's submissions as being the loss of her husband (almost two years prior to entering into the Bond) and her departure from her employment, necessarily render her a vulnerable consumer.

/Cont'd...

It is also stated that the Complainant “... was/is unable to absorb or understand large quantities of written complex financial information.” I consider this to be an unsupported statement. Furthermore, there is no evidence to demonstrate that the Provider was or ought to have been aware of the Complainant’s difficulties in this regard. Additionally, I do not consider that the information furnished to the Complainant was *complex*. The documentation outlined above is set out in a clear and understandable manner. There is also no evidence to suggest that the Complainant had difficulty understanding the documentation furnished to her in respect of the Bond.

Finally, the Provider completed a *Consumer Vulnerability Statement* in respect of the Complainant and based on the foregoing discussion, I am satisfied that it was reasonable for the Provider to conclude that the Complainant was not a vulnerable consumer.

Therefore, I am not satisfied that the Complainant was a vulnerable consumer prior to or at the time she entered into the Bond.

The Second Complaint

It is stated that the Bond was unsuitable for the Complainant in light of her needs and circumstances.

The memo from **16 May 2017** states:

“... [The Provider] is working on a tax plan for her with regard to her children. Her late husband had initialised this over 2 years ago but had died before completion and [the Complainant] wanted this to continue. She also told [the Provider] that she wanted an Investment Bond FOR 500k from which her daughter would receive an income from it. [The Provider] said that he would research this to see if this was feasible. ...”

The *Reasons Why* letter dated **25 May 2017** states:

“... You stated that you wanted to take out an investment vehicle with a view to trying to achieve a higher growth than deposit rates are currently low and the outlook remains for them to remain low and I would suggest that you invest €600,000 into an Investment Bond in this regard. ...”

It is also stated in this letter that: “... You had completed an *Attitude to Risk Questionnaire* last August which profiled you as a ‘3’. However, you said that you hadn’t changed your risk profile since then. ...” The risk profile for the Bond was 3.75 as outlined in bold print in the letter. However, I am not satisfied that this alone would render the Bond unsuitable for the Complainant. The letter also contained information about the proposed Bond and appended a number of documents relating to the Bond.

Subsequent to this, the memo from **1 September 2017** states:

“... The Reasons why letter was explained and [the Complainant’s son] agreed that she would take out the Bond ...”

The Complainant also signed the *Saving and Investments Declaration and Consents* on **13 October 2017** acknowledging that *“I confirm I have received the plan booklet.”*

It is stated in the Complainant’s submissions (above) that *“[t]his product was sold on the basis that it was to provide a future income for [the Complainant’s daughter] (my sister) and was of low risk ...”*

I am satisfied from the various interactions with the Provider and the documentation outlined above, that the Complainant was made aware of the nature and purpose of the product she was purchasing. While the Complainant maintains the position that the Bond was unsuitable for her needs and circumstances, the Complainant has not set out what her needs were and how they differed from those outlined in the memos and *Reasons Why* letter nor has any evidence been produced to show that the Provider was made aware of or reasonably ought to have been aware of, any contrary needs.

The change in the Complainant’s circumstances, as outlined in the previous section, were the loss of her husband and departure from her employment. It is quite apparent that the Provider was aware of the loss of the Complainant’s husband. However, it is not clear whether the Provider was aware of the Complainant’s loss of employment and if/when this was made known to the Provider (if at all). Furthermore, it is not stated when the loss of employment occurred. However, certain factors would suggest that the Complainant did not recently cease employment such as the information contained on a number of documents signed by the Complainant or prepared in respect of the Complainant.

For example, the Bond application form describes that Complainant as retired, the Financial Review signed by the Complainant on **24 August 2018** also describes her as being retired and the Vulnerability Statement lists the Complainant’s income as source as *State Pension/ARF/Deposit Interest*.

The Complainant makes the point that *“... [the Provider] seems to miss the point that there was a significant change in my mother’s needs and circumstances between 2014 and 2017...”* Essentially subsequent to this period, in **2017**, suitability for the Bond was assessed and the *Reasons Why* letter was prepared in **May 2017**. This letter contained that basis of the Provider’s assessment for the suitability of the Bond. It is acknowledged that the *Reasons Why* letter was received. This letter was then discussed at subsequent meetings. However, no issues were raised regarding the suitability of the Bond nor is there any evidence to suggest that the Provider’s assessment was based on incorrect or incomplete information. Therefore, it has not been demonstrated how any failure on the part of the Provider to properly consider the Complainant’s needs and/or circumstances rendered the Bond unsuitable.

/Cont’d...

In light of the evidence in this complaint, I am not satisfied that the Bond was unsuitable for the Complainant.

The Third Complaint

It is contended that the Complainant never intended to invest in the Bond. Having considered the evidence and the parties' submissions, I am not satisfied that there is any evidence to support this position. Furthermore, the Complainant has not produced or identified any evidence which would support the position that she never intended to enter the Bond.

In actual fact, the evidence points to the contrary. The Complainant wished to establish a system to provide an income for her daughter. The Provider recommended the Bond, meetings took place, a *Reasons Why* letter was prepared and Bond documentation was sent to the Complainant. There is no evidence of any reluctance or hesitation on the part of the Complainant regarding the purchase of the Bond nor is there any evidence to suggest that the Provider exerted any undue pressure on the Complainant to enter the Bond. As can be seen, the recommendation and sales process took place over a lengthy period of time. The Complainant also had the assistance and support of her son during this process.

The Fourth Complaint

The Complainant states that no family members were present at the point of sale. However, the Complainant has not identified precisely when the point of sale occurred. The sale of the Bond appears to have taken place with the Complainant agreeing to purchase the Bond at the meeting which took place on **1 September 2017**. The Complainant's son was present at this meeting.

The memo dated **16 October 2017** states:

"[The Complainant's son] phoned [the Provider] on 3rd October 2017. He had read our letter of the 26th of September and understood the content. [The Complainant's son] and [the Complainant] then both spoke to [the Provider] understood that 2 cheques would need to be written from the 2 bank accounts and that he would arrange for [the Complainant] to put notice on the 30 day deposit account with [the bank] as she would need the funds to the sale of the apartment. ..."

It was at all times open to the Complainant to request that a family member be present when she was meeting with the Provider, particularly if she considered herself vulnerable or had difficulties understanding the product information. Furthermore, I am satisfied that the Complainant had the assistance and support of her son during the sales process. In any event, I see no evidence that would have triggered any duty or obligation on the part of the Provider to ensure that the Complainant had a family member present at the point of sale.

/Cont'd...

The Fifth and Sixth Complaints

The Complainant states that she not advised of the annual management fees or exit penalties associated with the Bond.

It is accepted that the *Reasons Why* letter was received by the Complainant. The Complainant also signed this letter to acknowledge that she had read it. The *Reasons Why* letter was also explained at a meeting on **1 September 2017**. This letters states:

"... Please also find enclosed Fund Fact Sheets, Product Booklet together with Key Features document for your information and retention.

Please also refer to Appendix 1 with regard to allocation rates/charges/penalties etc. ..."

As noted above, Appendix 1 contains a table detailing information regarding *Early Surrender Penalties, Fund Management Charges, Fund Switch Charge, Government Levy and Commission Terms*.

The *Fact Sheet* states:

"Fund returns are quoted before taxes and after a standard annual management charge of 1.38%. The fund management charge and product charges will vary depending on the terms and conditions of your contract."

The Complainant also received separate correspondence from the Provider and the Investment Provider enclosing the *Investment Schedule*.

This document states:

"Your fund details

The yearly fund charge will be deducted on a daily basis and will be reflected in the price of the fund.

...

The yearly plan charge will be deducted on a monthly basis from the fund you build up with this single contribution.

...

A full list of all the charges on your plan is given in your Product Booklet, Fund Guide and Terms and Conditions booklet."

The Product Booklet and the fund's Terms & Conditions also contain substantial detail, in clear and plain language, about the charges associated with the investment.

/Cont'd...

Furthermore, these documents also explain the exit penalties that would be incurred if the Bond was cashed-in earlier than 5 years after the initial investment.

Therefore, I do not accept that the annual management charges or exit penalties were not explained to the Complainant.

The Seventh Complaint

It is stated that the Complainant did not understand the risks associated with the Bond. As can be seen from the *Reasons Why* letter, the risk profile of the Bond was set out in bold print in the *Investment Bond Risk* section. A number of warnings were also present on this letter in bold print.

In the Fact Sheet, the *Fund Description* section gives a brief description of the fund, advises that it is subject to incentive fees and contains a warning that a prospective investor may lose some or all of the money they invest. The *Fund Facts* section highlights that the volatility/risk of the fund is 'medium'.

At section 2 of the Product Booklet, the Complainant is encouraged to read the Fund Guide. This section also contains a *Suitability Snapshot* of the fund with bullet points as to why the fund may or may not be suited to a prospective investor.

The Complainant's previous investment experiences cannot be ignored when assessing this aspect of her complaint. The evidence demonstrates that the Complainant and her husband made a number of investments, including investments in bonds. The Complainant also met with the Provider on a number of occasions following her husband's death to discuss her investments and financial position. It is also clear that the Complainant had the assistance of her son during the process regarding the Bond.

If it was the case that the Complainant did not understand the risks associated with the Bond, there is no evidence to demonstrate that she conveyed her concerns or lack of understanding to the Provider. I am satisfied that the Complainant had sufficient information regarding the risks associated with investing in the Bond from both the meeting which discussed the *Reasons Why* letter and the documentation available to the Complainant.

The Eight Complaint

The Complainant submits that the Provider failed to explain that the death benefit attached to the Bond was the surrender value and not the amount invested.

The death benefit is defined in section 7 of the terms and conditions and states:

“This section gives details of the benefit we will pay if an investor named in the schedule dies.

On the date we are told about the death of the life assured on the second of the lives assured (if there are two shown on the investment schedule), we will switch the fund value to the Life Claims Cash Fund on the unit price on that day.

We do not charge for the switch.

The death benefit we pay will be 100.1% of the value of the Life Claims Cash Fund based on the unit price on the day we receive all the documents we need. ...”

The Product Booklet also states:

“If you die, we will pay 100.1% of the fund value of your [fund], less any tax that may be due. The amount we pay could be more or less than the original amount you invested. ...”

It is clear from the terms and conditions, and the Product Booklet that the death benefit, contrary to the Complainant’s submission, is not the surrender value nor is it the amount invested. It is, as stated in section 7, “... 100.1% of the value of the Life Claims Cash Fund based on the unit price ...”

Furthermore, the death benefit and the surrender value are two distinct concepts and treated in different ways. Death benefit switches the investment to a *Life Claims Cash Fund* and its value is calculated by reference to the unit price on the day the Investment Provider receives the relevant documentation; whereas the surrender value is calculated by reference to the value of the units in the fund at the end of the relevant notice period less any taxes and depending on when surrender occurs, an early withdrawal charge may also apply as per section 9 of the terms and conditions.

I would note that the Provider is not obliged to explain every aspect of the Bond’s terms and conditions to the Complainant. It is reasonable to expect the Complainant to read and familiarise herself with the documentation that she was provided with and/or referred to by the Provider and the Investment Provider. Finally, there is also no evidence to suggest that the Complainant sought clarity from the Provider on this aspect of the Bond which could have triggered a duty to explain this aspect of the Bond in more detail to the Complainant.

/Cont’d...

The Ninth Complaint

The Complainant states that the Provider furnished incorrect and/or misleading information in the **10 January 2018** Report. In the Complainant's submissions, the Complainant's son explains:

"A report issued to my mother by [the Provider] in January 2018 stated that the current value was €611,395 ... To our dismay, we then discovered from the product provider ... that the actual surrender value was €569,705.03. This is extremely worrying and raises the question as to why the surrender value was not disclosed in January 2018 in said report?"

Responding to this, the Provider makes the point that early surrender penalties are not a loss unless the Bond is surrendered. The Provider explains that the Bond did gain in value between **October 2017** and **January 2018** and to include exit penalties would give a misleading impression that the Bond did not gain in value.

The Provider has not set out precisely how the €611,395 was calculated, equally the Complainant has not set out the Investment Provider's method of calculation for the surrender value or whether taxes have been included nor has any documentation been furnished from the Investment Provider.

The Provider furnished a value for the Bond which was not based on it being cashed-in or surrendered. The Complainant however, maintains the value of the Bond is its surrender value. It appears that the Complainant has conflated the value of the Bond with the surrender value of the Bond. The value of the bond at a particular point in time is calculated by reference to the number of units in the fund multiplied by the price for those units at a particular date. The surrender value, however, would, in this particular instance be subject to a 5% early withdrawal charge as the investment was only made in the previous three months.

If the Provider were to calculate the value of the Bond by reference to its the surrender value, especially when such value is subject to early withdrawal charges, it would not accurately reflect the correct value of the Bond especially in circumstances where there was no indication or instruction from the Complainant that she wished to cash-in the Bond, a Bond which was intended to provide a future income for her daughter.

I am not satisfied that the Provider was obliged to include a surrender value in the Report. Furthermore, there is no evidence to demonstrate that a surrender value was sought prior to the Report being prepared or at any point immediately after the Report was given to the Complainant. While a meeting was held with the Provider on **15 May 2018** the value of the Bond was not raised until a letter dated **28 June 2018** was sent to the Provider.

I am not satisfied that the Provider furnished incorrect or misleading information to the Complainant regarding the value of her bond.

/Cont'd...

The Tenth Complaint

A number of breaches of the Code have been asserted by the Complainant. In terms of Clauses 2.6, 2.9 and 3.1, as per the preceding discussion, I am not satisfied that the Provider has acted contrary to these provisions of the Code.

The Complainant refers to clause 3.17 and a letter from the Provider dated **2 July 2018** and advances the point that the Provider "... states: *'the commission (paid by) [the Investment Provider] was offset against fees for ongoing tax advice and estate planning'. [The Complainant] has always discharged all fees due in a timely manner. Prior to the sale of the Investment Bond [the Provider] did not disclose to my mother that the commission to be paid to him was in any way connected to another service which he offered. This begs the question: is the return on an Investment Bond sold by [the Provider] dependent on whether fees have been discharged for other services?'*"

Clause 3.17 of the Code states as follows:

*"A **regulated entity** must not make the sale of a product or service contingent on the **consumer** purchasing another product or service from the **regulated entity**. This provision does not prevent a **regulated entity** from offering additional products or services to **consumers** who are existing **customers** which are not available to potential **consumers**."*

Having regard to clause 3.17, the Complainant has not identified what product was made contingent on the sale of the Bond or vice versa. The Complainant appears to have identified a situation where the Provider has engaged in the offsetting of fees. Furthermore, it is not clear and the Complainant has not stated, how this conduct prejudiced her in any way. Therefore, I am not satisfied that the conduct complained of in this instance falls foul of clause 3.17 of the Code.

Referring to clause 4.57, it is stated that the Provider did not and has never disclosed the commissions received from the Bond. The Provider states that this was discussed at the meetings with the Complainant and the *Reasons Why* letter. The memos of the meetings that I have cited above do not specifically refer to the discussion of commission. However, reference is made to the discussion of the *Reasons Why* letter.

This letter directs the Complainant to Appendix 1 for details of the charges associated with the Bond. The final column of that table at Appendix 1 sets out the *Commission Terms* as 2.5% Initial and 0.5% Trail. I note that in the submissions furnished on behalf of the Complainant it is stated that:

"In response to our complaint [the Provider] states that my mother received all relevant information such as a breakdown of costs and statement of suitability etc. That may well be the case ..."

/Cont'd...

I am satisfied that it is reasonable to infer that the costs being referred to in this passage would include the commission to be paid to the Provider. Furthermore, clause 4.57 requires information regarding commission to be provided "*Prior to offering, recommending, arranging or providing a product or service ...*" [My emphasis]. As such, I am satisfied that the Provider furnished information regarding its commission to the Complainant sufficiently in advance of the sale of the Bond. Because of this, I do not accept that the Provider has acted in breach of clause 4.57 or clause 4.58.

Clause 6.16 requires a regulated entity to provide "*... at least annually ...a statement in respect of the previous 12 month period ...*" I am not satisfied that this provision of the Code applies to the Provider in the manner contemplated by the Complainant. In this instance, the Provider is a broker or intermediary, the Investment Provider is the entity in charge of the Bond and its administration. Therefore, it would most likely be the Investment Provider that would be obliged to provide the Complainant with a statement in line with the provisions of clause 6.16. Furthermore, any *statement* furnished by the Provider in respect of the Bond does not necessarily have to comply with clause 6.16. In any event, the document prepared by the Provider in **January 2018** was not a statement in respect of the Bond nor does it attract the conditions of clause 6.16, it was a general report in respect of the Complainant's investments.

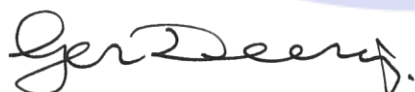
Therefore, I am not satisfied that the Provider has acted contrary to the Code or the provisions identified by the Complainant.

For the reasons outlined in this Decision, I do not uphold this complaint.

Conclusion

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

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



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

28 July 2020

/Cont'd...

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.

