



<b><u>Decision Ref:</u></b>	2021-0494
<b><u>Sector:</u></b>	Investment
<b><u>Product / Service:</u></b>	Online Share Dealing
<b><u>Conduct(s) complained of:</u></b>	Maladministration Delayed or inadequate communication Failure to provide correct information
<b><u>Outcome:</u></b>	Partially upheld

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

A complaint was received by this office in [2018] in relation to an online trading account. The consumer who made the complaint sadly passed away early in 2021.

In accordance with **Section 45(1) of the Financial Services and Pensions Ombudsman Act 2017, as amended**, the complaint was continued by the consumer's legal personal representative. In these circumstances, the complaint is being maintained by the estate of the deceased. I will therefore refer to the estate of the deceased and the deceased consumer as the Complainant throughout this Decision.

The Complainant opened an online trading account with the Provider, against which this complaint is made, in **May 2017** and deposited £30,000 to the account. The Complainant also entered into an agreement with a separate company, the Fund Management Company, to trade on her account. Shortly after opening the account, the Complainant's funds were lost through the trades placed by the Fund Management Company. The Complainant believes the Provider is responsible for the conduct of the Fund Management Company.

### **The Complainant's Case**

The Complainant explains that she contracted with the Fund Management Company that traded on the Provider's platform. The Complainant outlines that she spoke with her account manager within Fund Management Company at length and also met his team: "... we had a trading connection established through a previous investment firm ... I had known [the Fund Manager] for a full year."

In **May 2017**, the Complainant had a four hour meeting with the Fund Manager “... before I signed the paperwork presented.” The Complainant was signing up to a long term contract where the Fund Management Company “... would trade the markets, establish themselves and I would watch/comment and learn their techniques.” The Complainant states that:

*“I had previously met with the main players of [the Fund Management Firm] in March 2017 having traded and been learning the trading system ...*

*Their ethics appeared honourable as they ‘left’ the previous company due to an issue re holding unsecured details of people accounts and investment amounts. [The Fund Manager] referred to this as a black book.”*

The Fund Management Company began trading on the Complainant’s behalf on **5 June 2017** with her investment of £30,000. By **28 June 2018**, the balance on the Complainant’s account had reduced to £134. The Complainant remarks that her money “... was completely lost in the final week as eight/five trades were put on the same direction of foreign exchange currency.” It is submitted that such trading was *not professional, flagrantly wrong and lunacy*. The Complainant explains that “*I was always told, only 6 percent of my money would ever be ‘at risk’ and they would ‘ride out any storm.’*”

On **4 July 2017**, the Fund Management Company “... told me my broker/manager, [the Fund Manager] had gone ‘mental’ and everyone had lost their money.” The Complainant explains: “... I knew then that the information I was receiving was false.” A conversation also took place with an individual within the Fund Management Company where the Complainant was promised that she would get her money back. The Complainant has not managed to speak with the Fund Manager and his phone number is out of service.

On **7 July 2017**, the Complainant learned that her Power of Attorney form contained a different legal name: “*I understood the paperwork had changed when I enquired about the account. I asked for a copy of this form. It took 3 months to receive this paperwork.*”

On **29 June 2017**, the Complainant *sent the alarm* to the Provider about the trading activity on her account, and on **14 July 2017** understood an investigation was taking place. The Complainant spoke with one of the Provider’s Managers and a Regional Manager. Since these conversations with the Provider, the Complainant has not heard from the Fund Management Company:

*“Their legal name is not registered with the Companies House, UK. Their London Office address has proved false and their phone number and email address are not responded to. The telephone number goes to an exchange which last stated it was unobtainable.”*

The Complainant states that the Provider has “... proved to be far from useful ...” in addressing her problem. The Complainant was asked to put together all the information regarding the matter in **September 2017** which took a number of days. The Provider’s response was not communicated to the Complainant, who then learned the Account Manager overseeing her account had been dismissed.

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The Complainant submits that the Provider owed a duty of care in respect of the Complainant's money because it was transferred to the Provider. It also took some time, 10 days, for the Complainant's money to be received by the Provider and the Complainant is unclear as to why this was the case. The Provider kept asking the Complainant if she had sent the money. The Complainant explains that she used the Provider's simple deposit system after her account had been verified.

The Complainant's account with the Provider was opened by the Fund Manager and the Provider's terms and conditions were not effectively communicated to the Complainant. However, the Provider "... continually sent me with these terms when I ask for assistance." The Complainant states that she "... understand[s] they discount their liability but dismissing any responsibility is unfair and at full detriment to any consumer who contracts in." The Complainant questions whether the Provider should have had some verification process in place when dealing with the Fund Management Company.

The Complainant explains that:

*"I asked at length for the legal name or address details for the company. They appear to have no assurances for them, not alone details of any Professional Liability redress scheme. I assume [the Provider's] systems would have done rigorous checks on their status, directorship addresses and standard company paperwork checks. I was assured by [the Fund Manager] that they had to show trading records to get an account; and their trading history was second to none. This paperwork from [the Provider] had not been forthcoming."*

It was only at the end of **2018** that the Complainant received the address for the Fund Management Company following a fourth request for such information.

The Complainant states that her issues with the Provider are *many fold*. The Provider's response of **13 October 2017** was *devastating, poorly structured*, and *"... not an ounce of compassion was shown."* It was also understood by the Complainant that an investigation had taken place but none of this was presented to her, and subsequent correspondence was furnished later than promised and started with *Dear [Surname]*. The Complainant also argues that simply sending the standard terms to specific questions is not an adequate.

A formal complaint was made by email on **26 February 2018** which did not receive a reply. The Complainant received an out of office response which provided email details to which the complaint could be sent. The Complainant did this. However, the Complainant had to follow up with the Provider on two occasions in order to get a response.

The Complainant explains that:

*"My biggest gripe with [the Provider] was the lack of procedure/checks on the company's status. The names changed from [Name 1] to [Name 2] and six of the eight boxes on the POA form had been over-stickered and yet no one thought to raise a concern with me. ..."*

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*I found out on 7 July 2017 that my POA form had been changed. Sigh if this document was not forthcoming. It took until 13 October 2017 for this document that [the Provider] had recorded on their system to be sent to me.”*

### **The Provider’s Case**

The Provider explains it is an online broker offering execution-only services to clients that want to trade financial instruments. Trades are made by clients without receiving any advice about the merits or risks of the trade. The Complainant is a client of the Provider. The trading account held by the Complainant was an execution-only account. The Provider asserts that when registering for an account, clients are required to accept the Provider’s terms and conditions during the online registration process. A box acknowledging that clients have read, understood and accepted the terms and conditions is required to be checked and a hyperlink to the terms and conditions is also provided. This registration process was completed solely by the Complainant.

The Provider submits that it does not owe a duty of care to the Complainant as clients are fully responsible for making all decisions regarding their accounts and for assessing the merits and risks of the activities on their account. Clients also have 24 hour access to their accounts, and can monitor and view all current and recent transactions.

The Provider advises that clients can appoint a third party trading agent to trade on their behalf. A client engages the Provider about a pre-existing relationship with an account manager and both parties sign a trading agreement/power of attorney which grants control of an account to the account manager. The Provider observes that the Complainant had a pre-existing relationship with a third party trading agent prior to opening her account on **16 May 2017**. The Provider states that it only facilitates Money Manager Accounts (**MMAs**). It does not actively promote or solicit clients for MMAs and clients are not given the opportunity to choose such accounts. These account types are facilitated by the Provider as this is an industry norm.

The Provider submits that clients are responsible for making all decisions regarding their account and third party trading agents are separate from the Provider. The Provider does not endorse or vouch for any services provided by a third party and is not responsible for any losses resulting from the use of any information or advice given by a third party. The Provider outlines the Complainant requested that her account be managed by a third party in accordance with the Power of Attorney (**PoA**) which confirms the appointment of the trading agent to trade on her behalf. The Provider states that it acted in accordance with the Complainant’s requests and instructions as per the PoA. The Complainant’s account was linked to the Fund Management’s account on **26 May 2017**. The Provider states that it did not liaise with the Fund Management Company as this is a relationship between the Complainant and a third party.

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The Provider submits it is not responsible for conducting due diligence on the choice of appointment of a third party trading agent; and, referring to clause 30.2 of the terms and conditions and clauses 7 and 8 of the PoA, accepts no responsibility in this regard. The point is also made that the Complainant conducted her own due diligence and made enquires with the Fund Management Company as to how her money would be invested.

The Provider states that it furnished a detailed response to the Complainant's queries on **13 October 2017**.

It states that the Complainant did not follow the procedure for making a complaint, and as a result, the complaint was not handled in line with its complaints procedure. It asserts that if the correct procedure was followed, the matter would have reached the Provider's complaint's department and been handled more efficiently.

### **The Complaints for Adjudication**

In the correspondence submitted by the Complainant in support of her complaint, repeated references were made to allegedly illegal and fraudulent behaviour, and money laundering activities on the part of the Fund Management Company and/or the Provider. This Office wrote to the Complainant on **19 June 2019**, explaining that it will not investigate complaints made in respect of such conduct which is a matter for law enforcement authorities. The Complainant was also advised on **18 October 2019** that this Office can only investigate complaints made against financial services providers regulated by the Central Bank of Ireland, and as the Fund Management Company was unregulated, this Office could not investigate a complaint against this company.

Therefore the complaints that have been investigated and are for adjudication are that the Provider:

1. Permitted an unregulated entity, the Fund Management Company, to trade on the Complainant's behalf;
2. Failed to monitor the activity of the Fund Management Company; and
3. Provided poor communication, complaints handling and customer service.

### **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.

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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 19 November 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.

Following the issue of my Preliminary Decision, the Complainant made further submissions, copies of which were exchanged with the Provider.

The Provider has not made any further submission.

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

### **The First and Second Complaints**

In the chronology of events provided by the Complainant, she outlines a history of dealings with the Fund Manager. In particular, the Complainant details a meeting with the Fund Manager on **16 May 2017** at her home. The chronology outlines:

*"Two accounts offered those below £100k and those above £100k.*

*Advised that I was not looking to put £100k in. 5-10% profit offered on all funds invested. No more than 6% of my equity would be put at risk at anyone time.*

*I questioned what could potentially go wrong. I was told there was no risk. [Agent 1] was overseeing the accounts and it would be fully managed by [the Fund Manager]. [Agent 1] would manage him. I went further and asked if there was a bad trade what would he do? He said he would put on another counter trade or would look into other supporting equities to trade. Any losses would be short term. I was assured, it would be fully monitored and once a trade went the wrong way, it would be closed at the lesser loss.*

...

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*[A Provider] account set up for me, on [Fund Manager's] laptop. He gave me a new email address ...."*

Further to this, in a submission dated **13 February 2020**, the Complainant states at page 4 that:

*"[The Fund Manager] set up my account online account (sic) by asking me for my details. He also filled out the POA form which I kept and later signed."*

Again, at page 7, it is stated:

*"[The Fund Manager] opened the account on my behalf. It was opened the day he came to visit to tell me about what his company were offering."*

The Complainant also refers to the Provider's terms and conditions at pages 6 and 8 of this submission:

*"I did see the Terms and Conditions box and I did read through them before I sent the form to [the Fund Manager] but I did not see/do not recall seeing [the hyperlink].*

...

*I was only aware of the 30 or so page Terms and Conditions document that I needed to read through."*

Based on the evidence submitted, I am satisfied the Complainant's account with the Provider was opened on her behalf by the Fund Manager with her knowledge and consent. Further to this, the Complainant expressly acknowledges that she was aware of, and had read, the Provider's terms and conditions. The Complainant also signed the Power of Attorney, the PoA. As such, I accept that she was aware or ought to have been aware of the terms contained in this document.

The Complainant states there are two different PoAs and that she only signed one. The PoA signed by the Complainant was not sent to the Provider by the Complainant. Rather, it is outlined in the chronology that the Complainant sent the signed PoA to the Fund Manager on **22 May 2017** at an email address which has the appearance of being a Provider email address. The Complainant has also provided a copy of an email sent to this address on **22 May 2017** stating: *"Here's the paperwork I've now signed."*

There are two PoAs; each is signed by the Complainant and the Fund Manager and bear the same dates. There are three principal differences between the two documents: the name of the Fund Management Company is spelled in a slightly different manner; and different Provider trading account numbers are quoted for both the Complainant and the Fund Management Company.

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The Complainant maintains that the Provider holds a bogus PoA and failed to bring this to her attention. However, there is no evidence of the Provider ever being provided with more than one PoA other than the allegedly bogus PoA.

It appears the Provider was furnished with a PoA which had been validly executed by the parties; and I am not satisfied the Provider had any reason, nor am I satisfied there was any reason, to doubt the authenticity of the PoA it was supplied with.

As can be seen from the Provider's terms and conditions and the PoA, cited below, the Fund Manager was not working for or on behalf of the Provider, and no assurances in this respect were ever conveyed to the Complainant by the Provider. While certain representations may have been made by the Fund Manager regarding the Fund Management Company's status or involvement with the Provider, this does not have the effect of creating a particular type of relationship between the Complainant and the Provider nor does it mean specific duties or responsibilities were owed by the Provider. The Complainant's misunderstanding of the role and responsibility of the Provider can be clearly seen in a submission dated **13 February 2020**:

"...

**Point 2:** ... [The Provider] is known is as the Provider. I considered [the Provider] to be the securing/holding company for [the Fund Management Company's [operation]. The investment company were either their affiliates or trading partners.

**Point 3:** The third party/investment fund company approached me with [the Provider's] paperwork. I then checked who the company was whom they referred, to by checking for them on the internet. ...

I believed there was a relationship with [the Provider] already, as my 'managed fund authorisation' document was sent to [a Provider] Premium email address ... A pre-existing relationship existed. I understood [the Fund Manager] had traded with them before."

The relationship between the each of the parties is set out in the Provider's terms and conditions and the PoA. Clause 29 of the *General Terms and Conditions* deals with Trading Agents and states:

"29.1 Customer acknowledges that should Customer choose to grant trading authority or control over Customer's account to a third party ("Trading Agent"), whether on a discretionary or non-discretionary basis, Customer does so at its own risk.

29.2 Customer acknowledges that [the Provider] ... shall in no way be responsible for reviewing Customer's choice of such Trading Agent, or the actions taken by it, nor making any recommendations with respect thereto.

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29.3 *Customer acknowledges and understands:*

- (i) *That [the Provider] makes no warranties nor representations concerning any Trading Agent,*
- (ii) *...*
- (iii) *That [the Provider] does not, by implication or otherwise, endorse or approve of the operating methods of the Trading Agent.*

...

29.5 *Customer acknowledges that upon receipt of the POA, [the Provider] is authorised to follow the instructions of the Trading Agent in every respect until [the Provider] is notified in writing by the Customer that the POA is revoked or the POA has expired.*

*The Customer authorises [the Provider] to debit Customer's Account in accordance with the terms agreed between Customer and Trading Agent and which are set out in the POA.*

29.6 *Customer acknowledges that the Trading Agent ... may not be regulated by a government agency. It is the Customer's responsibility to perform necessary due diligence on the Trading Agent prior to using any of their services and to satisfy themselves of its competence and/or suitability to the Customer.*

...

29.9 *Customer acknowledges that any decisions or actions taken by the Trading Agent on Customer's behalf shall be deemed to have been taken by the Customer and any losses or gains generated by the Trading Agent's actions shall be for the Customer's account.*

29.10 *Customer agrees to indemnity and hold [the Provider], harmless from and against all liabilities, losses, damages, costs and expenses, including ... without limitation all actions, instructions or omissions by the Trading Agent. ..."*

The PoA was executed by the Complainant on **19 May 2017** and the Fund Management Company on **16 May 2017**. The Complainant is identified as the *Trader* and the Fund Management Company as the *Trading Agent*. The PoA states:

*"Whereas*

- A. *The account holder (the "Trader") has established an account with [the Provider] ...*

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- B. *The establishment and operation by Trader of the Account with [the Provider] is subject to the terms and conditions which have been accepted and acknowledged separately by Trader (the "Terms and Conditions").*
- C. *Trader now wished to appoint a trading agent ("Trading Agent") to trade the Account on behalf of the Trader.*
- D. *Trader and Trading Agent wish the terms of that appointment to be evidenced and reduced by way of this power of attorney ("POA").*

*It is hereby agreed as follows:*

1. *The Trader hereby authorizes the Trading Agent and appoints the Trading Agent as the Trader's lawful attorney to trade the Account on behalf of the Trader, to the fullest extent permitted, subject to and in accordance with the Terms and Conditions with Trader, and to do all acts and things in connection therewith as the Trading Agent may consider necessary or desirable, on behalf of the Trader, for the Trader's account and risk and in the Trader's name or number on [the Provider's] books and records.*
2. *Without prejudice to the above, the Trader acknowledges and understands that further to the Terms and Conditions, [the Provider] is upon receipt of this POA authorized to follow the instructions of the Trading Agent in every respect with regard to the Account.*
3. *...*
4. *...*
5. *The Trader hereby agrees to indemnify and hold [the Provider] ... harmless from and against all liabilities, losses, damages, cost and expenses, including ... without limitation all actions, instructions or omissions by the Trading Agent, its employees and agents.*
6. *The Trader acknowledges any Trading Agent costs, indebtedness and liabilities are the Trader's responsibility and authorizes [the Provider] to debit any balance(s) due thereon from the Account.*
7. *The Trading Agent represents, and Trader hereby confirms, that he/she/it has all of the required governmental approvals, licences and permits for managing the Account and performing all the actions set forth thereon.*

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8. *The Trader acknowledges that [the Provider] has not solicited, or in any other way recommended, his/her participation in trading with [the Provider] pursuant to any particular trading system. The Trader has made inquiries and conducted research sufficient to make an informed investment decision.*
9. *[The Provider] will not be liable in any way for any actions taken or failed to be taken by the Trading Agent, or for any losses, costs or expenses incurred by the Trader or any other third-party as a result of the Trading Agent's actions. The Trading Agent is not an employee or agent of [the Provider] and [the Provider] does not vouch or endorse the services provided by the Trading Agent.*
10. ...
11. ...
12. ...
13. *Notwithstanding that the Trader is hereby granting trading authority and a power of attorney to the Trading Agent, including without limitation, access to Account records and statements, the Trader acknowledges that the Account remains his/her full responsibility and hereby agrees to frequently and closely scrutinize all activity in the Account.*
14. ...
15. *The Trading Agent confirms that he/she/it has read and understood both [the Provider's] Terms and Conditions and [the Provider's] Trading Conditions ... and the Trading Agent hereby undertakes and agrees to comply in all respects with such Terms and Conditions and trading conditions.*
16. ...
17. ...
18. *[The Provider] shall not be under any obligation to make any inquiries as to the capacity or authority of the Trading Agent, or in the case of a Trading Agent that is a body corporate, the capacity or authority of any person acting on behalf of that trading Agent, in relation to the Account. ..."*

The Provider's terms and conditions and the PoA make it explicitly clear that the Provider has no responsibility in respect of the appointment, conduct or monitoring of a trading agent.

The Provider's role is simply to execute the instructions of a trading agent. It is equally clear and unambiguous that the management and control of the account is vested in the Fund Manager. In essence, the Complainant appears to be seeking to attribute responsibility for the Fund Manager's conduct to the Provider despite, and contrary to, the express terms contained in the documents outlined above. However, I do not accept that the Complainant is entitled to do this.

### **The Third Complaint**

An account manager of the Provider emailed the Complainant on **19 May 2017** to explain that he would assist her in setting up her account. The Complainant was also advised of the documents required to verify her account. Following this, on the same day, the Complainant attempted to deposit £30,000 to her account. The Complainant was notified that the first £10,000 was deposited, however, the remaining £20,000, while deposited, did not credit to her account. This was followed by a series of emails between the Complainant and the Provider. The Provider indicated on **23 May 2017** that the Complainant's credit card number was required to complete the process. However, the Complainant explained in an email **31 May 2018** that she was advised by her bank that the funds were simply uncollected by the Provider. Later that day, the Provider informed the Complainant that the funds had been released and fully credited to her account.

The Complainant advised the Provider of the loss of her money on **29 June 2017**. The Complainant explained that she had not heard from the Fund Management Company and asked if the Provider "... could point me in the direction of what to do." The Complainant also asked if the Provider could check her account to see if her concerns were true. A further email was sent on **30 June 2017**.

The Complainant requested a copy of the PoA held by the Provider on **7 July 2017** during a web chat. The Provider's agent explained that it was not possible to download a copy of the document from the Provider's computer system. The Complainant was given the contact details for an account manager and advised to contact him. The Complainant wrote to the account manager on **7 July 2017**, requesting a telephone call and an update as to the status of the Fund Management Company. I note that while the Complainant mentioned that she asked for "... documents you have with my signature", she did not specifically ask this individual to provide her with a copy of the PoA. However, it does not appear that the account manager responded to or telephoned the Complainant as requested.

The Complainant emailed the Regional Manager on **14 July 2017**. It appears there was previous communication between these individuals as the Complainant thanked the Regional Manager for reverting to her. The Complainant explained that she had not heard from the account manager. She also attempted to telephone the account manager but was unable to connect. The Complainant explained she believed that her signature was on a document she never signed, and that things had gone wrong in the Fund Management Company. The Complainant enquired as to how best to proceed, that she wished to recover her money and sought the Provider's assistance in this regard.

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The Regional Manager responded on **17 July 2017** asking for written correspondence between the Complainant and the Fund Management Company. If written correspondence was provided, the Regional Manager indicated he “... *may have something to go to Compliance with.*” It is not entirely clear if the Complainant wrote back to the Regional Manager as a copy of the response does not appear in the documentation submitted by the parties.

Additionally, in a letter to this Office dated **2 December 2019**, the Complainant states:

*“17 July 2017 – Reply back to him with received company email. Second email also sent with original limited POA form and Schedule of Fees. I point out I sent to it another [Provider] email address that I had for [the Fund Manager].”*

The Complainant also outlines a telephone conversation with the Regional Manager on **19 July 2017**. In terms of the provision of documentation by the Complainant, in her account of the conversation she states:

*“... [The Regional Manager] asked for the scanned documentation again. Customer Services to send me the POA form. I was asked did I upload it? Advised I emailed it to [the Fund Manager] direct. ...”*

It seems the Complainant wrote to the Fund Manager, who, as noted above, is not an employee or agent of the Provider.

The Complainant also refers to further telephone contact/attempted telephone contact between **19 July** and **31 July 2017**. The Complainant wrote to the Provider again on **25 July 2017** requesting an update on its investigation.

The Provider responded to the Complainant’s email of **29 June 2017** on **1 August 2017**, apologising for the inconvenience caused and asked the Complainant how the Provider could assist. Responding later that afternoon, the Complainant outlined her *needs* as follows:

*“My needs are:*

- 1) What type of investigation is going on? Is it external with industry regulators involved.*
- 2) What are my remedies to receive compensation and damages. My contract with them is in significant breach.*
- 3) What will [the Provider] do/offer me if my documents are forged?*
- 4) I wish to see the POA document [the Provider] have with my signature on. (I was promised sight of it over two weeks ago by [the Regional Manage].*
- 5) I wish to have my initial sum of money back and compensation for the stress caused. ...”*

The Complainant also expressed the view that, through her contact with the Provider, the PoA documents held on file were not the originals. On **2 August 2017**, the Provider asked

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that the Complainant forward a copy of the original PoA and all communications with the Fund Management Company. The Complainant responded on **4 August 2017** explaining that she had been previously asked by the Regional Manager to supply this information. However, as noted above, the Complainant appears to have sent this information not to the Provider but the Fund Manager. A follow-up email was sent by the Provider on **11 August 2017**.

The Complainant expressed the view on **14 August 2017** that *"... the task you ask is huge ... [and] [w]riting up what I have will be highly time-consuming. ..."* In an email dated **15 August 2017**, the Provider's agent explained that the more information provided, the easier it would be to understand what took place. It appears that the various documentation was furnished by the Complainant on **16 August 2017**.

The Complainant wrote to the Provider on **4 October 2017** requesting an update on the Provider's investigation. The Provider responded to the Complainant on **13 October 2017** explaining that she entered into a PoA with a third party to trade on her account. It was also stated, while citing a number of terms of the PoA, that the Provider was not responsible or liable for losses sustained by the Fund Management Company. In relation to the questions raised by the Complainant, the Provider advised:

***"1) What type of investigation is going on? Is it external with industry regulators involved?"***

*There is no investigation on going. [The Provider] have fulfilled its contractual obligations. [The Provider] is not liable for the actions of third parties pursuant to sections 8, 9, 11, 12, 13 of the terms and conditions applicable to the account.*

***2) What are my remedies to receive compensation and damages? My contract with them is in significant breach.***

*You would need to contact the third party to discuss any breach of a contract entered into with them.*

***3) What will [the Provider] do/offer me if my documents are forged?***

*We have no reason to believe that the document was forged on the basis that you mentioned that you are in possession of a copy of the document.*

***4) I wish to see the POA document [the Provider] have with my signature on. (I was promised sight of it over two weeks ago by [the Regional Manage].***

*Attached*

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***5) I wish to have my initial sum of money back and compensation for the stress caused.***

*This is not possible. The trades placed on the account were valid regardless of the performance of any third party contracted to manage the account."*

The Complainant wrote to a number of individuals and mailboxes within the Provider on **26 February 2018**. A letter was attached to this email highlighting the lack of response from the Provider's agents to the Complainant's emails. The Complainant also took issue with the manner in which her account was managed, the difficulties experienced with the Fund Management Company, and the Provider's conduct towards the Fund Management Company in terms of its verification and due diligence, and the duty the Provider owed to the Complainant. An out of office reply was received from one of the recipients which provided two alternative email addresses to send correspondence to. The Complainant then sent her letter to these email addresses on **27 February 2018**. It appears that none of these parties replied to the Complainant's emails.

The Complainant explains that she called the Provider on **15 March 2018** and requested to speak to the Regional Manager. This individual was not available, and the Complainant requested a call back. The Complainant telephoned the Provider the following day and was advised the Regional Manager no longer worked for the Provider. The Complainant also refers to a telephone conversation with an accounts analyst within the Provider where it was explained that the matter was being investigated. The Complainant states she was also advised that she would receive a call back with an update.

During a web chat on **3 April 2018**, the Complainant outlined the difficulty she was having communicating with the Provider and the Fund Management Company.

The Provider's agent advised the Complainant that she had contacted the Affiliates Department requesting they reach out to the Complainant as soon as possible. It was also noted that the Complainant did not have an account manager assigned to her account. The Provider's agent told the Complainant that she would ask the Retention Manager to assign an account manager. The Complainant emailed the Provider in respect of the foregoing on **13 April 2018** and again on **18 April 2018** querying why she had not heard from the Provider. The Complainant also stated that the last response she received from the Provider was **October 2017**. In an email of **14 April 2018**, the Complainant understood that she would receive a telephone call the following Monday. Based on the evidence presented, it seems that none of the matters mentioned in this paragraph were carried out by the Provider.

On **19 April 2018**, the Provider wrote to the Complainant as follows:

*"I apologize for the late email but I had to contact several departments to verify all the information I had.*

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*Unfortunately, it seems that there is nothing we can do about the money because it was lost by the MAM manager. A Power of Attorney document was signed and the contract was approved by you. Since the money was lost via trading, there is nothing I can do. I confirmed this with several managers from different departments. ...*

*I understand the situation completely and I am really sorry that I cannot assist you any further than this. ...”*

In response to this, the Complainant requested, on **19 April 2018**, the contact details for the Fund Management Company held by the Provider.

The Complainant made a formal complaint to the Provider’s Complainants Department by email dated **17 May 2018** in respect of the Fund Management Company and the conduct of the Provider. The Provider’s Complaints Department wrote to the Complainant on **20 June 2018**. It is not clear if this email was in response to the matters raised by the Complainant in **February** or **May 2018**, however. This email explained that matters were being looked into and the Provider hoped to issue a response within 20 business days. The Complainant responded to this email on **20 June 2018** referring to her May complaint, stating that she was promised a response by **14 June 2018**. This would suggest that there was some communication from the Provider regarding the May complaint and the Provider’s June email is likely to have been a response to the February complaint.

The Provider responded to the Complainant on **21 June 2018** citing clauses 9 and 29 of the terms and conditions, attaching a copy of the PoA, and provided contact details for the Fund Management Company. On **29 June 2018**, the Complainant requested a Final Response letter for the purpose of making a complaint to this Office and indicated her dissatisfaction with the Provider’s investigation. A Final Response letter was furnished by the Provider on the same day.

The Provider’s Formal Response to this complaint is very much silent in addressing this aspect of the complaint. While the Provider made certain efforts to address the various queries and issues raised by the Complainant, it is clear from the correspondence and communications outlined above, the Provider, in certain instances, failed to respond to the Complainant in a timely manner or at all. Further to this, I am not satisfied with the adequacy of the responses from the Provider which failed to address, and meaningfully engage with, the very serious issues raised by the Complainant.

In particular, I note the Complainant’s letter of **26 February 2018**. It is not clear if this letter was treated as a formal complaint. Although not sent to the Provider’s Complainants Department by the Complainant, having reviewed this letter, it is clear that a complaint was being made. However, I am not satisfied it was treated as such by the Provider, and given the circumstances, I would have expected the Provider to treat it as a formal complaint.

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Additionally, the Complainant made a formal complaint on **17 May 2018**. This was not acknowledged by the Provider. The Provider's response on **20 June 2018** does not address the complaint raised by the Complainant and it is certainly not appropriate for the Provider to simply quote from its terms and conditions. This was also the Provider's final response to the complaint, yet it did not advise the Complainant of her entitlement to make a complaint to this Office. This information was only provided to the Complainant when specifically requested.

I completely reject the Provider's suggestion that the Complainant "*did not follow the procedure for making a complaint*".

Having considered the evidence in this complaint, the Provider has failed to communicate with the Complainant and has offered below par customer service. Further to this, its handling of the complaints made by the Complainant was most unsatisfactory, particularly as clause 13.2 of the Provider's terms and conditions expressly states that its complaints procedure "*... follows the requirement outlined in the Irish Consumer Protection Code.*" The Provider has failed to follow this procedure, especially sections 10.7, 10.8 and 10.9 of the **Consumer Protection Code 2012**. The Provider has also failed to act in accordance with the spirit of the Code as expressed in clause 2.12.

I had indicated in my Preliminary Decision my intention to bring my Legally Binding Decision to the attention of the Central Bank of Ireland for any action it deemed necessary, because of the Provider's failure to comply with the CPC in relation to dealing with the Complainant. However, given the passage of time, I do not propose to do so.

For the reasons outlined in this Decision, I partially uphold this complaint and direct the Provider to pay the sum of €5,000 to the estate.

### **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) and (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 estate in the sum of €5,000, to an account of the estate's choosing, within a period of 35 days of the nomination of account details by the estate 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**

8 December 2021

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.