



<u>Decision Ref:</u>	2018-0183
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Unit Linked Whole-of-Life
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service Delayed or inadequate communication
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The complaint made by Ms JSB (the First Complainant) & Mr JRB (the Second Complainant) and relates to two Personal Investment Bonds (the Bonds) which were sold by independent financial advisers.

The Bonds were issued in the name of Mr DB on a Joint Life last death basis with the lives assured on the first Bond being the Complainants' father Mr DB and the Second Complainant, and the lives assured on the second Bond being Mr DB and the First Complainant. The Bonds are single premium, unit-linked, investment contracts. The Initial investment premium on each Bond was £176,000 and both were put into force on 11 May 2015. The Sum Assured is 101% of the Bond value on the date of notification of the last death. The death of the owner and first Life Assured, Mr DB, was notified to the Provider on 24 August 2015 by the Second Complainant.

The complaint is that the Provider did not initially correctly and reasonably communicate or process the requirements for putting the Bonds into the Complainants' ownership.

The Complainants' Case

The Complainants' complaint is that they are unhappy with the process and service received as part of their request to change ownership of each Bond, following the death of the owner,

Mr DB. Instructions were received by the Provider to change ownership of the Bonds to Mr JRB and to Ms JSB.

The Complainants state that the Provider did not follow their instructions with regard to the change of ownership. The Complainants say that the Provider did not fully explain to the Complainants that the legal procedure following death of an owner is to change ownership to the Executors of the Estate of the Life Assured who can then instruct further changes.

The Complainants also refer to what they state was the Provider's wrongful action of putting the ownership of the Bond in the name of another person, and the consequences that followed from same.

The Provider's Case

The Provider states that it accepts that it did not explain the death claim process fully to the Complainants or that ownership would be transferred jointly to the Executors, who would then have full control of the Bonds.

The Executors could then instruct transfer ownership to themselves as individuals once the Provider's requirements had been satisfied. This was completed on 23 February 2016 and confirmed to the Clients. It was at this point that the Complainants were advised that the Executors, jointly, were noted as owners of the Bonds.

Following receipt of the Endorsements confirming change of ownership jointly to the Executors the Complainants contacted the Provider and complained that it had not acted on their instructions to change the ownership solely to JRB and JSB.

Requirements to change ownership, by legal Deed of Assignment, were issued on 15 March 2017. Following receipt of the required documentation the ownership of each Bond was Endorsed on the Contract in line with the Legal Deeds and the clients instructions. This was confirmed to the clients on 12 April 2016 along with Contract Endorsements.

The Provider does not accept the allegation of maladministration raised by the Complainants in respect of the transfer of ownership of the Bonds following the death of Mr. DB. The Provider does accept that it did not clearly explain the process of transferring ownership to the Executors named on the Grant of Probate received from the Complainants following the death of an owner.

The Provider accepts that by not explaining to the Complainants the procedure for transferring ownership of the Bonds following the passing of their father, Mr DB, to the Executors jointly and then assigning ownership away from the Estate, that it delayed the

Complainants ultimate objective of transferring ownership to them in their capacity as individuals.

The Provider also accepts that when the Complainants sent a follow up letter to their complaint in 2016 it should have communicated that it had been contacted by the Financial Services Ombudsman (“FSO”) and that the response would be issued by it.

The Provider does not accept the allegation of maladministration raised by the Complainants in respect of the transfer of ownership of the Bonds following the death of the Bond(s) Owner, Mr DB.

The Provider states that it followed its correct procedure and transferred ownership of the Bonds to the Executors of the Estate of Mr DB, named on the Grant of Probate received from the Complainants.

The Provider does accept, however, that it did not explain its process clearly to the Complainants in respect of the transfer of ownership to the Executors.

The Provider states that it regrets that the Complainants remain unhappy with the service provided and acknowledge that the Complainants should have been made aware of the required procedural sequence, to change ownership to each of them individually, at the outset of the process following the death of Mr DB. In recognition of this the Provider offered compensation of Stg£300 to each of the Complainants. It is the Provider’s position that the Bonds have at all times been applied strictly in accordance with the Contract Conditions.

Further submissions from the parties

First Complainant’s submission of 28th August 2017

It is the First Complainant’s position that the most important communication with the Provider is the one where she was told for the first time that her inheritance was in another person’s name and she had no right to communicate with the Provider in relation to the Bond.

The First Complainant states that it is also important to note that the Provider had no intention of informing her that her inheritance was now shared between her brother and another person (the Provider’s incorrect insertion of the name Ms. SB on its records). The First Complainant states that the circumstances were that she was not contacted by the Provider at all. The Complainant states that she understood that the situation before her father's death because she had discovered that there were some very unsavoury practices going on in U.K. at this time. The First Complainant states that one practice is to refuse to speak to executors, beneficiaries, attorneys. The First Complainant submits that organisations, including HMRC, choose somebody they want to talk to and exclude all other officers. The First Complainant says that thus, the Provider decided that her brother was more of an executor/beneficiary/attorney than she was.

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The First Complainant states that after her father's death she eventually became a client of the Provider, i.e. after Probate. The First Complainant submits that she still heard nothing from the Provider, it still did not contact her by telephone, letter or otherwise. The First Complainant states that one day this seemed very odd to her and so she placed a call to the Provider. The First Complainant's position is that this was when she was told emphatically that she had nothing to do with Mr. JB's and Ms. SB's inheritance. The First Complainant states that her verbal protests carried no weight at all and so her brother and herself started to ask questions in writing. The First Complainant states that they did in fact spell out that during the transition period, which had not been explained to them by their financial advisor or anyone else, the whole line of inheritance was disrupted. The First Complainant submits that she has never been told why Ms. SB was recorded as the owner of the bonds or received any indication as to when the Provider was thinking of telling her about it.

The Second Complainant's submission of 4/09/2017

The Second Complainant states that he finds that the Provider's response is both flawed and inadequate. The Second Complainant says that the Provider has not comprehended the severity with which his sister and himself view the mistakes and deliberate deceptions which characterised the Provider's interactions with them.

The Second Complainant says that the Provider has misunderstood the purpose of the letter dated 2 March 2016. The Second Complainant states that this was not a letter of complaint, and that the purpose of the letter was clearly stated in the letter.

"This letter is to confirm our understanding of the process so far, and intended process with respect to the above mentioned bonds, in response to our letter of 10 February. "

The Second Complainant states that unexpectedly the Provider decided to process this as a letter of complaint, and did not respond to the substantive request made in the letter, namely:

"Please acknowledge receipt of this letter in writing by return post to both [Mr JB and Ms. JB], and confirm that we have now a correct understanding of the process. "

The Second Complainant states that the Provider's response letter dated 14 March 2016 from a Complaint Handler went some way to explain the Provider's errors but did not address one of the most severe concerns, or answer specific points.

The Second Complainant submits that their letter of 11 April 2016 was a letter of complaint. The Second Complainant states that the Provider acknowledged it, but to this date have not replied to it. The Second Complainant states that in paragraph 18 of the Provider's response it makes a remark about that letter which was clearly headed "Complaint" and was three pages long, referring to it as "a follow up letter". The Second Complainant says that this was not a follow up letter, but was the substantive letter of complaint.

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The Second Complainant states that the Provider accepted that it failed to comply with the lawfully given instructions of the Executors of the Estate of Mr. DB. The Second Complainant's position is that when the Provider received these instructions, if it was unable to comply with them, then it should have responded to that effect. The Second Complainant says that instead the Provider invented a fictitious person called Ms. SB, and placed £360,000 worth of investments in her name jointly with himself.

The Second Complainant says that in paragraph 13 of its response, the Provider deny maladministration. The Second Complainant states he does not know the formal definition of maladministration, but to place invested funds into the name of a fictitious person, without any authority, indeed to change the ownership of any investments at all without proper authority from the owner of the investments, or in this case the lawful representatives of the estate of the owner, sounds like maladministration to him.

The Second Complainant submits that in paragraph 2 of the Provider's response it does not even mention that it had changed the ownership of the investment into the joint names of himself and the fictitious Ms. SB. The Second Complainant states that this error was then compounded when his sister telephoned the Provider on 26 February 2016 to enquire as to progress and the call handler refused to deal with her, an appointed Executor of Mr. DB's estate.

It is the Second Complainant's position that regrettably the Provider has been unable to retrieve the recording of that telephone call, and the call handler's notes do not do justice to the content of the call, in which the call handler emphatically refused to discuss the matter with her insisting only Ms. SB could talk about the bonds.

The Second Complainant states that the fact that the Provider had not mentioned this in its summary of the dispute demonstrates that it has not comprehended the severity of this error. The Second Complainant states that he notes that even now the Provider has managed to invent a third party with the name Ms. J Susan B as a party to the dispute and that this is characteristic of the Provider's sloppiness.

The Second Complainant says that in paragraph 21 the Provider again denies maladministration, in that it states that it acted correctly and transferred the ownership of the Bonds to the Executors of the Estate. The Second Complainant says that is not what the Provider did. The Second Complainant states that without lawful authority the Provider transferred the ownership of the bonds to a non-existent person Ms. SB and himself.

The Second Complainant submits that the Provider did not have authority to change the ownership of the bonds at all, except to place one in his name and one in his sister's name.

The Second Complainant states that the letter of 11 April 2016, the Complaint Letter, included many other detailed aspects of the deception and incompetence of the Provider, to mention just two:

- Call handler LA stated on 14 March that the Provider could not use a next day delivery service to send documents. On 15 March call handler C stated that

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documents had been dispatched using a next day delivery service. They were not in fact dispatched until 21 March.

- Call handler LA stated on 8 April that the Provider did not have the ability to transfer a call to a specified person in the relevant business office. Under pressure she then transferred the call.

The Second Complainant sought a response to every point mentioned in the Complaint Letter, as he considered that this letter has remained unanswered.

The Second Complainant says that the Provider is seeking to portray its unlawful acts as a minor infraction and inconvenience. The Second Complainant submits that the Provider's action to invent a fictitious person and to place ownership of the bonds in her name is portrayed as a clerical error. The Second Complainant considers that throughout the whole process the Provider has demonstrated deception and incompetence.

The Second Complainant states that it is normal business practice in the financial services industry for fees and charges to be calculated based the amount of funds invested, and he states he sees no reason why that practice should not apply in respect of compensation from the Provider for its actions. The Second Complainant states that he considers 1% of the amount invested to be an appropriate amount. The Second Complainant says that in the period 1 May 2016 to 1 May 2017 he has paid the Provider £2,057.52 in management fees. The Complainants consider that a refund of those fees would be suitable compensation.

The Provider's response to the additional submission, concerning the Bond

It is the Complainant's position that the letter dated 2 March 2016 was not a complaint and that the Provider decided to process this as a letter of complaint, but did not respond to the substantive request made in the letter.

The Provider's response is that the letter of 2 March 2016 was treated as a formal complaint due to the expression of dissatisfaction confirmed in the correspondence, extracted here:

"We find that your handling of this matter has been unsatisfactory so far".

"You have made an error in recording the name of [the First Complainant] as a joint owner of the Bonds, instead recording the name as [SJB]"

The Provider states that a formal response was sent on 14 March 2016 answering all the concerns raised with respect to its handling of the transfer of ownership of the Bonds to the Executors following the death of Mr. DB.

The letter stated that it is the Provider's process to transfer the ownership of the Bonds to the named Executors on the Grant of Probate. The Provider states that it acknowledged that this should have been explained to the Executors at the beginning of the process. The Provider says it also confirmed that the Executors could then transfer ownership to individual persons should they wish and that the Provider was in the process of issuing requirements to Mr JB and Ms JSB for this purpose.

As regards the Letter of 11 April 2016, which the Complainants state was a complaint and while acknowledged was not replied to, the Provider's position is that the client's complaint letter dated 11 April 2016 was received in its Dublin administration office on 14 April 2016. At the same time on 15 April 2016 the Provider received the referral from the FSO referring to the same complaint.

The Provider states that it accepts that when the Complainants sent this follow up letter to their complaint, it should have communicated that it had been contacted by the FSO and that the response would be issued by them.

The Provider states that as regards any acceptance that it failed to comply with the lawfully given instructions of the Executors of the Estate of DB, the Provider submits that it does not accept that it failed to comply with the lawfully given instructions of the Executors.

The Provider does accept that it did not explain fully the standard process of transferring the ownership of the Bonds to the Executors following the death of the sole Bond holder. The Provider submits that its letter of 14 March explained the procedure and the ability of the Executors to further assign ownership once the initial change of ownership to the Executors as complete.

The Provider states that it accepts that the name of Ms. JSB was incorrectly recorded on both Bonds as Ms. SJB for a very short period of time. The Provider states that this was rectified when brought to the Provider's attention and an apology provided to the client.

The Complainants' position was that the Provider was denying maladministration — and refer to the transfer of ownership of the bonds into the incorrect name. The Provider's response is that it accepts that an administrative error occurred in noting the name of Ms. JSB as Ms. SJB incorrectly when updating the ownership of the Bonds to her as joint Executor.

The Complainants state that Ms JSB telephoned the Provider on 26 February 2016 to discuss the progress of the transfer of ownership but the Provider representative refused to speak to her insisting only that SB could discuss the bond.

The Provider's response is that it was noted during the call by its call handler that the name of Ms. B had been noted incorrectly on the Bond. This error was rectified and its systems updated to reflect the correct name of JSB. The call handler agreed to call Ms. JSB back once this had been looked into. A call was made to Ms. JSB and a message left. The Provider submits that it does not have the recording of this call so is unable to verify what was discussed however it states that it has no reason to believe that the documented call notes are incorrect.

The Complainants state that the Provider did not have any authority to transfer ownership of the bonds, except to place one in the name of JB and one in the name of JSB. The Provider's response is that the Bonds were transferred into the joint names of the Executors of the estate of DB named on the Grant of Probate received. The Provider states that this is the process it follows following the death of a Bond owner. The Provider accepts it did not inform the clients of this procedure from the outset and clearly explain the process.

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The Provider accepts that the name of one of the Executors was noted incorrectly. This the Provider says was an administrative error and was immediately rectified once the error was brought to its attention. Once the Bonds were transferred into the names of the Executors they could then operate the investments and transfer the ownership into their names as individuals, and / or transfer ownership to other individuals once all requirements had been satisfied.

The Complainants' state that their letter of 11 April 2016, the complaint letter, included many other detailed aspects of *the deception and incompetence* from the Provider:

The Complainants state that Call Handler LA stated on 14 March that the Provider could not use next day delivery service to send documents. On 15 March call handler C stated that the documents had been dispatched using a next day delivery service. The Complainants' position is that they were not in fact dispatched until 21 March.

The Provider's response is that it does not normally issue documents by next day delivery however if a client requests this it can send as an exception. The Provider states that there was a delay in sending out these documents to the clients and it apologises for this.

The Complainants state that Call Handler LA stated on 8 April that the Provider did not have the ability to transfer a call to a specified person in the relevant business office. Under pressure she transferred the call.

The Provider's response is that its Call Centre agents answer all calls from clients and can arrange a call back from its administration teams if requested by the client. The Provider submits that normal procedure would not be to transfer calls to back office individuals, but also confirm that calls can physically be transferred to an administration area if required, if the required back office individual is not available a call back would be offered.

The Complainants submit that they would like management fees of £2,057.52 as compensation.

The Provider's response is that it does not believe that the complaint warrants return of Management Fees as these are contract based. The Provider states that its previous response confirms its regret that the Complainants remain unhappy with the service provided and continue to acknowledge that they should have been made aware, earlier in the process, of the procedural sequence to change ownership to each of them individually. In recognition of this the Provider has offered compensation of £300 to each of the Complainants.

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 22nd October 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.

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

Analysis

The issue for investigation and adjudication is whether the Provider correctly and reasonably communicated / processed the requirements for putting the Bonds into the Complainants' ownership.

It is accepted by the Provider that the administration service provided to the Complainants was not of the highest standard, in particular the following is noted:

- It is the Provider's process to transfer the ownership of the Bonds to the named Executors on the Grant of Probate. The Provider states that it acknowledged that this should have been explained to the Executors (the Complainants) at the beginning of the process.
- The Provider states that it accepts that when the Complainants sent a follow up letter to their complaint, it should have communicated to them that it had been contacted by the Financial Services Ombudsman and that the response would be issued to that office.
- The Provider states that it accepts that the name of the First Complainant was incorrectly recorded on both Bonds as Ms. Susan .. rather than JSB (S being for Sarah) for a very short period of time. The Provider states that this was rectified when brought to the Provider's attention and an apology provided to the client.

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- The Complainants state that Ms JSB telephoned the Provider on 26 February 2016 to discuss the progress of the transfer of ownership, but the Provider representative refused to speak to her insisting only that Ms. SB (the incorrectly recorded person) could discuss the bond. The Provider submits that it does not have the recording of this call so is unable to verify what was discussed. However, I consider that was an unacceptable position for the First Complainant to be faced with this information from the Provider, when she telephoned, in particular that she could not discuss the Bond with the Provider, as another named person was incorrectly recorded on the Provider's records as being the owner / executor.
- The Complainants experienced delays in response to their correspondences.
- In a correspondence dated 2nd October 2017 the Provider again mixed up the names of the parties involved. In paragraphs 5 and 7 the Provider refers to the deceased Bond Holder Mr. DB when it should be referring to the Second Complainant Mr. JB.
- The unfortunate position is that the Provider did not establish one point of contact from the outset from the Complainants in their capacity as executors, (or come to some formal agreement with both appointed executors as to where and to whom matters were to be communicated, either to one or both executors) and as a result there was confusion caused in relation to who should be receiving correspondences and communicating with the Provider on the matter. The First Complainant was justifiably concerned that the Provider was apparently ignoring her as executor and intended owner of one of the Bonds.
- The Provider initially received correspondence from Mr. JRB, but sent the response on that correspondence to Ms. JSB's e-mail address. This caused confusion as Mr JRB was awaiting the response to his correspondence, not knowing that the Provider had replied to his sister.

It is a reasonable requirement that a Provider should ensure that all information it provides to a customer is clear, accurate, and that key information is brought to the customer's attention. The method of presentation and communication should not disguise, diminish or obscure important information. It is also a reasonable requirement that a Provider would supply information to a customer on a timely basis and in doing so, have regard to the urgency of the situation; and the time necessary for the customer to absorb and react to the information provided.

This has been a protracted complaint with arguments and counter arguments and I take the view that in order to do justice between the parties and to bring finality to the dispute, an alternative remedy to that made by the Provider in respect of its failings is merited. I consider that the Complainants were entitled to a better service from the Provider when it was administering the transfer of the Bonds into their own names / ownership.

The instances outlined above are all unacceptable and clearly fall below the level of service a customer should reasonably receive from a Financial Service Provider. I accept that some

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distress and inconvenience was caused by the Provider in its handling of these matters. The stress and inconvenience caused to the Complainants at a time of a bereavement is particularly noted and was something that the Provider could have reasonably avoided if it had the correct and adequate procedures in place to deal with such eventualities.

I accept that the Complainants would have reasonably wanted and were entitled to expect to be correctly informed about how to effect the transfer of their father's Bond into their names / ownership, and to not have the upset and inconvenience of finding out that an incorrect name for the owner was recorded by the Provider. What is of particular note here is that the error subsisted for a time and it was the Complainants' who uncovered the error, not the Provider, as would reasonably be expected. I accept that accurate information should have been available to the Complainants at all stages here, so as to allow the Complainants to deal with their roles as executor and future owners of the Bonds.

While I do not consider that the errors and omissions of the Provider merit a direction that the Provider should return the fees associated with the Bond, I accept that for the stress and inconvenience that has been caused by the Provider, a greater payment than that offered by the Provider to the Complainants, is reasonably merited in this case. Having regard to all of the above it is my Legally Binding Decision that this complaint is upheld and I direct that the Provider pay each of the Complainants Stg£1,500 (one thousand and five hundred pounds sterling), instead of the Stg£300 offered to each Complainant by the Provider.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld on the grounds prescribed in **Section 60(20)(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 each of the Complainants in the sum of Stg£1,500, to accounts of the Complainants' choosing, within a period of 35 days of the nomination of the account details by the Complainants to the provider. I also direct that interest is to be paid by the Provider on the said compensatory payments, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said accounts 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

14th November 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.