An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0299
Sector:	Investment
Product / Service:	Online Share Dealing
Conduct(s) complained of:	Product not suitable
Outcome:	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to a trading account held by the Complainant with the Provider.

The Complainant's Case

The Complainant states that he opened an account with the Provider in **March 2017** and experienced significant financial losses. He said he then began to seek help for his addiction and he advised the Provider in March 2017 that he was a compulsive gambler, was mentally unwell and was very vulnerable. The Complainant states that he requested that the Provider place a lifetime ban on his account with the Provider and all affiliated companies.

The Complainant states that in **December 2018**, the Provider telephoned him and encouraged him to start trading on his account again. The Complainant agreed to do this and after suffering losses a few days later, he withdrew his funds. The Complainant advises that he contacted the company for help and advice who in turn advised him that he would need to deposit £10,000 in order to receive help and advice. The Complainant states that the Provider then offered him a number of different options such as bitcoin and he lost another substantial amount of money over the following few days. The Complainant states that he then withdrew the remaining funds.

In addition to the foregoing, the Complainant submits that he made a complaint to the Provider on **28 December 2018** and again on **31 December 2018** which the Provider refused to acknowledge or process.

The Complainant states that he lost substantial monies in March 2017 and further monies in December 2018. The Complainant is seeking that the Provider refund him these losses.

The Provider's Case

The Provider states that the Complainant's account was an execution only account which is restricted to executing trades for clients who make their own decisions without receiving any advice about the merits or risks of investments. The Provider asserts that it is not required therefore to assess the Complainant's risk appetite or investment strategy prior to opening an account. The Provider asserts that this assessment of suitability is only required for investment firms which provide investment advice and the Provider says that it conducts an assessment of appropriateness in respect of an execution only service in compliance with S.I. No. 375/2017 - European Union (Markets in Financial Instruments) Regulations 2017, and did so in this instance.

In addition, the Provider states that it is satisfied that it complied with all of its policies and procedures. The Provider also states that the Complainant provided no indication or signs of vulnerability during a call with one of its agents on 20 December 2018.

In relation to the complaint regarding complaint processing, the Provider asserts that the complaint was not brought to the attention of the complaints department because the Complainant did not follow the procedure for making a complaint. Accordingly, the Provider states that the complaint was not handled in line with the Provider's complaints handling process.

The Complaint for Adjudication

The first complaint is that the Provider wrongfully and unlawfully provided a financial service to the Complainant that was wholly unsuitable to him and his circumstances and failed to close his account at his request or reimburse him his losses.

The second complaint is that the Provider wrongfully failed to acknowledge and deal with the Complainant's complaint in a timely manner or at all.

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.

/Cont'd…

A Preliminary Decision was issued to the parties on **18 August 2020**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

In relation to the Complainant's complaint regarding the suitability of the product, and his desired recovery of lost funds, I note that the Complainant suffered losses of £5,817.25, between 11 March 2017 and 23 March 2017 and subsequently further losses of £1,448.72, between 19 and 28 December 2018.

Dealing firstly with the 2017 losses, I note that the Complainant opened his account in around **11 March 2017**. The general terms and conditions of the agreement between the Complainant and the Provider provides, amongst other things:

> *"Although* [the Provider] *issues general market recommendations, this should not be construed as personal recommendations or advice to trade with* [the Provider]*. As such we are under no obligation to assess the suitability or otherwise of the customer trading forex, CFDs, options and spread betting with* [the Provider]*.*
>
> *All trades entered into by the customer represent an independent decision by the customer to trade with* [the Provider].
>
> *If we consider on the basis of the information that you provide that trading in the contracts we offer is not appropriate for you, we shall warn you of this. Any such warning is not intended as investment advice and must not be relied upon as such.*
>
> *Our obligation is to assess your knowledge and experience and not to assess the suitability of a given investment in your circumstances."*

In my opinion, these terms and conditions appear to be wholly at odds with the Provider's assessment and suitability obligations. There has been no evidence submitted to this office which demonstrates that the Provider assessed the Complainant for suitability at all. This is evidently because the Provider appears to be of the view that "*we are under no obligation to assess the suitability or otherwise of the customer trading*".

The provisions of the Consumer Protection Code 2012 are binding on ***regulated entities*** providing financial services. Those provisions include:

/Cont'd…

KNOWING THE CONSUMER AND SUITABILITY

KNOWING THE CONSUMER

5.1 A regulated entity must gather and record sufficient information from the consumer prior to offering, recommending, arranging or providing a product or service appropriate to that consumer. The level of information gathered should be appropriate to the nature and complexity of the product or service being sought by the consumer, but must be to a level that allows the regulated entity to provide a professional service and must include details of the consumer's:

a) Needs and objectives including, where relevant:

i) the length of time for which the consumer wishes to hold a product,
ii) need for access to funds (including emergency funds),
iii) need for accumulation of funds.

b) Personal circumstances including, where relevant:

i) age,
ii) health,
iii) knowledge and experience of financial products,
iv)dependents,
v) employment status,
vi) known future changes to his/her circumstances.

c) Financial situation including, where relevant:

i) income,
ii)savings,
iii) financial products and other assets,
iv) debts and financial commitments.

d) where relevant, attitude to risk, in particular, the importance of capital security to the consumer.

The regulated entity is only required to seek the information set out at a) to d) above where it is relevant to the assessment of suitability to be carried out under this Chapter.

*5.3 A regulated entity must gather and maintain a **record** of details of any material changes to a **consumer**'s circumstances prior to offering, recommending, arranging or providing a subsequent product or service to the **consumer.** Where there is no material change, this must be noted on a **consumer**'s **records.***

5.4 Where a consumer refuses to provide information sought in compliance with Provisions 5.1 and 5.3, the regulated entity must inform the consumer that, as it

/Cont'd…

does not have the relevant information necessary to assess suitability, it cannot offer the consumer the product or service sought.

…

Assessing suitability

5.16 When assessing the suitability of a product or service for a consumer, the regulated entity must, at a minimum, consider and document whether, on the basis of the information gathered under Provision 5.1 and 5.3:

a) the product or service meets that consumer's needs and objectives;

b) the consumer:

i) is likely to be able to meet the financial commitment associated with the product on an ongoing basis;
ii) is financially able to bear any risks attaching to the product or service;

EXEMPTION FROM KNOWING THE CONSUMER AND SUITABILITY

5.24 Provisions on knowing the consumer and suitability do not apply where:

(a) The consumer has specified both the product and the product producer by name and has not received any assistance from the regulated entity in the choice of that product and/or product producer, or

…

In relation to 5.24(a) above, prior to providing an investment product to a consumer, a regulated entity must warn the consumer, on paper or on other durable medium, that the regulated entity does not have the information necessary to determine the suitability of that product for the consumer.

I also note that S.I. No. 375/2017, the ***European Union (Markets in Financial Instruments) Regulations 2017,*** which came into operation on 3 January 2018, provides at Section 33, sub-sections (3) and (5):

(3) When providing investment advice or portfolio management an investment firm shall obtain the necessary information about—

(a) the client's or potential client's knowledge and experience in the investment field relevant to the specific type of product or service offered to the client by the investment firm,
(b) the client's or potential client's financial situation, including his or her ability to bear losses, and

/Cont'd…

(c) the client's or potential client's investment objectives, including his or her risk tolerance

that is necessary to enable the investment firm to recommend to the client or potential client those investment services and financial instruments that are suitable for the client and, in particular, are in accordance with his or her risk tolerance and ability to bear losses

(5) When providing investment services other than investment advice and portfolio management, an investment firm shall—

(a) ask the client or potential client to provide information regarding his or her knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded,
(b) take that information into account in order to assess whether the investment service or product envisaged is appropriate for the client, and
(c) where a bundle of services or products is envisaged pursuant to Regulation 32(19) and (20), consider the appropriateness of the overall bundled package for the client.

I note that these regulations were not in effect when the Complainant originally opened his trading account, but had come into effect on 3 January 2018, almost a year before the parties were in contact again in late December 2018, on foot of which the Complainant's account was re-activated (having been archived in December 2017).

Furthermore, I note that in August 2012, in the context of MiFID, the **European Securities and Markets Authority** (ESMA) published "***Guidelines on certain aspects of the MiFID suitability Requirements***", which provided as follows:

Clients are expected to provide correct, up-to-date and complete information necessary for the suitability assessment. However investment firms need to take reasonable steps to check the reliability of information collected about clients. Firms remain responsible for ensuring they have adequate information to conduct a suitability assessment. For example, firms should consider whether there are any obvious inaccuracies in the information provided by their clients. They will need to ensure that the questions they address to their clients are likely to be understood correctly and that any other method used to collect information is designed in way to get the information required for a suitability assessment

An investment firm should also take into account the nature of the client when determining the information to be collected. For example, more in-depth information would usually need to be collected for older and potentially vulnerable clients asking for investment advice services for the first time…

Investment firms should take reasonable steps to ensure that the information collected about clients is reliable. In particular, firms should:

/Cont'd…

(a) not rely unduly on clients' self-assessment in relation to knowledge, experience and financial situation;

…"

The terms and conditions of the agreement quoted above at page 3, and indeed the response supplied to this office by the Provider appears to me to be somewhat out of alignment with the above codes, statutory obligations and guidelines.

In particular, there is little or no evidence that any form of suitability questionnaire or assessment was carried out with the Complainant, by the Provider. The Provider asserts that the Complainant's account was an execution only account. Even if the provider is correct in that regard (and this is dealt with below) there is little or no evidence to show that the Provider posed questions to the Complainant regarding his knowledge and experience in the investment field, or took that information into account in order to assess whether the investment service was appropriate for the Complainant.

I note that following his swift accrual of losses in **2017,** the Complainant sent an email dated 23 March 2017 to the Provider. It stated:

"Dear [Provider]*,*

Please close my account with immediate effect.
I would like a lifetime ban to be placed in my account with yourself and all affiliated companies.
I am a compulsive gambler and I'm seeking help for my addiction.
I am also mentally unwell and very vulnerable.
Please can you also remove me from all marketing.
A copy of this email has been sent to the gambling commission to confirm your legal obligation to protect me."

The Provider submits in its response to this office that

"*the client did not explicitly request that his account be closed. The account remained accessible and active to the Complainant until it was archived on 24 December 2017 and was not closed, contrary to the Complainant's assertion."*

It is a mystery why the Provider maintains that the Complainant did not ask for the account to be closed. In my opinion, such a submission is completely at odds with the above quoted email of 23 March 2017, which confirms that the Complainant specifically requested that his account be closed "*with immediate effect*".

The Complainant went on to inform the Provider that he had a compulsive gambling addiction, that he was mentally unwell and very vulnerable.

/Cont'd…

Not only did the Provider fail to follow the express instructions of the Complainant and close his account, it appears to me that it also ignored the Complainant's admissions as to his mental health problems, his gambling addiction and his overall vulnerability.

The Consumer Protection Code 2012 provides as follows:

GENERAL REQUIREMENTS

3.1 *Where a **regulated entity** has identified that a **personal consumer** is a **vulnerable consumer,*** the ***regulated entity*** must ensure that the ***vulnerable consumer*** *is provided with such reasonable arrangements and/or assistance that may be necessary to facilitate him or her in his or her dealings with the **regulated entity.***

3.2 *A **regulated entity** must ensure that the name of a product or service is not misleading in terms of the benefits that the product or service can deliver to* a ***consumer.***

3.3 *A **regulated entity** must ensure that all instructions from or on behalf of a **consumer** are processed properly and promptly.*

The Provider states that it does not regard the Complainant as being a 'vulnerable person' within the meaning of the Consumer Protection Code 2012. I note that a 'vulnerable person' is defined in the 2012 Code as follows:

"vulnerable consumer" *means 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).*

The Complainant asserts that the Provider started calling him again in December 2018 to encourage him to start trading. There is insufficient evidence demonstrating these calls and it seems that it may have been the Complainant who in fact approached the Provider at that time, to start trading again. The absence of appropriate records from the Provider regarding the parties' interactions however, hinder efforts to shed light on those communications.

In that context, after the Provider's formal response to this complaint had been made available to this office in November 2019, I found it necessary, in the course of adjudication of this complaint to write to the Provider again on 20 July 2020, seeking additional details. In particular, I reminded the Provider that audio evidence of all telephone communications between the Provider and the Complainant at the time of opening the account in 2017 had been requested in the Summary of Complaint (sent by this Office to the Provide in September 2019).

/Cont'd…

I pointed out that the evidence supplied by the Provider included only telephone calls from December 2018, and failed to include any audio evidence of the calls between the parties in March 2017, notwithstanding the reference in an email from Mr. J. to the Complainant at that time, which opened advising "*It was a pleasure speaking with you on the phone today…"*

For that reason, I advised the Provider that the FSPO was affording it a final additional period of 10 working within which to make available the recording of this missing phone call and any other phone calls between the parties during 2017. The Provider's response was requested by 4 August 2020, but it made no response whatsoever to this Office.

The Provider has asserted on a number of occasions that the Complainant's account is an execution only account and that no advice or "investment strategy" was provided to the Complainant. The interactions between the Complainant and the Provider in December 2018 however, in my opinion, indicate otherwise.

On 21 December 2018, the Provider emailed the Complainant referring to a telephone conversation and scheduling a call the following week.

On 23 December 2018, the Complainant emailed the Provider stating:

> *"I was wondering if we could cancel our scheduled appointment for the time being.*
> *I am not sure if I want to participate in spread betting.*
> *I am discussing this matter with my partner I'll be back in touch in a few weeks time.*
> *Merry Christmas to you by the way".*

The following day, on Christmas Eve, the Provider replied to the Complainant:

> *"I understand your apprehension, but I think it would be best to at least gain the knowledge before making your decision.*
>
> *At no risk, you can receive training and education. You only need to fund the account to 10K, and no trading as needed.*
>
> *Once we do a couple of sessions, then you can decide to take the funds back out as you have already done, or to begin trading.*
>
> *You clearly have the urge to invest, but are just not sure yet. By having the education, you can be in a better position to make decisions."*

Approximately 3.5 hours later, the Complainant responded stating:

> *"I have credited my account with £10,000 and will keep to our original plan and schedule our session for Wednesday at 11 AM*

/Cont'd…

The Provider responded and stated, amongst other things:

> *"We will get you going on building the right strategy starting Wednesday. No worries, one step at a time."*

Two days later, on the morning of 26 December 2018, the Provider emailed the Complainant and stated:

> *"I just tried you by phone but with no luck for our scheduled call.*
>
> *I do see that you pulled your funds out again after a few bumps since we last communicated.*
>
> *I want you to consider doing as we discussed, which would be to put the 10K in the account and don't trade until after some strategy sessions.*
>
> *We can look at some low risk moves with good payout potential such as the Bank of America set up below.*
>
> *Nice two year support level, high potential for movement, low risk when set up correctly.*
>
> *Let me know a good time to call and I can walk you through one strategy with the Conservative risk management."*

In its response to this office, the Provider has stated:

> *"The Complainant provided no indication for signs of vulnerability during a call with one of our agents on 20 December 2018. During the call, the Complainant stated that he "has been trading on and off for ten years" and confirmed that he knew his way around trading platforms".*

The above statement is very surprising. The Provider's opinion regarding the impression created by the Complainant during one telephone call during December 2018, overlooks the fact that the Complainant had previously instructed the Provider to close his account on the basis that he was mentally ill, vulnerable and had a severe gambling addiction. The Provider failed to close the account and instead, it allowed the Complainant to reactivate his account in December 2018 and begin trading again, with significant amounts of money.

In my opinion, it is nothing short of disingenuous for the Provider to assert, on the basis of one a phone call with one of its agents on 20 December 2018, that the Complainant did not indicate signs of vulnerability and therefore he was not deemed to be vulnerable. The Provider had actual knowledge in the form of an express written admission from the Complainant that he was mentally unwell, was a gambling addict and was very vulnerable. That admission was furnished as part of a request to close the Complainant's account and to impose a lifetime ban on him ever re-opening that account.

/Cont'd…

As can be seen from the above email exchanges, the Complainant emailed the Provider on 23 December 2018, stating that he was unsure if he wanted to participate in spread betting and that he would be back in touch in a few weeks' time. The following day, the Provider responded to this vulnerable gambling addict stating, amongst other things:

> "*You clearly have the urge to invest, but are just not sure yet."*

The email also informed the Complainant that he could receive training and education *"at no risk"* but it expressly stipulated that he would need to fund his account in the amount of £10,000, and then at that point, begin trading or decide to take the funds back out.

When a self-confessed gambling addict informed the Provider that he was unsure if he wanted to get involved in trading and wanted to think about it for another few weeks, at the very least in my opinion, the Provider should have allowed that process to happen. Instead, the evidence before me suggests that the Provider took advantage of the Complainant's urges and encouraged him to deposit £10,000 into his account on foot of a suggested "*no risk*" assurance.

To make matters worse, on 28 December 2018, the Complainant emailed the Provider stating that he had been trying to withdraw his funds and stating "*I really need to withdraw the funds, please can you look into this*".

The Provider responded within a very short period of time stating the following:

> *"First of all…GREAT JOB trading yesterday. You played the* [detail redacted] *brilliantly.*
> *It looks to be in a great position again to act on… See below image with established lines of support and resistance.*
> *I can show you how to set up a market order backed up by a pending hedge to manage the risk on either side of the lines.*
>
> *Regarding your withdrawal requests… I can see that all funds have been sent out as two separate withdrawals around 10K and 4.5K.*
>
> *If you want to fund 5K or 10K back into the account I can help you with some hedged positions to have high potential profits with low risk"*

As can be seen from the foregoing, rather than dealing only with the request to withdraw funds, the Provider's first response was to encourage the Complainant to set up another market order and to offer assistance and advice in relation to some *"hedged positions"* with *"high potential profits with low risk".*

Following this, the Complainant emailed the Provider later that morning requesting that the Provider stop telephoning him and sending him emails. The Complainant implored the Provider to stop encouraging him to invest.

/Cont'd…

The Provider responded shortly after, asserting that the only thing that was scheduled was a strategy session and that the Provider had never pressured the Complainant to trade but rather was just trying to assist any trading decisions that he was already making.

The Provider insists that the trading account held by the Complainant was an execution only account and that this account is restricted to only executing trades for clients that make their own decisions "*without receiving any advice about the merits or risks of the investments*". I take the view that this is completely at odds with what is contained in the above quoted email exchanges. The email exchanges from the Provider are littered with advices about risks of investment and about the merits of investments. I am satisfied that the emails in question clearly demonstrate is that there was in fact no execution only arrangement in place.

For example, the following highlighted extracts from the above quoted emails are clear examples of advice about the merits and risks of the investments:

> *We can look at some **low risk moves** with **good payout potential** such as the **Bank of [redacted]** set up below.*
>
> *Nice two year support level, **high potential for movement, low risk** when set up correctly*
>
> *It looks to be in a **great position again to act on***
>
> ***I can help you with some hedged positions to have high potential profits with low risk***

I take the view that the Provider has completely and utterly disregarded its obligations under Section 33, subsections (3) and (5) of S.I. No. 375/2017 - European Union (Markets in Financial Instruments) Regulations 2017 and the Consumer Protection Code and the European Securities and Markets Authority (ESMA) Suitability Guidelines (which were updated in 2018, in the context of MiFID II). Not only did the Provider initially fail to assess the Complainant for suitability, it failed to take any action when he informed the Provider that he wanted his account to be closed, because he was a gambling addict, had mental health problems and was vulnerable. Moreover, the Provider allowed the Complainant to reactivate his account in December 2018 being clearly on notice of his personal circumstances and acute vulnerability. On top of all that, the evidence indicates to me that in fact the Provider actively sought to dissuade the Complainant from his hesitations about trading again and it actively provided him with advice about the merits and the risks of investments.

In the course of the adjudication of this complaint I wrote to the Provider on 20 July 2020, drawing the Provider's attention to the obligations set out at Article 25(3) and (4) of MiFID II, and Regulation 33(5) of the ***European Union (Markets in Financial Instruments) Regulations 2017***. I advised the Provider that this office had been unable to identify any records of the appropriateness assessment for the Complainant, within the Provider's formal response to the complaint.

/Cont'd…

In that context, I asked the Provider to explain in detail the steps taken to conduct the assessment of appropriateness for the Complainant, when opening the account and in the event that such an assessment was documented, I requested a copy. I also asked the Provider to make available a copy of its internal written protocols regarding the undertaking of an assessment of appropriateness, whether such internal written protocols had existed in March 2017 or had come into being since that time. I asked the Provider to specify how it had obtained information regarding the Complainant's knowledge and experience of operating a trading account of this nature, and his ability or otherwise to bear losses, and to explain in what manner it had documented the Complainant's risk tolerance, if at all.

Although the Provider was afforded a specific period of 10 working days within which to reply to the FSPO, this office has noted that the Provider elected to make no response whatsoever to these additional queries.

While the Complainant must take some responsibility for his own poor decisions, the Provider has very well defined and very serious obligations pursuant to all of the aforementioned codes, statutory provisions and guidelines and I'm satisfied that it failed to meet these obligations. The Provider's conduct in this regard is grave and very concerning.

I note that the Provider has confirmed that the Complainant's account was never closed and that the account "*remained accessible until it was archived on 24 December 2017*". In that context, I take the view that it would have been reasonable for the Provider to have reconsidered its obligations to assess appropriateness or suitability when it took action to move the Complainant's account out of archives and to permit trading to commence again in December 2018. No attention however, appears to have been given by the Provider to its obligations in that regard, whatever the Complainant's personal circumstances.

In this particular instance, quite apart from any obligation to establish appropriateness, the Provider was on notice that the Complainant had described himself as a compulsive gambler, thereby clearly falling, in my opinion, within the definition of a "vulnerable consumer" as specified in the 2012 Consumer Protection Code. Accordingly, I take the view based on the evidence before me that the Provider failed abysmally to meets its obligations as a regulated entity, taking into account the vulnerability of the Complainant. In all of those circumstances outlined, and on the basis of the evidence available, I am of the opinion that the first complaint must be upheld.

The second aspect of the complaint concerns the suggested poor complaints handling on the part of the Provider, or its complete failure in that respect. The Provider quite rightly and quite appropriately, and in compliance with the Consumer Protection Code, had written procedures in place for the proper handling of complaints. However, notwithstanding all of the foregoing, when the Complainant lodged his complaint on 31 December 2018, which was addressed to the individual who had been managing the Complainant's trading account, the Provider's customer service email and the Provider's customer support email, with the subject of the email noted as "OFFICIAL COMPLAINT", he received no response.

/Cont'd…

The Provider insists that the Complainant did not follow the procedure for making a complaint and as a result his complaint was not handled in line with the Provider's complaints handling process. The Provider's written procedure for complaints states that all complaints should be directed to its complaints email address. Clearly the Complainant did not send the complaint to the complaints email address but I note that it was sent, not only to his account manager, but also to the Provider's customer service and customer support email, which in my opinion can have left the Provider in no doubt regarding the Complainant's dissatisfaction, and the fact that he was making a complaint.

It is quite apparent from examining the emails, that following the lodging of the complaint in question, no attempts or efforts were made by the Provider to investigate the Complainant's complaints and that the Complainant was not given the opportunity to have his complaint handled in accordance with the Provider's complaints process. The Provider's position appears to be that this lack of action was because the Complainant had not directed his complaint to the designated complaint email address. I am entirely satisfied however that the Complainant made his dissatisfaction abundantly clear to the Provider and I do not accept that the Provider was entitled to ignore his clearly articulated "OFFICIAL COMPLAINT", simply because it was received by the Provider through a different email channel.

I consider the Provider's inaction in respect of the complaint to have been unreasonable and unsatisfactory, and I am satisfied that it failed in its obligations to the Complainant in that regard. Having considered the totality of this complaint and the breaches that have taken place, I consider that an adequate and appropriate compensatory measure is required in recognition of the wrongdoings of the Provider. In that regard, I consider it appropriate to direct the Provider to pay the Complainant the sum of **Stg£17,000** to an account nominated by the Complainant, in order to conclude. In addition, because of the concerns raised by the issues in this complaint, I also intend to refer this matter to the Central Bank of Ireland for such action as it may consider appropriate.

Conclusion

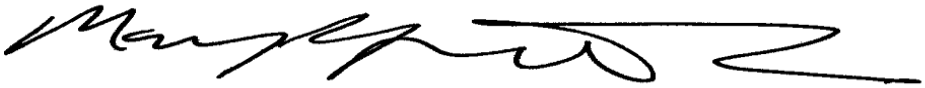
- My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is upheld on the grounds prescribed in ***Section 60(2)(g).***

- Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of **Stg£17,000**, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in ***Section 22*** of the ***Courts Act 1981***, if the amount is not paid to the said account, within that period.

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

/Cont'd…

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



MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

10 September 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.