



<b><u>Decision Ref:</u></b>	2022-0191
<b><u>Sector:</u></b>	Investment
<b><u>Product / Service:</u></b>	Shares/Equities Investment
<b><u>Conduct(s) complained of:</u></b>	Failure to provide correct information Failure to process instructions
<b><u>Outcome:</u></b>	Partially upheld

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

The complaint concerns the administration by the Provider of a ***“Personal Retirement Bond”***.

#### **The Complainant’s Case**

This complaint arises from the encashment of the Complainant’s ***“Personal Retirement Bond”*** and the further investment of the Fund balance. The Complainant submits that the Provider failed to act in her best interests at all times and mismanaged these events during **August/September 2018**. It is stated that the Complainant had engaged the Provider, a Financial Advisor, to advise and manage her financial investments, approximately 3 years earlier in 2015.

The Complainant and the Provider met on **6 February 2018** and on **3 July 2018** to discuss the Complainant’s investments. The Complainant planned to access a Personal Retirement Bond when the early encashment penalties expired on **24 August 2018**. These meetings included discussions regarding the options available to the Complainant at that time.

The Complainant says that at the meeting on **3 July 2018** the Provider gave her the Retirement Bond Claim Forms. The Complainant goes on to say that the Provider advised her to sign the forms, and the Provider *“would complete the majority of the paperwork and submit same”* to the Fund Provider entity. The Complainant agreed at this meeting that a sum of **€180,000** would be taken from the Retirement Bond, after the 24 August 2018.

The Complainant has submitted into evidence an email dated **11 July 2018** in which the Provider offered its financial advice regarding the maturity of the Retirement Bond *“as discussed”* with the Complainant, *“Access €180,000 tax free lump therefore leaving €20,000...”*. The Complainant agreed in an email to the Provider dated **20 August 2018** *“you are correct in what we want to take out, €180k leaving €20k to take tax free at a later date”*. In the same email the Complainant makes reference to other investment options given by the Provider, the *“risk”* levels of these investments and the ability to reduce risk levels at no cost in the future. The remaining balance of the funds were to be invested further, being divided and split into 3 new retirement Funds (AMRF/ARF) as suggested by the Provider.

In early **September 2018** the Complainant says she was informed that **€222,369.72** had been transferred from the Retirement Bond. The Complainant was advised in an email, dated 11 September 2018 to *“return the over-payment”* to the Fund Provider entity. The Complainant did not return any ‘overpayment’ and, as it transpired, she was later advised not to do so.

The Complainant subsequently sought a copy of the submitted Retirement Bond Claim Forms and noted that the sum of €223,000 had been inserted on the form by the Provider as an encashment value, and not €180,000 as agreed. (The alternative sum appears to be the 25% ‘Tax Free’ portion of the Complainant’s fund). The Complainant says that the Provider told her it was the Fund Provider entity which had made an administrative error in *“pressing the 25% button”*. The Complainant says that due to the Provider’s actions it is *“not possible to avail of any further tax-free amounts on subsequent withdrawals from the ARF”*.

Following the maturity of the Retirement Bond and on the earlier advice of the Provider, the Complainant says the balance of the Fund encashment sums were invested and split into 3 AMRF/ARF products on **24 August 2018**. The Complainant states these *“have made a considerable loss of €28,556.38 over the first 7 weeks of the life of the policies”*. The Complainant went on to say that appropriate documents were not issued to her and the risk levels on these Retirement Funds, were not brought to her attention or discussed with the Provider, at the time.

In the Complainant’s full submissions, she outlines a catalogue of criticism and failings by the Provider. The Complainant’s letter of **19 March 2019** outlines specific complaints which include:

- The Provider did not provide correct advice to her in 2018 regarding the encashment of the Personal Retirement Bond and the most tax efficient way for the Complainant to access the funds;
- The requested encashment sum inserted on the Retirement Claim form completed by the Provider in August 2018, was contrary to the Complainant’s agreed wishes;
- The Provider failed to provide suitability letters, agree fees, penalties or other charges with the Complainant and failed to advise the Complainant of an applicable ‘cooling off period’, during which she says she may have reconsidered alternative investment options that were within her investment risk level.

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The Complainant details in her full submissions, more reasons why she believes the Provider has not acted in her best interests at all times. Following a complaint being submitted to the Provider and a period of somewhat contentious communications between the parties, the Provider offered a 'gesture of goodwill' in the sum of **€5,129.45**. This was rejected by the Complainant who advised the Provider that she would accept a sum of **€15,000** to resolve the dispute "*in full and final settlement on a no liability basis*".

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

The Provider points out its email of **1<sup>st</sup> July 2019** that the Complainant "*suffered no financial loss as a result of the maturity of the pension bond and no losses as a result of [its] advice*".

In the same email the Provider said "*there may have been some inconvenience caused*" and it offered the Complainant "*without prejudice, a sum of €5,129.45 as a gesture of goodwill*".

The Provider refutes any allegations of "*mis-advice or lack of competence*" on its part. The Provider goes on to say that over the 3 years of working with the Complainant, she was satisfied with the service provided until September 2018. The Provider also notes that, had the Complainant remained with the funds advised by it in August 2018, any loss would have been recovered as the funds have now "*gained*" (as at 08.05.19).

### **The Complaint for Adjudication**

The Complaint is that the Provider maladministered the encashment of the Complainant's Retirement Bond in August/September 2018 and failed to follow correct procedures, and communicate full information to her, prior to the investment of the remaining Retirement Bond funds.

The Complainant wants the Provider to compensate her for the financial loss incurred from the inception of the AMRF/ARF products on **24 August 2018**, to the date of switching from these funds. The Complainant states that between 24/08/18 and 12/10/18 the fund "*lost €28,556.38*".

### **Decision**

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision, I have carefully considered the evidence and submissions put forward by the parties to the complaint. Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **6 May 2022**, 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.

Prior to considering the substance of the complaint, I consider it useful to set out a chronology of certain relevant matters.

**Chronology**

06 February 2018	Meeting between the Provider and the Complainant to discuss maturity of the bond
22 February 2018	Follow-up email from the Complainant to the Provider referencing an estimated lump sum payment of €150,000 and, in terms of the balance of the funds, proposing that the Complainant could consider investing <i>“in higher risk funds such as the funds I have attached information on”</i> . The attachments related to funds which had fund risk profiles of 4 out of 7, to 6 out of 7.
27 June 2018	Email from the Complainant to the Provider which includes the following:  <i>“As discussed on the phone I have gone through the various fund options and as advised would be happy to leave the funds with [the Pension Administrator] in a similar type fund in which they are now invested. The [Pension Administrator’s] Balanced and [the Pension Administrator’s] Performance give good fund performance numbers over a 10-year period and the spread is quite good. Perhaps you can discuss with your contact in [the Pension Administrator] whether the balance of the funds should be spread between these funds or if they are too alike just invest in one of them. In relation to the [Pension Administrator’s] [redacted name] 100 Fund, the risk profile on this is too high for me and is one that I would not like to invest in.”</i>

	The Complainant's funds were ultimately invested into the "Balanced" fund and the "Performance" fund (both of which carry a risk profile of 5 out of 7) as well as into a third fund also carrying a risk profile of 5 out of 7. The fund which the Complainant identified as too risky, carried a risk profile of 6 out of 7
03 July 2018	Meeting between the Provider and the Complainant in the course of which the 'Claim Form' was signed by the Complainant.
05 July 2018	Date of the Complainant's signature on the 'Claim Form'. The Claim Form requests a lump sum of "223,000". Elsewhere on the form there is a request to reinvest 80% of the funds.
11 July 2018	Email from the Provider to the Complainant suggesting taking a €180,000 lump sum, and placing €720,000 in AMRF/ARF pursuant to a split into three identified funds, namely the Pensions Administrator's Balanced, Performance and Dynamic Funds. Fund Fact sheets for each of these three funds were attached, each of which had a fund risk profile of 5 out of 7.
17 July 2018	Claim Form received by email by the Pension Administrator
09 August 2018	Claim Form resubmitted to the Pension Administrator
09 August 2018	<p><b>'Reasons Why'</b> letter from the Provider to the Complainant noting that the Complainant wished access her pension and  <i>"to avail of €180,000 tax free lump sum with the balance being invested in an AMRF/ARF"</i>.</p> <p>This letter includes an entry stating:</p> <p><i>"Updated 18/09/2018 - Maturity amount was changed to 25% of the bond at €911,850 which was €227,961.15 minus tax of 20% above €200,000 which was €5592.43 and the balance of €222,369.72 paid to you. The balance of the fund €683,886.44 was issued directly to the AMRF/ARF plans. These instructions were issued directly to [the Pension Administrator] by yourself."</i></p> <p>[This Reasons Why letter dated 9 August 2018 does not appear to have been furnished to the Complainant until <b>11 October 2018</b>]</p>
20 August 2018	Email from the Complainant to the Provider, in response to the Provider's email of 11 July 2018, expressing agreement with the proposal to take €180k lump sum and stating as follows:

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	<i>"As we are getting very close to making decisions on the funds going forward, can I just check with you whether these three funds are the same as those you sent through to me on the 22nd of February? I just didn't think they were level 5 risk. I appreciate that we have a 10 year period to make the most of the funds but just want to make sure we have ability to dial down the risk level, at no cost of switching, if we feel markets are a bit volatile."</i>
20 August 2018	Email response from the Provider to the Complainant confirming that <i>"we can easily tweak the funds and change the risk level and that can be done with no fund switching charges"</i> .
24 August 2018	Date on which it became possible to encash the bond without penalty.
31 August 2018	Email from the Provider to the Pension Administrator advising that <i>"the wrong amount was matured on this buy out bond"</i> .
07 September 2018	Email from the Complainant to the Provider requesting an explanation for the overpayment.
07 September 2018	Email from the Provider to the Pension Administrator, forwarding the Complainant's email of that same day requesting a phone call to discuss.
07 September 2018	Email from the Provider to the Complainant explaining that <i>"after running some figures"</i> and discussing the matter with the Pension Administrator, the Provider realised that it was <i>"more advantageous to access the full 25% now and not to send back the funds"</i> . This email states that the Pension Administrator <i>"did not act on our own instructions of 17/7/2018 to only access €180,000"</i> .  [This appears to be an inaccurate statement]
10 September 2018	Letter from the Pension Administrator to the Complainant providing information as to how the 'overpayment' might be returned.
11 September 2018	Letter from the Pension Administrator to the Complainant stating as follows:  <i>"As discussed with [The Provider], we initially held off maturing the pension until the encashment penalties ceased. Once this date passed, I instructed our Pension Claims Department to mature the pension fund and pay out the tax free lump sum as per the original retirement claim form.</i>  <i>I understand that a further instruction was sent to [the Pension Administrator] which instructed us to only pay out €180,000 of your entitled tax free lump sum. In an effort to</i>

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	<p><i>pay the lump sum in a timely manner, this instruction was unfortunately missed by the team and as a result, your full entitlement was paid out.</i></p> <p><i>On behalf of [the Pension Administrator], I sincerely apologise for this oversight which came as a result of a human error by our Pension Claims Dept."</i></p> <p>[Part of the content of this letter was subsequently disavowed by the Pension Administrator in its letter of 27 November 2018]</p>
11 September 2018	Letter from Pension Administrator to the Complainant noting that the Provider had confirmed that the Complainant wished to receive €180k only (rather than €222,369.72) and inviting the Complainant to return the additional funds of €42,369.72.
19 September 2018	Letter from the Provider to the Complainant <i>"to sincerely apologise for the mistakes made on the maturity of your retirement bond"</i> .
01 October 2018	Letter from Pension Administrator to the Complainant setting out charges payable in respect of the pensions.
10 October 2018	Email from the Complainant to the Provider, reiterating concerns and inviting a response.
10 October 2018	Email from the Provider to the Complainant explaining the delay in sending the 'Reasons Why' letter, in circumstances where <i>"the final maturity amount was in dispute"</i> . The email also addressed the issue of fees stating that these were paid by the Pension Administrator and were <i>"fully earned"</i> and noting that 100% of the Complainant's funds were allocated to her pension.
11 October 2018	This email attached the 'Reasons Why' letter dated 9 August 2018 described above.
12 October 2018	Letter from Pension Administrator to the Complainant confirming the switch of the Complainant's funds from the three level 5/7 funds, to a level 3/7 fund.
17 October 2018	Letter from the Complainant to the Provider raising a detailed formal complaint including an allegation that funds were invested in funds <i>"above my agreed risk profile"</i> . This letter included the formal disengagement from the Provider, by the Complainant.
05 November 2018	Letter from the Provider to the Complainant in response to the Complainant's letter of 17 October 2018.

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	<p>[I understand that the Complainant maintains that this letter was received on 18 October 2018]</p> <p>The Provider states that, in the course of the two meetings in February and July 2018:</p> <p style="text-align: center;"><i>“we discussed it would be better in the medium to long term to go with a more medium to higher risk fund and as a result of this I recommended fund selection which overall is a risk 5 profile which equates a medium to high risk profile.”</i></p> <p>The Provider also relied on the content of the emails of 27 June 2018 and 20 August 2018.</p> <p>With regard to the maturing bond, the Provider concedes that the form submitted by its representative, included a figure of €223,000 as the desired lump sum payment however the Provider maintains that the Pension Administrator independently misinterpreted this as a request for a lump sum payment in the amount of 25% of the total fund, in respect of which the Pension Administrator had <i>“admitted their wrong doing”</i>.</p>
05 November 2018	Letter from the Complainant to the Pension Administrator
27 November 2018	<p>Letter from Pension Administrator to the Complainant explaining the manner in which the lump sum payment came to be processed.</p> <p>The letter includes the following with regard to the Pension Administrator’s earlier letter of 11 September 2018 which had said that it had failed to act on an instruction issued by the Provider, after the submission of the Claim Form, to process a lump sum payment in the amount of €180,000:</p> <p style="text-align: center;"><i>“The letter incorrectly stated that a second instruction was received by [the Pension Administrator] to pay a lump sum of €180,000. This was not the case and I apologise for the incorrect information provided. I can confirm that the only instruction received by [the Pension Administrator] was the Retirement Claim which noted a lump sum of €223,000.”</i></p>
19 March 2019	Letter from the Complainant to the Provider raising a detailed formal complaint identifying losses in the amount €28,556.38.
08 May 2019	Final Response Letter from the Provider to the Complainant.

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21 June 2019	Email from the Provider to the Complainant making an “offer” “without any admission of liability” in the form of an extra “0.5% allocation” to be “invested into your pension since the inception of the policy”.
24 June 2019	Email from the Complainant to the Provider querying what the offer means in terms of specific figures.
25 June 2019	Email from the Provider to the Complainant advising that the offer “amounts to €3,419.43 additional sum into your pension since 18/9/2019”.  [It appears that this increase was to be funded by the Pension Administrator]
26 June 2019	Email from the Complainant to the Provider declining the offer
01 July 2019	Email from the Provider to the Complainant increasing the offer to “€5,129.45 towards your pension”.  [It appears that this increase was to be funded by the Pension Administrator]  The email also noted that the Complainant  “suffered no financial loss as a result of the maturity of the pension bond and no losses as a result of my advice”.
12 July 2019	Email from the Complainant to the Provider declining the offer and indicating that she would be willing to accept €15,000
12 July 2019	Email from the Provider to the Complainant noting the rejection of the offer and insisting that the Provider has always acted in the Complainant’s best interests.

I note that the Complainant has advanced a very detailed and multifaceted complaint which is set out in multiple documents. The complaint is one of maladministration by the provider of the Complainant’s encashment of a Retirement Bond, and can be distilled into four constituent parts relating to the following matters:

1. The amount instructed to be paid out by way of lump sum.
2. The tax advice provided regarding the lump sum payment.
3. The funds into which the balance of the bond proceeds, were invested.
4. The fees generated by the Provider.

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Each of these matters is addressed below.

***The amount instructed to be paid out by way of lump sum.***

This issue appears to be the starting point for the disharmony between the Complainant and the Provider and, on the basis of the evidence, this is understandable.

I note that the Provider had initially portrayed the error as deriving entirely from a mistake made by the Pension Administrator, but it did not initially acknowledge its own error in completing the relevant 'Claim Form'. It is clear from a review of the Claim Form that it was the Provider which included the figure of €223,000 as the amount intended to be taken by way of lump sum, though it has confirmed, in its submissions since the preliminary decision of this Office was issued, that the Complainant, remained unsure for some time as to what percentage she wished to access but "*finally made her decision in July 2018, to go with €180,000 which left me to complete this part of the form she had already provided to me*". Elsewhere on the form there is a request to reinvest 80% of the funds, implying that it was intended to take payment of 20%. 20% of the funds would have amounted to a figure of €182,340.92.

As per its letter of **27 November 2018**, the Pension Administrator interpreted the Claim Form as a request for 25% of the overall sum, that percentage being the closest round percentage that resulted in a figure near €223,000, and it consequently processed a lump sum payment in the precise 25% amount of €227,926.15 or €222,369.72 after tax. (I note that an initial suggestion that a subsequent instruction was issued from the Provider identifying the correct amount, was subsequently withdrawn, as having been in error.)

I note that the evidence available indicates that the Pension Administrator has apologised for not interrogating the matter, given that the numbers did not tally precisely (as between the lump sum figure cited in the Claim Form and the percentage cited) however it is clear to me that the problem arose from the manner in which the Provider completed the Claim Form. Certainly, it is regrettable that after what appears to have been a very good service provided to the Complainant for a number of years, this error then had significant consequences for her, but the Provider should not have relied on the Pension Administrator to identify any discrepancy in the details on the form.

It was the Provider which was acting for the Complainant, and was under an obligation to ensure the accuracy of the information given to the Pension Administrator, based on her instructions. I take the view that the Provider was mistaken in seeking to assign elsewhere; the Provider in my opinion should have originally acknowledged its own error, an acknowledgement that only came much later, but which still sought to assign primary responsibility to the Pension Administrator. In my opinion, the Provider's failures in that regard constitute conduct which was unreasonable, within the meaning of **Section 60(2)(b)** of the ***Financial Services and Pensions Ombudsman Act 2017***.

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Arising from the foregoing, and particularly by reference to the manner in which the Provider failed to acknowledge its failing, subsequent to the issue coming to light, including in its response to this Office (wherein the “*wrong doing*” of the Pension Administrator was again promoted as the primary failing), I consider it appropriate to uphold this aspect of the complaint.

***The tax advice provided regarding the lump sum payment.***

This is a matter that, in my opinion, has not been satisfactorily addressed by the Provider. In the course of the investigation by this Office, the Provider was asked:

*Were the ‘Tax Free’ limits and rules discussed with the Complainant prior to the encashment of the Bond? Was any of this information given to the Complainant in writing? Please forward documentary evidence as applicable.*

The response supplied by the Provider was as follows:

*Yes, on many occasions over 2017/2018 and how much they could have and tax side to accessing funds and how much is tax free.*

*The policy documents and brochures on the products outline this and the emails outline this which was discussed in detail and over a long period of time.*

I am not satisfied that this response was adequately addressed and indeed the documentation furnished by the Provider to this Office was somewhat haphazard, with little division or categorisation or chronological order apparent. Strangely, certain emails bear no date of sending, as a result of which the reference in the response above to “*the emails*” is of limited benefit, when assessing the Provider’s response to this specific query.

The issue, as I understand it from the evidence, is that the Provider advised that it would be possible for the Complainant to take a lump sum tax free payment of €180,000 and to save the balance of the total potential tax free €200,000 (ie €20,000) for withdrawal, tax free, at a later date.

Thereafter, the amount of €222,369.72 was paid out to the Complainant following which, after engagement with the Provider, the Complainant was invited to return the ‘overpayment’ of circa €42k. It then transpired that returning the funds would not be in the best interests of the Complainant “*for future taxation purposes*”. This prompted the Provider to initially text the Complainant advising against returning the money.

Ultimately, the money was not ‘returned’ and thus the Complainant did not suffer any of the “*future taxation*” issue which had been identified. The Complainant did however suffer taxation at 20% on the €27,961.15 which was matured over and above the tax free threshold of €200,000. This tax amounted to €5,592.43 at the time of the encashment in 2018, when in fact she had not intended to crystallise any such tax liability at that time. In my opinion, the Provider has a case to answer to her in that regard.

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***The funds into which the balance of the bond proceeds were invested.***

In many ways, this is the main thrust of the Complainant's complaint. It is certainly the matter that gives rise to her estimate of the losses claimed to have been incurred, which in turn informs her claim for compensation which she has requested this Office to direct. The Complainant submits that the funds into which her money was reinvested, were not suitable for her, by reference to her risk profile, and that adequate information was not provided to her (including a proper 'Reasons Why' letter) in order to allow her to make an informed decision.

The Complainant had previously been invested in a fund carrying a risk profile of 4 out of 7 (medium risk). It is clear that discussions were had with the Provider regarding investing "*in higher risk funds*" as per the email of 22 February 2018 which followed the first meeting relevant to this complaint.

This email attached details on various different funds from different providers with risk profiles ranging from 4 out of 7 to 6 out of 7. It is also clear that the Provider proposed various specific funds during the week preceding the Complainant's email of 27 June 2018, following which, in that email, the Complainant expressly noted her approval of two of the funds into which the money was ultimately invested:

*The [Pension Administrator's] Balanced and [the Pension Administrator's] Performance give good fund performance numbers over a 10-year period and the spread is quite good.*

*Perhaps you can discuss with your contact in [the Pension Administrator] whether the balance of the funds should be spread between these funds or if they are too alike, just invest in one of them.*

Immediately thereafter, the Complainant noted that, in respect of a different fund, "*the risk profile on this is too high*". The risk profile on this other fund was 6 out of 7. The clear implication in my opinion, is that the Complainant was aware of, and satisfied to accept, the 5 out of 7 risk profile (medium to high risk) on the two funds with which she was satisfied. It appears from the evidence that in forming this view the Complainant had reviewed the detail and performance of those two funds.

On **11 July 2018**, the Provider furnished fact sheets on the three proposed funds (including the two previously approved by the Complainant). On **20 August 2018**, the Complainant queried these funds indicating that she "*didn't think they were level 5 risk*".

Whilst this could be construed as inconsistent with her email of 27 June 2018, what is abundantly clear is that by this stage, prior to investment, the Complainant was certainly aware of the risk profile of the three funds, and she opted to proceed with the investment, armed with that knowledge. It is also clear that the fund selection arose in a context whereby increased risk had been discussed and, in that context, the increase in risk profile from 4 out of 7, to 5 out of 7 was not in my opinion, in any way incongruous.

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I am satisfied that the Complainant was aware of the nature and risk of the three funds prior to investment, and that she had been supplied with all the necessary information to come to an informed decision on the matter. Whilst the failure to send the 'Reasons Why' letter is clearly regrettable, I do not accept that this would have had any material impact on this occasion.

In this regard, I do not agree with the Complainant that she was deprived of "*the opportunity to discuss the fund selection options in more detail*" in such a manner as might have resulted in a different investment decision being taken. The evidence confirms that all relevant information was already known to her.

It seems to me that the Complainant's claim for compensation relating to this issue, is based on the sharp drop in value of the funds over a short period of time, following which the Complainant withdrew from the three funds and transferred to lower risk funds. The Complainant highlights the loss in value during this period of **€28,556.38**.

In the first part, the Provider points out that the Complainant, in coming to this calculation, ignores the gain in value prior to the period in question in the amount of €11,000 approx. More significantly, the 'loss' identified is simply the product of market fluctuation and does not comprise any fees or penalties arising from the transfer to the lower risk fund(s). Indeed, as the Provider points out, had the Complainant remained invested in the funds, the losses in question would have been fully recovered.

Given my conclusions regarding the informed nature of the Complainant's decision regarding the investment into the three funds, I do not accept that this aspect of the Complainant's complaint is made out, or that it is appropriate to make any direction for compensation in that regard.

#### ***The fees generated by the Provider***

I note that the Provider generated fees arising from the investments in question, which were paid directly by the Pension Administrator, and which were not taken from the Complainant's funds, as set out in the Provider's email of 10 October 2018. The fees paid were standard industry fees. In her letter of 17 October 2018, the Complainant raises a claim for an entitlement to a "*rebate*" in respect of these fees. I do not accept that any such rebate should arise given that the fees were funded by the Pension Administrator and indeed, as noted by the Provider in its letter of 05 November, given that such a transaction could very likely breach regulatory rules.

#### ***Compensation.***

In light of the foregoing, I consider it appropriate to partially uphold the Complainant's complaint, noting that I have not upheld the element relating to the funds into which her money was reinvested. I accept however that the Provider has been guilty of failings regarding the Claim Form submitted to the Pensions Administrator on her behalf, and regarding the manner in which it subsequently addressed that shortcoming.

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As already noted above, it seems to me that, as a result of this failing, the Complainant has been subjected to tax in the amount of €5,592.43, to which she should not have been subjected at that time. Even accepting that this tax would have been incurred in any event at some point in the future, it is not a tax to which the Complainant ought to have been exposed in 2018, on the basis of the instructions she had given and, as a result, the Complainant's reinvested funds were reduced by that amount.

Accordingly, I consider it appropriate to direct that the Provider make a compensatory payment to the Complainant, as specified below, to redress the financial loss and the inconvenience caused to her by both the Provider's error, and its poor and confusing manner in addressing that error, when she made a complaint.

### **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)**.
- Pursuant to **Section 60(4)(d) 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 **€4,000**, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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



**MARYROSE MCGOVERN**  
**Financial Services and Pensions Ombudsman (Acting)**

8 June 2022

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## **PUBLICATION**

### **Complaints about the conduct of financial service providers**

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.

### **Complaints about the conduct of pension providers**

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.