An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2018-0139
Sector:	Investment
Product / Service:	Bonds
Conduct(s) complained of:	Delayed or inadequate communication
Outcome:	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The dispute in this complaint is in relation to the 'unexpected' tax liability that resulted from a partial encashment of an Investment Bond. The Complainants consider that the Company could have communicated in a better manner in relation to, the Chargeable Event / Chargeable Gain that arose and the tax implication of that Gain. The Complainants say that they understood that they could offset the gain by selling other funds at a loss, but later established that the gain was to be treated differently for tax purposes.

The complaint is that Company did not clearly communicate the operation of an encashment relative to the Chargeable Gain that arose.

The Complainants' Case

The Complainants state that their complaint concerns the unexpected cost of income tax of £25,392.60 payable on a "chargeable gain" of £56,428 incurred on partial encashment of their investment bond.

The Complainants state that their financial loss has arisen due to very poor and inadequate communication by the Company at a crucial moment. The Complainant states that the Company used the term "chargeable gain" very generally during a telephone conversation with the First Complainant, only to inform him after the fact that it had intended a much more specific, technical meaning of the term and assumed he would understand the related implications.

The Complainants state that in summary the First Complainant personally requested that the Company encash a part of the policy (i.e. no third party was involved). The First Complainant then received a phone call from Mr C in the Company stating in his words "…a quick call...". The Complainants state that the purpose of this call, was to make the Complainants aware of a "substantial chargeable gain" on partial encashment of the policy.

The Complainants state that at no time during this crucial call, which lasted approximately 2 minutes, and during which time the words "chargeable gain" or "gain" were used 7 times, was there any mention of the specialist meaning of the Company's term "chargeable gain".

The Complainants state that the Company accept that there are different definitions of a "chargeable gain" and suggest that the Complainants used the incorrect one. The Complainants say that the Company's interpretation of the phrase is apparently specific to the investment industry. The Complainants question how they could have been aware of this very important point unless it had been properly brought to their attention.

The First Complainant states that during the call, which he says had clearly surprised him, he reacted to the information about incurring a chargeable gain by considering how best to manage such a gain between the Second Complainant and himself. The First Complainant says that one might describe his reaction as being 'normal' when faced with what he believed to be a *normal* chargeable gain. The Complainants state that their subsequent actions serve to back this up, in that they subsequently sold off other investments to offset this "chargeable gain".

The Complainants submit that it is therefore their firm belief that Mr C from the Company should have provided the First Complainant with more specific and detailed information during his call on 31 May, 2015.

The Complainants state that they believe Mr C's "quick call" should have imparted a summary of the consequences of partial encashment of the bond, particularly as the Company was aware that the application for partial encashment had been made directly by the First Complainant and not through a third party.

The Complainants state that furthermore, and at the very least, it should have been made clear during the call what Mr C meant by a "chargeable gain" (i.e. the technical / specialist meaning) and, in particular, that it would be treated as income and subject to income tax.

It is the First Complainant's position that if he had been properly informed during the call about the specialist nature and consequences of the Company's investment industry definition of a "chargeable gain", he would have taken a different course of action at that time. The Complainants state that therefore, they are seeking compensation for the losses incurred of £25,392.60.

The Encashment Process and the Telephone Call

The Complainants' complaint is that the Company has advised that it has no particular duty to inform customers of the tax risks inherent in the Encashment Process. The Complainants

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question the Company's claim of providing better or enhanced customer service approach by calling him directly about the chargeable gain.

The Complainants state that whether such a duty exists is not the issue. The Complainants submit that the issue is that during the call, the Customer Service Representative, Mr C's style and responses led him to make a decision more confidently than should have been the case. The Complainants state that indeed, they perceive that Mr. C did not actually have the knowledge or competency required to handle the call or to answer the questions in the manner that he did.

The First Complainant states that in the past he encashed from the same policy where the Company was consulted. The First Complainant says that at the time his Independent Financial Advisor advised him very clearly, when the Complainant asked, that there were no tax consequences as a result of the encashment. The Complainant submits that this previous experience helps to explain the surprise in his voice and the subsequent pause after being told that a Chargeable Gain had arisen. The Complainant states that furthermore, his subsequent questions to Mr. C during the call indicated what he understood him to mean in his use of the term Chargeable Gain. The Complainant understood it to mean the same as a Gain when offsetting gains for capital gains.

The Complainants state that were Mr C competent to handle the call, he would have understood why the First Complainant was asking the questions he asked and he would have realised that he needed to clarify that he using the term in a *specialist* manner. The Complainants state that Mr C would perhaps even have stopped to double-check with a colleague or superior before allowing the transaction to proceed.

The First Complainant states that it would have been good practice and would have cost no more than another call to him to clarify. The Complainant submit that instead, Mr C rushed it, which equates to poor customer service and falls below the standards of professional conduct and integrity that he might reasonably have expected from the Company.

The Provider's Case

The Company states that the First Complainant first brought this complaint to its attention on 4 June 2015 while he was complaining about another issue which has since been resolved. The Company says that the First Complainant felt the implications of his actions after being informed of the Chargeable Gain could have been avoided had the Company been more detailed in its explanation of the Chargeable Gain during Mr C's telephone call to him in May 2013.

As regards Chargeable Gains, the Company's positon is as follows:

- The Company states that the Bond offers tax-efficient investment growth and control over when tax is paid. The Company says that while invested in a Bond, a customer does not normally pay tax on any growth (except irrecoverable withholding tax). Instead, tax is paid when the customer takes money out of the Bond, and will be based on the customer's circumstances at that time.

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- The Company advise that up to 5% of the total payments made into the Bond can be taken each year by the customer up to a maximum of 20 years, without any immediate tax liability. Once withdrawals equal the total amount paid into the Bond, this allowance stops. If the full 5% allowance is not used in a particular policy year, it can be carried forward. Withdrawals in excess of 5% may be treated as a 'Chargeable Gain' and will be liable to income tax.

- The Company states that Chargeable Gains can be offset by incurring investment losses in other aspects, but that this is dependent on the customer's financial circumstances. It is the Company's positon that it would never recommend any course of action regarding how to deal with Chargeable Gains.

- The Company states that depending on how long the policy has been in force, and what gains have been made, surrenders can be processed on either a maximum or a minimum gain. The Company says that it will process requests on a minimum gain basis unless advised otherwise.

- The Company says that a maximum gain may be requested if a customer has experienced financial loss in another area and wishes to offset a gain on their International Bond against this.

- The Company submits that in the case of a large gain, a customer service representative (CSR) will attempt to contact the person who placed the surrender instruction in order to let them know prior to actioning the surrender.

The Company states that information relating to Chargeable Gains and how these apply are in its Key Features document, and say that the Key Features are sent at point of sale. The Company states that it urges all its customers to read these prior to taking out a policy. The Company submits that it is an intermediated business and it expects Financial Advisers to discuss the workings of a Bond with its mutual customers prior to making any decisions. The Company says that in addition to this, in keeping with its customer centric culture, it also informs customers if there is to be a large chargeable gain as a result of a surrender from the bond.

The Company states that its surrender process is as follows:

- The main objective of its Customer Service Representative when processing surrender requests is to efficiently return the customer's funds to them as per their request.

- As outlined in its response to the Complainants, the Company process surrenders on a minimum gain basis, unless advised otherwise.

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- If there was to be a large Chargeable Gain as a result of a part or full surrender, the Company would let the Financial Advisor or customer know this before proceeding, and confirm this may be subject to tax.

- The Company is under no obligation to make this call. The Company is an intermediated business and it expects customers to make informed decisions in conjunction with their Independent Financial Advisor.

- The Company do not confirm any other details as customer's individual tax circumstances are not known to it, nor does it advise customers on how they may offset any gain.

As regards its Call handling, the Company state as follows:

- Mr C had the necessary knowledge and experience to process the surrender of the amount requested from the Bond.

- Customer Service representatives are not Financial or Tax Advisers and Mr C appropriately addressed the First Complainant's query and recommended he speak to a Financial Adviser should he have any concerns. The Complainant confirmed the surrender should proceed.

- Any action taken after this point was taken by the First Complainant. It appears the First Complainant chose not to seek financial advice regarding the Chargeable Gain and instead sold shares from his investment portfolio with **** at a loss in order to offset the Chargeable Gain from the Bond surrender.

- From the information provided by the First Complainant it appears the First Complainant interpreted Chargeable Gain to mean Capital Gain and acted accordingly.

- The Company does not believe Mr C rushed the call or used poor communication; he was clear as to the reason for his call and asked the First Complainant for confirmation to proceed before he actioned the surrender request.

The Chronology of the encashment and complaint is stated to be as follows:

The Company states that the First Complainant called the Company's office on 30 May 2013. The First Complainant told the Customer Service Representative he required £600,000 from his policy in order to purchase a property. The Company says that the funds were not invested at that time and instead sat in the policy cash account. The Company states that the First Complainant confirmed on his call he was looking for the payment to be made urgently. The CSR agreed that as the funds were in cash, the Company would be able to pay this out quicker since it would not have to wait for a disinvestment instruction to settle. The CSR also agreed to flag the surrender request as urgent in order to speed up this process.

The Company submit that the request was marked as urgent and flagged with the Claims team. A Visual Management Board (VMB), an aid the Company's Telephony team would have been used to flag the urgent request.

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The Company states that upon picking up the surrender request, Mr C placed a call to the First Complainant on 31 May 2013. The Company says that Mr C would have been aware at this point that the Complainants were looking for the funds urgently in order to complete a property purchase.

The Company submit that the First Complainant initially raised the complaint regarding the conversation on a telephone call to its office 4 June 2015 when he complained about an additional sum which had been applied to his policy. The Company states that his complaint was acknowledged by the New Business team manager on 11 June 2015 and a response issued 17 June 2015.

The First Complainant contacted the Company again on 24 June 2015 confirming he felt he should have been given more technical information regarding tax treatment of the Chargeable Gain in his telephone call with Mr. C. At this point the First Complainant also requested a copy of the telephone call with Mr. C.

The complaint was escalated to the Operations Department Manager, Mr. F, who reviewed the existing complaint. On 7 August 2016, Mr. F responded to the First Complainant and let him know a copy of the telephone call was being arranged.

On 1 September a recording of the call was sent along with a decryption leaflet to the Complainant.

On 23 September the First Complainant contacted the Company to confirm he had listened to the call. He queried the complaint process and the process of escalating the complaint.

On 24 September, the First Complainant's queries were answered by Ms R, an Operations Department Manager.

On 9 November 2015 the First Complainant confirmed he remained unhappy with the Company's response and submitted a letter outlining his grievances. The First Complainant also felt his complaint should be escalated and reviewed by an impartial party. The Complainants' complaint was escalated to the Company's Operations Director, Mr. B who conducted a full review.

On 8 December Mr B responded to the Complainants and confirmed its stance regarding the Chargeable Gain.

On 23 December, the First Complainant responded to Mr B's email.

On 6 January 2016 the First Complainant also emailed the Company's UK Customer Relations team asking them to conduct an impartial review of the complaint. The Company states that as the Bond is administered in Ireland, it confirmed the complaint process to the Complainant and reminded the customer of his right to refer to the Financial Services Ombudsman Ireland, rather than the Financial Ombudsman Service in the UK.

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On 7 January 2016, the First Complainant emailed Mr. B, Operations Director, to say he did not agree with the Company's proposition and again emailed its UK Customer Relations team as he felt they needed to be aware of issues with their subsidiaries.

On 8 January 2016, the Company sent back its Final Response letter and reminded the Complainant of his right to refer to the Financial Services Ombudsman.

The Company's response to the Complainants' complaint

The Company submits that it does not believe it acted incorrectly in relation to the surrender request in 2013. The Company says it acted on a valid instruction to administer a withdrawal of £600,000 from the Bond. The Company's position is that it operates as an intermediated business due to the more complex nature of the product and it expects customers to discuss decisions with their Financial Advisers in order to make informed decisions about their policy. The Company states that it confirmed to the First Complainant that there was a large Chargeable Gain in relation to his surrender of £600,000. The Company submits that it did not use the words Capital Gain as alleged by the First Complainant on his call on 4 June 2015. The Company states that it noted there was a large Chargeable Gain and asked the First Complainant if he wished to proceed. The Company says that when processing surrenders, its priority is to release the funds from the Bond as efficiently as possible and return these to the customer.

The Company advise that the First Complainant had previously processed a partial surrender from his policy in 2011 under his Independent Financial Adviser at that time. The Company submit that at that point, his Financial Adviser instructed the Company on the best way to surrender the policy in order to avoid any gain. The Company submit that on that basis it is reasonable to assume the First Complainant had been made aware of Chargeable Gains and how it relates to the policy at that point. The Company states that explaining how a Chargeable Gain is subject to income tax would fall under the remit of the Financial Adviser when first taking out the policy. The Company says that the surrender application form, received in 2011 instructed the Complainant on the way to surrender the policy in order to avoid any gain.

The Company's position is that any decisions or assumptions made by the Complainants were made of their own volition. The Company states that it did not advise the Complainant to offset any losses in relation to the Chargeable Gain on the Bond. The Company says that based on later communication from the First Complainant, he understood Chargeable Gain to be Capital Gain and acted in order to offset this, without, it appears, obtaining any additional financial advice from a qualified Financial Adviser.

The Company submits that any losses arising from this decision are not the Company's responsibility.

The Company states that as it has no knowledge of individual customer's tax or financial situation, it cannot go into details about how this gain will work and instead urge customers to seek financial advice. The Company says that it takes this approach as it feels it is the

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most prudent to ensure customers receive correct information appropriate for their financial situation and whether they do so or not is their decision.

The Company submit that had the First Complainant asked for his surrender instruction to be placed on hold during his call with Mr C it would of course have obliged.

The Company states that the First Complainant did not mention he misunderstood Chargeable Gain and what tax applies to gains on a Bond, nor did he call back at a later time to query what his options would be regarding offsetting this gain. The Company say that had he done so, it would have referred him to a Financial Adviser, as Mr C did on his call. The Company submit that it also appears the First Complainant did not refer to the Key Features of the policy which outline how a Chargeable Gain works, and instead proceeded based on his own interpretation of Chargeable Gain.

The Company's position is that the Bond is deemed higher risk due to the various tax implications associated with it. The Company says that it always recommends that customers seek financial advice regarding this product. The Company submit that it does not provide financial or taxation advice. The Company states that in this case, its duty was to release funds to the customer's as per their request as soon as possible, in keeping with its role as the administrators of the bond. The Company states that when processing the request, it identified a high Chargeable Gain and contacted the customer.

The Company submit that it is under no obligation to do so but felt it represented the right thing to do. The Company says that when checking with the First Complainant, it waited for his confirmation before proceeding. The Company states that in line with its remit of administering the Bond it proceeded as requested.

Evidence and submissions

Complainants' submission of 21st May 2017

> ***"The Company's Chargeable Gain Calculation and related communications***
>
> *"After all this time, I find it astonishing that neither [the Company representative], nor his colleagues during the encashment process, have been able to explain in understandable terms important matters relating to the encashment, such as Chargeable Gain or Chargeable Event. As stated in our letter dated 5th May: " … As previously reported, we were directed to contact [the Company] for the encashment. They are the experts on all matters relating to their [Bond] policy and encashment process. Any communications or information from [the Company] should be clear, comprehensive, timely and understood by the customer. We expected high standards of customer care.*
>
> *It is evident from the process and the lengthy dispute correspondence that [the Company] did neither share, nor explain adequately, important information with us as customers. At a minimum, customer care and duty of care should incorporate*

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standards of due skill, care and diligence; being able to demonstrate due regard for the interests of the customer and also that they have been treated fairly. "

Chargeable Gain and Chargeable Event

I note, and I am sure the Ombudsman will also, that [the Company] is still, even at this late stage, trying to influence change to what was actually communicated during the second of the two calls making up the 14 minute encashment process. I repeat some of the key words used by ("WC") during his call in relation to the Chargeable Gain on encashment: ***"...That's what it was."*** *It is undeniable that WC used the past tense to explain that that was the Chargeable Gain on encashment.*

In relation to WC's call, which has been covered extensively in previous correspondence, the comments below are undeniable, namely that during the call from WC:-

1) *[The Company] did not explicitly state that the gain was potential;*
2) *[The Company] did not state that the encashment transaction could be aborted;*
3) *[The Company] did not state the basis of calculation of the Chargeable Gain;*
4) *[The Company] did not explain their specialist use of the term Chargeable Gain or its income tax implications;*
5) *[The Company] did not use the term Chargeable Event or explain its meaning.*

I hope the Ombudsman will ask [the Company] to stick to the facts, not what [the Company] would like to have occurred during the encashment process. Otherwise, I consider [the Company] are wasting everyone's time".

<u>Bond Application Form</u>

"Financial Adviser's details

..

Please state your preferred way(s) for [the Company] to contact you regarding matters relating to [the] Bond". "E-mail" was selected and the Adviser's e-mail was set out.

Part 4d – Authorising your financial adviser to give investment instructions on your behalf. …

I /We authorise the financial adviser named on page 1 of this application form to:

1. *Sell such investments as are required to maintain a balance in the .. Bank Account to cover charges, expenses and withdrawals.*
2. *Make investment switches, i.e. buy and sell any investments held within my .. Bond.*
3. *Change investment instructions for recurrent single payments".*

"Yes" was selected for the above authorisations.

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Policy Provisions

"Taking instructions from you / your Financial Adviser
1.14. If your Financial Adviser no longer acts for you (For any reason) and you do not appoint another Financial Adviser we may require that you complete a declaration confirming you do not wish the support of a Financial Adviser for any future dealings between ourselves and that you would be relying on your own judgement as to the suitability of any actions or decisions taken in relation to your Bond"

"10. Taking Regular Withdrawals
10.1 Taking Regular Withdrawals may have some tax consequences for you so you should obtain tax advise before making a decision to take Regular Withdrawals. The tax treatment of Regular Withdrawals will depend on your personal circumstances and may change. Please note that any Adviser Charge paid from within your Bond will count as a withdrawal and will count as part of the 5% tax deferred withdrawal allowance permitted by Her Majesty's Revenue and Customs. We recommend that you speak to your Financial Adviser who can provide you with details of the terms and conditions of the Adviser Charges between you and them".

"11.12. The tax treatment of the Cash-in Value of the Policies in your Bond will depend on your personal circumstances and may change. If we are not advised otherwise we will process any Partial Cash-in on the assumption that it will incur the minimum tax gain. You should seek tax advice to understand the tax treatment of the Cash-in Value of the Policies in your Bond".

Annex 1 Glossary – "Chargeable Gain" and "Chargeable Event" are not defined.

Key Features

"4.8 What about tax?
Withdrawals

The Chargeable event certificate

The Chargeable event certificate that the Complainants received on 13 January 2015 (which was in the normal course of events received some months after the Company's telephone call) advised as follows:

"Important Income tax information
..
Date of chargeable event 30th May 2013
You should tell HM Revenue & Customs about this certificate as you may have extra tax to pay.
..

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A gain is triggered by certain events and is usually the difference between the plan value and the amount paid into it. Please read the following page – it explains how a chargeable gain might affect you. If you need more information about this or any other tax matters, please call your tax advisor or HM Revenue & Customs helpline on 0845 ….
How this might affect you

Will you have to pay income tax? Tax is not treated as having been paid on these gains. You will have to pay tax on the gain at your marginal rate- starting, lower or higher savings rate of tax"

Company's Call Log of 31st May 2013

"User Name WC
"part surrender for £600,017.68 passed for authorisation by tt…No Client warnings, payment being made to a known account and letters issued. This encashment will result in a large CG, I have contact the client and he is happy to proceed".

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 on 23rd August 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 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.

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Submissions dated 12th September 2018 from the Provider and submissions dated 21st September 2018 from the Complainants, were received by the Financial Services and Pensions Ombudsman after the issue of a Preliminary Decision to the parties. These submissions were exchanged between the parties and an opportunity was made available to both parties for any additional observations arising from the said additional submissions.

The content of those submissions however has not persuaded me to alter my previous preliminary determination and, consequently, the final determination of this office is set out below".

Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

The issue for investigation and adjudication is whether the Company clearly and reasonably communicated with the Complainants on the operation of an encashment relative to the Chargeable Gain that arose.

Analysis

I am satisfied from the evidence that the Complainants were aware that there was a tax implication with the encashment and the advice received from the Company representative was that a Financial Advisor should be consulted. However, I am not satisfied that the greatest information that could have been given by the Company representative was given or indeed given in the most appropriate manner.

In its post Preliminary Decision submission, the Provider clarified that the reason it called and spoke with the First Complainant directly (instead of contacting their appointed Advisor) was because the surrender instruction was provided by the First Complainant calling the Provider to provide this instruction. The Provider states that it was therefore reasonable for it to call him to discuss the chargeable gain as his role was the instigator and decision maker. The reason given by the Provider for not contacting the Independent Financial Advisor was that it would slow down the process.

In response, the Complainants state that they were content to deal directly with the Provider because they believed that they would be dealing with the Provider's own trained customer service providers whom they reasonably expected to look after their best interests as the service providers are experts on the Provider's product. The Complainants state that it is evident that the call failed to provide adequate guidance or information to assist them through vital issues such as the meaning or implications of the use of the term "gain" or to explain how the gain had been arisen or been calculated.

The Company had previously contacted the Complainants' Financial Advisor to discuss whether the encashment was on a minimum or maximum gain basis. And the instructions given on the Application for the Bond was that communications were to be with the Financial Advisor. It is also noted that the Policy Provisions state that:

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> *"1.14. If your Financial Adviser no longer acts for you (For any reason) and you do not appoint another Financial Adviser we may require that you complete a declaration confirming you do not wish the support of a Financial Adviser for any future dealings between ourselves and that you would be relying on your own judgement as to the suitability of any actions or decisions taken in relation to your Bond"*

The Company telephoned the First Complainant directly and the call was described by the Company representative as a "quick call" and it lasted a little over 2 minutes in duration. A recording of the telephone call has been provided in evidence I consider that given the importance of the message that was been communicated directly to the Complainants, greater and better information could have been provided at this time. In this "quick call" the Company representative was communicating that there was a substantial "chargeable gain". When the First Complainant queried whether such a gain could be shared between himself and his wife, the Company representative advised that a Financial Advisor should be consulted. A follow up in writing, to the Complainants by the Representative in relation to the Chargeable Gain, may have been the prudent course of action. It may also have been prudent of the Provider to follow up in writing with the Independent Financial Advisor (that was on record) of what had been discussed in the call with the First Complainant.

I consider that the Company representative could have been clearer in his communication of the chargeable gain / chargeable event.

I consider that the Company should have been clearer in its description of what had happened when the Complainants had requested an encashment of monies. What should have been communicated by the Company was that a 'chargeable event' had occurred. A chargeable event is defined by the Company as the "intervention" which results in the Gain and it gives the example of a partial surrender. This should have been followed by an explanation of what was meant by a Chargeable Gain. The Company states that the Chargeable Gain is the resulting tax liability due as a result of the Chargeable Event and that a Gain is only crystallised after the Chargeable Event. I consider that in the absence of an explanation of the meaning of Chargeable Event, which the Company representative did not explain in his telephone call with the First Complainant, the First Complainant did not have the opportunity to question same, at that time. However, it must be noted the Company representative only used the phrase Chargeable Gain and did not make reference to the event leading to that Gain, that is that a Chargeable event led to same. However, it was only on the First Complainant's confirmation to proceed with the encashment that the Chargeable Gain crystallised.

I consider that the Company representative should have better explained that the transaction could have been halted pending a consideration of the tax implications of the Chargeable Gain, but again this was not communicated to the Complainants.

I consider that the Company representative should have greater highlighted how the gain arose. The Company representative could easily have referred the First Complainant to his policy documentation for an explanation of the Chargeable Gain when he had questioned the Company representative about its taxable nature.

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The First Complainant did question the effect of the Chargeable Gain, which did indicate a lack of understanding of what that meant, and he did this by questioning whether it was something that could be offset by himself and his wife.

It is of note that the Chargeable Event Certificate would not have issued for some time after the encashment and this Certificate had information / advice on what a Chargeable Gain meant and its tax implications.

A chargeable event certificate covers the investment year. This generally runs from the date the policy is taken out.

While independent advice is the ideal with such transactions, particularly in relation to the taxation side of the transaction it is good practice that the tax implications be spelled out by the Company when the event leading to a Chargeable Gain occurs, rather than waiting until after the individual's decision has been implemented (as happened here). I consider that what was missing here from the communication with the First Complainant was a greater explanation of what had happened regarding the gain. Had this occurred, the First Complainant would have had the opportunity to fully appraise himself before committing to the encashment in the manner proposed and / or he could have advised the Company of his alternative plans with regard to the encashment or question the Company further on the tax issue. This I consider would not encroach on the Company's stance in not providing taxation advise, but would be considered to be the basic and reasonable information that could be provided during the encashment process.

As regards the provision of information it is acknowledged that a Provider must ensure that information it provides to a consumer is clear, accurate, and up to date and that key information is brought to the attention of the consumer. I am satisfied that the Company's failure to give the fullest information (and at the most relevant time) on the Chargeable Event / Gain did not meet this requirement.

However, the Complainants must take responsibility as regards the level of enquires they made themselves prior to the encashment, after being told about the Chargeable Gain and when advised to seek clarity on the matter from a Financial Adviser. Those enquires should have been initially made as to what was meant by a "Chargeable Gain" and later as to how much tax would be deducted and what was the most tax efficient way for them to deal with the Chargeable Gain. On the latter point, enquiries by the Complainant from his Financial Advisor, the Revenue or other independent advice was necessary. It is noted in this regard that the Complainant had not questioned the Company representative as to what was meant by a "Chargeable Gain" but operated on the basis that it was a Gain that could be offset against losses, on a capital gain / loss basis.

Investment encashment and taxation management is a major decision making area that a person has to consider and requires great care from all parties connected with the process that is involved. Ultimately, the Provider is not responsible for the Complainants' tax liability or for the incorrect steps taken by the Complainants in relation to same.

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I conclude that a payment of what the Complainants considers are their full losses (that includes the tax paid) is not on balance the appropriate remedy here, I consider that the more appropriate remedy is that a compensatory payment should be made by the Company.

Having examined the totality of the evidence, I partially uphold the complaint. Accordingly, it is my Legally Binding Decision that the complaint is partially upheld and that the Company should make a compensatory payment in the amount of Stg£5,000 (five thousand pounds sterling) in recognition of its lapses identified above.

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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)(g).***

- Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider make a compensatory payment to the Complainants in the sum of Stg£5,000 to an account of the Complainants' 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.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

28th September 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.