



**Decision Ref:** 2022-0202

**Sector:** Investment

**Product / Service:** Investment

**Conduct(s) complained of:** Mis-selling

**Outcome:** Rejected

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

This complaint relates to the sale of an investment in the Olympiades Building, Avenue des Olympiades, Olympiadenlaan, 1140 Brussels (the “Olympiades”) by the Provider to the Complainant, which concluded on **15<sup>th</sup> March 2007**

#### **The Complainant’s Case**

The Complainant submits that his relationship with the Provider had commenced some years prior to 2007 and during this period the Provider had been his lender of funds for various property purchases and introduced him to a number of investments. In this regard, the Complainant submits that he “*trusted*”, the Provider to ensure that his “*best interests*” were being protected. The Complainant submits that he was not interested in “*risky*” investments and that the Provider was aware of his “*financial profile*”. The Complainant submits that given his relationship with the Provider he considered himself to be an “*advisory client*” of the Provider.

The Complainant submits that his decision to invest was made on **9<sup>th</sup> March 2007** following receipt of an Information Memorandum prepared by the Provider and other promoters, a presentation on **8<sup>th</sup> March 2007** and numerous discussions that the Complainant had with the Provider’s personnel in relation to the “*advantages*” of the investment in the Olympiades. The Complainant submits that he was “*advised that it was a low risk investment*” and that the Information Memorandum “*suggested*” it was a “*low risk “blue chip” investment*”.

The Complainant submits that he agreed to invest **€1,000,000** in the project and communicated this to the Provider. He submits that he sent a 40% deposit cheque (€400,000) on **9<sup>th</sup> March 2007** together with the application form. The Complainant outlines that later in March he was advised that the investment required, was reduced to circa €800,000 as the capital requirement had been reduced. He says that the investment was settled at **€820,000**.

The Complainant submits that at the outset, he paid a fee of €24,600 (3% of €820,000) to the Provider. The Complainant submits that he considered this fee to be "*consideration in respect of the advices*", given by the Provider. The Complainant submits that he now knows the Provider considered itself to be a "*placing agent*" in the transaction. He submits that this is not the correct treatment of the fee by the Provider, as it is the promoters, not the investors, which pay placing agents.

The Complainant submits that the Provider was his "*adviser*" throughout the origination and ultimate finalisation of the investment transaction and that "*certain important facts, known by or ought to have been known by the Provider, were hidden*" from the Complainant. The Complainant submits that he never acknowledged the transaction with the Provider as an "*execution only*" transaction.

The Complainant submits that to support the investment, he made further investments in **December 2009** of €87,000, **December 2011** of €21,750 and **June 2012** of €133,000. The Complainant submits that he also had to make small ongoing cash injections of €1,500 per annum to "*cover some of the costs in the corporate structure*". The Complainant submits that these investments were made to "*rescue*" the investment in the Olympiades from being "*a total loss*".

The Complainant submits that between **2009** and **2012** he, in conjunction with other investors,

*"set about trying to understand how we had reached this point whereby a seemingly low risk investment in a new prime office building capable of attracting blue chip tenants could have gone so badly wrong".*

He submits that at this time, it was discovered that certain key assumptions and representations made by the Provider, which he relied on in making his decision to invest "*were fundamentally incorrect*". These representations and assumptions were as follows:

1. "*Where I had been told that this was a new building in 2007, I found that it had been constructed between 2002 and 2004.*"
2. "*Where I had been advised that this property was an "off market" sale, I then found that it had been marketed for sale by one of the leading estate agencies in the world some months prior to our investment.*"
3. "*I became aware that the property was very close to, but on the wrong side of, a so called "tax line", which meant it was less attractive to proposed tenants who were seeking office space in the vicinity.*"

4. *"The assumptions which had been made in relation to rents and yields were unreasonably high".*
5. *"The "conservative" assumption in relation to yield compression contained in the Information Memorandum, which underpinned the proposed exit strategy and the rationale behind the investment, was never likely to materialize".*
6. *"The valuation of the building which supported the purchase price paid €40,325,013.00 plus costs was flawed and that a more realistic valuation at the time of investment was €34,507,000. Given that €30,000,000 of the Purchase price was financed through a loan from [the Provider], this reduction in value essentially more than halved the value of my equity investment in the project."*
7. *"The building was still largely empty and was proving very difficult to let. This was far removed from the picture painted in the Information Memorandum about a "prime new office building" which had the potential to attract "blue chip" tenants at rents of €175 per square meter".*
8. *"I became aware that the property risked being repossessed by the [Provider] at the end of 2009. This was as a result of the fact that no financing had been secured beyond that time by the Promoters."*

The Complainant submits that if he had known of these issues in **March 2007**, then he would not have made the investment in the Olympiades. The Complainant submits that these were issues that were all either known to the Provider or should have been known by the Provider at the time the Information Memorandum was prepared.

The Complainant submits that the Provider failed in its duty of care to him and was *"reckless and negligent"*. The Complainant submits that the information provided to him via the Information Memorandum, and otherwise, was *"unbalanced, incomplete, overoptimistic and ultimately misleading"*. The Complainant submits that he does not accept that the Provider's role in the investment was consistent with that of a placing agent, given its *"considerable and detailed involvement in the origination and organisation"* of the investment. The Complainant submits that even if the Provider was considered to be a placing agent, the Provider was in breach of its duty to him, in putting its name to such an inaccurate and *"negligently prepared"* Information Memorandum.

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

In its submissions, the Provider strenuously denies the suggestion that it in any way behaved improperly, and in particular that it was *"reckless and negligent"* or otherwise in breach of any duty to the Complainant. The Provider denies that it acted in an advisory capacity towards the Complainant and submits that the Complainant was aware that the Provider's role was that of a Placing Agent. The Provider contend that it *"has always advised [the Complainant] to take independent legal and financial advice as appropriate"*.

Although the Information Memorandum was prepared by the Promoters, the Provider disputes that it was *"unbalanced, incomplete, over-optimistic and ultimately misleading"*. The Provider further asserts that the Complainant has not initiated a complaint process in respect of the Promoters or the international real estate firm it retained.

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The Provider also submits that the Complainant has failed to take account of the 2008 financial crisis and the resultant global impact upon property values.

The Provider says that its role in the sale of the investment was as a placing agent, i.e. for raising of the equity. It relies on the Summary Information document and the Information Memorandum in that regard. It says that as the placing agent a flyer/summary was issued to its private clients and any others who the Provider believed might be interested in investing into a foreign property investment. The Provider says that once the investment closed in June 2007, it had no further role except to facilitate certain shareholder meetings/requests for updates from the promoters, in 2008/2009, at the behest of the investors when they became concerned as to how lettings of the building, were progressing.

The Provider makes clear that it did not “secure” any investors. Rather, as placing agent, it raised equity for investment by making private clients aware of the investment opportunity and it facilitated their attendance at the presentation given by the promoters on 8 March 2007.

The Provider says that the Complainant was not a “consumer” within the meaning of the Central Bank and Financial Services Authority of Ireland Act 2004 but instead, he was a sophisticated and experienced property investor, who was aware of what he was investing in and the risks involved. It is further asserted by the Provider that the Complainant was a businessman “*who had all necessary advisors available to him to provide whatever advice he felt was required*”.

### **The Complaint for Adjudication**

The complaint is that in 2007, the Provider mis-sold the investment in the Olympiades to the Complainant in that:

- (a) it failed to establish that the investment was appropriate to him at all, and failed to take the necessary steps to assess the suitability of the product for its customer;
- (b) The Provider knew or ought to have known key information in relation to the building itself, which was withheld by it from the Complainant.

The Complainant wants the Provider to:

- (i) Refund the initial investment of €820,000
- (ii) Refund the further investments of €245,602
- (iii) Refund the fees paid to the Provider at the time of the investment (€24,600)
- (iv) Reimburse the fees associated with the Investment (€87,283)
- (v) Refund further committed investments of €16,130.

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## 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 **24 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. In the absence of additional submissions from the parties, within the period permitted, the final determination of this Office is set out below.

Having examined the documentation available, I note the following chronology of events:

- **2004:** The Provider's relationship with the Complainant commenced. The parties were introduced by a financial advisory group of which the Complainant was ostensibly a client
- **June 2004:** Complainant borrowed €450,000 to invest €500,000 with one of the Provider's capital guaranteed hedge fund investment products. As part of this transaction, the Provider received communications from the Complainant's accountancy firm which was acting for him at the time. The communications detailed other loans outstanding in the Complainant's name.
- **August 2005:** The Complainant applied for a loan to be secured on a holiday home. The Application Form received from the Complainant's accountancy firm, on the Complainant's behalf, was for a loan of €760,000 on a property valued at €1,000,000. The loan was approved and advanced in **September 2005**. It was identified by the Provider during this loan process that the Complainant owned two other properties in Dublin and Spain.
- **6<sup>th</sup> March 2007:** The Provider emailed the Complainant "*further to our conversation*" notifying him that the Provider was hosting a presentation in respect of an investment in Brussels. The email confirmed that the Provider was raising equity for the investment "*seeking minimum investment of €1mio (i.e. 6 like minded*

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investors)", and attached a Summary Information document. This summary identified the Provider as the 'Placing Agent' and identified the financial advisors and legal advisors acting for the Promoters.

- **8<sup>th</sup> March 2007:** The Complainant attended a presentation hosted by the Provider. The presentation slides issued to the Complainant and other attendees have been furnished in evidence and clearly state at the outset that the presentation is being given by the Promoters of the investment.
- **9<sup>th</sup> March 2007:** The Complainant completed and signed an Application Form which was returned to the Provider with a cheque for the deposit amount of €400,000. The Application Form stated at the top that:-

*"I hereby request [Provider] to invest on my behalf in the proposed investment in the [Olympiades] on the terms set out in the Information Memorandum. I confirm that I have read and understand the section concerning investment risk and I have made my own independent assessment of the merits or otherwise of participating in the proposed investment and have taken professional advice where I considered appropriate, as recommended by the Information Memorandum."*

- **9<sup>th</sup> March 2007:** A Section 30 receipt was issued to the Complainant.
- **28<sup>th</sup> March 2007 – 31<sup>st</sup> March 2007:** Execution copies of the investment documents were sent to the Complainant by the Provider following their receipt by the Promoters
- **26<sup>th</sup> June 2007:** This was the application date for a separate investment of €500,000 in a property investment in Germany.
- **27<sup>th</sup> June 2007:** The Olympiades investment closes. From this point, the Complainant continued to engage with the Provider in respect of a number of transactions.
- **September 2007:** The Complainant was applying for further funds to purchase UK investment properties. A Credit Advice Paper refers to a statement of net worth as at **July 2005** calculating the Complainant's total net worth at €26,910,000. It also states that the Provider has received confirmation that *[the Complainant]* has a total net value in excess of €10m. The same Credit Advice Paper calculated the Complainant's income in the previous year at €443,000 and noted that the Provider was advised that the Complainant's earnings in the present year were similar.
- **October 2007:** The Provider received a loan application for £431,000 for the purchase of two buy-to-let properties in the UK valued at £635,000.
- **February 2008:** The Provider received an application for an investment of €515,000 in a French property.
- **March 2008:** The Provider received an application to open a deposit account to invest €500,000 in Brussels. The Provider identified that the Complainant had retained an advisor on his behalf, in this regard.
- **June 2008:** The Complainant's advisor requested the withdrawal of the application for the property investment in France, which was agreed by the Provider.

## Evidence

### (i) The Information Memorandum

The Information Memorandum from the Promoters of the investment was supplied to the Complainant and set out various risks in respect of the proposed investment. I note that the cover page of the Information Memorandum identified the Provider as "Placing Agent".

On the very first page inside the cover, the "Legal Notice to Investors" advised, amongst other things, as follows:-

*"Each recipient of this document should consult his/her own financial/tax advisor authorised under the Investment Intermediary Act 1995 or under the Stock Exchange Act 1995, in connection with the proposals set out herein to determine the consequences of investing with regard to the risks involved in their own personal financial circumstances and tax position.*

...

*This document should not be considered as a recommendation by [Promoter] or its representatives to participate in this investment.*

*You should note that any financial projections contained in this document are for illustrative purposes only and, as with all financial projections, are dependent on future events and are not guaranteed.*

*The value of investments may fall as well as rise and your attention is specifically drawn to the section "Risk Factors" in this document.*

*Prospective investors should be able to bear the economic risk of an investment in the property portfolio and be able to withstand a total loss on any subsequent disposal."*

Certain additional relevant excerpts from the Information Memorandum are set out below:

#### **4.0 RISK FACTORS**

*Investors should carefully consider the risks and uncertainties involved in investing in an unquoted property investment company. Investment in commercial property is speculative and involves a degree of financial and commercial risk. The future value of the Company is dependent on the value of the underlying property asset in which it will invest.*

*If investors are in any doubt about the contents of this document they should consult their stockbroker, bank manager, accountant, solicitor or other independent professional adviser authorised or exempted under the Investment Intermediaries Act 1995 or the Stock Exchange Act 1995 who specialises in advising on the acquisition of shares and other securities.*

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*While the risk factors listed below do not purport to be a complete explanation of all the risks involved in this Placing, the Directors consider that, as of the date of the Information Memorandum, the principal areas of risk for Investors are as follows...*

#### *4.3 Letting Risk*

*In accordance with its strategy, the promoter will appoint a property manager to aggressively pursue the letting of the remaining floors of the office building. The successful letting of the remaining floors is dependent on ongoing demand from prospective tenants for space of this quality in Brussels.*

#### *4.4 Financial*

*As in all leveraged investments there is some element of exposure to fluctuating interest rates. Interest rates could increase and result in increased interest payments on the related bank borrowings.*

*There is no guarantee as to the exact terms which will be obtained on borrowing facilities or that the security granted over the Properties acquired by the Group will not be enforced in the event of a default by the Group with its obligation to repay its borrowings...*

*Unforeseen circumstances may result in delays or in additional costs with regard to the acquisition, disposal and/or maintenance of the property.*

*...*

*4.7 The value of any investment made in the Company can go down as well as up and the amount Investors receive back from the investment may be less than the amount they originally invest.*

*It may be difficult for Investors to obtain reliable information about the Company's value or the extent of the risks to which it is exposed.*

*Property and property related assets are inherently difficult to value due to the lack of liquidity relative to stock or bond markets. As a result, valuations are subject to some uncertainty. Independent expert valuations will be obtained annually but there is no assurance that the estimates resulting from the valuation process will be reflected in the actual sales price even where such sales occur shortly after the valuation date."*

Also:

*"Sequence of Events for Investors*

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*On receipt of this information Memorandum and having taken person taxation and /or property advice, intending investors should complete and sign the application form attached at Section 13 of this Information Memorandum indicating their intention to participate in the Investment and the level of their investment."*

(ii) Declaration re Execution Only

I note the contents of a single page which makes reference only to "this investment", without the investment in question being named. I note however, from the date of the Complainant's signature that this declaration coincides with his application for the Olympiades Investment on 9 March 2007.

The confirmation was signed by the Complainant on **9<sup>th</sup> March 2007** and states as follows:

*"**Execution only** - I acknowledge that investments may fall as well as rise in value and that I have not received any advice from a regulated financial entity in respect of this investment. I confirm that I do not wish to provide the requested information in respect of my financial history and investment objectives to determine the suitability of this investment for my purposes but wish to proceed with the purchase of this investment on an execution only basis."*

(iii) Investment Application form signed by the Complainant

The form completed and signed by the Complainant upon his investment in the property contained the following statement:

*"I hereby request [the Provider] to invest on my behalf in the proposed investment in [the Olympiades] on the terms set out in the Information Memorandum. I confirm that I have read and understood the section concerning investment risk and I have made my own independent assessment of the merits or otherwise of participating in the proposed investment and have taken professional advice where I considered appropriate as recommended by the Information Memorandum".*

**Analysis**

In respect of the historical relationship between the Complainant and Provider, it is apparent from a consideration of the documentation furnished by the parties that the Provider had previously granted loan facilities to the Complainant for the purchase of a holiday home and had facilitated certain loan transactions sought by the Complainant. However, it does not appear to me to have been the case that the Provider was ever instructed or retained by the Complainant in an advisory capacity.

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Although it is noted that the Complainant utilised the Provider's services previously, and the Provider had an understanding of the Complainant's net worth, I do not accept that the Provider held itself out in March 2007, as being on notice of the Complainant's particular financial profile or his attitude to risk when it notified him of this investment opportunity.

It is apparent from a consideration of the documentation that the Complainant attended a presentation given by the Promoters of the investment in **March 2007** whereupon he received a detailed Information Memorandum ("the I.M.") prepared by the Promoters.

It is clear to me that this I.M. provided considerable detail to the Complainant in respect of the risk attached to this particular investment, including reference to the Belgian property market, the concentration of the investment in one asset, the letting, financial and currency risks attaching to the investment, in addition to the general risk that its value could go down as well as up, and the amount investors would receive from the investment could be less than their initial investment.

I accept from the submissions and the contents of the Information Memorandum that the Provider's role in the sale of the investment was as a Placing Agent with the responsibility of raising capital for the investment. It is noted in the submissions that 50% of the required equity had already been committed by a large Irish corporate entity, which was confirmed at the presentation by the Promoters. It is also noted that the Complainant has stated that he "*now knows that the Provider considered itself to be a "placing agent"*". However, it appears to me that the Provider's status was communicated to the Complainant from the outset, and this was also identified on the face of the Information Memorandum.

The evidence indicates that the Provider acted in the capacity of Placing Agent by providing the Complainant, and presumably other potential investors, with notice of the presentation in respect of the Brussels investment. However, this notification made it clear that the presentation itself was being given by the Promoters of the investment, who were also identified in the notice email. These information documents also included recommendations that the reader seek independent advice. I do not accept that the Provider had any responsibility for "*securing*" investors; instead, I accept that it had responsibility for raising the necessary equity for the investment by introducing the opportunity to potential investors who were recommended to seek independent advice. It discharged this obligation by notifying its clients of the opportunity and inviting them to the investment presentation if they were interested, based on the details in the Summary Information document. The Provider has said that it is unaware of any further promotional activities that were undertaken by the Promoters, in respect of the investment.

I am satisfied that the Information Memorandum put the Complainant on sufficient notice of the inherent risks attaching to the property investment in Belgium. It clearly recommended that independent advice be sought from a party authorised to provide such advice under the relevant legislation. It does not appear from a consideration of the papers that the Complainant sought independent advice after attending the Provider's presentation on **8<sup>th</sup> March 2007** and receiving the Information Memorandum. It is noted that he engaged in communications with "*the Provider's personnel*" about the investment.

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However, this is not what was recommended to the Complainant in the Information Memorandum. He was encouraged to seek advice independently of the Provider.

The Complainant submits that he had been told the investment property was a new building in 2007, when he later learned it had been constructed between 2002 and 2004. The Provider elaborates on this point, stating its understanding that the property was built as part of a larger development commenced in 2002 and that this particular office element was constructed in 2005. In respect of the Complainant's assertion that the property sale was "off-market", I do not accept that the Provider, in its role as Placing Agent, had knowledge of the development or marketing of the building, or that it should have had such knowledge.

The Complainant contends that only after investing, did he become aware that the property was "very close to, but on the wrong side of a so called 'tax line', which meant that it was less attractive to proposed tenants who were seeking office space in their vicinity". The Provider, in response, states that this issue was factored into the CBRE valuation which was available in full, at the request of the Complainant. It is noted that the Provider observes that "notwithstanding this, one factor is rarely determinative when considering whether to lease or purchase a property".

The Complainant makes various assertions about representations made to him in respect of the characteristics of the investment and says that: "this was far removed from the picture painted in the Information Memorandum about a "prime new office building" which had the potential to attract "blue chip" tenants at rents of €175 per square meter. Whatever such representations were made, this is not a matter for the Provider, which I have accepted, acted only as a Placing Agent in respect of the investment. I am also conscious that such a concern was likely heavily related to the financial crisis taking place at the time of the Complainant's investment. In my opinion, this is a concern more appropriate to be raised with the Promoters of the investment.

In respect of the Complainant's assertion that the property was repossessed at the end of 2009 as a result of the fact "that no financing had been secured beyond that time by the Promoters", I take the view that this is also a matter for the Promoters. Any involvement by the Provider in this aspect of the investment, cannot be identified from a consideration of the documentary evidence.

It appears to me that after a consideration of the contents of the Information Memorandum, the Complainant invested in the property on an execution only basis and signed the relevant application form which contained the following confirmation:

*"I hereby request [the Provider] to invest on my behalf in the proposed investment in [the Olympiades] on the terms set out in the Information Memorandum. I confirm that I have read and understood the section concerning investment risk and I have made my own independent assessment of the merits or otherwise of participating in the proposed investment and have taken professional advice where I considered appropriate as recommended by the Information Memorandum".*

I am satisfied that upon signing his name to this unequivocal statement, the Complainant accepted the risk involved in the investment. The Provider did not hold itself out as having any responsibility for advising the Complainant. Furthermore, it is apparent from the separate Execution Only Declaration signed by the Complainant and set out under '*Evidence*' above, that the Complainant did not consent to providing information in relation to his financial history and investment objectives, to determine the suitability of this particular investment for his purposes, but wished instead to proceed with the investment on an execution only basis. The relevant risks were also set out in the Summary Information document accompanying the notice of the presentation emailed to the Complainant. Although not designed to list all the risks involved, it also recommended that potential investors seek independent professional advice.

Upon a consideration of the Information Memorandum, it is apparent that the success of the investment itself was dependent on the letting of the remainder of the building. It is noted that the building was only partially let, with the benefit of a two-year rent guarantee. The Information Memorandum set out that the potential return was 13%, reflecting the level of risk involved. This investment, like property investments in general, appears to have been speculative in nature and I accept the Provider's assertion that the Complainant "*had all necessary advisors available to him to provide whatever advice he felt was required*". Furthermore, I agree that given the scale and nature of the Complainant's other investments, of which the Provider was aware, which included a portfolio of property related assets, property investments and mezzanine finance investments in Ireland, the UK, Europe and Australia, it is apparent that the Complainant possessed a degree of expertise and shrewdness in the area, which ought to have enabled him to form his own opinion as to whether he wished to take independent advice before proceeding with the investment.

In respect of the Complainant's submissions that the appropriate course of action was for any placement fee in respect of the investment to be paid to the Promoters and not to the Provider, it is noted from the investment application form completed and signed by the Complainant that there was a 'Placing fee' of 3% payable to the Provider. It is noted that the Complainant does not appear to have queried this fee at the time of paying it, or at any previous stage and, in my opinion, the identification of the Provider's fee as a 'Placing' fee should have placed the Complainant on further notice of the Provider's status as a Placing Agent, in respect of this investment.

I am satisfied that the Provider maintained its position as Placing Agent and did not provide advice to the Complainant in respect of this investment. The Complainant submits that he was advised by the Provider that this was a low-risk investment, but on the basis of the evidence, I do not accept this. It is apparent that the Provider's role in this investment was a Placing Agent, and the responsibilities of this role were discharged by inviting the Complainant to the presentation from the promoters. I take the view that all relevant information, including the risks attached, was supplied to the Complainant by the Promoters and he was afforded the opportunity to request a copy of the full valuation if he had so wished. He was repeatedly advised to seek independent advice in respect of the investment, and in those circumstances, I do not accept the Complainant's assertion that it was the Provider which ought to have advised him.

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The Complainant did not obtain independent advice and did not request a copy of the valuation. Instead, he proceeded to sign an execution only agreement and an application for the investment, the day after the presentation.

In all of those circumstances, I do not consider it appropriate to uphold the complaint that the Provider mis-sold the investment in question to the Complainant by failing to establish the suitability of the investment to him, or by withholding key information from him which it was aware of. Accordingly, on the basis of the evidence available, I take the view that there is no reasonable basis upon which 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 rejected.

**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)**

20 June 2022

### **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.

