



<u>Decision Ref:</u>	2020-0420
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Cash Investment
<u>Conduct(s) complained of:</u>	Complaint handling (Consumer Protection Code)
<u>Outcome:</u>	Partially upheld

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

The complaint concerns an investment product and the manner in which the investment was managed by the Provider, including the manner in which the Provider engaged with the Complainants.

The Complainants' Case

The investment was first incepted in November 2007 following the completion of an application in June 2007. Thereafter, the fund was sold resulting in the transfer of the management of the investment fund to the Provider some time in 2014. The Complainants are unhappy and allege that there is a continuing lack of information from the Provider, particularly about the performance of the fund, and the overall management of the fund.

The First Complainant states that *“two main price drops in August 2016 and September 2017 were inadequate, considering market and economic fund trend analysis were done on a daily basis”*. The complainants submit that their queries around these events were not sufficiently answered or clarified during 2017 and 2018. The First Complainant states he requested more detail and explanation from the Provider, and he submits that he also requested a meeting with a Fund Manager. It was stated that a meeting has not yet been facilitated by the Provider.

The Complainants also have concerns about management fees, the apparent unsatisfactory reports/updates on the fund and the purported delay in addressing their complaints. In a more recent submission, the First Complainant also questions the level of tax taken from the fund.

The complaint is that the Provider:

1. Failed to adequately communicate information to the Complainants, particularly about the performance of the fund, in a timely manner;
2. Failed to arrange a meeting, as requested, between the Complainants and a Fund Manager, from within the Provider's organisation;
3. Has not clarified the management fees applicable to the fund.

The First Complainant wants the Provider to facilitate a *"meeting with a Senior Fund Manager from [the Provider's group] with specific knowledge of [his] investment"*.

The Provider's Case

The Provider set out the details of specific fund activities in its Final Response Letter to the Complainants dated **26th April 2018**. It offers an explanation to the decreasing value of the fund, due to the *"amount invested in the cash fund"*. It states that an information flyer was forwarded to the Complainants and advises that they contact the Provider's Customer Support Team to discuss investment options or possible withdrawal of funds. The Provider goes on to outline the reasons why the funds appear to be *"dropping value"* and encloses a breakdown of *"positive returns on the fund"* in which, it states *"[the] policy has gained €74,000 on premiums of €200,000 (28.11.07 - 13.04.18)"*.

The Provider addressed the Complainants' issues regarding management fees in its letter of the **16th May 2018**. It also suggests that should the Complainant wish to speak with [a Provider group] Fund Manager, in relation to a particular query regarding the delay in realising the sale of a property, *"[the Provider] can arrange for them to contact [the Complainant] directly"*. The letter then gives a contact phone number to advise of a *"suitable date, time and contact details"*.

The Provider concludes, in its Final Response Letter of the **26th April 2018**, that it notes the Complainants' comments regarding investment reports, and it apologises and notes their dissatisfaction with *"recent correspondence"*. It also *"strongly recommends [the Complainants] meet with [their] Financial Advisor to discuss [their] policy and options available to [them] at this time"*.

Subsequent to the commencement of the formal investigation process and the issuing by this office of the 'Summary of Complaint' document and the request for responses and evidence, a meeting took place between the parties on 15 January 2020.

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Following this meeting, the Provider acknowledged that the Complainants had been overcharged in respect of a charge associated with the inception of the policy and this amount was refunded together with an additional amount to “*to take account for the passage of time*”. The Provider also acknowledged certain additional shortcomings and made an additional offer of compensation which was not accepted by the Complainants.

The Complaints for Adjudication

The complaints for adjudication are that the Provider:

1. Failed to adequately communicate information to the Complainants, particularly about the performance of the fund, in a timely manner;
2. Failed to arrange a meeting, as requested, between the Complainants and a Fund Manager, from within the Provider’s organisation;
3. Has not clarified the management fees applicable to the fund.

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 Complainants were 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 10 September 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.

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Following the issue of my Preliminary Decision, the Complainants made a submission under cover of their e-mail to this Office dated 25 September 2020, a copy of which was transmitted to the Provider for its consideration.

The Provider has not made any further submission.

Having considered the Complainant's additional submission and all of the submissions and evidence furnished by both parties to this Office, I set out below my final determination.

Analysis

The complaint in this matter relates to a relatively complex investment policy. However the complaint itself is relatively straightforward and has been simplified further following the exchange of documentation facilitated by this office. In essence, the Complainants' complaint can be divided into the three elements above; I propose to begin by addressing an issue that has been conceded by the Provider before going on to consider the remaining two issues together. I note that the First Complainant appears to accept the Provider's explanation as to the tax deducted from the fund as communicated in his correspondence of 9 October 2019; I do not however view this as a substantive aspect of the complaint.

Management Fees/ the 'Upfront Charge'

The Complainants took issue with the amount of money they were charged as an 'upfront fee' upon the inception of the policy in June 2007. The Complainants were charged €7,500 which represented 3% of the '*full committed capital*' amount of €250,000 (notwithstanding that the initial investment was in the amount of €100,000 only and notwithstanding that the total cumulative investment was in the amount of €212,500 only). The Complainant queried this charge and was assured by the Provider, in various correspondence that the charge was in order.

It subsequently transpired that the charge should have been in the amount of 2.5% of the '*full committed capital*' amount of €250,000 only, or €6,250. Following a meeting between the First Complainant and the Provider on 15 January 2020, and following follow-up phone calls, the Provider, by way of letter of 19 February 2020 to the Complainants, acknowledged its error and remitted payment to the Complainants in the amount of €1,500, that amount representing a refund of the overcharged amount of €1,250 plus an additional €250 "*to take account for the passage of time*".

This acknowledgment and payment were proffered very late in the day, and some significant period after the Complainants made their complaint to this office. The €1,250 which was overcharged has been repaid, as is proper. However, I am not satisfied that the €250 compensation offered is sufficient or that it adequately reflects "*the passage of time*". The time period involved is four months short of 13 years. The amount offered represents less than €20 per year. This is grossly inadequate.

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Failure to Arrange a Meeting and Failure to Communicate Adequate Information

These two matters are intrinsically linked. With regard to the first matter, the Complainants maintain that they repeatedly sought a meeting with an individual from the Provider who was familiar with the particular investment and who could answer questions in relation to it. The Provider points out that two phone calls were arranged but that *“both meetings were cancelled at short notice”*. In response to this somewhat vague statement by the Provider, the Complainants pointed out that they did not cancel any of the meetings. The Provider responded in turn suggesting that *“the scheduled times did not suit [the First Complainant] and were cancelled internally as a result of this”*. The Provider expounded that it believed that the First Complainant *“was unavailable to take at least one of the calls”*. The First Complainant responded disputing this and challenged the Provider to identify any occasion on which he had indicated an unavailability, or to identify anybody to whom such an unavailability had been communicated. The Provider has done neither and I have no reason to doubt the Complainant’s version of events leading me to conclude that the meetings were cancelled by the Provider which failed thereafter to arrange a rescheduled date for a call or meeting.

With regard to the provision of information, the Provider concedes that *“the volume of communications and level of detail on the fund did reduce following the restructure”*. The Provider also accepts that it *“failed to identify the import of specific questions raised”*.

In its letter of 19 February 2020, the Provider noted that it had made an offer of €1,000 to the Complainants in respect of these matters *“in full and final settlement of his complaint”* to reflect *“the shortcomings in the level of service [the First Complainant] experienced”*. An apology was also offered. The offer, which apparently was not accepted by the Complainants at the time, was expressly stated to remain open pending the adjudication by this office of the complaint.

I have reviewed the Complainants’ submissions in their entirety, and I am of the view that the offer of €1,000 compensation adequately addresses the accepted shortcomings addressed in this part of the complaint. In this regard, I note that the Complainants have not pointed to any financial loss which they claim stemmed from the conduct of the Provider. I note the meeting with an appropriate individual from the Provider, as requested by the Complainants, has now taken place, albeit belatedly.

Given the acknowledgments by the Provider of its conduct outlined above, together with the offer of compensation, were proffered only very late in the day, and some significant period after the Complainants made their complaint to this office, I partially uphold this complaint and direct the Provider to pay a sum of €2,500 (to include the sum of €1,000 already offered by the Provider to the Complainants) to the Complainants.

Conclusion

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

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 Complainants in the sum of €2,500 (to include the sum of €1,000 already offered by the Provider) to an account of the Complainants choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider.

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

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

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



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

23 November 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,

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and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

