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| <u>Decision Ref:</u> | 2020-0263 |
| <u>Sector:</u> | Investment |
| <u>Product / Service:</u> | Cash Investment |
| <u>Conduct(s) complained of:</u> | Mis-selling (investment) Failure to process instructions in a timely manner Value of policy at surrender less than expected or projected Switching funds |
| <u>Outcome:</u> | Rejected |

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

While the Complainant was in one of the Provider's branches on **24 July 2018**, she discussed investment options with the Provider's Investment Adviser. The Complainant returned to the branch on **7 August 2018** with her daughter and having been presented with a number of investment options, invested €1m in one of the Provider's investment products. The Complainant withdrew from the investment in **December 2018**. The Complainant's representative maintains that the investment product was unsuitable for the Complainant and was mis-sold to her.

The Complainant's Case

It is submitted on behalf of the Complainant by her representative that "[u]nder the updated Consumer Protection Code 2012 [the Complainant] would be deemed a Vulnerable Consumer, due to her age and ill health 'capable of making decisions but their particular life stage or circumstances should be taken into account when assessing suitability'."

The Complainant's representative also points out that, pursuant to the Consumer Protection Code 2012 (the **Code**), a financial services provider should not:

- *Mislead you about the advantages and disadvantages of any product or service*

- *Use too much influence on you or put you under too much pressure to buy a product or service*
- *Make sure that any information they provide to you is clear, accurate, up to date and written in plain English*
- *Make sure the product or service they recommend, or offer is suitable for you and explain to you, in writing, why it is suitable.*

The Complainant's representative explains that she has known the Complainant for many years and advises that the Complainant is 86 years of age and not in good health. It is stated that the Complainant is "... *extraordinarily risk averse ... Given that she had substantial funds to invest she dealt with senior managers in all banks. In all these meetings, no one, before [the Provider] ever suggest that she risk her funds in a managed fund, given her attitude to risk and her advanced age.*"

It is explained that the Complainant had €1m on deposit with the Provider which was reaching maturity in **July/August 2018**. Referring to the assessment of the Complainant's attitude to risk carried out on **24 July 2018** and her classification as *Defensive*, it is submitted that "... *in the most simple terms, I do not see a fund with a risk rating of 4 as a suitable investment for a defensive investor.*"

The Complainant expressed her reservations about the investment during a meeting with the Investment Advisor on **7 August 2018** but the Investment Advisor continued to sell the investment to the Complainant. The investment was a long-term investment which the Complainant's representative submits: "*I do not believe any 86-year-old should be directed into a long-term investment.*"

It is also stated the fact the Complainant's daughter was present when the investment was made is irrelevant as "... *she is not very financially literate.*" It is also pointed out that the Complainant's date of birth was incorrectly recorded on the Risk Profile Questionnaire as 1938 instead of 1932. Further to this, the Complainant did not approach the Provider about investing in a financial product, rather it was the Provider who approached the Complainant.

The Complainant's representative states that the Complainant continued to express reservations on **8 August 2018** but was again reassured that other funds were available for her nursing home expenses. It is suggested that "[w]hile [the Investment Advisor] was aware that [the Complainant] had other funds, she was hardly in a position to make such an assertion as she would not have had access to all of [the Complainant's] personal financial requirements."

The Complainant requested that the investment be cancelled on **8 August 2018**. However, in a later telephone call, she was persuaded to go ahead with the investment and on **9 August 2018**, the investment was complete.

The Complainant's representative explains that it is the Complainant's contention that the investment was mis-sold to her and that inappropriate pressure was placed on her. It is also stated that the Complainant was mis-directed into an investment that was unsuitable for her risk profile and age.

The Complainant's representative also states that *"[b]ased on my discussions with [the Complainant] I do not believe that she received unbiased independent advice in relation to this investment."*

The Complainant's representative further states that the *arguments* in relation to this complaint are fully articulated in the meeting notes of **14 November 2018** and **22 November 2018**.

It is also stated that the Provider did not transfer the funds from the investment to one of the Complainant's other bank accounts until **14 January 2019** despite the request to do so being made on **10 December 2018**. The Complainant's representative advises that in light of this error, the Provider was asked to pay an appropriate sum in respect of interest arising from the delayed transfer. The Provider's response to this request was to seek details of the interest rate applicable to the designated account. It is the Complainant's *"... contention that the interest rate applicable anywhere is irrelevant to the fact that [the Provider] should have paid penalty interest on the basis that they were negligent in not transferring the funds on 10th December 18."* The Complainant's representative states that the Provider informed her that *"... the interest paid on the account was €19.38 up to 31st December and €12.10 from 1st January to 14th January 2019."*

The Provider's Case

The Investment

The Provider strongly disputes the contention that the investment was not suitable for the Complainant. The Provider states it is satisfied that the investment suited the Complainant's needs following consideration of the information provided in the Risk Profile Questionnaire. Based on the answers provided to the questionnaire, which is used to determine a person's knowledge and experience, personal and financial circumstances, and risk appetite, the Complainant was classified as *Defensive*. On completion of the Risk Profile Questionnaire, the Provider advises that a List of Suitable Products was produced which detailed products which were and were not, suitable based on the *Defensive* classification. The Provider sets out the definition of a *Defensive* classification as:

"If you are a defensive investor, you put an emphasis on playing it safe. You are also able to tie up your money for a longer period of time: three to five years.

You opt mainly for interest-bearing investments. You have a modest proportion of your investments in shares. A healthy spread of investments remains an important factor."

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It is submitted that the Provider's Investment Advisor had no reason to believe that the Complainant should be categorised as a vulnerable consumer. The Provider wishes to highlight that the Complainant's daughter was with her and was present throughout the meeting on **7 August 2018**.

The Provider advises that if the Investment Advisor had any inclination that there was reason to consider the Complainant as a vulnerable consumer, the necessary steps would have been taken. The Provider explains that *"... at the request of the Complainant, a conversation was held with a person nominated by the Complainant prior to the Complainant opting to proceed with the investment. We regret that we are unable to locate a recording of this call however, we note that the nominated party has not consented to the release of this recording regardless."*

Addressing the various provisions of Chapter 5 of the Code, the Provider submits that it has complied with these provisions. The Provider explains that the investment was an open-ended investment and did not tie the Complainant into any fixed term period and as such, this investment was deemed suitable considering the Complainant's age. It is also because of this that the investment does not have a cooling-off period.

In relation to the Complainant's health, the Provider refers to the *Record of Conversation for Investment Fund Trade* which includes specific questions relating to a customer's health and wellbeing. The Provider notes that the answer given to this question was 'No'. It is also stated that, as detailed in this document, it is evident that the Complainant had substantial funds available to invest and while the amount of the investment was considerable, it was within the Complainant's means to invest such an amount. The Complainant was recorded as holding €2.7m with two other financial service providers and €1.2m with the Provider.

The Provider explains that the List of Suitable Products contained a suite of products deemed suitable for the Complainant. The Complainant, together with the Investment Advisor, signed that she had received an overview of the suitable investment products in accepting the *Declaration by the Investment advisory reference holders*. The Provider also refers to the Investment Product Transaction Form and the *Assessment of suitability* section. The Provider states that the Complainant signed the declaration attaching to this document.

The Provider explains that following the discussions regarding the products offered, the Complainant was provided with the Key Investor Information Document (KIID) and the Product Fact Sheet. The Provider also refers to a record of this conversation contained in the documentation furnished to this Office.

On **7 August 2018**, the Complainant queried the charges relating to the investment noting that it may not be worth her while investing. The Provider states that its Investment Advisor explained the charges and the Complainant signed the relevant declarations evidencing that she was agreeable to proceeding with the investment.

The Provider submits, regarding the reservations expressed on **8 August 2018**, the contemporaneous account note details the discussions held in response to this and clearly notes the Complainant's final decision to proceed with the investment.

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The Provider rejects the comments that the Complainant was persuaded to proceed with the investment and maintains that the relevant and pertinent information was provided to the Complainant for consideration and it was ultimately the Complainant's decision to invest. The Provider points out that the Investment Advisor facilitated the Complainant in her request to discuss the investment with her nominated party, which was done and it was following these discussions that the Complainant opted to proceed.

The Provider states that it conducted the sale of the investment appropriately and for this reason it is not agreeable to refund the loss incurred by the Complainant as a result of the performance of the investment as it states that the risks associated with the investment were clearly set out to and accepted by, the Complainant.

Delayed Transfer

The Provider has:

"... accepted the delay in processing the withdrawal from the Complainant's Standard Access Demand (SAD) account to her [financial services provider] account. We acknowledge receipt of the initial request on the 3rd December 2018 and explained that due to an administrative oversight this was not processed until the 14th January 2019. We offered our sincerest apologies in this regard and proposed a resolution to ensure the Complainant was at no financial loss as a result."

The Provider accepts that the Complainant's instruction was not actioned in full compliance with provision 3.3 of the Code. However, in compliance with Chapter 8, once this issue was brought to its attention, the matter was investigated and it was confirmed that a customer care award would be made to recompense the Complainant for any financial loss that she may have incurred. The Provider advises that it requested details of the designated account be furnished so that the Provider could calculate the refund due to the Complainant. The Provider states that the Complainant did not provide the relevant information to facilitate the compensation payment.

The Complaints for Adjudication

The complaints are that the Provider:

1. Mis-sold the investment to the Complainant;
2. Placed inappropriate pressure on the Complainant to make the investment; and
3. Unreasonably delayed in transferring the funds from the investment to a designated account.

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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 8 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.

Risk Profile Questionnaire

The Complainant completed and signed a Risk Profile Questionnaire on **24 July 2018**. I will now set out the questions contained in the questionnaire and the answers selected in response to those questions.

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

...

D: I am familiar with all these terms.

...

/Cont'd...

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?

...

C: I regularly follow and discuss such topics.

...

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 ...

D: More than €1,000

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 are 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?

...

B: Within 3-5 years.

...

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

...

C: I would take a long term view expecting the value to rise again. ..."

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) [the Complainant] 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.

/Cont'd...

- *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.”*

Record of Conversation for Investment Fund Trade

This document details the conversation which took place between the Investment Advisor and the Complainant on **7 August 2018**. Part of the script states:

“My advice is based on your knowledge and experience, financial situation and investment objectives, all of these will be covered off as part of our meeting. There can be other things that are important to know in order to make sure you always get the best advice for example, illness, personal circumstances, hearing or sight difficulties. If you feel that there is anything that might impact on your ability to make the right choices, I can suggest ways to accommodate this for you.

Can I ask if there is anything you would like to tell me about?

No”

I note it is not disputed that this was recited to the Complainant nor that she answered ‘No’ to the question.

List of Suitable Products

A list of suitable products was generated following the completion of the risk questionnaire on **7 August 2018**. This document contains a list of products which have been deemed either *Suitable* or *Not Suitable* for the Complainant. Under the heading *Defensive* the product score limit is 3. Five investment products are contained on the list and all are deemed *Suitable*. 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 og (sic) July”

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Investment Advisory Application Form

The Complainant and the Investment Adviser signed the Investment Advisory Application Form dated **7 August 2018** in order for the Complainant to become an *Advisory Client* of the Provider. The *Client Declaration* states as follows:

"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] 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] Terms and Conditions."

Investment Product Transaction Form

The Transaction Form is dated **7 August 2018** and has 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 agreed 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];*

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- *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.*
- *...*
- *I/We have received the MiFID Fees and Changes Sheet.”*

Classification as Retail Client

The Provider has furnished a document dated **7 August 2018** in respect of MiFID which outlines that she has been classified as *retail client* under MiFID. This document provides certain details about MiFID, the Complainant’s classification and refers her to the Investment Funds Terms and Conditions for more information on MiFID classifications.

Investment Documentation

The Provider has furnished a number of other documents, in particular those mentioned in the declaration to the Transaction Form above.

The KIID sets out, amongst other matters, the objectives and investment policy of the investment, a risk and reward profile (with a risk rating of 4), an explanation as to why the risk rating was 4 and information on MiFID.

The investment’s Fact Sheet contains information about the investment, investment policy, performance, risk and warnings, and contains a detailed description of the meaning of the floor protection attaching to the investment. The *Product Score* on the Fact Sheet is recorded as 3 which is in line with a risk classification of *Defensive* as stated on the List of Suitable Products.

The Provider has also furnished a copy of its Investment Funds Terms and Conditions and an Overview of Fees and Charges.

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I note that the Complainant also signed a Withdrawal Form and Maturity Instruction on **7 August 2018** in respect of the investment.

Account Notes

The Provider has furnished a copy of its account notes. On **24 July 2018**, the following entry is made:

“Met with customer about upcoming rollover ... Went through risk profile and customer came out as defensive. Went through [investment] options. Went through entry fee charges and on-going mgt charges.

Explained about floor reset levels in detail and that it is not 95% capital protected floor can reset up or down every year.

cust extremely happy with service and options – said she wants to discuss with her son and has booked 2nd apt on 7th August ...”

On **7 August 2018**, the account notes state:

“Customer came in with her daughter ... to accompany her. ... Moving 1 x mill to [investment] fund. Went through all funds again with [the Complainant] and her daughter. [The Complainant] had gone through the charges in detail and felt that it wasn't worth her while – I explained that our returns that we quote were after we had taken the mgt fees and also that the 1% entry fee could be reduced to 0.75%. She felt that access was important to her and didn't want to lock her funds away- she said she was thinking about 12 month with fixed 25% access at 0.3% or the [investment]. I explained in detail about the tax at 41% and that it was higher than DIRT tax. Explained there was no cooling off period but she had instant access- customer very aware that she needs to leave it in at least a couple of years as the fund goes up and down. Customer decided to go with [investment] and asked her daughter if she was happy with the decision- daughter agreed with [the Complainant] and said it seemed like the best options as she already had so many other funds sitting on low rates of interest in other banks. ... daughter wanted to know why mgt charges were so high- I explained that we have people looking after these funds 24/7, our emergency procedures etc etc. ...”

Two notes were entered on **8 August 2018**. The first relates to a telephone conversation with the Complainant's son:

“Customer left a voicemail this morning to say that she has spoken to her son and he told her he wasn't happy with her doing the investment and could I call him on his mobile.

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I called her son ... and explained I could go through the product with him but not get into any product specifics with about his mother's account, I went through the features and benefits with him- he asked for the breakdown of what it is actually invested in cash, bonds, equities etc, went through entry fee and mgt fee- ... questioned why we reduced the entry fee to 0.75% for his mother that he thought with Mifid we had to be transparent without (sic) charges- I explained the mgt fee had to be charged at the same price but we could change entry fee from some customers over certain limits. cust wanted to know what happened if [the Provider] went bust in the morning- I explained we had never broken our floor ever but he wanted to know exactly what the protocol was- I said I would get back to him on this. I asked him did he have any other questions for me and he said no ... I then called [the Complainant] but she said she couldn't talk as she was with a friend but that she wanted to cancel the investment- I asked could she talk but she asked could I call her back in an hour- I did call her back and left her a voicemail. I cancelled the investment as we only had until 2pm to cancel the investment and am awaiting further instruction from the customer."

The second entry relates to a telephone conversation with the Complainant:

"Received a missed call from [the Complainant] and called her back. I explained to [the Complainant] that I had spoken to her son and explained about what [the investment] fund was, what charges were, the investment tax vs dirt tax and also how he wanted to know what would happen if [the Provider] went 'bust' in the morning- I explained to [the Complainant] that if [the Provider] closed all its [branches] in the morning that her money would still be safe as [the Provider] asset mgt were a separate entity and that they didn't lend money- they take people's money and manage it for them. Customer said she was much happier after talking to me and wanted to leave everything as it was yesterday evening. She said she was worried about paying for nursing home and she thought it could be around e2k per week. I explained again that she has instant access to her investment ...she again said she was sorry for the confusion this morning and to leave everything as is- I asked her was she sure and she confirmed she was ... I also offered if she would like to bring her son in to meet me at any stage that would be no problem- I said I knew he was busy but I would come in and meet him on Saturday if that was easier. Customer thanked me for my help and said she would meet again in November."

The First and Second Complaints

Vulnerable Consumer

It is asserted that the Complainant should be considered a *vulnerable consumer* due to her age and ill health.

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Chapter 12 of 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 impaired 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 am not satisfied that the Complainant’s age alone is something that would classify her as a vulnerable consumer. It is stated that the Complainant was 86 years of age when she entered into the investment. While it is pointed out that the Complainant’s date of birth was incorrectly recorded on the Risk Profile Questionnaire by six years, the Provider would nonetheless have been aware that she was at least 80 years of age. Furthermore, the Complainant signed this document acknowledging the information provided was correct and did not notice the error regarding her date of birth.

Additionally, the Risk Profile Questionnaire automatically classifies a person aged 65 years or older as *Defensive*. Therefore, I am not satisfied that the incorrect date of birth led to a misclassification of the Complainant based on her age. Further to this, the Complainant has not demonstrated that the incorrect date of birth caused her to answer any of the questions contained on the questionnaire otherwise than in the manner in which they were answered. Neither has it been established that the List of Suitable Products would have returned a different set of investment options had the Complainant’s age been correctly recorded.

The Complainant’s *ill 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 health made her a vulnerable consumer. I also note that no medical evidence has been provided in support of this contention. Furthermore, there is no evidence to suggest that the Complainant or her daughter or son made the Investment Advisor aware of any health issues she was experiencing at the time she completed the Risk Profile Questionnaire or when she made the investment. I am also satisfied that the Investment Advisor asked the Complainant the question regarding her health as reflected in the Record of Conversation for Investment Fund Trade on **7 August 2018**. It is also not disputed either by the Complainant or the Complainant’s daughter (who was present during this meeting) that this question was in fact asked nor it is stated, that any of the Complainant’s apparent health issues were brought to the Investment Advisor’s attention such that would have required her to be classified as a vulnerable consumer. Moreover, while the Complainant was unaccompanied the day she completed the Risk Profile Questionnaire, she was accompanied by her daughter on the day she made the investment.

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Accordingly, I have been presented with no evidence that there was anything about the Complainant, in particular her age and/or general health that required the Investment Adviser to treat the Complainant as a vulnerable consumer.

Mis-Selling of the Investment

The Complainant completed a Risk Profile Questionnaire on **27 July 2018** and was classified as *Defensive*. A number of days later the Complainant met with the Investment Adviser on **7 August 2018** accompanied by her daughter and invested €1m in her chosen investment.

A statement from the Complainant's daughter as to precisely what occurred on **7 August 2018** has not been provided. However, I have been provided with no evidence that the Complainant's daughter disagreed with the Complainant's decision to make this investment. Further to this, the arguments made in support of this complaint are primarily those of the Complainant's representatives and reference is also made to meeting notes prepared by the Complainant's representative in respect of meetings which occurred in **November 2018** (at which the Complainant, amongst others, was in attendance but does not appear to have taken a particularly active part in). These representations, while apparently adopted by the Complainant through her signature of the Complaint Form, are representations of what her representative and son believe was and/or was not suitable or appropriate for the Complainant. However, the Complainant has not prepared an account of events from **27 July 2018** or **7 August 2018**.

Furthermore, no evidence has been presented to suggest that the information provided by Complainant or recorded by the Provider was inaccurate or incorrect (outside of her date of birth) at the time it was given. The Complainant signed a number of declarations on **7 August 2018**, containing information relevant to the investment and/or directing her to those documents. In a note prepared by the Complainant's representative of the meeting which took place between the parties on **22 November 2018**, it is suggested in the penultimate paragraph on the second page that the Investment Advisor "... did not follow up with documentation ..." and the Complainant was only given a photocopy of the investment's performance. However, the Provider maintains the position that the Complainant was provided with all relevant information surrounding the investment.

I am satisfied that, at the very least, the Complainant was made aware of the existence of the investment documentation. There is also no evidence to suggest that the Complainant requested any of the various investment documentation referred to in the declarations that she signed. Again, no evidence has been furnished by the Complainant's daughter in this regard even though she was present on **7 August 2018**. Therefore, it is likely that the Complainant was provided with the information regarding the investment documentation which I have referred to above. Accordingly, from a review of the various investment documents I accept that the Complainant was made aware, or ought reasonably to have been aware, of the nature, charges, risk profile and risks associated with this investment.

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Moreover, while risk profile of the investment was 4; the product score limit for a *Defensive* investor is 3 and, as the investment's Fact Sheet states, the investment's product score is also 3.

In terms of the investment product itself, it was one of the Complainant's wishes that she have ready access to her money. The investment in question gave instant access to the investment monies and the Complainant was entitled to withdraw from the investment at any time with no exit charges.

As noted above, the Complainant completed the Risk Profile Questionnaire on **27 July 2018** and discussed the possibility of investing. She then returned to the Provider's branch sometime later with her daughter on **7 August 2018**. The evidence also indicates that the Complainant discussed the investment with her son between **27 July** and **7 August 2018** and that the Investment Adviser spoke with the Complainant's son on **8 August 2018** and again with the Complainant on the same day.

Having considered the content of the recording of the telephone call between the Complainant and the Investment Adviser on **8 August 2018**, I note, during the conversation, the Complainant agreed that the investment "... is the best option. I actually am happier about it now ... that I've thought it out even more ..." Mid-way through the conversation, the Complainant says that "... I'll go ahead with it. I'll chance it." In relation to the conduct of the Investment Adviser during this call, I accept that she dealt with the Complainant in an appropriate manner and did not exert any undue or inappropriate pressure or influence over the Complainant.

In light of the foregoing, I do not consider that this investment was unsuitable for the Complainant's risk profile nor do I consider that it was mis-sold to the Complainant, whether through undue pressure or otherwise.

The Third Complaint

An undated Withdrawal Form was completed by the Complainant in or around **December 2018** and bears the Provider's date stamp of **3 December 2018**. The Provider wrote to the Complainant by letter dated **10 December 2018** to advise her the investment funds had been transferred to a particular account.

By letter dated **5 February 2019**, the Provider advised the Complainant that the delay in transferring the funds to the designated account was due to an administrative error and apologised for this error. The Provider also intimated that it was willing to compensate the Complainant for any loss of interest caused by the delayed funds transfer and requested that the Complainant provide evidence that the funds were lodged to the designated account and evidence of the applicable interest during the relevant period. By letter dated **13 February 2019** and in response to correspondence received from the Complainant's representative, the Provider repeated its request for the applicable interest rate.

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In a submission to this Office dated **25 March 2020**, the Complainant's representative explains that:

"[The Complainant] was so traumatised by her whole interaction with [the Provider], that she was not in a position to make a decision on where to best invest her funds. It was transferred to [financial services provider] account and this account was not interest bearing. ..."

It is submitted on behalf of the Complainant that the request to transfer the funds to the designated account held with another financial services provider was made on **10 December 2018**. However, the transfer was not effected until **14 January 2019**. It is also suggested in the Complainant's submissions that interest of almost €32.00 was earned on the money withdrawn from the investment while it was in the Complainant's Provider account.

It has been acknowledged that the account to which the money was ultimately transferred was a non-interest bearing account. As such, I do not accept that the Complainant suffered a financial loss caused by the Provider's delay in transferring the money. In any event, interest of €32.00 was earned during this period.

The Provider states that:

"... we have already offered to recompense the Complainant for any loss of interest resulting in the delay in processing the withdrawal request in December 2018. This offer remains open and we reiterate our request for details of the account to which the funds were transferred so that we can calculate the refund due.

We are also willing to offer an additional customer care award of €250 in respect of this aspect of the complaint."

The Provider has accepted responsibility for the delay and has offered to compensate the Complainant for any interest she would have earned on the money had the transfer been effected when instructed. The Provider has also offered €250.00 as compensation for its error.

As the Complainant has not established any financial loss attributable to the Provider's error, I do not accept that the Provider is obliged to compensate the Complainant for a loss that did not materialise nor am I satisfied that the Provider is obliged to pay a notional amount in *penalty interest* as suggested on behalf of the Complainant.

Therefore, I consider the offer of €250.00 to be a reasonable sum of compensation for the length of the delay in transferring the funds to the Complainant's designated account.

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

/Cont'd...

Conclusion

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

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



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

5 August 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.