



<b><u>Decision Ref:</u></b>	2022-0269
<b><u>Sector:</u></b>	Investment
<b><u>Product / Service:</u></b>	Multiple Products/Services
<b><u>Conduct(s) complained of:</u></b>	Failure to provide accurate investment information Delayed or inadequate communication Failure to process instructions in a timely manner
<b><u>Outcome:</u></b>	Rejected

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

This complaint concerns investment products held by the Complainants with the Provider.

#### **The Complainants' Case**

The Complainants submit that on **13 June 2019** they took out two investment products with the Provider, at which time they purchased 56.9744 shares with one investment product and 39.6016 shares with another investment product.

The Complainants assert that they received statements of the value of the investment funds on **30 June 2019** and **30 September 2019**. The Complainants submit that they did not however receive any update in **January 2020** for the value of the investment funds, as of 30 December 2019.

The Complainants submit that they made an unsuccessful attempt to contact the Provider by telephone on **16 March 2020** and they subsequently visited a branch of the Provider to discuss the status of the investment funds in question. The Complainants submit that when they visited the branch on **16 March 2020**, there was a handwritten note on the door of the branch noting that it was closed. The Complainants assert that they had been given no prior notice of this closure.

The Complainants submit that they subsequently visited the Provider's branch on **18 March 2020** to inquire about the value of their investments. The Complainants state that they instructed the Provider to redeem their investments, as they were incurring a loss at that

time and the Provider informed them that the investments would be redeemed, and the proceeds would be transferred into their deposit account.

The Complainants assert that the shares in question were redeemed on **1 April 2020** and the proceeds were transferred into their deposit account on **6 April 2020**. The Complainants submit that despite the value of the shares increasing during that period, the Provider has failed to supply them with a satisfactory explanation as to why it took fourteen days to process the redemption of the shares.

The Complainants submit that the First Complainant emailed the Provider on **25 May 2020** regarding the complaint and within that correspondence he had requested details of the value of the share funds, for each day during **March 2020** and during each week of **April 2020**. The Complainants contends that the Provider has supplied them with incorrect information pertaining to the value of the investment funds on **18 March 2020**, **31 March 2020**, and **1 April 2020**.

### The Provider's Case

The Provider submits that its branch was closed at short notice on **16 March 2020** due to COVID-19 and to allow deep cleaning and sanitisation of the branch, for health and safety purposes.

The Provider submits that it issued its quarterly statement to the Complainants in **January 2020** which contained the records of the investment funds for the final three months of 2019. The Provider states that this quarterly statement was issued to the Complainants at the address that it held on file for the Complainants. The Provider also states that the details of the Complainants' investment account are available to view on a mobile phone app, once the statements have been generated.

The Provider has acknowledged within its correspondence to the First Complainant dated **22 May 2020** that the shares were not redeemed on **18 March 2020** as requested. Rather the request to redeem shares was processed by it on **31 March 2020**.

The Provider submits that the Complainants were supplied with an indicative redemption figure of **€55,060**, and that it had highlighted to the Complainants that this was an indicative figure only. The Provider contends that if the redemption figure had been processed within the regular timeframe, the Complainants would have received the unit price applicable on **19 March 2020**, which it submits would have resulted in a redemption figure of **€54,808**.

The Provider says that due to the oversight of the agent, the process for redeeming the funds commenced on **31st March 2020**. The unit price was taken as of **1st April 2020**, which resulted in an actual redemption figure of **€55,614.02**. Therefore, the redemption value was €805.87 higher than if it had been redeemed on 19 March 2020; this sum was lodged into the Complainants' bank account on **6 April 2020**. The Provider notes that this actual redemption figure was higher than it would have been, if the redemption transaction had been processed on **18 March 2020**.

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The redemption value of the fund was derived by multiplying the number of units held by the current price for the date, detailed in Condition 45 of the Terms and Conditions. The Provider submits that it has no evidence that the Complainants were supplied with the new indicative figure of **€56,141**, representing the redemption figure as of **31 March 2020** but the Provider submits that this figure was given to the Complainants during their telephone conversation on 1 May 2020.

Within its correspondence dated **22 May 2020**, the Provider apologised to the Complainants for its error which resulted in the delay in redeeming the funds and it submits that this error did not have a negative impact on the Complainants' funds. The Provider contends that the final figure was approximately €805 higher than it would have been, if the redemption had been processed on **18 March 2020**. The Provider submits that it is not in a position to honour the indicative figure that the Complainants were supplied with, on 31 March 2020.

### **The Complaint for Adjudication**

The complaint is that the Provider mal-administered the encashment of the Complainants' investment funds, including that it failed to process instructions in an efficient and timely manner and failed to supply the Complainants with adequate and accurate information pertaining to the investment funds.

The Complainants want the Provider to resolve this matter in an acceptable manner, in particular the Complainants submit that they want to receive satisfactory explanations from the Provider for the following:

- “... correspondence re the value of the investment on 30<sup>th</sup> December 2019*
- 2) satisfactory explanation why their office was closed on 16 March and [why] it was not possible to make contact with them.*
- 3) A satisfactory explanation why it took 14 days to process our request.*
- 4) That I would receive the value of the investment that [the Provider] said they were worth on 31st March or 1st April 2020”.*

### **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 Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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In arriving at my Legally Binding Decision, I have carefully considered the evidence and submissions put forward by the parties to the complaint.

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

A Preliminary Decision was issued to the parties on **4 July 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.

I note that in **December 2018** the Complainants invested **€20,200.00** to purchase 56.9744 units in what I shall refer to as "**Investment 1**".

I note that subsequently, in **June 2019** the Complainants invested **€40,400.00** to purchase 39.6016 units in what I shall refer to as "**Investment 2**".

The total sum invested was therefore **€60,600.00**.

Each investment initially proceeded without any issue. The Complainants received quarterly statements dated **22 February 2019**, **10 May 2019** (for Investment 1) and **30 September 2019** (for Investment 1 and Investment 2). The Provider states that it also made statements available through its mobile app, from **September 2019**.

The **30 September 2019** statement advised unit prices of €367.34 and €1,022.85 for Investment 1 and Investment 2, respectively. The combined value of the investments was stated at that time to be **€61,435.48**.

I have been supplied with a statement dated **31 December 2019**, which the Complainants state they did not receive. This statement advised unit prices of €370.89 and €1,033.11 for Investment 1 and Investment 2, respectively, for a combined value of **€62,044.05**.

Whether the December statement was received or not (a matter to which I will return below) the 2019 statements essentially show a modest increase in investment value – the initial **€60,600.00** had grown by the end of 2019, to **€62,044.05**.

The Complainants attempted to contact the Provider's branch by telephone on **16 March 2020** but could not get through, so they went to the branch in person, but found that it was

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closed and a handwritten note was left on the door. This forms part of the Complainants' complaint.

In its response to the initial complaint the Provider explained that the branch was closed "*due to concerns surrounding Covid-19*" and that a decision was taken "*at very short notice*" to close the branch to allow for a deep clean to take place. In responses to this Office the Provider has stated that "*there was a suspected case of Covid-19 that day*".

In my opinion, there are no grounds for upholding a complaint against the Provider on the basis of its branch being closed that day – this occurred at the very early stages of the COVID-19 emergency, and I accept the Provider determination at that time, that this was appropriate action to take.

On **18 March 2020** the Complainants again attended at the branch, and on this occasion, they were able to meet an agent of the Provider. They were supplied at that time with a document containing the following information:

<i>"Total redemptions*</i>		<i>55,060.96EUR</i>
<i>[Investment 2]</i>	<i>Indicative value*</i>	<i>36,402.98 EUR</i>
<i>[Investment 1]</i>	<i>Indicative value*</i>	<i>18,657.98 EUR</i>
<i>[...]</i>		

*\*Indicative value based on latest available NAV. Actual value received may be higher or lower depending on actual NAV received [sic] for your transaction"*

I note that, at that point, the Complainants instructed the Provider's agent to cash out their investments.

The Provider's agent states that the Complainants were advised that the value they would receive would be the value on the day after their instruction to sell, was processed. I note in that regard that Section 46 of the Provider's Terms and Conditions for Investment Funds (subject to certain cut-off times) confirm this '*next business day*' timeframe between processing the instruction and the value that will be applied.

Although the Provider and Complainants agree that the instruction to cash out the investments was given and received on **18 March 2020**, it was not effected until **1 April 2020** (10 working days later). The redemption value at that point was €55,614.02 – €553.06 more than the indicative value they had been given on 18 March 2020.

If the Complainants' instruction to sell had been correctly processed by the Provider, on 18 March 2020 when it was given, the unit price on redemption would have been the unit price

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of 19 March 2020 – a lower value than the indicative value they were given the previous day.

The note prepared by the Provider's agent who dealt with the Complainants states that *"I failed to commit the deal after receiving the signed paperwork from the customers on the day"*. The Provider's agent states that he/she noticed the error *"a few days later"*, and that *"because of my error the redemption was then done on the 31<sup>st</sup> of March. On 31<sup>st</sup> of March the fund was worth 56141.32"*.

The statement dated **30 June 2020** advises redemption of investment funds on **1 April 2020** at unit prices of €331.30 and €927.70 for Investment 1 and investment 2, respectively, for a combined value of €55,614.02.

I am satisfied that if the instruction of 18 March 2020 had been processed that day, the investments would have been redeemed for the value on 19 March 2020 and the Complainants would have received €54,808.15. If they had been redeemed on 31 March 2020, the Complainants would have received €56,141.32. On 1 April 2020, when they were in fact redeemed, the investments were worth (and the Complainants received) €55,614.02 – this was €527.30 less than the value of the previous day, but more than if the instruction had been correctly actioned on the original date.

I note in that respect that, in the days between 18 March 2020 and 1 April 2020, the fund value fluctuated daily.

I am satisfied that the Provider was under a duty to furnish quarterly statements. It submits that it did in fact issue a statement dated 31 December 2019, to the Complainants, and it adds that the account statements were at that stage also available through its online app. I accept this.

The Complainants are adamant that they did not receive this statement. In the broader context of this complaint the Complainants have kept thorough records of the documentation received from the Provider. In fact, they have produced their copy of the initial investment agreement, which the Provider was unable to produce in its responses to this complaint.

On balance, therefore, I accept that the Complainants did not receive the 31 December 2019 statement. I must acknowledge, however, that there are a number of reasons why this could have happened (including postal issues) that are outside the control of the Provider, and I note that this particular aspect of the Complainants' grievance is somewhat secondary to the main issue raised in this complaint, ie the delay in processing the encashment instructions given on 18 March 2020.

In the circumstances, in the absence of sufficient evidence to make a finding that the Provider did not issue the statement and considering that the statement was available in any event, on the mobile app, I do not consider it appropriate to criticise the Provider for a failure to issue this quarterly statement.

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Insofar as the encashment is concerned, I accept that indicative values are precisely that, they are clearly described as such by the Provider and the actual value received on redemption may differ. In my opinion, the Complainants understood this.

The Complainants, in their further submissions to this Office, appear to suggest that they may not have proceeded with the sale of the investment if the Provider had contacted them to notify them of its error (and prior to effecting their instruction on 31 March 2020) as the markets may have been recovering by then.

I do not accept this contention. Firstly, from 18 March 2020 until late April 2020, the Complainants did not receive post, due to an issue with An Post, over which the Provider had no control. Secondly, the Complainants gave an instruction to the Provider on 18 March 2020. It is the processing of that instruction by the Provider which I must assess. The fairest manner in which I can consider this complaint, is to consider the following questions:

1. Was there was an unreasonable or otherwise wrongful delay in processing the Complainants' instruction?

If the answer to the above is yes, I then consider:

- a) When ought the instruction have been processed?
- b) What effect did the delay have on the customer?
- c) What is an appropriate resolution to the complaint?

In response to Question 1, the Provider has accepted that there was a delay in processing the Complainants' instruction of 18 March 2020. Indeed, the delay was contrary to the Provider's own terms and conditions and was contrary to the advice that had been verbally given to the Complainants. The Provider's agent accepted that this was an error on her part.

The answer to question 1 is therefore "Yes".

With regard to question (a), the instruction ought to have been processed on 18 March 2020. In accordance with the Provider's terms and conditions and the advice that had been given to the Complainants, this would have resulted in a value as of 19 March 2020 being credited to the Complainants.

On the basis of the unit prices furnished to this Office by the Provider, if their instruction had been carried out properly, the Complainants would have received €54,808.15 (the 19 March 2020 value). This is a lower value than both the indicative value given to the Complainants the day before, and the value that they actually received, when the investment was encashed.

Accordingly, I am satisfied that the delay transpired to be of benefit to the Complainants.

I am cognisant of the Complainants' concerns that this issue could have affected other customers. However, this complaint investigation by this Office concerns only the Complainants' individual complaint, and in the course of the investigation, the evidence

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available has not suggested to me that there may have been other individuals affected by the Provider's staff member's error in this instance.

I am also cognisant of the Complainants' broader concern for the financial system and, for example, their contention that providers should be required to furnish daily figures rather than quarterly statements when markets are volatile. I do not agree. In furnishing an indicative value when requested to do so, I am satisfied that the Provider adequately met its existing regulatory requirement.

I am mindful that the Provider formally advised the Complainants of its error and explained the position at an early stage (on **22 May 2020**, in its written response to the complaint). Accordingly, given that the Provider long since acknowledged its error, and that the Complainants benefitted from the error in question, I am not satisfied that it would be appropriate or reasonable, to uphold this Complaint.

### **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)**

16 August 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.

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**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.

