



<b><u>Decision Ref:</u></b>	2018-0073
<b><u>Sector:</u></b>	Investment
<b><u>Product / Service:</u></b>	Bonds
<b><u>Conduct(s) complained of:</u></b>	Encashment delays Failure to process instructions in a timely manner Dissatisfaction with final fund value
<b><u>Outcome:</u></b>	Rejected

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

### **Background**

The complaint relates to a Company Investment Bond. This Bond was owned by and in the name of a Pension Trustees firm, hereafter 'The Trustees'. The Complainants, who are husband and wife, were listed as each having 50% beneficial ownership of the Bond, which was written on a Joint Life First Death basis. The Bond was a single premium, unit-linked investment contract with an initial investment premium was GBP £183,210, invested on 29 September 2013, with an additional premium of GBP £62,055 invested on 18 August 2014. The Sum Assured was 101% of the Bond value on the date of notification of death. The investment benefit currency, the currency that any payments would be made from the Bond, was GBP. The Bond was fully surrendered on 14 December 2015 in the amount of GBP £272,489.33.

### **The Complainants' Case**

The Complainants note that the Trustees contacted the Company by email on 27 November 2015 to instruct a full surrender of this Bond. In this regard, the Complainants state, as follows:

*"The documentation required [by the Company] was sent by email on the 27<sup>th</sup> November 2015 and in hard copy with the original certificates on the 30<sup>th</sup> ...*

*Confirmation is given by [the Company] on the 7<sup>th</sup> & the 9<sup>th</sup> [December 2015], by telephone...that all documents had been received on the 4<sup>th</sup> December. So*

*it was our expectation that the funds would be released in 5 working days, around the 9<sup>th</sup> December as per [the Company's] policy terms and telephone conversations ...*

*On the 10<sup>th</sup> December [the Company] again says some documentation is missing despite saying on the 7<sup>th</sup>, 9<sup>th</sup> & again on the 10<sup>th</sup> that the case was with the payments department and this would not be the situation if there were documents absent, although on the same day some doubt was cast on this in another phone call.*

*Then on the 14<sup>th</sup> [the Company] says all lost documentation has been rediscovered to both [the Company] and [the Trustees]. Although on the same day they also say items are still missing but then that payment would be made".*

The Complainants submit in their correspondence to the Company dated 7 January 2016 that the full surrender of the Bond *"should have been a simple act taking no more than 5 working days from the receipt of all the paperwork...however...the entire process was completely mishandled to the point of incompetence"*. In this regard, the Complainants state that *"the confusion caused by [the Company] saying they did and then did not have the paperwork ...caused an enormous amount of angst"*.

The Complainants are dissatisfied with the way the Company handled the full surrender of the Bond and consider that it did not provide an accurate timescale for the surrender process or adhere to same. As a result, the Complainants consider that they have suffered financial loss due to exchange rate movements during the surrender process and seek *"the monies lost due to the delays caused by [the Company's] inept handling of the surrender of the policy"*, which based on the difference between the GBP to Euro exchange rate on 11 December 2015, *"when we originally expected the funds to be released as told by [the Company]"*, and on 16 December 2015, *"when the funds arrived"*, they estimate to be €6,290.91. In addition, the Complainants submit that *"an apology to all concerned would be appropriate as well"*.

The Complainants' complaint is that the Company provided them with poor customer service insofar that it mishandled the full surrender of the policy, resulting in a financial loss for the Complainants.

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

Company records indicate that the Trustees emailed the Company on 27 November 2015 to instruct a full surrender of the Bond. Attached to this email, with the originals to follow by post, were a cover letter requesting the surrender that included bank account details, a completed Beneficial Ownership form, an Authorised Signatory List for the Trustees, a certified bank statement from the Complainants, as the beneficial owners of the Bond, and certified photo identification in respect of them both.

The Company notes that its service level agreement for reviewing documents is 5 working days. Having reviewed this documentation, the Company emailed the Trustees on 3 December 2015 advising that some items were still outstanding, namely, the original or a certified copy of a bank statement for the bank account details ending '6901' and the return of the original policy documents, and if these were not available then the completion of a Lost Policy Declaration, a copy of which was attached to the email.

The Company received the required documentation on 14 December 2015 and processed the surrender immediately for disinvestment overnight and payment was made before noon the following day, 15 December 2015. The Company notes that on receipt of all requirements the disinvestment of units can only happen overnight.

The Company states that it is satisfied that there were no servicing issues in relation to the full surrender of the Bond and that the timelines for the assessment of the necessary documentation and surrender of the Bond were clearly communicated throughout. In this regard, the Company states that a full surrender will be sanctioned on receipt of all outstanding requirements, after which it would take up to 5 working days to complete the surrender. The Company notes that the Contract Conditions applicable to the Bond states that it will cash in a Bond on receipt of an Acceptable Instruction, which is defined as an Instruction that is correctly completed and submitted to the Company's Administration Centre in Ireland together with any additional documentation that the Company may require at the time. The Company is satisfied that the Bond in question was on receipt of the last outstanding item on 14 December 2015 surrendered in line with the terms and conditions.

### **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.

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 28 June 2018, 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

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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, the final determination of this office is set out below.

The complaint at hand is, in essence, that the Company provided the Complainants with poor customer service insofar that it mishandled the full surrender of the policy at issue, resulting in a financial loss for the Complainants. The Complainants are dissatisfied with the way the Company handled the full surrender of the policy and consider that it did not provide an accurate timescale for the surrender process or adhere to same. As a result, the Complainants submit that they have suffered financial loss due to exchange rate movements during the surrender process.

In this regard, the complaint relates to a Company Investment Bond. This Bond was owned by and in the name of a Trustees firm. The Complainants, who are husband and wife, were listed as each having 50% beneficial ownership of the Bond, which was written on a Joint Life First Death basis.

The Bond was a single premium, unit-linked investment contract with an initial investment premium was GBP £183,210, invested on 29 September 2013, with an additional premium of GBP £62,055 invested on 18 August 2014. The investment benefit currency, the currency that any payments would be made from the Bond, was GBP. The Bond was fully surrendered on 14 December 2015 in the amount of GBP £272,489.33.

The Complainants note that the Trustees emailed the Company on 27 November 2015 to instruct a full surrender of the Bond but that it was 16 December 2015 *“when the funds arrived”*.

In this regard, Section 1.4, ‘Definitions’, of the applicable Contract Conditions booklet provides the following definition at pg. 3:

*“**Acceptable Instruction**” means a written instruction specific to the type of Cash in Benefit required ...*

*The instruction must be correctly completed and sent to Our Administration Centre in Ireland together with any additional documentation We may require at the time”.*

I note from the documentary evidence before me that the Company replied to the Trustees by email on 3 December 2015, as follows:

*“Thank you for your email dated 27<sup>th</sup> November 2015.*

*In order to proceed with the full surrender of the...Bond, we will require the following:*

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1. *An original or certified copy of a bank statement or letter from the bank for the account ending in '6901' that the payment is being made to which clearly confirms the account is in the name of the policyholder, the bank name and the bank account number.*
2. *The return of the original policy documents/contract schedule. If these documents are no longer in your possession please ensure the attached Lost Policy Declaration form is completed and returned to us. Please note that your signature must be witnessed, certified, stamped and signed by one of the certifiers as listed below”.*

In reply, the Trustees emailed the Company the following day, on 4 December 2015, as follows:

*“I can confirm the following:*

1. *I have requested an original bank statement to forward on to you which will clearly confirm the payment details of where the funds are to be sent.*
2. *The original policy documents were sent in the post to you, together with the other original or certified documentation, a few days after the scanned copies were sent”.*

In this regard, the Trustees emailed the surrender instruction to the Company on Friday 27 November 2015 and later advised in its email dated 4 December 2015 that the original policy documents were sent by post *“a few days after”*. The Company email requesting the original policy document was sent on Friday 4 December 2015 and given the *“a few days after”* the Friday 27 November 2015 timeline referred to by the Trustees in its email of Friday 4 December 2015, I accept that it is not unreasonable to consider that if the original policy document had at that time been posted by the Trustees that there was a crossover in correspondence between the Company and the Trustees and that the Company would then, in line with its service level agreement, have 5 working days to vet this document. In any event, it is clear that there also remained outstanding at that time an original bank statement which the Trustees advised in its email of 4 December 2015 that it had at that time requested and would forward to the Company.

The Trustees wrote to the Company on Tuesday 8 December 2015, as follows:

*“Please find enclosed original bank statement confirming details of where the funds are to be sent following surrender of the...policy”.*

The Company emailed the Trustees on Thursday 10 December 2015, as follows:

*“I understand you have called our contact centre today looking for an update on this surrender request.*

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*I have reviewed the file and I can confirm that we never received an original bank statement which you said in your email [of 4 December 2014] would be forwarded to us.*

*Additionally, I can confirm that the original policy documents were also never received in the post. We only received the ID documents by post.*

*We previously received an uncertified online bank statement which would be acceptable as bank verification, once certified by one of the persons outlined below*

*...*

*The original contract schedule must be posted to us.*

*Once we are in receipt of these documents, we will expediate the payment to you”.*

Recordings of the telephone calls between the Company and the Trustees and the Company and the Complainants’ Financial Advisor have been provided in evidence that took place between 26 November 2015 and 15 December 2015. There were two telephone calls that the Company state were not retrievable from its records, namely, a call from the Company to the Trustees on 7 December 2015 and a call from the Complainants’ Financial Advisor to the Company on 11 December 2015 at 10.23am.

The content of the recordings of the 16 telephone calls that were retrieved indicate that there appears to be an element of what is commonly referred to as ‘crossed wires’, which was somewhat inevitable given that there were three separate parties - the Company, the Trustees and the Complainants’ Financial Advisor - interacting over a number of telephone calls over a number of days, with some information being relayed by, for example, the Company to the Trustees, which would then appear to have been relayed by the Trustees to the Financial Advisor, who then contacted the Company to discuss this information further.

In any event, I accept that during the telephone call the Trustees made to the Company on 26 November 2015, the Company Agent clearly confirmed that if all documents required for the full surrender of the policy in question were received by the Company the next working day, that is, 27 November 2015, then payment should be with the Trustees by 14 December 2015, this timescale representing the 5 working days the Company required to vet the documents and a further 5 working day to sanction and action the surrender process.

I note from the recording of the telephone call the Trustees made to the Company on 9 December 2015, the following exchange:

Company Agent: *We’re still working on that just now because we just got the requirements in on the 4<sup>th</sup> of December, em, all the outstanding requirements, they only came in on Friday of last*

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*week, so it is a 5 working day process, so that premium – that monies will issue on Friday of this week.*

Trustees: *So it will actually come through this week*

Company Agent: *Yeah. It'll leave here, it'll leave here on Friday now, it'll go by direct debit, so it'll go to the client's account but the banks themselves can take 3 to 5 working days to put that into the client's account, it's not anything that we have any control over ... so we can't start the process to release the money until we got all the outstanding requirements.*

I note that the Company Agent indicated to the Trustees during this telephone call that the documents the Company received on 4 December 2015 were “*all the outstanding documents*”, when it is clear from the aforementioned Company email to the Trustees the next day, 10 December 2015, that there were still at that time outstanding documents. In this regard, the Company spent 5 working days vetting the documents received from the Trustees on 4 December 2015 and emailed them on 10 December 2015, the fifth working day, to advise of the outstanding documents.

In addition, I note from the recording of the telephone call the Trustees made to the Company the next day, 10 December 2015, the following exchange:

Trustees: *When I spoke to [Company Agent A] and [Company Agent B] they think that it should go through tomorrow based on when you received the original documentation and everything*

Company Agent: *That's stand processing timescale...if by tomorrow there are any other requirements we need to then ask for them, if not, we would then be able to proceed with the payment.*

The Trustees then asked for an email to be sent confirming that all documents required had been received but the Agent advised that as the documents received were still being assessed that the Company were unable to advise at that time if there were outstanding documents. I accept that this confirmed the timescale the Company advised the Trustees of during the telephone call of 26 November 2015 and clarified the information provided by the Company Agent to the Trustees during the telephone call the previous day, 9 December 2015.

I note from the recording of the telephone call the Complainants' Financial Advisor made to the Company the next day, 11 December 2015, that the Company Agent advised that “*there's obviously been some confusion along the line*”. The Agent, having examined the file, informed the Complainants' Financial Advisor that when the Trustees were advised by a Company Agent during the irretrievable telephone call on 7 December 2015 that the Company had received the mail with the documents, the Agent ought to have advised that it was the email of the 27 November 2015 with the scanned documents attached to it that

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had been received and not the posted mail with the documents enclosed. In this regard, the Agent advised, as follows:

*“The original request came in from [the Trustees] actually on the 27<sup>th</sup> of November. [The Trustees] emailed over to us with the surrender request for the policy and requested that we go through the documentation that [they] sent over to us and [the Trustees] said [it] was going to forward the original documents on to us ... these documents then had been reviewed, it actually fell within timescale that somebody’s put a note on the 4<sup>th</sup> of December saying “surrender docs received, now [indecipherable] docs passed to payments”. Now, that was from the email that [the Trustees] sent over so when [the Trustees] called in and spoke to [the Company Agent] on 7<sup>th</sup> [the Agent] has put a note on the file stating that “[the Trustees] called from the policyholder and confirmed the above note and advised of the processing times. Also confirmed as per above the mail received on the 4<sup>th</sup> December”. Now, that was an error. It was not the mail that was received, it was the email that was received, that [the Agent’s] referring to. This is where the issue has come”.*

I note from the recording of the telephone call the Trustees made to the Company on 13 December 2015, that the Trustees advise *“the Bank statement we sent under separate cover – that was sent a few days later so it may not have reached you yet”*, indicating that on 13 December 2015 the Trustees accepted that there may still be an outstanding document at that time.

The Company states that its service level agreement for reviewing documents is 5 working days, and I accept this would apply to each batch of documents it receives. As the Trustees emailed the Company on Friday 4 December 2015 advising *“I have requested an original bank statement to forward on to you which will clearly confirm the payment details of where the funds are to be sent”*, I accept that it is clear that there remained on Friday 4 December 2015 an outstanding document that the Trustees had at that time requested and would forward to the Company.

In this regard, I note that even if that outstanding document had arrived by post on the next working day, Monday 7 December 2015, the Company service level agreement allowed for 5 working days to review these documents and a further 5 working days for the surrender to be actioned, resulting in the surrender to be actioned on or by 18 December 2015; however I am satisfied from the documentary evidence before me that the policy was surrendered overnight on 14 December 2015, with the monies transferred on 15 December 2015. That said, I note from the documentary evidence before me that it was Tuesday 8 December 2015 when the Trustees wrote to the Company, as follows:

*“Please find enclosed original bank statement confirming details of where the funds are to be sent following surrender of the...policy”.*

I note from the documentary evidence before me that the Company received correspondence from the Complainants on 7 January 2016 raising a complaint in relation to

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the time it took for the Company to process the full surrender of the Bond and the manner in which it did so. The Company sent its response to this correspondence by email directly to the Trustees, as the Bond owners, on 19 January 2016, as follows:

*“On 27 November 2015 we received a request to surrender the Bond along with some supporting documentation. This documentation was passed to our Payments Team to review. I should explain that upon receipt of such documentation, we have a timeframe of five working days to fully vet the documents received and to request any further surrender requirements if necessary. We emailed you on 3 December 2015 which was within the above mentioned timeframes. We outlined that we still required an original or certified copy of a bank statement for the account to which the surrender proceeds were to be paid to as well as the return of the original Bond documents.*

*You confirmed to us on 4 December 2015 that this documentation was en route to us in the post. On the same day we received post which was referred to our Payments Team. As mentioned above, our timeframe for reviewing this documentation and asking for further requirements if necessary was five working days. I note that you spoke to our office on 9 December 2015.*

*During the call, the call handler confirmed that we had received documentation and that this was to be reviewed by our Payments Team. She also confirmed that if all requirements have been received, we would surrender the Bond and issue the proceeds within five working days of when we initially received the documentation.*

*We reviewed the documentation on 10 December 2015 (again within five working days of receipt) and emailed you on the same day to advise that we had not yet received the original Bond documents or the original bank statement. I cannot find any evidence on our files to suggest that we had previously confirmed to you that we had received these. I note that we explored the possibility of you completing a Lost Policy Declaration but you indicated during your call to our office on 11 December 2015 that you would not be happy to do so. Based on this, we referred the matter to our Compliance Department on 14 December 2015 to see if they could possibly grant a concession to waive the need for the original Bond documents or Lost Policy Declaration. In the meantime, we received the outstanding requirements in the post on the same day.*

*We surrendered the Bond immediately and set up payment to issue as quickly as possible. We subsequently issued the surrender proceeds by Telegraphic Transfer on 15 December 2015 ...*

*Having reviewed all aspects of this complaint, I am satisfied that we have acted correctly in how we processed the surrender request. On receipt of correspondence, we reviewed these and provided an update within our standard time frames on each occasion. I am also satisfied that during your call to this office on 9 December 2015, we did not confirm that we had received all correspondence. The call handler confirmed what our timeframes for issuing surrender proceeds would be, assuming*

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*all requirements were received. We could not confirm if this was the case at that point as the document received on 4 December 2015 had not been reviewed at that stage.*

*Once we did receive all requirements on 14 December 2015, we prioritised the surrender as you had mentioned it was required urgently. We issued the payment on 15 December 2015, despite the fact that our standard timeframes were five working days from receipt of the last requirement”.*

I note that the Company accepts that the Trustees were advised by its Agent during a telephone call on 7 December 2015 that the mail had been received on 4 December 2015 when in fact the Agent ought to have advised that it was the email with scanned attachments that had been received on 4 December 2015 and that the mail with the original documentation enclosed had not yet arrived by post. However, I am satisfied that the surrender of the Bond was not delayed as a result of this administrative error as it is clear from the Trustees’ email to the Company dated Friday 4 December 2015 that there remained at that time an outstanding document that the Trustees had requested and would forward to the Company. In this regard, even if that outstanding document had arrived by post on the next working day, Monday 7 December 2015, the Company service level agreement allowed for 5 working days to review this document and a further 5 working days for the surrender to be actioned, resulting in the surrender to be actioned on or by 18 December 2015.

In this regard, I note from the documentary evidence before me that the policy was surrendered overnight on 14 December 2015, with the monies transferred on 15 December 2015. I further note that the exchange rates from GBP to Euro is a matter that falls outside of the control of the Company.

Accordingly, I am of the opinion that, given the evidence made available by the parties, there is no reasonable basis upon which it would be appropriate to uphold this complaint and I therefore do not 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.

**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

31 July 2018

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*.**