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| <u>Decision Ref:</u> | 2021-0528 |
| <u>Sector:</u> | Investment |
| <u>Product / Service:</u> | Shares/Equities Investment |
| <u>Conduct(s) complained of:</u> | Encashment delays Delayed or inadequate communication Complaint handling (Consumer Protection Code) Maladministration |
| <u>Outcome:</u> | Partially upheld |

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

The complaint concerns the Provider's conduct in respect of the verification of the Complainant for anti-money laundering purposes.

The Complainant is a shareholder in a sub-fund ("the Sub-Fund") which is part of a broader umbrella fund ("the Fund"). The Provider was appointed administrator of the Fund pursuant to an 'Administration Agreement' dated **17 October 2014**.

The Fund is a public limited company which was incorporated in Ireland on **23 December 2004**. The Fund was authorised by the Central Bank of Ireland under the scheme for 'Undertakings in Collective Investment in Transferrable Securities' on **27 January 2005**. The Fund entered voluntary liquidation effective from **July 2019**. The Sub-Fund is one of the Fund's approved sub-funds.

The Complainant's Case

In his Complaint Form, the Complainant describes his complaint, as follows:

“Refusing to give my own money, which is the residue of a failed and liquidated investment fund, as contracted.

Claiming they are unable to discern who i am for AML purposes, from the adequate documentation supplied and my even being vouched-safe for by [the Financial Adviser], the fund creator. Clearly this level of incompetence is surely, not plausibly, making me of the opinion that they are wilfully retaining my money. [A Provider agent] AML ‘team leader’ at [the Provider] informed me (4/10/18) that he had elected to pass my complaint to his management, he further informed me (10/7/18) that they in turn had decided to ‘pass the buck’ to the none existent fund, i am only supposing, for some guidance. Having heard no more, clearly demonstrates the level of operating standards of this firm.”

In resolution of this complaint, the Complainant states, as follows:

“Take my money from their bank account (@3600pounds) and put it into mine as they were contracted to do. A fair and proportionate interest payment is justified as indeed is compensatory payment for the stress and work involved in just trying to prize my own money from [the Provider].”

The Provider’s Case

The Provider says it was appointed as administrator to the Sub-Fund of the Fund on **17 October 2014**. The Provider says it replaced another entity which previously acted as the administrator to the Fund (“the Previous Administrator”).

The Provider says the Fund is an open-ended umbrella investment company, incorporated in Ireland and authorised by the Central Bank of Ireland as a collective investment scheme (UCITS). The Provider says the Complainant was a shareholder in the Sub-Fund and held shares in Class A of the Sub-Fund. The Provider says shares of the Sub-Fund were admitted to the Official List of the Irish Stock Exchange on or about **2 February 200** but were not traded on a regulated market. The Provider says the Sub-Fund may invest in a variety of financial instruments as detailed in the supplement of the Sub-Fund (“the Supplement”) and the prospectus of the Fund (“the Prospectus”), including equity and fixed income securities, cash and money market instruments. The Provider says forward contracts and financial derivative instruments may be held for the purpose of reducing risks, costs or to enhance prospective returns. In this respect, the Provider refers to pages 2/3 of the Supplement and pages 15/21 of the Prospectus.

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The Provider says the Fund delegated administrative services, including the payment of redemption proceeds and anti-money laundering (“AML”) / terrorist financing due diligence in respect of the Sub-Fund, to the Provider as its service provider. However, under applicable laws, the Provider says the Fund retains ultimate responsibility for the provision of administrative services including compliance with its AML obligations. The Provider says as delegate of the Fund, the Fund retains the overall responsibility for dealings with its shareholders.

As detailed below, the Provider says it made several attempts to contact the Complainant in order to obtain outstanding AML documents required in order to release redemption proceeds to the Complainant. At all times, the Provider says it acted in accordance with its AML obligations as provided for under the ***Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*** as amended by Part 2 of the ***Criminal Justice Act 2013*** and the ***Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018*** (together, the “Irish AML Legislation”). If the Provider facilitated the payment of redemption proceeds without receipt of the requested documentation from the Complainant, the Provider says it would have committed a criminal offence under Irish AML Legislation.

The Provider says, as outlined below, it explored all potential avenues to resolve this issue with the Complainant through direct communication with the Complainant where requested and the Complainant’s financial adviser (“the Financial Adviser”), who acted as a go-between for much of the communication between the Provider and the Complainant. It was evident from the supporting documentation accompanying its response to this complaint, the Provider says, that the Financial Adviser agreed with the Provider’s process and requirements and understood the AML requirements which the Provider is required to adhere to.

The Provider says the Board of Directors of the Sub-Fund (“the Board of Directors”) decided to terminate the Sub-Fund on **30 December 2016** and a named firm was appointed as liquidator (“the Liquidator”) on **9 August 2019**. The Provider says the Liquidator took operational control of the Fund’s bank accounts from the Provider and the Provider ceased to act as administrator to the Fund. The Provider says as it is no longer the administrator of the Fund, it is unable to take any further action in respect of the Sub-Fund.

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At the time the Liquidator was appointed to the Fund and the Provider ceased to act as administrator, the Provider says the outstanding AML documentation required from the Complainant was a second valid proof of the Complainant's address.

The Provider says the Financial Adviser was willing to pay for any translation costs that may be incurred by the Complainant. The Provider says that as the Liquidator was appointed, it has no control over the payment of the redemption proceeds to the Complainant.

In terms of resolving the matter, the Provider says it would encourage the Complainant to provide the outstanding required AML documentation to the Liquidator. Until this occurs, the Provider says it does not believe any institution would be in a position to pay out redemption proceeds to the Complainant without being in breach of the Irish AML Legislation. The Provider wishes to reiterate that it explored all potential avenues with the Complainant in terms of providing the required AML documentation and that the Financial Adviser was willing to cover any translation costs. The Provider says it has incurred considerable time and expense in responding to the Complainant and that it cannot pay out redemption proceeds to an investor unless it has the documentation required under Irish AML Legislation. The Provider says it explored all potential options with the Complainant in terms of providing documentation to meet these requirements and that it treats all of its AML obligations very seriously. As outlined below, the Provider says a breach of Irish AML Legislation is both a criminal offence and could result in the Provider and its officers attracting a financial penalty and / or a sanction from the Central Bank of Ireland ("the Central Bank"). The Provider says every effort was made to assist the Complainant, but he has not complied with the reasonable requests made of him.

The Provider says the Previous Administrator transferred 56,518.1579 shares from a named fund to the Complainant on **26 May 2006**. From that date to **16 July 2014**, the Provider says the Previous Administrator executed 37 transactions, the majority being an auto-withdrawal of STG€1,382.50 every four months around **20 January, April, July and October** each year. The Provider says there were also three cash redemption requests in addition to the auto-withdrawals.

When the Provider became administrator to the Fund it says the Complainant's closing balance of 8,414.3144 shares were booked onto its accounting system as the Complainant's opening balance. The Provider says cash representing subscription and redemption monies are held in an account in the name of the Fund for the benefit of the Sub-Fund, not in the name of the Provider. The Provider says it does not and never held any money representing investors' subscriptions or money due to be paid to investors following redemptions of shares in the Fund. Until **August 2019**, when authority was

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transferred to the Liquidator, the Provider says it only had the ability to make payments from the accounts upon satisfaction of AML legislative requirements.

The Provider says the Complainant's auto-withdrawals for **21 January** and **15 April 2015** were booked on its system but no funds were wired to the Complainant due to AML deficiencies identified by the Provider and the wire proceeds remained in the account in the name of the Fund. The Provider says it cannot, of itself, decide to cancel an investor's auto-withdrawal simply because an investor is non-compliant. The Provider says the Complainant questioned why the Provider permitted the **15 April 2015** auto-withdrawal to occur when it knew the Complainant would not be paid, but the Provider says the auto-withdrawal instruction was solely for the Complainant to make or withdraw. The Provider says the Complainant then requested to cancel his future auto-withdrawals and to re-invest the two outstanding payments, which were re-invested on **22 May 2015**. The Provider says this instruction in effect side-stepped the AML issue which had arisen.

The Provider says the Board of Directors decided to terminate the Sub-Fund on **30 December 2016** and all investor holdings were subsequently redeemed. The Provider says no cash payments were made to investors pending liquidation of the Sub-Fund's investments. Following the sale of a portion of the Sub-Fund's assets, the Provider says the initial termination payment to investors was made on **1 February 2017**. However, due to the Complainant still being non-compliant with the relevant AML requirements, STG€2,198.08 due to the Complainant could not be paid out, but instead remained in an account in the name of the Fund, pending satisfaction by the Complainant of AML requirements. The Provider says a second payment was made to investors on **6 February 2017**. However, due to the Complainant still being non-compliant with the relevant AML requirements, STG€1,459.15 was not paid out, but instead remained in an account in the name of the Fund, pending satisfaction by the Complainant of AML requirements. The Provider outlines a similar situation in respect of a payment made to investors on **12 April 2019**, with the relevant amount being STG€527.24.

As at **9 August 2019**, the date on which the Liquidator was appointed to the Fund, the Provider says the Liquidator took operational control over the Fund's bank accounts from the Provider and the Provider ceased to act as administrator to the Fund and the STG€4,184.47 owing to the Complainant remained in an account in the name of the Fund. The Provider says such monies could be paid to the Provider by the Liquidator pending satisfaction by the Complainant of AML requirements / receipt by the Liquidator of the required AML documentation.

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The Provider says it was an agent of the Fund and acted in accordance with the administration agreement with the Fund, any instructions of the Board of the Fund and with AML legislation. The Provider says it never had any contractual relationship with the Complainant. The Provider says its AML Team and Transfer Agency Team were in communication of the Financial Adviser and the Complainant during this process.

The Provider says the law requires that for AML / terrorist financing purposes, due diligence must be performed on every investor into a fund. The Fund in this case, the Provider says, contracted with the Provider to perform this service for it. The Provider says this process is based on a risk categorisation of all potential investors and the due diligence that is performed is driven by that risk assessment. The Provider says the Complainant's account was designated as 'Individual' by the Provider which triggered a requirement for a predetermined set of documentation and information. In addition, the Provider says the Complainant is resident in Thailand, which is rated by the Provider as a high-risk jurisdiction from a money laundering / terrorist financing perspective. As the Complainant's investment was made from the high-risk jurisdiction, the Provider says extra due diligence is triggered.

The Provider says that money laundering under Irish law encompasses the proceeds of (any) crime including tax evasion and is not confined to very serious crime. This risk based approach, the Provider says, is a legal requirement and is normal for all fund administrators acting on behalf of investment funds in the Irish market.

The Provider says the terms of the Prospectus for the Fund apply to the Complainant's investment. Specifically, there are 'Anti-Money Laundering Provisions' paragraphs in the 'Share Dealing' section of the Prospectus (pages 39/40). In addition, the Provider says the section 'Repurchase of Shares' on page 40 of the Prospectus is relevant. In particular, the Provider refers to the following statement:

"In no event shall repurchase proceeds be paid until all of the necessary AML checks have been carried out"

The Provider says the Fund and the Provider, both being regulated by the Central Bank, are subject to AML legislation which detail the applicable AML obligations. The Provider says it was appointed to assist the Fund in meeting the Fund's obligations to comply with the applicable AML legislation with respect to investors in the Fund, and non-compliance with the applicable AML legislation is a criminal offence.

The Provider says the initial AML verification of the Complainant was carried out by the Previous Administrator. In summary, the Provider says in **October 2014**, the Complainant was deemed compliant based on the AML comfort letter received from the Financial

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Adviser (Singapore). Section 40 of the ***Criminal Justice Act 2010***, as amended by the ***Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018***, and the Central Bank's 'Report on Anti-Money Laundering / Countering the Financing of Terrorism and Financial Sanctions Compliance in the Irish Funds Sector', the Provider says provide that an administrator should seek to test the veracity of such comfort letters.

After testing the efficacy of the letter, the Provider says it was not satisfied with it and therefore could not rely on it pursuant to AML legislation. The Provider says it then proceeded to deem the Complainant non-compliant and was thus required to obtain full documentation directly from the Complainant. In this respect, the Provider says it was not satisfied that the Financial Adviser held any up to date documents on investors that were introduced to the Fund by the Financial Adviser. The Provider says if the comfort letter cannot in fact be relied upon, then the legal requirement is that full documentation must be obtained directly. The Provider says it deemed all investors listed on the Financial Adviser's AML comfort letter as non-compliant (over 400 investors). The Provider says the Complainant was not singled out in this regard and treated the same as all other non-compliant investors.

The Provider says it proceeded to reach out to the Complainant to request the required AML documentation to allow it to deem the Complainant's account compliant from an AML perspective. The Provider says it communicated with the Complainant on numerous occasions in relation to the specific documentation that was required for his account to comply with Irish AML Legislation. At numerous times, the Provider says the Financial Adviser agreed with its approach and stated that these were also their requirements.

The Provider says Thailand is rated by it as a "high risk" jurisdiction from a money laundering / terrorist financing perspective, so any high risk individuals must provide the following:

- 1) Original or certified true copy of one proof of ID (POI)
- 2) Original or certified true copy of first proof of address (POA1)
- 3) Original or certified true copy of second proof of address (POA2)

If the Complainant had not been resident in a high risk jurisdiction, the Provider says it would not have required an original or certified copy of the above listed documents, but two types of address would still have been required.

The Provider says that any investor who has documents in a foreign language can provide a translated, certified copy and that the Complainant has been informed of this.

The Provider says it was under a legislative and regulatory obligation to ensure the AML documentation of the Complainant met regulatory requirements and it was not therefore in a position to pay out the redemption proceeds as the AML documentation provided by the Complainant did not meet the regulatory requirements at the time the redemption request was received.

In this respect, the Provider also refers to a guidance note issued by the Department of Finance on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing issued in **February 2012** (“the Department of Finance AML Guidelines”).

As the Provider is no longer the administrator of the Fund since **August 2019**, the Provider says it is not able to take any further action and the matter now rests with the Liquidator to resolve directly with the Complainant. However, the Provider says when it was appointed as administrator to the Fund, the Complainant confirmed by email dated **28 May 2015** that:

“As for the AML documents, i can of course furnish utility bills, it is the notarised photo ID that is a little bit more demanding for me to acquire.”

On **18 September 2017**, the Provider says it provided an alternative (the first instance of being open to alternatives) to not having utility bills by attaching a template for an address confirmation letter whereby a solicitor, lawyer, notary or consul could confirm the Complainant’s current address.

On **15 January 2019**, the Provider says the Financial Adviser proposed that the Complainant would go to his local Thai bank where he held an account and request a letter / statement with his Thai address on it. The Provider says the Financial Adviser confirmed it would be happy to pay for the translation cost. The Provider says it responded the same day to say that if the Complainant could not provide an original / certified true copy of his bank statement showing his Thai address, then the Provider would accept the proposed signed letter from the Complainant’s Thai bank (this was the second instance the Provider was open to alternatives).

On **28 February 2019**, the Provider says it received an email with the following attachments:

- 1) Certified passport for POI
- 2) Thai driver’s license with address
- 3) Bangkok bank statement

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The Provider says the residential address on 2) and 3) above were different addresses and the bank statement matched what appeared to be the Complainant's residential address but the driver's license was for a different address so could not be accepted.

On **7 March 2019**, the Provider says the Complainant responded to the Financial Adviser, which was forwarded to the Provider. In this email, the Provider says the Complainant responded to the driver's license / bank statement discrepancy, as follows:

"To explain why my Thai driving license has the same address as my Thai household registration book and not the address where I state I currently reside requires the composition of an essay which I am quite happy to do, but it will require work-time."

On **14 March 2019**, the Provider says it proposed four alternatives (the third instance of the Provider being open to alternatives). On **18 March 2019**, the Provider says the Complainant rejected all four alternatives.

The Provider says all requests made to the Complainant informed him that no payments could be made until the specific AML documentation was provided. The Provider says this position applied from **April 2015** until the Provider ceased to act as administrator of the Fund in **August 2019**. The Provider says it is unaware as to whether the Liquidator has been able to lift this restriction / obtain the required AML documentation.

The Provider says the Complainant's status as non-compliant was reported to the Fund's Board at every quarterly meeting between **October 2014** and **November 2016**, and following termination of the Fund in **December 2016** by way of ad hoc reporting until **March 2019**. The Provider says the Fund's Board informed all investors that if they were AML unverified then no payments would be released to them. In this respect, the Provider refers to a letter dated **4 January 2017** issued by the Board to the Complainant.

The Provider says the Department of Finance AML Guidelines were applicable during the period it acted as administrator to the Fund. The Provider refers to Appendix I of these guidelines at pages 115/119 and page 122 regarding the 'Guidance on Identification and Verification Procedures' and the 'Authenticity of Documentation' required for individuals. In particular, the Provider refers to the following passage at page 117 in respect of the "One plus One" approach:

"Depending on the risk assessment of the customer additional ID verification may be required"

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The Provider refers to a further passage on page 117, which states as follows:

“In its risk analysis, a Designated Person should also have regard to the jurisdiction that issued the documentation on which it chooses to place reliance”

The Provider also refers to the following passage on page 122:

“In high risk scenarios a designated person should use more than one source to verify information”

The Provider says the Complainant was classified as “high risk” given the jurisdiction of location, requiring the documentation requested. This documentation, the Provider says, was in line with the requirements set out in the industry guidance applicable during that period (‘Investment Funds Sectoral Guidelines on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing’ published by the Irish Funds Industry Association in **December 2013**, “the Industry Guidelines”). In this respect, the Provider refers to page 28 which contains the recommended documents that should be requested by a designated person for individual investors who are determined to be higher risk. The Provider says the documentation requirements for “high risk” investors are in accordance with the Industry Guidelines and remain the current requirements of the Provider.

In response to the Complainant’s position that the Provider “*decided to pass the buck to the non-existent fund*”, the Provider says it acted as administrator to the Fund between **October 2014** and **August 2019**, and acted per direction from the Fund’s Board. The Provider says the Fund’s AML / payment policy, in accordance with applicable AML legislation and Department of Finance AML Guidelines, is not to make payments to investors that are non-compliant with the relevant AML requirements and to do so would be a criminal offence under Irish law. The Provider says its role as administrator was to contact investors and brokers to obtain required AML identity verification documentation from investors, and any decisions to waive requirements, cancel redemptions without an investor’s signed instruction, reinvest cash without an investor’s signed instruction are not decisions the Provider can make and must come from the Fund’s Board.

The Provider says it complied with all its obligations as administrator of the Fund and acted as per direction from the Fund and the Board of the Fund. The Provider says it acts as delegate of the Fund, however, the Fund retains the overall responsibility for dealings with its shareholders. The Provider says the Fund is required to retain ultimate responsibility for the provision of administration services including compliance with its AML obligations.

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The Provider says although the Fund terminated its investment strategy and was liquidating its investments, the Fund still existed as a legal entity subject to Central Bank regulation. The Board of the Fund, the Provider says, remained in-situ and was required to perform its duties until the Liquidator was appointed in **August 2019**.

Therefore, the Provider says the Fund still existed when the above statement was made by the Complainant, albeit the Fund had terminated its investment strategy and was in the process of winding down.

In response to the Complainant's position that there were "*numerous unsatisfactory responses*" from the Provider, the Provider says it replied to the Complainant and the Financial Adviser's emails within a few days, often by close of business on the same day, and offered alternatives throughout the period. It is evident from the supporting documentation provided to this Office, the Provider says, that the Financial Adviser agreed with the Provider's process and requirements, and understood the regulations which the Provider (as agent of the Fund) were following as similar regulations were also applicable to the Financial Adviser in Singapore. The Provider says it emailed the Complainant when he wanted the Provider to contact him directly and emailed the Financial Adviser when the Complainant preferred to go through the Financial Adviser. The Provider says it tried telephoning the Complainant when he preferred this method of communication, and then the Complainant decided to switch back to email. Therefore, the Provider says its responses were prompt, clear and concise. The Provider says it took the Complainant's situation into account and offered alternatives, but still the Complainant was not happy to provide evidence or reasons for multiple addresses. The Provider submits that compliance with AML and terrorist financing laws are particularly important and that anyone dealing with any financial institution will expect to have to provide information to comply with these laws.

In terms of the applicability of the **Consumer Protection Code 2012** ("the Code"), the Provider says the Code does not apply because the Provider is not a credit institution or an insurance firm. The Provider also says that the Complainant is not a customer of the Provider and is a customer of the Fund. The Provider is a service provider appointed by the Fund to perform administrative services with respect of the Fund's investors. The Provider says it would highlight that it is a service provider appointed by the Fund to perform administrative services with respect to the Fund's investors. The Complainant's legal / customer relationship is with the Fund and not the Provider. The Provider says it would highlight that at all times it acted fairly and reasonably to accommodate the Complainant within the confines of its legal, contractual and regulatory responsibilities, as is evidenced by the correspondence with the Provider.

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When the Provider was administrator to the Fund it says that the last remaining document was a second proof of address. However, the Provider says as it is no longer the administrator to the Fund since **August 2019**, it is not able to take any further action or enter into any correspondence with the Complainant.

This is now a matter for the Liquidator to take up with the Complainant in order to obtain the outstanding documentation and pay the redemption proceeds. The Provider says it notes that the Complainant does not have any complaint against the Liquidator, however the Provider says it would suggest that the Complainant approach the Liquidator and provide the outstanding documentation / second proof of address in order to receive the redemption proceeds.

The Complaints for Adjudication

The complaints are that the Provider:

1. refused to pay to the Complainant the closing balance of his investment in the Sub-Fund; and
2. proffered below par communication, customer service and complaints handling.

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

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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 24 November 2021, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

2014/2015 Correspondence

By letter dated **12 September 2014**, the Financial Adviser wrote to the Provider in respect of the Fund.

This letter advised that the Financial Adviser was a provider of financial services regulated for the purpose of anti-money laundering within Singapore by the Money Laundering Authority of Singapore and was required to undertake measures to ensure compliance with relevant anti-money laundering regulations. In this letter, the Financial Adviser stated that in accordance with these regulations, it instituted procedures to verify the identity and residence of all applicants for units in the Fund. In a further letter dated **12 September 2014**, the Financial Adviser wrote to the Provider identifying the Complainant as one of the individuals covered by its earlier letter.

By email dated **20 January 2015**, the Provider wrote to third parties associated with the Fund regarding *“the verification status of investors within [the Sub-Fund] that are covered by the letters of representation received from the various [Financial Adviser] entities”*, advising that the letters of representation were not sufficient to meet AML verification requirements and that enhanced AML due diligence was required in respect of a number of investors.

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It appears from an extract from a 'Report of the Administrator to the Board of Directors 18 October 2014 to 30 January 2015', that the Complainant was identified as one of the investors in the Sub-Fund who was unverified for AML purposes.

It appears from an email dated **9 February 2015** to the Provider from third party legal advisers that, arising from a meeting of the Board of the Fund on **24 November 2014**, the Provider was to provide confirmation that all original AML documentation had been received from the Previous Administrator and that all investors were AML compliant.

A Provider email dated **10 March 2015** states, in part, as follows:

"[I]nvestor AML verification was conducted through the provision of letters of representation from four [Financial Adviser] entities for a large group of investors and through independent AML verification of the remaining investors by [the Provider]. Subsequent to the receipt of the letters of representation from the entities within the [Financial Adviser] covering 259 converting investors, [the Provider] has recently conducted a review of the details of the investors covered by such letters and it has determined the following with regard to these;

- 1. 30 investors were considered to be higher risk due to their geographical location therefore these are to be assessed as enhanced due diligence; as a result of this enhanced risk assessment; it has been deemed appropriate to request the underlying due diligence documentation from the entities providing these respective letters of representation.*

Until [the Provider] can verify that the underlying documentation meets the requirements of enhanced verification, these 30 investors are to be marked as AML unverified and no proceeds can be paid to such. [...]

Please note that [the Provider] has been advised by [the Financial Adviser] that the underlying documentation have been dispatched as at the end of last week [...]."

By email dated **3 April 2015**, the Complainant contacted the Provider to query why he had not received his quarterly redemption payment. This email was acknowledged by the Provider on **7 April 2015**. By email dated **8 April 2015**, the Provider wrote to the Complainant, as follows:

"Our AML department have advised that we are pending AML documents which we need to verify your account and pay this redemption. The documents previously

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provided by the [Financial Adviser] were unacceptable/expired. Please forward the below AML in order to get your account AML verified:

1. Certified copy of current, clear Photo ID with signature (e.g. Passport, Driver's License and National ID Card).

Also, 2 or 3 will be required:

2. 2 original or certified Forms of Proof of current Residential Address dated within the past 6 months (e.g. Utility Bill, Bank or Mortgage Statement). Please note that we may only accept the original or certified copies of the above and that a certified copy of a Driver's License may only be used as a means of verifying ID or residential address not both. Both proofs should be from different sources. Statements addressed to PO Box locations are not acceptable.

OR

3. An original Affidavit of Address can be accepted in the place of 2 original or certified forms of proof of address, once signed by the affiant and witnessed and signed by a lawyer or notary public only.

Important Note: All documents received must be either originals or independently certified true copies of originals. [...]."

The Complainant responded to the Provider on **10 April 2015**, in part, as follows:

"I am a little troubled here, in as much that the redemption occurred over two months ago when it was known that the payment could not be forwarded to me because of a lack of AML documents. Troubling me further is that i am not aware of any request for AML documents pre or post-redemption. I am also mindful that another redemption is not far away.

I would like to ask the following questions:-

1. Are you legally restrained from forwarding me my money as things stand?
2. Where is my money now and who is receiving the benefit of it?
3. Can my money be put back into the fund with ease and the request for quarterly redemptions cancelled?

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I have to say that i do find the need to have a photo ID notarised a little dramatic, all things considered. I have never had or heard of this request before. I would therefore like at this stage to wait for your response before making any decisions. [...].”

By email dated **10 April 2015**, the Provider responded to the Complainant, as follows:

“1) [The Provider] is authorised and regulated by the Central Bank of Ireland and is required to comply with the terms set out in the Criminal Justice (Money Laundering & Terrorist Financing) Acts, 2010 and 2013 which are consistent with the provisions that apply in the other Financial Action Task Force jurisdictions and the Third EU Money Laundering Directive. [The Provider] is required under the Acts to establish the identity of a registered shareholder.

2) Your redemption money is sitting in a non-interest bearing account in the name of The Fund, awaiting payment in your account.

3) Yes, all we require is that you complete the attached Additional Investment Form, and also write on it that you wish to cancel any further Quarterly Redemptions until further notice. In addition to that your dividend option is to receive this in cash, although there has not been any dividends declared in this Fund since [the Provider] took over as administrator you may wish to also write on this form you wish to change your dividend status to re-invest until further notice also. Then once all AML documents have been provided you can resume Quarterly Redemptions and alter your Dividend status again. [...].”

Responding to this email on **20 April 2015**, the Complainant stated, as follows:

“I would just like to comment that although i appreciate that you are overwhelmed with rules and regulations, some of which you have quoted to me, i feel that my question was not answered. I also note that no reference was made to my not receiving any request for AML forms to be completed, regardless of the fact that a redemption occurred two months ago, which the paying of required such forms to be completed. I am now further dismayed that another redemption had occurred. However, i feel that these can all remain moot points for the following reasons.

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I have decided that the easiest procedure for me is to cancel the receiving of redemption and any dividend payments for the foreseeable future. The onerous task of acquiring any notarised photo ID at this time would be both too time consuming and unjustifiably expensive. I trust that this email is sufficient notification for the aforementioned cancellation. I would also ask that the monies be returned back into the fund.

I can make no further decisions in respect of this investment because as you may know or not know i am in deep dispute with [the Financial Adviser] regarding this investment, a decision by the Financial Ombudsman is i believe imminent. It will be this decision that determines my ultimate position."

This appears to have been followed by certain internal correspondence regarding the Complainant's request that the redemption proceeds be re-invested without the requirement for updated AML documentation. This was noted, in particular, in an email dated **23 April 2015**.

Separately, it appears from a Provider email dated **17 April 2015**, the Provider determined that all accounts (with the exception of three accounts) covered by four 'Representation Letters' received from the Financial Adviser should be classified as unverified and any pending payments should be blocked until AML verification was confirmed by the Provider. In terms of a review undertaken by the Provider in respect of the above-mentioned representation letters, it is stated in a Provider email dated **21 April 2015** that:

"[...]

- *As below noted, our review took the approach of assessing whether the documentation provided by [the Financial Adviser] would be acceptable at the point of investment by the investor and also whether the documentation provided by the [Financial Adviser] matched the current registered details of investors.*
- *The findings noted varying gaps including the following in singularity or in combination –*
 - *proof of address documentation not agreeing to the current registered address*
 - *incomplete documentation on file such as a second proof of identity / address*

/Cont'd...

- *documentation for enhanced due diligence accounts were noted as not being certified form*
- *provision of PO Box documentation as proof of address verification [...].”*

In a spreadsheet accompanying this email, the Complainant was identified as one of the individuals whose ‘Special Drawdown’ would be blocked until the required AML documentation was received.

By email dated **8 May 2015**, the Provider wrote to the Complainant to advise that his request to cancel the redemption requests was under consideration with the Board of the Fund pending receipt of the requested AML documentation. This email then proceeded to repeat the request for AML documentation as set out in the Provider’s email of **8 April 2015**.

The Complainant responded to this email on **14 May 2015**, stating that:

“[I] have to tell you i am unable to provide AML documentation for them [the Board of Directors] in the immediate future. I would also like to remind you that the requirement of AML documents was only made known to me after my contacting your firm on 3/4/15, after i became aware that the quarterly payment due 1/2/15 was not received, despite the fact that the funds were in your firm’s bank account. The fact that a second redemption has occurred with your firm being well aware that the payment could not be made to me, does i believe warrant further explanation, especially as my money has, i assume, ended up in your firm’s bank account. [...].”

This email was followed by certain internal correspondence. In particular, it was noted in a Provider email dated **18 May 2015** that:

“To resolve this issue the investor would like to:

- 1. re-invest any unpaid Special Drawdown redemptions to date,*
- 2. temporarily cancel his recurring Special Drawdown Facility,*
- 3. provide his outstanding AML documentation in the future.*

With the board’s permission via email, coupled with the investor’s request via email, [the Provider] can execute the first two points above i.e., reinvest unpaid

/Cont’d...

redemption proceeds back into the Fund at next available trade date and cancel all future dated redemptions

[The Provider] will also reply to the investor stating that we acknowledge he is unable to provide AML documents in the immediate future, but request that we will follow up with him in 30 days to request an update on the provision of these missing AML documents. We will also confirm that his pending redemptions are cancelled and his pending payments will be reinvested."

It appears from an email dated **22 May 2015** that the Provider received approval for the above approach to the Complainant's request. In a further email dated **22 May 2015**, the Provider wrote to the Complainant, as follows:

"The Board have agreed to your following three points of concern:

- to re-invest both of your redeemed Special Drawdowns, as of today's date, totaling 2,765.00, into [the Sub-Fund].*
- to cancel all future Special Drawdowns from [the Sub-Fund] until further notice from yourself*
- that you will provide your AML documents at some time in the future. Do you have an estimated time-frame for the provision of these documents? We will contact you periodically requesting these documents."*

The Complainant responded to the Provider on **28 May 2018**, in part, as follows:

"As for the AML documents, i can of course furnish utility bills, it is the notarised photo ID that is a little bit more demanding for me to acquire. I will endeavour to obtain this within the next thirty days."

By email dated **25 June 2015**, the Provider wrote to the Complainant stating, in part, as follows:

"Please note that we cannot pay any proceeds until we receive your AML documentation. Can you please advise if you have any updated with regard to the AML documentation?"

The Provider sought an update from the Complainant on **29 June 2015**. By email dated **30 June 2015**, the Complainant wrote to the Provider, as follows:

/Cont'd...

"I have yet to acquire a notarised photo ID copy, but please rest assured the matter is in hand. In the event that there is a [Sub-Fund] dividend please reinvest in the fund."

2017 Correspondence

The Board of the Fund issued a 'Notice of Closure' to all shareholders in the Sub-Fund on **3 January 2017** to advise that the Board was terminating the Fund as of **30 December 2016** as the continued existence and operation of the Sub-Fund was not economically viable.

The Notice of Closure further advised that the Fund would be repurchasing all remaining shares in the Sub-Fund and that the net proceeds of each shareholder would be distributed to the relevant parties. In the context of the present complaint, the Notice of Closure also advised that:

"If you are an unverified AML investor in the [Sub-Fund], please note that the [Fund] is prohibited from releasing the repayment monies to you until such time as it is in receipt of full anti-money laundering documentation from you. [...] Once all outstanding identity documentation has been received and verified, the Administrator on behalf of the [Fund] will then arrange to transfer the repayment monies to you."

On **11 May 2017**, the Financial Adviser emailed the Provider regarding the liquidation of the Sub-Fund querying whether there were any outstanding matters and if payment had been made to the Complainant's bank account. Responding the same day, the Provider advised that the Complainant's account had not been AML verified. The required AML documentation outlined in this email appears to be the documentation previously requested in **April 2015**. The Financial Adviser emailed the Complainant on **12 May 2017**, outlining the AML documentation required by the Provider.

By email dated **11 July 2017**, the Financial Adviser emailed the Complainant acknowledging receipt of 'address proof(s)', however these were in Thai and the Financial Adviser queried whether the Complainant had any proofs of address in English. It appears from an email to the Financial Adviser dated **24 August 2017** that the Complainant posted, that day, "*a letter that contains my Thai address in English*" to the Financial Adviser. By email dated **13 September 2017**, the Financial Adviser appears to have sent certain documentation to the Provider. However, it is not entirely clear what documentation was attached to this email.

In this email, the Financial Adviser noted, in part, as follows:

/Cont'd...

"I think we are pending for address proof only at the moment.

He has sent back the contract note from you guys, and I don't think he has any other address in English."

The 'contract note' referred to by the Financial Adviser appears to be a 'Contract Note' for the Sub-Fund addressed to the Complainant at an address in Thailand dated **15 October 2014**.

It appears from an internal email dated **11 October 2017** that two proofs of address were provided on **13 September 2017** (one in Thai and *"another which was an unacceptable proof of address"*) and that certified photographic identification had not been received.

By email dated **13 September 2017** and in response to the documentation furnished by the Financial Adviser, the Provider wrote to the Financial Adviser, as follows:

"Unfortunately, this document is dated from 2014 and we cannot place reliance on this document that [the Complainant] has not changed address since. All proofs of address must be within 6 months of issue date.

Can you advise what other proof of address [the Complainant] has, even if this is not in English."

In a further email dated **14 September 2017**, the Provider advised the Financial Adviser that proof of address within the previous six months would be acceptable for AML purposes and, for any documentation not in English, the Provider would require an original translation, completed by an accredited translator.

Following a telephone conversation with the Financial Adviser, the Provider wrote to the Financial Adviser on **18 September 2017**, as follows:

"I understand you have advised that foreigners cannot own land in Thailand. This however does not mean that they cannot have utility bills or bank statements issued in their name. We will accept bills that are in both [the Complainant's] and his wife's name on the same bill.

If there are no bills of any kind (aside from cellular phone bills) in [the Complainant's] name, he must have the attached address confirmation letter completed by a Solicitor/Lawyer/Notary/Consul."

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The above-mentioned address confirmation letter required the following declaration to be signed by the relevant authorised party and the Complainant:

"I _____, (insert name of the Solicitor/Lawyer/Notary/Consul) confirm that _____ (insert the printed name of the individual) is known to me and I confirm that this person currently lives at the following address: [...]"

In an email dated **19 September 2017**, the Financial Adviser requested that the Provider telephone the Complainant. By email dated **22 September 2017**, the Provider advised the Financial Adviser that it attempted unsuccessful telephone contact with the Complainant. In this email, the Provider also provided a telephone number which the Complainant could use to contact the Provider to discuss the AML request. In an email dated **25 September 2017**, the Financial Adviser advised that the Complainant wished to discuss matters through email.

The Provider set out the required and acceptable AML documentation in an email to the Financial Adviser dated **25 September 2017**, as follows:

"Please see below list of acceptable address proofs (we will require 2 original/wet ink certified copies for [the Complainant]) along with his wet ink certified photo id:

I understand that some of the below are not possible for [the Complainant] to provide; please ask that he confirm which is can/cannot provide (and we can review scanned copies via email also, prior to postage)

We await further up (sic) on this, and will advise further then

- *A current statement of account from a credit or financial institution, or credit / debit card statements;*
- *A bank statement or a signed letter on headed paper signed by a bank official confirming that the individual has an account with the bank and the individual's current address;*
- *A mortgage statement;*
- *Instrument of court appointment [...]*
- *Current local authority document e.g. refuse collection bill, water charge bill*
- *Current utility bills;*

- *Current household / motor insurance certificate and renewal notice;*
- *A signed address confirmation letter on headed paper from a solicitor, lawyer, notary, consul or honorary consul confirming that the individual is known to*

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them and the individual's current address - we can provide a template if this option is to be used.

- A signed letter on headed paper from a known / recognisable employer confirming the individual is in current paid employment and the individual's current address;
- Travel pass issued by a government entity or similar;

Where the documents are not in English, we will require original translations to be completed by an accredited translator"

On **29 September 2017**, the Financial Adviser responded to the Provider, as follows:

"I spoke to client yesterday again, he is not willing to provide anymore documents and he said he will lodge a complaint.

I feel for him and fully aware of his difficulties but I have to agree that you guys are just complying with the regulation and the required proofs are not difficult to provide generally."

Responding the same day, the Provider advised that the matter had been escalated internally for further guidance. The Provider further advised that the account would remain unverified for payments until the AML verification requirements were complied with. The Provider also requested details of the Complainant's 'difficulties'.

By email dated **6 October 2017**, the Complainant made a formal complaint to the Provider stating that the Provider was *"with-holding my money with-out just cause."* The Complainant further stated that:

"I have recently submitted, as requested, sufficient documentation adequately proving my existence and verifying my status, your further request for supplying a duplication of these documents must therefore be regarded as superfluous to requirements. I would also like you to note that I have supplied previously, to whom-ever requested, the same documents of the time, receiving total acceptance.

It has been indicated to me by [the Financial Adviser's] Singapore office that you are having some difficulty with the veracity of my Thai residential address.

It has occurred to me that you can simply post to me at the address above enclosing an international reply coupon/envelope a letterhead to sign and return. This will

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surely allay any fears or suspicions that you may have, that skullduggery might be afoot here. This simple suggestion I can only leave for you to consider.”

By letter dated **19 October 2017**, the Provider issued its formal response to the Complainant, as follows:

“We are writing in response to your email dated 6th October 2017, and acknowledge your complaint with regards to the withholding of payments due as a result of outstanding documentation required to satisfy regulatory Anti-Money Laundering requirements.

As previously advised, [the Provider], as an Irish Regulated Administrator is required to comply with Irish statutory obligations in relation to Anti-Money Laundering and the requirements of our regulator, the Central Bank of Ireland. As the Administrator of the Fund, [the Provider] is required to ensure that the Anti-Money Laundering documentation held on file for investors meets the requirements of the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 & 2013 (together the “Act”).

We can confirm that the Anti-Money Laundering verification documents required to verify your account for Anti-Money Laundering purposes are in line with the requirements of the Act.

We have looked at your case in detail and confirm that the documentation you provided as proof of address is insufficient and would not meet the required legal obligations for the following reasons;

- a) One proof of address is in Thai language. As we have advised previously we require documents in English, or translated to English, as such we were unable to validate the address or the date of the proof of address.*
- b) The second proof of address was a Fund contract note which is not an acceptable form of address verification. We have previously provided a list of acceptable documents, but would be happy to resend this to you.*

Additionally, the request for an original certified photographic identification remains outstanding.

We previously contacted you to request these documents in 2015, but unfortunately these have not been provided, hence our inability to release any payments. In

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accordance with our regulatory obligations all payments will be withheld until receipt of the required Anti-Money Laundering documentation.”

This letter appears to have been sent to the Complainant under cover of email dated **20 October 2017**.

2018 Correspondence

By email dated **29 June 2018**, the Complainant responded to the Provider, as follows:

“I have studied your response to my complaint in which you have expressed your limitations.

However, i can-not accept any of the excuses that you are stating, justifies or explains your persistent refusal to give me my money, which it is pertinent to point out i did not give to you.

In your response i have noted your mentioning of 2015. I have to confess i did not even realise you were the same concern. You have claimed non-receipt of previously sent AML documentation, i have to concede the Thai post does have vagaries and so you qualify for the benefit of the doubt here with this claim. The documents sent were by and large the same as you now possess, i now know that they would not have met your discerning limitations in any case. This means of course, that your claim is totally irrelevant to my complaint and so any issues regarding this incident can remain moot ones.

At this point i would like to make you aware that i do not have a mortgage, i do not use a credit card nor receive telephone bills of any kind. Further comments are the reminder that you asked for a utility bill and this is what you got. The same documentation you hold has been submitted to fulfil other previous AML requests with-out encountering any hindrance. Further-more you are fully aware of who i am, where i reside and the origins of my money which must be regarded as a totally insignificant amount. Your continued denial of this knowledge merely raises other issues. These points collectively more than justify my charge against your firm.

The afore-mentioned facts make my complaint perfectly acceptable and understandable to any reasonable mind. [...].”

The Provider responded to the Complainant on **4 July 2018** advising that his email had been escalated internally to management and that the Provider would advise the Complainant *“of any actions (if any) in due course.”* In an email dated **10 July 2018**, the

/Cont'd...

Provider advised the Complainant that the matter had been escalated to the Fund and upon receipt of a response from the Fund, the Provider would revert to the Complainant. In its timeline of events, the Provider states that a response was received from the Board around **22 August 2018**. In response to this on the same day, the Provider says it advised the Board that it would try to resolve matters with the Complainant one more time. In a Provider email dated **27 August 2018** it is stated that *“we will press for the AML documentation one last time.”*

2019 Correspondence

By email dated **14 January 2019**, the Financial Adviser emailed the Provider on the Complainant’s behalf, requesting the Provider’s legal name. The Provider responded to this email the same day, in relevant part, as follows:

“In order to meet our regulatory requirements we require the following documentation from [the Complainant]:

- *1 originally certified true copy photographic identification (this must be in date).*
- *2 originally certified true copy proofs of address dated within the last 6 months.*

[...]

**** All documents received must be in English or Translated into English ****

[The Complainant] *previously provided the following:*

- *One proof of address is in Thai language. As such we were unable to validate the address or the date of the proof of address*
- *The second proof of address was a Fund contract note which is not an acceptable form of address verification.”*

It appears that following a telephone conversation with the Complainant, the Financial Adviser emailed the Provider on **15 January 2019**, in respect of the required AML documentation. The Provider responded to this email the same day, inserting its comments in bold. This email exchange states, as follows:

“Appreciate if you could advise on below.

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- 1 originally certified true copy photographic identification (this must be in date) – he has a UK passport, will send it across when we can. **Thank you, please ensure this is originally certified and includes the sample signature page also.**
- 2 originally certified true copy proofs of address dated within the last 6 months – he rents the place so u-bill is under landlord name.

*First proof – he has one thai driving license which has his thai address, I believe that is acceptable as long as we get it translated and certified? **This will be acceptable providing it is in date and states the expiry date/validity date on the drivers license as it must be current.***

*Second address proof – I have asked him to go to the thai local bank which he has a account with, and then request a letter or statement with his thai address on it. **If he cannot provide an originally certified copy of the a (sic) bank statement sent to his residential address we may accept an originally signed letter on headed paper, dated and signed by a bank official confirming that the individual has an account with the bank and the individual's current address***

[...]

We are happy to pay for the translation cost but we like to resolve this once and for all, [...].”

By emails dated **28 February/1 March 2019**, the Financial Adviser wrote to the Provider attaching a copy of the following documents:

Certified passport

Certified Thai driving license with address at the bank

Certified Bangkok bank letter with bank account detail and address

On reviewing the documentation submitted by the Provider as part of its response to this complaint, I can see copies of a Thai bank statement in respect of an account held by the Complainant, a letter from the Complainant's Thai bank, a copy of the Complainant's Thai driving license and a copy of the Complainant's British passport – all stamped as having been certified by the Financial Adviser on **1 March 2019**. It appears hardcopies of these documents were received by the Provider around **5 April 2019**. However, a copy of the Complainant's Thai driving license does not appear amongst the documents stamped **5 April 2019**.

Responding to the Financial Adviser on **2 March 2019**, the Provider advised that:

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“The address on the Driving License differs to the address on the Bank Statement. We require two certified proofs of address for [the Complainant’s] current address. I would be grateful if you could advise on this.”

At this juncture, I note that the address on the Complainant’s Thai driving license is different to the address stated on the Thai bank statement.

On **7 March 2019**, the Complainant emailed the Financial Adviser, stating that:

“Have studied the response from [the Provider] who have further expressed their fears. To explain why my Thai driving license has the same address as my Thai household registration book and not the address where I state I currently reside requires the composition of an essay which I am quite happy to do, but it will require work-time.

In the mean time, I have come up with some options for [the Provider] to consider which might allay their fears.

I could go back to my bank and ask them to re-issue my statement with the address in my Thai household registration book. The only drawback being of course is that this will require work-time and expense for which I will be seeking restitution.

A further option is, I could use my UK credentials which would be a UK driving license and UK bank statement, I could supply a utility bill but it will have my daughters name on it. It may be useful to make [the Provider] aware that hundreds of millions of people around the globe reside in homes whose utility bills do not have their name on them, there is nothing sinister in this fact, indeed I am such a person. I mention this as I am sure [the Provider] are going to make an issue of my own utility bill presentation which I will be contesting when this matter comes before the Ombudsman. [...].”

It appears from an email dated **12 March 2019**, the Financial Adviser forwarded a ‘banking details form’ to the Provider. By email dated **14 March 2019**, the Provider wrote to the Financial Adviser, as follows:

/Cont’d...

“This query has been reviewed by management. Whilst we understand this process is proving difficult for this registered shareholder, we nevertheless must adhere to regulatory requirements.

The passport & bank statement (which states his residential address) will be acceptable upon receipt of the originally certified documentation. The objective of the AML process is to verify the registered shareholders address by obtaining two certified proofs of address. To date we have received one valid proof of address. The options offered by [the Complainant] in his email do not meet regulatory requirements and therefore cannot be accepted.

Is it possible to obtain any of the following as an alternative second proof of address?

- *A copy of a local telephone directory showing [the Complainant’s] residential address.*
- *A certified true copy of a lease agreement from [the Complainant’s] landlord.*
- *A certified true copy of current household / motor insurance certificate and renewal notice;*
- *An originally signed address confirmation letter on headed paper from a solicitor, lawyer, notary, consul or honorary consul confirming that the individual known to them and the individual’s address. This letter must be in the following format:*

Letter from Solicitor/Lawyer/Notary/Consul (On headed paper)

I _____, (insert name of the Solicitor/Lawyer/Notary/Consul) confirm that _____ (insert the printed name of the individual) is known to me and I confirm that this person currently lives at the following address: [...]”

The Financial Adviser responded on **15 March 2019**, indicating that the Provider’s AML requirements were similar to those in Singapore. In so far as concerned the AML documentation provided, the Financial Adviser queried whether the matter would need to be closed within three months, otherwise the letter provided from the Complainant’s Thai bank would expire. In this email, the Financial Adviser also responded, in brackets, to each of the four bullet points from the Provider’s email of **14 March 2019**, as follows:

“[...]

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- A copy of a local telephone directory showing [the Complainant's] residential address. (possible, not sure if he has one but appreciate if you could word it differe next time, he kept shouting and arqing that you said A copy of a local telephone directory showing [the Complainant's] residential address", you didn't say it ha be in his name, so he provided me a phone / U bill that has his residential address but not in his name. I rejected that and said it is has be in his name, otherwise it doesn't serve its purpose, he will then continue to shout and argue for another 5-10 minutes and insist that you didn't say these address proo to be in his name) Please let me know if I am wrong, [the Provider] can actually phone / U bill that is not in his name, as long as it shows his residential address?
- A certified true copy of a lease agreement from [the Complainant's] landlord. (possible, I asked for that many many times, will see what he says)
- A certified true copy of current household / motor insurance certificate and renewal notice; (very unlikely, you know he rented that place, I think the ans no based on what I can remember)
- An originally singed address confirmation letter on headed paper from a solicitor, lawyer, notary, consul or honorary consul confirming that the individual known to them and the individual's address. This letter must be in the following format: (I proposed this to him many many times and assure him will pay for that, he rejected it and shout and argue for 5-10 minutes every single time I raise this.) [...]."

[Underlining added for emphasis]

Having consulted with the Complainant, the Financial Adviser emailed the Provider on **18 March 2019**, with the following responses to each of the above bullet points:

"[...]

- [...] No
- [...] No, he said he has been staying in the same place for 12 years, he may have one l agreement signed 12 years ago but never sign any more lease agreement legally after that, and he continue to stay there without any lease agreement till
- [...] No
- [...] He said it is extremely difficult to get a letter like this ov there"

On **20 March 2019**, the Provider emailed the Financial Adviser explaining that:

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“[T]he AML Team have provided [the Complainant] with all acceptable options for AML Documentation. Upon receipt of one of these options in the format as outlined in previous emails will we release payment.”

In response to this on **25 March 2019**, the Financial Adviser stated, as follows:

“We can’t help anymore unless he is willing to help us help him.

*We already offered him the imbursement of the **Letter from Solicitor/Lawyer/Notary/Consul (On headed paper)** this morning which we don’t usually.*

It is up to him now really whether he likes to close this off.”

As noted above, certain documentation was received by the Provider around **5 April 2019**.

The Provider wrote to the Financial Adviser by email on **16 May 2019** in respect of a number of investors in the Sub-Fund. Regarding the Complainant, the relevant part of the email states, as follows:

“[The Complainant] if still Thailand resident

- One originally certified address verification (utility bill or bank statement dated within the last six months **no mobile phone bills**)*
- We have received an originally certified ID and one address verification (a bank statement) already for [the Complainant] from [the Financial Adviser]”*

Analysis

It is important to note that the **Consumer Protection Code 2012** only applies to ‘customers’ and ‘consumers’ in the Republic of Ireland. Based on the available evidence, the Complainant was resident in Thailand during the period to which this complaint relates. Accordingly, as there is no evidence of the Complainant being in Ireland during the relevant period, I am of the opinion that the **Consumer Protection Code 2012** does not apply in the context of this complaint.

The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, as amended by Part 2 of the Criminal Justice Act 2013 and by the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018 is the primary piece of legislation in Ireland governing anti-money laundering and the financing of terrorism. The conduct the subject of this complaint began around **April 2015**. At this point the 2010 Act and 2013 Act were in

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effect. In **November 2018**, certain amendments introduced by the 2018 Act came into effect.

The 2010 Act (as amended) imposed certain obligations on the Fund and the Sub-Fund in terms of the verification of shareholders for AML purposes such as the Complainant. This function was delegated to the Previous Administrator and then to the Provider following its appointment in **October 2014**.

Prior to the appointment of the Provider, the Financial Adviser provided certain letters of representation regarding the verification of shareholders, including the Complainant.

Shortly after its appointment, it appears the Provider engaged in a process of reviewing the letters of representation for the purpose of determining whether these were sufficient to satisfy AML requirements, as provided for by AML legislation.

In respect of the AML legislation in effect during **2015**, I note that section 33(1) of the 2010 Act states, in mandatory language, that the designated person shall apply the measures specified in subsection (2) and where applicable, the measures specified in subsection (4), in relation to a customer of the designated person in certain circumstances, including:

- prior to establishing a business relationship with the customer;
- prior to carrying out an occasional transaction with, for or on behalf of the customer or assisting the customer to carry out an occasional transaction;
- prior to carrying out any service for the customer if:
 - the person has reasonable grounds to doubt the veracity or adequacy of documents (whether or not in electronic form) or information that the person has previously obtained for the purpose of verifying the identity of the customer; and
 - the person has not obtained any other documents or information that the person has reasonable grounds to believe can be relied upon to confirm the identity of the customer.

Section 33(1) must also be read in conjunction with section 54. In particular, section 54(1) and section 54(2) require a designated person to adopt policies and procedures to prevent and detect the commission of money laundering and terrorist financing. Further to this,

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section 54(3)(c) [as amended by section 11 of the 2013 Act] requires a designated person to ensure by its policies and procedures that measures are taken to keep documents and information relating to customers up to date.

On considering the evidence and in light of the obligations imposed by the 2010 Act, I am satisfied that it was reasonable for the Provider to review the letters of representation received from the Financial Adviser in respect of the Complainant following its appointment in **October 2014**. Furthermore, I am satisfied that it was reasonable for the Provider to conclude that the information held in respect of the Complainant was not sufficient to satisfy the requirements of the AML legislation in effect at this time.

In particular, I note that certain shareholders were considered high risk due to their geographical location (which appears to have included the Complainant, who resided in Thailand) in the Provider email dated **10 March 2015**, and that certain 'gaps' were identified in the letters of representation in the Provider email dated **21 April 2015**.

By email dated **3 April 2015**, the Complainant queried why he had not received his quarterly redemption payment. In response to this, the Provider advised the Complainant on **8 April 2015** that his account would need to be verified before the payment could be made and that the documentation previously provided by the Financial Adviser was unacceptable / expired. The Provider also set out the type of documentation required from the Complainant in order for his account to be verified. In response to this, the Complainant noted that the quarterly redemption was due two months prior to his email but a request for AML documentation had only been made in response to his query regarding the redemption payment.

The documentation requested by the Provider in its email of **8 April 2015** was photographic identification and two forms of proof of address. In this email, the Provider set out three types of document which would satisfy the photographic identification requirement and three types of document which would satisfy the proofs of address requirement. I also note that the Provider gave the Complainant the option of providing an Affidavit of Address in place of the two proofs of address.

In this respect, I note that section 33(2)(a) of the 2010 Act required the Provider to identify the Complainant and verify his identity on the basis of documents or information that the designated person has reasonable grounds to believe can be relied upon to confirm the identity of the customer. Section 33(3) states that nothing in subsection (2) limits the kinds of documents or information that a designated person may have reasonable grounds to believe can be relied upon to confirm the identity of a customer.

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Further to this, section 33(4) [which was deleted by section 11 of the 2018 Act] set out, in mandatory language, the measures to be applied where a customer who is an individual does not present to the designated person for verification in person of the customer's identity, which include:

- verification of the customer's identity on the basis of documents (whether or not in electronic form), or information, that the designated person has reasonable grounds to believe are reliable as confirmation of the identity of the customer in addition to any documents or information that would ordinarily have been used to verify the customer's identity if the customer had presented to the designated person for verification in person of the customer's identity;
- verification of documents supplied, for the purposes of verifying the identity of the customer, to the designated person by the customer; and
- verification of the customer's identity on the basis of confirmation received from an acceptable institution that the customer is, or has been, a customer of that institution.

In circumstances where a designated person who is unable to apply the measures specified in subsection (2) or (4) in relation to a customer, as a result of any failure on the part of the customer to provide the designated person with required documents or information, section 33(8) states that the designated person shall not provide the service or carry out the transaction sought by that customer for so long as the failure remains unrectified, and shall discontinue the business relationship (if any) with the customer.

It is the Provider's position that enhanced due diligence applied to the Complainant. This appears to have arisen because of the Complainant's residence in Thailand. In this respect, section 39 of the 2010 Act [as amended by section 10 of the 2013 Act], states that where a designated person has reasonable grounds to believe that the circumstances relating to a customer may present a heightened risk of money laundering or terrorist financing, the designated person shall apply additional measures.

Having considered the matter, it is my opinion that at the time of the Provider's request for AML documentation in **April 2015**, the Provider was reasonably entitled to request photographic identification and two forms of proof of address from the Complainant in the manner prescribed.

In terms of the Provider notifying the Complainant that the AML documentation was unacceptable / expired, this does not appear to have been addressed by the Provider in its

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response to the Complainant on **8 April 2015**. I note from the email dated **10 March 2015** that the Provider was awaiting receipt of the documentation supporting the letters of representation from the Financial Adviser. It also appears that during **April 2015**, the Provider was still engaged in a review of the letters of representation and that it was not until around **17 April 2015** that the Provider determined that all accounts covered by the letters of representation should be classified as unverified. That said, it seems to be the case that the Provider was engaged in a review of the letters of representation (on foot of the emailed dated **9 February 2015**) at the time the Complainant's quarterly redemption payment was apparently due, which appears to have been around **January/February 2015**. In the circumstances, it appears the Provider's AML review is likely to have impacted the Complainant's quarterly redemption payment.

As such, I am of the view that the Provider should have notified the Complainant of any delay that may have arisen in respect of this payment as a result of the review it was undertaking. However, this does not appear to have occurred and it was not until the Complainant contacted the Provider that he was informed about his AML status.

In an email dated **10 April 2015**, the Complainant raised certain queries in respect of the Provider's request for AML documentation. The Provider responded to this email the same day. In this email the Provider set out its response to the Complainant's queries and, in particular, the legislative basis underpinning its AML obligations. In an email dated **20 April 2015**, the Complainant indicated that he would not be in a position to provide notarised photographic identification and requested the cancellation of redemption payments. By email dated **8 May 2015**, the Provider advised the Complainant that his request to cancel the redemption payment was under consideration, which the Board agreed to around **22 May 2015** and communicated to the Complainant the same day. In an email dated **14 May 2015**, the Complainant indicated that he was unable to provide the AML documentation *in the immediate future*. In an email dated **28 May 2015**, the Complainant indicated that he could provide utility bills, but he was finding that providing notarised photographic identification more demanding and would endeavour to obtain the relevant documentation within the next 30 days. The Provider sent a follow-up email to the Complainant on **29 June 2015**. Responding to the Provider on **30 June 2015**, the Complainant advised that he had yet to acquire notarised photographic identification but matters were in hand.

On considering the evidence, I am satisfied that the Provider made the Complainant aware of the types of documentation required to satisfy the applicable AML requirements. I am also satisfied that reasonable efforts were made to communicate with the Complainant regarding the required AML documentation and to accommodate the Complainant's request to cancel redemption payments.

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However, as discussed above, I am not satisfied that reasonable efforts were made to inform the Complainant that due to the Provider's AML review, there could be a delay in paying the quarterly redemption payment.

It appears the Complainant's email of **30 June 2015** was one of the last exchanges between the parties until **2017**. However, at this point, it appears that the Complainant had yet to provide any AML documentation to the Provider but advised that matters were in hand. In its timeline of events, the Provider says following the email of **30 June 2015**, no further contact was made at this time and that its AML team awaited the Complainant to provide the requested documentation. It also appears that there was no communication between the parties during **2016**.

In the final email exchanges between the parties in **May/June 2015**, the Complainant indicated that he was in the process of gathering the requested documentation. However, there is no evidence to suggest that any documentation was provided either during **2015** or **2016**. The Fund/Sub-Fund's AML obligations, as mandated by the 2010 Act, were delegated to the Provider. In the circumstances, I consider it reasonable for the Provider to have periodically written to the Complainant in respect of his account, reminding him of the requirement to provide the previously requested documentation and the consequences if this documentation was not provided. In particular, in its Complaint Response, the Provider says the Complainant's status as non-compliant was reported to the Fund's Board at every quarterly meeting between **October 2014** and **November 2016**, and following termination of the Fund in **December 2016** by way of ad hoc reporting. Therefore, the Provider appears to have been aware of the Complainant's unverified status yet took no steps to pursue the matter with the Complainant following its (brief) engagement with the Complainant between **April 2015** and **June 2015**.

Equally, I am satisfied that the Complainant was aware of the need to provide the requested documentation in order to verify his account and to continue to receive redemption payments. However, based on the available evidence, no steps appear to have been taken by the Complainant to provide the requested documentation.

It appears the next point of communication was the Provider's issuance of the Notice of Closure in **January 2017**. In **May 2017**, the Financial Adviser began to correspond with the Provider regarding the verification of the Complainant's account. From the outset of this exchange the Provider set out the documentation required to verify the Complainant's account, which was the same as the documentation originally requested in **April 2015**. This appears to have been followed by a certain level of communication between the Financial Adviser and the Complainant regarding the provision of documentation.

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However, it appears that it was not until **September 2017** that documentation was forwarded by the Financial Adviser to the Provider.

It appears from the emails between the Provider and the Financial Adviser during **September 2017** that proof of identification was provided and one proof of address (a Contract Note for the Sub-Fund from **2014**). Beginning with its email of **8 April 2015**, the Provider advised that the proof of address must be dated within the last six months. As the Contract Note was dated **15 October 2014**, I accept that this was not sufficient to satisfy the proofs of address requirement.

In respect of proof of address, the evidence shows the Provider sought to engage with the Financial Adviser. In particular, I note that the Provider took a very open, reasonable and flexible approach to the proof of address requirement. In its email of **13 September 2017**, it queried the other proofs of address the Complainant could provide, even if not in English. In its email of **18 September 2017**, the Provider acknowledged that non-nationals could not own land in Thailand (the Complainant being a UK citizen) but noted that this did not mean the Complainant would not have utility bills (except mobile phone bills) or bank statements issued in his name. The Provider also advised it would accept bills in the joint names of the Complainant and his wife. In the event the Complainant was unable to provide any kind of utility bill, the Provider attached an 'address confirmation letter'. In an email dated **25 September 2017**, the Provider set out a list of acceptable documentation, asking that the Complainant confirm which documentation he could or could not provide. The Provider also advised that it could review scanned copies of the relevant documentation prior to postage. On considering the documentation listed in this email, I am of the view that the Provider gave the Complainant a number of reasonable options.

It appears from the Financial Adviser's email dated **29 September 2017** that the Complainant did not wish to provide any further documentation. I also note the Provider advised that it would escalate the matter internally and further requested details of the 'difficulties' the Complainant was experiencing, in response to this email.

A formal complaint was made by the Complainant on **6 October 2017** and a final response letter dated **19 October 2017** issued to the Complainant under cover of email dated **20 October 2017**. It is not clear from the documentation provided by the parties whether the complaint was acknowledged by the Provider in advance of its final response letter. However, there is some evidence to suggest that an acknowledgement letter and update letter issued to the Complainant. In this respect, I note an internal email dated **23 October 2017** says that " *Holding emails issued to the investor on 9th and 18th of Oct 2017*".

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I also note that a 'Transfer Agency Complaint Log 2017' notes that a holding email issued on **9 October 2017**. However, copies of the correspondence which issued on **9 and 18 October 2017** do not appear to have been provided.

While it is not clear whether the Provider acknowledged the Complainant's complaint in advance of issuing its final response letter, I note that the Provider issued the final response letter within eight business days of receiving the complaint. In these circumstances, I am satisfied that the Provider promptly issued a formal response to the Complainant.

In the final response letter, the Provider advised that two proofs of address had been received: one being in Thai language and the other being the Contract Note. The Provider also advised that original certified photographic identification remained outstanding. In terms of the proofs of address, the Contract Note has been dealt with above. However, based on the available evidence, it is not clear what the Thai language proof of address was. In any event, if this proof of address document was in Thai, I note from the emails exchanged with the Complainant and the Financial Adviser, the Provider advised that originals or certified true copies were required, and where documents were not in English, original translations by an accredited translator were required.

The final response letter appears to have been the last communication between the parties during **2017**.

On considering the evidence, I accept that the Complainant does not appear to have provided documentation sufficient to satisfy the Provider's AML requirements, which derived from the 2010 Act (as amended). Although the Complainant may have experienced certain difficulty or inconvenience in obtaining the appropriate documentation and also made efforts to provide documentation through the Financial Adviser, I am of the view that the Complainant was nonetheless required to provide the requested documentation and that this documentation was required to meet certain criteria in terms of its authenticity (being an original or certified copy) and being in English (or appropriately translated). Further to this, I accept that the Provider made very reasonable efforts to engage with the Complainant and the Financial Adviser, to accommodate the Complainant, and adopted a very flexible approach as to the documentation which could be provided.

The Complainant responded to the final response letter eight months later, on **29 June 2018**. The Provider responded to the Complainant on **4 July 2018** and advised that the matter had been escalated internally. By email dated **10 July 2018**, the Provider advised that the matter had been escalated to the Fund and that the Provider would contact the Complainant once a response was received.

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While the Provider sought to escalate matters both internally and with the Board in respect to the Complainant's email, and informed the Complainant of this course of action, it appears that when a response was received from the Board the Provider failed to communicate this response to the Complainant. Furthermore, it appears that the Provider intended to request the required documentation again, however it failed to action this and no further engagement appears to have taken place between the parties during **2018**.

Having consider the matter, I accept that the Provider failed to engage with the Complainant following the response received from the Board. I also accept that the Provider failed to engage with the Complainant regarding the required AML documentation despite indicating an intention to do so.

Following an email from the Financial Adviser in **January 2019**, the Provider set out the documentation required to verify the Complainant's account (which was the same as that originally requested in **April 2015**). In respect of the proofs of address previously provided, the Provider advised that as one was in Thai, it was unable to validate the address or the date of the document. The Provider also advised that the Contract Note was not an acceptable from of address verification.

In the email exchanged between the Provider and the Financial Adviser dated **15 January 2019**, the Provider indicated that it would accept a certified copy of the Complainant's passport in satisfaction of the photographic identification requirement. In terms of proofs of address, the Provider set out the basis on which it would accept the Complainant's Thai driving license. The Provider also indicated it would accept an account statement from the Complainant's Thai bank or an original signed letter on headed paper from the bank. I note that these documents are very much in line with the documentation the Provider advised would be acceptable in its emails of **8 April 2015** and **25 September 2017**.

Around **February/March 2019**, certain documentation was provided to the Provider. By email dated **2 March 2019**, the Provider advised the Financial Adviser that the address on the Complainant's Thai driving license was different to the address stated on the Thai bank statement. In an email to the Financial Adviser dated **7 March 2019**, the Complainant stated that:

"To explain why my Thai driving license has the same address as my Thai household registration book and not the address where I state I currently reside requires the

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composition of an essay which I am quite happy to do, but it will require work-time.”

The Complainant also outlined two proposals in this email. The first was to ask his Thai bank to re-issue a statement containing the address in his Thai household registration book and the other was to use his UK credentials which would be a UK driving license and UK bank statement.

In an email dated **14 March 2019**, the Provider advised that the passport and bank correspondence were acceptable. However, the Provider further explained the objective of the AML process was to verify the registered address of a shareholder by obtaining two certified proofs of address and the options offered by the Complainant did not meet regulatory requirements. On considering the purpose of the 2010 Act (as amended) and the options offered by the Complainant, I consider that it was appropriate for the Provider to decline to accept the alternatives offered. For instance, as there was conflicting information regarding the Complainant’s address (which the Complainant did not explain), I do not consider asking the Thai bank to change the Complainant’s address necessarily resolves matters as the address at which the Complainant actually resided was unclear. In terms of providing UK credentials, I do not accept this would have resolved matters either as the evidence was that the Complainant resided in Thailand and not the UK. As such, it would not be appropriate for the Provider to accept proofs of address in respect of an address where the Complainant did not reside.

In the Provider’s email of **14 March 2019**, the Provider set out a further list of documents which would satisfy its AML requirements. The Financial Adviser responded to each item listed in the Provider’s email and set out the Complainant’s position. It appears from the Financial Adviser’s response (**14 and 18 March 2019**) that the Complainant was either not in a position or unwilling to provide these documents.

From the outset, I note that the Provider gave the Complainant the option of providing an Affidavit of Address or ‘address confirmation letter’. In the Financial Adviser’s email of **14 March 2019**, it was stated that:

“I proposed this to him many many times and assure[d] him will pay for that, he rejected it and shout and argue for 5-10 minutes every single time I raise this.”

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In the email of **18 March 2019**, the Financial Adviser explained that the Complainant advised that it *“is extremely difficult to get a letter like this ov[er] there”*.

However, in a submission dated **20 July 2020**, the Complainant states:

“There is every likelihood that in the city of [...] no such documentation can be obtained.

Whilst I cannot claim to be house-bound it is certainly unreasonable of the writer to expect me to trawl the city on a possible wild goose chase in an attempt to satisfy his firm’s operating limitations.”

It appears that there may not necessarily have been any difficulty in providing an Affidavit of Address or ‘address confirmation letter’. Rather, it appears there may have been an unwillingness on the part of the Complainant to locate an appropriately qualified person to complete the Affidavit of Address or ‘address confirmation letter’ for him. It appears that an Affidavit of Address or ‘address confirmation letter’ would have been the most suitable option for the Complainant given the difficulties encountered with respect to obtaining / providing any of the other types of documentation acceptable to the Provider, and could possibly have allowed the Complainant verify his account during **2015**. I also note that the Financial Adviser offered to cover the costs associated with obtaining an address confirmation letter during **2019**.

In terms of the parties’ engagement during **2019**, although it may have been the case that the Complainant was not in a position to provide the documentation requested by the Provider, I am satisfied that a sufficiently broad range of documentation was acceptable to the Provider such that would reasonably have allowed the Complainant to provide the verification required. I am also satisfied that the Provider make reasonable efforts to engage with the Financial Adviser (and by extension, the Complainant) with respect to accepting documentation that would satisfy the Provider’s AML obligations.

While the 2018 Act introduced certain changes to the 2010 Act (as amended), in the context of this complaint, I am satisfied these changes were not such that interfered with the Provider’s obligation or entitlement to seek the documentation requested from the Complainant following the amendments introduced by this Act in **November 2018** or during the parties’ engagement during **2019**.

I understand that the Provider’s role as administrator ceased on the appointment of the Liquidator in **August 2019**. In this respect, I note that at the time of the Provider’s email to the Financial Adviser dated **16 May 2019**, one proof of address remained outstanding. As discussed above, unless appropriate documentation is provided to satisfy the Provider’s

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obligations under the relevant AML legislation, it could not pay to the Complainant the closing balance in respect of his investment in the Sub-Fund. It is my opinion that the Provider was only required to pay these funds to the Complainant once satisfactory documentation had been provided such that would have allowed the Provider to verify the Complainant's account, which did not occur prior to the appointment of the Liquidator. Accordingly, I do not accept that the Provider wrongfully or unreasonably refused to pay the closing balance in respect of the Complainant's investment in the Sub-Fund.

However, in light of the above analysis, I do accept that there were certain shortcomings in terms of the level of communication and customer service on the part of the Provider.

Therefore, I partially uphold this complaint and direct that the Provider pay the sum of €500 to the Complainant.

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)** as the conduct complained of was unreasonable in its application to the Complainant and on the ground specified 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 €500, 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**.

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

17 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.