



<b><u>Decision Ref:</u></b>	2022-0046
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Savings Account
<b><u>Conduct(s) complained of:</u></b>	Mis-selling (banking) Delayed or inadequate communication Complaint handling (Consumer Protection Code) Dissatisfaction with customer service Fees & charges applied Maladministration
<b><u>Outcome:</u></b>	Upheld

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

The Complainant is a customer of the Provider which is a bank.

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

The Complainant says that in **2017**, his Credit Union advised him that his savings exceeded the maximum threshold of the Credit Union cap of **€30,000**. As a result, the Credit Union issued the Complainant with a cheque for surplus funds of €50,976.63 (fifty thousand nine hundred and seventy six euros and sixty three cent) and the Complainant decided to place this money with the Provider. The Complainant submits that he wanted to deposit this money into a regular bank account.

The Complainant states that in August 2017, owing to the amount in question, he was advised by the Provider to see one of its financial advisors, who he told that these funds were *“earmarked for the purchase of a home.”*

The Complainant argues that the Provider's Financial Adviser *“was quite persuasive in his sales pitch on the day and assured me that I could access my funds at any time, without a penalty. He advised me my money would be safer in a savings account, rather than a regular current account, due to the amount in question.”* The Complainant also states that he *“was*

*encouraged to sign off on documents on the day of opening the account, and also encouraged to tick off pre-populated fields on the form."*

The Complainant contends that the restrictions of the 5 year deposit account were not explained to him, and he was not aware that a penalty charge of €1,600.00 (one thousand six hundred euros) would be deducted on early release of the funds.

The Complainant contends that the Provider's Financial Adviser was a student who he asserts lacked sufficient experience to advise him. The Complainant also argues that the Provider's Branch Manager spoke with the Complainant in an office and admissions were made on that occasion. The Complainant wants the €1,600.00 (one thousand six hundred euros) refunded to him by the Provider.

The Complainant submits by letter, dated **20 May 2019**, that:

*"To give you the background, I deposited savings of €50,976.63 with [Provider], in August 2017, having previously had the funds deposited in my local credit union. I moved these savings to [the Provider] due to being advised the representative at the Credit Union, that the amount was too large for a credit union account. I accrued little to no interest in the credit union and the reasoning for my moving my savings to the [Provider] was out of necessity, not out of any motivation to accrue interest payments. (just to advise, there was a minimal interest payment linked to this savings account with [Provider] -1%, which would have left me without access to my funds for 5 years), when I specifically advised the financial advisor on the day in the [Provider] that I would be accessing my funds shortly. It was not explained to me that I would not have access to my funds, even though I stipulated that the funds were earmarked for the purchase of a home. When I went to withdraw my funds, I was charged €1600 of a penalty fee which was automatically deducted from my money. I was encouraged to sign off on documents on the day of opening the account, and also encouraged to tick off pre-populated fields on the form.*

*I did not fully understand what I was signing up for, but I was assured I would have access to my funds in full without penalty, as I advised the employee that the funds were earmarked for the purchase of a home as I mentioned. You will notice on the bank form, that most of the answers to the questions are pre-populated by [Provider's Financial Adviser]. For example, the 'objective question' - No. 6 "Are you aware of any future changes that need to be considered as part of this review? E.g. buying a home, getting married, etc.) The pre-populated typed answer to that question being -"No", is categorically incorrect. I advised [Provider Financial Adviser] that I have earmarked these funds to purchase a home, that I would be purchasing the following year....*

*I would be grateful if you could look into this matter and help me in having this penalty charge of €1600 returned to me. This is part of my life savings and a significant portion has been deducted where I am of the utmost sincerity in saying*

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*that the product I signed up for was not explained to me and was in fact misrepresented to me."*

The Complainant also submits by email, dated **24 July 2020**, that:

*I explained this to [Provider's Financial Adviser] who I since found out was only a student, with no experience in these matters. [Provider Bank Manager] as the time did bring me into his office and told me that what had happened to my money was totally wrong, and he assured me that I would get my money back.*

*He also said that this could also lead into complications with other similar cases in the bank. again, I stress my money was in the Credit Union because I didn't want any investment accounts, I just need a simple account to home my money."*

The Complainant also argues that:

*"The bank have failed to give any response to the qualification and training of [Provider's Financial Adviser]. This is the person who invested it wrongly. He was a student, and they still have not responded to this. It is also unbelievable when the [Provider's Bank Manager] denied that he brought me into the office but that he supposedly spoke to me on the floor regarding my savings of over €50,000?? Again how can somebody believe that that is the way banking business is done, standing in the bank in the public area? [Provider Bank Manager] told me that what happened to me was wrong and that I would be getting my money back. So the [Provider] have failed many times regarding this issue."*

The Complainant furnished a letter from the Credit Union, dated **30 January 2020**, which says that the Board of Directors of the Credit Union:

*"... introduced a Savings Cap of €30,000.00 in July 2017. As a result of this, a cheque for €50,976.63 was forwarded to [Complainant] on 3rd August 2017. This cheque was cleared through our bank on 15th August 2017."*

The Complainant submits that he was incorrectly advised about the nature and implications of depositing his money in the Provider's Fixed Term Deposit Account. The Complainant closed the account in question on **3 October 2018** and argues that he has incorrectly incurred a penalty fee of the €1,600.00, which he now seeks to have refunded to him.

### **The Provider's Case**

The Provider contends that the Complainant was not misled about the nature or implications of depositing €50,976.63 (fifty thousand nine hundred and seventy six euros and sixty three cent) into a Fixed Term Deposit Account.

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The Provider submits, by letter dated **17 January 2019** and addressed to the Complainant, that *“a Savings & Investment review”* was conducted and it was agreed *“that having invested the funds for a term of 5 years there was adequate funds to support your living expenses.”*

The Provider further submits that *“as the review was conducted and the account specifics were explained, we are not in a position to waive this penalty.”*

The Provider argues that the penalty fee imposed is a consequence of breaching the Provider’s **Terms & Conditions** of its Fixed Term Deposit Account. The Provider submits that the Financial Adviser had sufficient training to carry out his role. The Provider’s Bank Manager says that he spoke with the Complainant on the bank floor and that admissions were not made at any stage. The Provider submits that:

*“The account in question, Account \*\*\*\*, is a 5-year Fixed Term Deposit Account. The key features of the account are:*

- *a minimum balance of €5000.00 applies;*
- *no maximum amount applies for personal customers;*
- *it is a lump sum investment account;*
- *there is a fixed rate of return for a fixed period of time;*
- *if a withdrawal is required before account maturity an early withdrawal charge will apply;*
- *a monthly income option is available;*
- *generally interest is paid at the end of the term and is subject to DIRT (deposit interest retention tax) at the prevailing rate but is subject to change.”*

In its **Final Response** Letter, dated **17 January 2019**, the Provider states as follows:

*“I note you had an appointment with [Provider’s Financial Adviser] of [Provider] here in [Branch Location], on 14th August, 2017. At this meeting there was a Savings & Investment review conducted. During this process, it was agreed with yourself and [Provider’s Financial Adviser] that having invested the funds for a term of 5 years there was adequate funds to support your living expenses. A copy of this review was given to you at the end of the meeting. I am enclosing copies of the following for your attention:*

- 1. Account Opening Application form*
- 2. Copy of the Savings & Investment Review*

*Unfortunately, as the review was conducted and the account specifics were explained, we are not in a position to waive this penalty.”*

By letter, dated **5 August 2020**, the Provider submits as follows:

*“[Provider Bank Manager] has confirmed he spoke with the Complainant but that their conversation took place in an informal setting in the Branch, and not in an office. [Provider Bank Manager] has also confirmed that he did not assure the Complainant*

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*that the fee in question would be refunded, nor did he state or refer to ‘...other similar cases in the bank...’ [Provider Bank Manager] has confirmed he would not have advised the Complainant of anything that would go against the terms and conditions of the account.”*

By letter, dated **5 March 2021**, the Provider states that:

*“Regrettably, the Bank inadvertently omitted to include the letter of 4 March 2019 in ...its submission of 10 July 2020 [to the FSPO]. On review of this correspondence the Bank notes that it did not respond directly to the Complainant at the time of receipt of this letter as it understood all matters raised had been addressed in the Bank’s Final Response letter of 17 January 2019, letter reference \*\*\*. However, the Bank accepts that it should have acknowledged receipt of this correspondence and confirmed to the Complainant that it had nothing further to add to its Final Response of 17 January 2019. The Bank apologises for this shortcoming in its customer service. In acknowledgment of this shortcoming the Bank would like to offer the Complainant an ex-gratia payment of €100.00.”*

The Provider argues that the Complainant engaged in and signed a *Savings & Investment review* and it relies on the contents of same in support of its contention that the Provider met its obligations to the Complainant. The Provider also furnishes evidence regarding the Financial Adviser’s training.

The Provider argues that the penalty fee imposed is a consequence of breaching the Provider **Terms & Conditions**. It says that in this instance the penalty fee was calculated at 1,972.02, and it relies on the formula referenced in the terms and conditions of the account.

Finally, the Provider Bank Manager refutes the Complainant’s suggestion that the suggested admissions were made.

### **The Complaint for Adjudication**

The complaint is that the Provider:

1. Mis-sold the Complainant a 5-year term deposit account in **August 2017**, that was not suitable for his financial needs; and
2. Charged him “a penalty fee” of €1,600.00, in **October 2018**, when he withdrew his savings to purchase a property.

### **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

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response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision, I have carefully considered the evidence and submissions put forward by the parties to the complaint. Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict.

I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **13 December 2021**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

The Provider relies on the **Terms & Conditions** of the Complainant's account (effective from **31 March 2017**), where at page 41, under heading *Savings and Investments Accounts, Terms and Conditions - Section 8: Fixed Deposit Accounts*, it says:

*"8 a You have a choice of investment periods;*

*8 b Interest rates are fixed at the start of the investment term and are guaranteed for the duration of the term;*

*....*

*8 d(i) Withdrawals may be made up to 14 calendar days after opening the Fixed Deposit Account or up to 14 days after the maturity date where the investment is renewed for a further agreed fixed period...*

*8 f Repayment of balances together with accumulated interest, net of appropriate DIRT where applicable, will only be made on maturity of the agreed fixed period or as otherwise confirmed in writing to us;*

*8 g Where early repayment is required, the cost of replacing the funds shall be borne by you and subject to a minimum payment of €20 or such other amount as may be determined by us, will be the greater of the amount calculated by the following formula:*

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$$\frac{1\% \times A \times T}{365} \quad \text{or} \quad \frac{A \times T \times D\%}{365}$$

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\*Where

- *A is the amount withdrawn*
- *T is the unexpired term remaining up to the maturity date*
- *D is the difference in the prevailing market rate of interest for a term equivalent to the period remaining up to the maturity date and the funding rate applicable at the date of opening of the Account or the date of re-investment for a further agreed fixed period if the investment is renewed.*

The Provider says in that regard that:-

*“Based on the formula above, the penalty fee in question, €1,972.02, was calculated as follows:  $1\% \times 50,976.63 \times 1412/365 = €1,972.02$  where:*

*A, the amount withdrawn is €50,976.63*

*T, the unexpired term in days from date of withdrawal to maturity date being 1412 days; the date of withdrawal was 03 October 2018 and the maturity date was 15 August 2022.”*

The Provider points also to Clause 8h of the Terms and Conditions which notes:

*“In the event that a funding loss is incurred when insufficient interest has accrued on the Account to provide for the loss, we reserve the right to deduct the amount of such funding loss from the balance in the Account. The balance in the Account may be reduced accordingly.”*

I also note that page 4 of the **Terms & Conditions** says as follows:

*“Deposit Accounts: If you exercise your right to close your account, the account balance and any accrued interest less Deposit Interest Retention Tax (DIRT) (where applicable), will be sent to you by cheque, subject to the account balance being cleared funds and after deducting any amounts you owe us. An early withdrawal charge where it applies will be deducted from the account closing balance. This will only be processed for you when the full account balance consists of cleared funds.”*

I note that the Provider’s **Terms of Business** says “we will be fair, honest and professional in all our business dealings with you” and lays out the consumer complaint process.

I also note that the **Savings Account Rates Guide** (dated **11 July 2017**) says under the heading “Withdrawals – all Account Types” that “for all Fixed Term Deposit Accounts you can withdraw part or all of the account balance within 14 days from the account investment date without charge, otherwise a charge will apply.”

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I note that the relevant provisions of the **Consumer Protection Code 2012 (as amended)** are as follows 4.1, 4.2, 4.21, 4.22, 4.54 and these sections say that:

*“4.1 A **regulated entity** must ensure that all information it provides to a **consumer** is clear, accurate, up to date, and written in plain English. **Key information** must be brought to the attention of the **consumer**. The method of presentation must not disguise, diminish or obscure important information.”*

*“4.2 A **regulated entity** must supply information to a **consumer** on a timely basis. In doing so, the **regulated entity** must have regard to the following:*

- a) the urgency of the situation; and*
- b) the time necessary for the **consumer** to absorb and react to the information provided.”*

*“4.21 Prior to offering, recommending, arranging or providing a product, a regulated entity must provide information, on paper or on another durable medium, to the consumer about the main features and restrictions of the product to assist the consumer in understanding the product. To the extent that the contract for the provision of the product is a distance contract for the supply of a financial service under the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004, the Regulations apply in place of the requirement set out in the first sentence of this provision.”*

*“4.22 A **regulated entity** must provide each **consumer** with the terms and conditions attaching to a product or service, on paper or on another **durable medium**, before the **consumer** enters into a contract for that product or service. To the extent that the contract for the provision of the product is a distance contract for the supply of a financial service under the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004, the Regulations apply in place of the requirement set out in the first sentence of this provision.”*

*“4.54 Prior to providing a product or service to a **consumer**, a **regulated entity** must:*

- a) provide the **consumer**, on paper or on another **durable medium**, with a breakdown of all **charges**, including third party **charges**, which will be passed on to the **consumer**; and*
- b) where such **charges** cannot be ascertained in advance, notify the **consumer** that such **charges** will be levied as part of the transaction.”*

I see that by letter, dated **4 March 2019** from the Complainant to the Provider, the Complainant submits that:

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*"I have explained on numerous occasions, that the funds were requested to be deposited in an account where I could have access to the full amount at any time without incurring any penalty. I went into the branch in [location] in August 2017, wanting to deposit the funds into a regular current account.*

*I was advised at the customer care desk that I should see a financial advisor at the bank, due to the amount in question. (€50,976.63 to be exact). When I spoke with the 'Personal Banking Co-Ordinator' at the branch at the time - [Provider's Financial Adviser], who signed me up for the product in question, I specifically advised him that I did not care about earning interest, that I only wanted to deposit my money in an account where I could have access to the funds when required. [Provider's Financial Adviser] was quite persuasive in his sales pitch on the day and assured me I could access my funds at any time, without incurring penalty. He advised me my money would be safer in a savings account, rather than a regular current account, due to the amount in question. He also requested that I sign the documents on the day and did not at any time indicate the penalty for withdrawing the full amount. I whole heartedly and without reservation know that I was miss-sold this product that I signed up for.*

[My underlining added for emphasis]

*You will notice on the form, that most of the answers to the questions are pre-populated by [Provider's Financial Adviser]. For example, the 'objective question' - No. 6 "Are you aware of any future changes that need to be considered as part of this review? E.g. buying a home, getting married, etc.) The pre populated typed answer to that question being-"No", is categorically incorrect. I advised [Provider's Financial Adviser] that I have earmarked these funds to purchase a home, that I would be purchasing the following year.*

*I have noted from our conversation when I spoke with you personally at the [Provider Branch] in November last, that you reassured me that this should whole incident should not have occurred and that you would ensure to resolve this issue to my satisfaction - namely, that I would be refunded the penalty charge."*

The Provider submits that on **14 August 2017**, the Complainant visited the branch, completed a Savings & Investment Review and opened a 5 Year Fixed Term Account. The Provider says that on this date:

*"Complainant is given a copy of signed Statement of Suitability, Terms & Conditions Brochure, Terms of Business, Savings Account Brochure/Guide and Deposit Guarantee Scheme-Depositor Information Sheet"*

and that

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*“Letter 'Confirmation of Fixed Term Account' posted to Complainant; this letter also confirms funds available up to 14 days from 14 August 2017 without charge but after this time charge will apply.”*

I have examined in detail **Deposit Account Application Form** signed by the Complainant which says:

*“Source of Funds: Regular Savings...Reason for Opening: General savings...Account Type: Fixed Term Account.....Account Name: Complainant Name].”*

*“I/We hereby apply to [the Provider] to open a Deposit Account. I/We confirm that the information given in the application is true and accurate. I/We have had the necessary time to consider and query the information provided to me/us in relation to my/our application.”*

I note that the **Deposit Account Application Form** says:

*“Fixed Deposits: An early withdrawal charge will apply on fixed rate accounts. Additional lodgements and/or withdrawals can be made up to 14 calendar days after investment date without charge. The Fixed Access account allows one withdrawal of up to 25% of the account balance without charge after the 14th day following investment date.*

*All other withdrawals (including withdrawals of more than 25% and subsequent withdrawals) and account closure will incur a charge on the full withdrawal amount - no charge reduction will apply for the portion of these withdrawals that may be 25% of the account balance. Notice Deposit Accounts: Early withdrawal charges will apply to withdrawals from notice deposit accounts where the specified notice has not been given by you before the withdrawal.”*

[My underlining added for emphasis]

I note that the **Deposit Account Application Form** is signed and dated on **14 August 2017** by the Complainant. I also note that by letter dated **14 August 2017**, the Provider wrote to the Complainant regarding an *Important Notice - Statement of Suitability*. The top of the letter is highlighted in bold and says:

*“This is an important document which sets out the reasons why the product(s) or service(s) offered or recommended is /are considered suitable, or the most suitable, for your particular needs, objectives and circumstances.”*

The letter then says:

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"Thank you for taking the time to talk to us today. At [Provider], we understand that it is not always easy to plan for the future so I hope you found the review beneficial. The purpose of the review was to assess your short, medium and long term financial goals and provide you with some Savings and Investment options to help you achieve these goals."

...  
 "Some Important reading...You've taken the first step in making the most of your money and planning for your future. All you have to do now is read the attached report which includes all the information gathered during your review. The products recommended are based on your attitude to risk and your needs and objectives identified during the review. I would like to draw your attention to the "Agreed" actions and can you please make sure that you are happy with them. If there is anything in the report that you do not agree with, or if you have any questions about the content of your report, please do not hesitate in contacting me."

[My underlining added for emphasis]

The letter encloses the **Savings and Investment Review** which says:

"Report prepared for: [the Complainant]  
 ....  
 Next Review Date: 15/08/2018  
 Net Monthly Income: €3,000.00  
 Date of Review: 14/08/2017  
 ....

The **Savings and Investment Review** says as follows:

Are you interested in a Regular Savings Account or Investing a Lump Sum or Both?	Regular Savings? No Lump Sum? Yes
How long do you want to save for?	Less than or equal to 5 years
What is your Savings Goal?	Lump Sum
If you are saving for your retirement or are unsure about your provisions for life assurance we recommend that you do a full financial review with our financial consultant.	Discussed? Yes  Reply: Proceed with SMART S&I review
How would you describe your attitude to taking financial risk?	Very Cautious
Are you aware of any future changes that need to be considered as part of this	No.

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review? (e.g. Buying a Home, Getting Married, etc.)	
General Comments:	

The result of the **Savings and Investment Review** was that the Complainant's risk profile was assessed at 0 and "low risk." The following analysis was supplied by the Provider:

*"Based on our risk profiling, your risk profile is **Low Risk**. Below is a description of this profile.*

*Based on our initial assessment of your needs and circumstances we recommend within this review one of our deposit account options as being suitable for you - it will provide you with capital security, some certainty about the level of your return and will not include exposure to the ups and downs of equity markets.*

*If you are 18 years old or more, are looking for a longer term product and/or are interested in equity based investments we are happy to discuss alternative product options that may be open to you, including the option to meet a financial consultant for a full financial review."*

The **Savings and Investment Review** also noted under "Reasons for changes to Funds, Commitments and Recommendations", that:

*"[Complainant] is an experienced investor, advised has sufficient funds on demand and from income to live comfortably for the duration of the term. happy to proceed.*

*How long are you prepared to invest this money for? Less than or equal to 5 years"*

The **Savings and Investment Review** also noted the following details:

*"amount to set aside for emergencies: €15,000.00."*

*"amount available for discussion today: €50,976.63"*

*"Living Expenses (0-1 year): €0.00"*

*"Financial Commitments (1-5 years): €0.00"*

In particular I note that under "existing accounts" the document recorded that €11,638.55 was already held by the Complainant in bank deposits with the Provider.

The "**Source of Funds**" which were under discussion between the parties at that time, in the amount of €50,50,976.63, were recorded as "**Regular Savings**".

The product description under the Agreed Option in the **Savings and Investment Review** says:

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*“Term Deposit - 5 year: Fixed Term Accounts reward you for putting your savings away for longer, with a great fixed rate. You can withdraw part or all of the account balance within 14 days after the account investment date without charge, otherwise a charge will apply.”*

Finally, the **Savings and Investment Review** notes that *“in the case of this Savings and Investment Review it is understood that the above represents the wishes of all customers, if not all customers' signatures are obtained.”*

The Complainant signed and dated this document on **14 August 2017** as did the Provider's Financial Adviser.

I note that by letter dated **14 August 2017**, the Provider wrote to the Complainant regarding the *Fixed Term Deposit 5 Year* account and said:

<i>“Start date:</i>	<i>14 August 2017</i>
<i>Account balance:</i>	<i>€50,976.63</i>
<i>Maturity date:</i>	<i>15 August 2022</i>
<i>Gross Rate:</i>	<i>5.11%</i>
<i>Annual Equivalent Rate (AER):</i>	<i>1.00%</i>
<i>Gross Interest:</i>	<i>€2,606.33</i>

*Please check your account details above carefully to make sure they are correct. Do not hesitate to contact us if you have any queries. Just to note, you can make further lodgements to or withdrawals from your account up to 14 days (from the above start date) without incurring an early withdrawal charge. You can still make a withdrawal after 14 days, however a charge will apply. A copy of your savings account terms and conditions is available to view in any of our branches and on our website [website details] - we recommend you take the time to familiarise yourself with them.*

*At this account's maturity date, which is listed above, the total funds in your account will be automatically reinvested into an Instant Access variable account, unless you request another available fixed term deposit prior to this date.”*

[My underlining added for emphasis]

The Provider argues that:

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*“There are no 'pre-populated field' forms involved in the interaction between the Provider and a consumer in the savings and investment review process and/or in the savings/deposit account opening process.*

*As stated, based on the information provided by the Complainant during the consultation which took place on 14 August 2017 which involves a Savings and Investment Review, and based on the Complainant's responses to the direct questions asked by the Provider during the Savings and Investment review, the 'fields' to which the above contention refers become populated - in the absence of information provided they remain blank and the Savings and Investment review cannot continue. The Savings and Investment Review consists of open dialogue and direct questioning between the parties within the context of establishing the investor's savings' and investment goals and attitude to risk. The Complainant's answers/responses to the questions put by the Provider during the course of this review on 14 August 2017 were recorded/input online and uploaded to [System Name], the Provider's online savings/investment analytical system. Each review therefore is unique to each investor. The whole process is an interactive one which encourages and supports questioning and verification from both parties involved in the review/process.”*

The Provider also submits that:

*“The Provider recommended a Fixed Term Account from its available range of deposits, as based on the information provided by the Complainant during the Savings and Investment Review, this type of account was the most suitable to the Complainant's stated needs and objectives. The interest rate applicable to this account on 14 August 2017 was Gross 1.00% AER (annual equivalent rate) with a Gross Return Rate over the term of 5.11%. By way of comparison, the AER of a Demand Deposit Account at the time was Gross 0.05%. This information is outlined in the Savings Account Rates Guide on page 2 under the heading Fixed Term Deposit Accounts.”*

I note that on the **14 August 2017** the Provider furnished the Complainant with a copy of a signed **Statement of Suitability, Terms & Conditions Brochure, Terms of Business, Savings Account Brochure/Guide** and **Deposit Guarantee Scheme-Depositor Information Sheet**.

The Complainant was also advised regarding his Fixed Term Deposit 5 Year account that:

*“you can make further lodgements to or withdrawals from your account up to 14 days (from the above start date) without incurring an early withdrawal charge.”*

I note in particular, the contents of the **Savings and Investment Review** when an interview was conducted between the Provider and the Complainant on the **14 August 2017**. I note that all material issues related to the nature of the deposit account seem to have been discussed during the review. I note that the Complainant affirmed that he wanted a lump sum amount and answered **no** when regular savings was queried.

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I am conscious that the Provider Financial Adviser had cause to twice note:

*"[Complainant] is an experienced investor, advised has sufficient funds on demand and from income to live comfortably for the duration of the term. happy to proceed"*

This information regarding the Complainant being an experienced investor, is included in the documentation, under each of the following headings:

*"Reason for changes to Funds, Commitments and Recommendations"*

&

*"Reasons for changes to Risk profile, Product or Fund Mix"*

It is not clear from the evidence, how that view was formed that the Complainant was an experienced investor, as the Complainant's funds were described as having come from "**Regular Savings**", and I can see no details in the completed documentation, advertng to previous investments he had undertaken.

That aside, the documentation reflects that when asked "*Are you aware of any future changes that need to be considered as part of this review? (e.g. Buying a Home, Getting Married, etc.)*" he answered "*no*". The Complainant maintains that this documented answer is incorrect.

The **Savings and Investment Review** also noted that "*amount to set aside for emergencies*" is €15,000.00 and under "*existing accounts*" that €11,638.55 is held in bank deposits with the same Provider. In my opinion, these funds were correctly something that the Financial Adviser considered, in the course of giving his advice.

What remains unclear however, is why on the basis of the information gathered in the Savings and Investment Review, to the effect that the Complainant wished to save this particular lump-sum for "*less than or equal to 5 years*", a 5-year fixed term account was considered appropriate.

It is clear from the terms and conditions of such an account, that a withdrawal charge will be levied (once an initial period of 14 days has elapsed) over the remainder of the 5 year period, in the event that any such funds are sought to be withdrawn by the accountholder. In circumstances where the Complainant's preference was to save for an amount **up to 5** years max, it should have been apparent to the financial advisor that there was a very real risk that the Complainant would require access to these funds before the full 5-year period had elapsed. It remains a mystery to me therefore as to why, on the basis of the information supplied by the Complainant, the 5-year fixed term account was considered to be suitable.

Since the preliminary decision was issued to the parties, the Provider has contended that:

*"The account in question was in fact in line with the Complainant's preferences of 'up to or equal to 5 years'. It did not exceed a 5 year term. The range specified by the Complainant of 'up to or equal to 5 years' includes an account term of 5 years. It*

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*was clear to the Complainant that a number of options were available and the Complainant chose the 5 Year Fixed Term Deposit Account as his preferred option.”*

I disagree.

Even if I were to accept that the Complainant did not mention his plans for the purchase of a house in the shorter term (and indeed there may have been a misunderstanding between the parties in that regard) nevertheless, I do not accept that the recommendation of a 5 year fixed term product, was suitable for the Complainant who had indicated that 5 years was the very maximum, he was willing to invest his money for. As a result, a 5-year fixed term exposed him to the potential for incurring an early encashment charge, during year 1, year 2, year 3, year 4 and even during the final year of the term, if he sought to withdraw his money at any time before the full 5 year period would expire, albeit that the charge was likely to reduce in amount, the longer the money remained in the account. In my opinion, this potential charge calls into question the suitability of this product, when the provider’s own documentation reflected the following:

<i>How long do you want to save for?</i>	<i>Less than or equal to 5 years</i>
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I do not however accept the Complainant’s suggestion that the financial advisor was unqualified to offer advice, or that the financial advisor’s decision to subsequently take on further studies, in some way impacted upon his ability to give appropriate advice on the day. I accept that an error occurred on the day of the account opening, and that the recommendation of the financial advisor was not appropriate, because of the information which the Complainant had made available. The financial advisor’s actions after that date however, whether personally or professionally, have no bearing on the events of August 2017.

It is certainly the case that when the relevant documentation was issued to the Complainant, and the covering letter specifically asked him to read over all of the details included, he arguably ought to have noted that if he wished to withdraw the funds before the period of 5 years had elapsed, he would be subject to a withdrawal charge. His failure to notice these details however, does not in my opinion cure the Provider’s error, in August 2017, in recommending a fixed term account to the Complainant for a period of 5 years, when it was clear that he wished to invest for **“Less than or equal to 5 years”**, which gave rise, in my opinion to a very real risk, if not something of an inevitability, that the Complaint would likely face the imposition of an early withdrawal fee, if he required access to some or all of his cash.

In my opinion, on the basis of the evidence made available to this Office, the recommendation made to the Complainant in August 2017 was not appropriate, and I take the view that this recommendation was unreasonable within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**, and the Provider has a case to answer to the Complainant in that regard.

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In reviewing the evidence, I am disappointed to note the tone and content of certain audio evidence supplied, and I note that during a telephone call of **7 January 2019**, the following was said:

Complainant: *"I want this young fella there who has left, I want his address there, I am going to up to him personally there and ask him what he did to my money."*

...

Complainant: *"you are going to cause more problems for this fella now, even though he has left your branch, I am going to find out who he is. I want him."*

...

Complainant: *"I want this young fella's name, I will drop down to his house and I will ask him personally what he did with my money."*

In my opinion, this was an utterly inappropriate tone for the Complainant to adopt throughout this telephone call and I am pleased to note the professional manner which the Provider's telephone agent maintained.

I further note that the evidence submitted to this Office by the Complainant includes a Social Media Profile for the Provider's Financial Adviser. It should be noted that the Financial Adviser's personal profile, the studies he undertook after leaving employment with the Provider and details of any subsequent period of employment, when he was no longer working for the Provider, are entirely irrelevant to the complaint investigation of this Office.

It is only the role which the Financial Advisor played in the course of his employment with the Provider in August 2017, in his interactions with the Complainant, which is relevant for the purpose of this complaint investigation, which concerns the conduct of the Provider at that particular time, in recommending to the Complainant that he open a particular type of account.

There should be no confusion between (i) the Financial Advisor's professional role as an employee of the Provider, on the date of his interactions with the Complainant, and (ii) his entirely separate personal profile.

The Provider as the employer is responsible for the actions of the Financial Advisor in August 2017, and the Financial Advisor's personal life outside of that employment is a private matter which should be respected by this Office, by the Provider and also by the Complainant.

On the basis of the evidence before me and for the reasons outlined above, I am satisfied that an error was made by the Provider on 14 August 2017, in its recommendation to the Complainant for a 5-year fixed term account. In those circumstances, I consider it appropriate to uphold this complaint and to direct the Provider to reimburse the Complainant the full amount of the withdrawal penalty which was ultimately charged to him in October 2018, when the monies were withdrawn, and the account was closed.

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I also note the Provider's offer of €100 in recognition of its failure to respond to a letter from the Complainant dated 4 March 2019 and it will be a matter for the Complainant to communicate directly with the Provider if he wishes to accept that additional compensatory offer which the Provider has proffered.

Accordingly, for the reasons outlined above, I am satisfied that this complaint should be upheld.

### Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld on the grounds prescribed in **Section 60(2)(b)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to rectify the conduct complained of by reimbursing the Complainant the full amount of the withdrawal penalty which was charged to him in October 2018, when the monies in the account were withdrawn, and the account was closed. The Provider is directed to effect that reimbursement by crediting 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 reimbursement amount, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said nominated 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.



MARYROSE MCGOVERN  
Deputy Financial Services and Pensions Ombudsman

1 February 2022

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,

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- (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.

