



<b><u>Decision Ref:</u></b>	2019-0047
<b><u>Sector:</u></b>	Investment
<b><u>Product / Service:</u></b>	Bonds
<b><u>Conduct(s) complained of:</u></b>	Dissatisfaction with final fund value Delayed or inadequate communication Fees & charges applied Alleged poor management of fund
<b><u>Outcome:</u></b>	Rejected

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

**Background**

The Complainants, four siblings, invested GBP £163,144.50 in an International Bond with the Provider on **5 October 2010**. Following the maturity of this investment after five years, the Complainants received from the Provider a final surrender payment of GBP £156,171.40 on **24 November 2015**.

**The Complainants' Case**

The Complainants set out their complaint, as follows:

*“This product was chosen as it said it provided 100% capital protection. It was linked to 15 FTSE 100 companies. It was tied in for 5 years with no changes allowed. It states that “the coupon each year can never be less than zero. At the end of 5 years on maturity 100% of the capital is returned plus the total of the 5 yearly returns”. The product only made any profit in the first three months and this coupon was added. At no stage did they choose different companies to invest in despite us querying this with the financial adviser. We were informed that they were fixed for 5 years’ duration despite the fact that one company was consistently failing and clearly needed to be reviewed. I received a statement in October 2015 stating the value and*

*the charges for the bond. I received a form to close the bond as the five years had elapsed. The wrong form was initially sent and had to be changed. As the payment was due to be split between four siblings [the Provider] initially suggested that a joint bank account was required but finally agreed that if we all signed the form it could be paid into one of my accounts. This form was completed.*

*We still did not receive a letter saying how much was to be paid out or when. I phoned [the Provider] to chase it up just to discover that it had been paid into my account already, at an amount lower than expected. Yearly charges had been added to the account even though the adviser said that the charges weren't applicable. The amount did not relate to any information we had been provided with at any stage. I am unable to understand why there are such significant charges, bearing in mind that no changes were allowed to be made to the policy so it was clearly not actively managed in any way. I appreciate that [the Provider] cannot predict how FTSE 100 companies will perform, so can not be held responsible for this. However if you do nothing to manage a fund, what are the charges for?"*

In this regard, the Complainants are dissatisfied with the charges levied on their International Bond and submit, as follows:

*"The set up fee which continues each year is possibly understandable. The other fees are excessive for a fund which clearly involved no management at all. I would like repayment of the fees for each quarter.*

*The yearly charge on initial payment...is on average £197 a quarter = £788 a year x 5 years = £3,940 plus additional yearly charge of £197 a quarter = £3940 for 5 years".*

As a result, the Complainants seek a refund from the Provider "for fees = £7,880".

In addition, the Complainants are dissatisfied with the way the Provider handled the full surrender of the Bond.

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

Provider records indicate that the Complainants total initial premium into their International Bond on 5 October 2010 was GBP £163,144.50. Of this, GBP £158,250.17 was invested in the particular deposit account that they had chosen to invest in, whilst the remainder, GBP £4,894.33, that is, 3% of the total initial premium, was placed into the transaction account, in accordance with the terms and conditions. The investment matured five years later and the Complainant's International Bond was fully surrendered on 19 November 2015, with the final surrender payment paid to the Complainants on 24 November 2015 in the amount of GBP £156,171.40.

The Provider is the regulated insurance company which issued the International Bond, however it does not operate or manage any of the permitted assets available under the Bond nor does it provide advice in relation to these assets.

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In this regard, the Provider is an execution only provider and it does not make any recommendations or provide any financial advice about any of the permitted assets which a policyholder may choose to be invested in and the Provider is satisfied that this is stated in the information provided to the policyholders and/or the financial advisers at the outset. As a result, the Provider does not take any responsibility for the financial advice provided to the Complainants prior to their investing in the Bond.

The Provider notes that the terms and conditions of the International Bond expressly state that the policyholders choose the permitted assets entirely at their own risk and it is for the policyholders or their advisers to make any checks that they consider necessary. In this regard, the Complainants, in conjunction with their financial adviser, chose to invest in the particular deposit account. It was a matter for the Complainants to seek and obtain the appropriate financial advice before deciding to invest and they should have ensured before proceeding, that they were fully aware of the nature, risks and specific details of the product that they were investing in before doing so.

The Provider is also satisfied that it fully disclosed the level and nature of all Bond charges in the product literature it provided to the Complainants at inception. In this regard, the Provider is satisfied that it is clear that charges on the Bond do not relate to any form of investment management, as the Provider makes it clear that it does not provide investment management of the permitted assets. All Bond charges were set out in the Plan Schedule provided to the Complainants at inception.

In addition, Section 9 of the International Portfolio Bond Terms and Conditions booklet provided to the Complainants at inception confirmed the applicable charges and fees. Furthermore, the Provider issued the Complainants with quarterly valuation statements showing all charges deducted during the relevant period.

The Provider received from the Complainants a cash-in request form on **11 November 2015** indicating that they wanted to fully surrender the bond. Following the maturity of their investment after 5 years, an amount of GBP £163,012.85 was credited to the Complainants' transaction account. This represented a positive return of GBP £4,762.68 on the investment of GBP £158,250.17 (that is, the amount invested in the particular deposit account after 3% had been placed into the transaction account). Prior to issuing the final surrender payment, it was necessary to clear the outstanding charges that had accrued on the Bond. These charges amounted in total to GBP £6,841.45. Once these charges had been cleared, the Provider issued the final surrender payment to the Complainants on **24 November 2015** in the amount of GBP £156,171.40. The Provider is satisfied that this final surrender payment was correct.

The Provider is satisfied that the surrender of the Complainant's International Bond was, following receipt of the signed cash-in request form, processed in accordance with its standard processing timescales. The Provider cannot find any evidence that the wrong cash-in request form was first provided to the Complainants.

The Provider wrote to the Complainants on 28 September 2015 to advise that the particular deposit account in which they had invested, was maturing on 6 October 2015. The Provider notes that there is a distinction between the maturity of the permitted asset and the surrender of the Bond. At the time of the maturity of the permitted asset, the Complainants had the option to reinvest in another permitted asset, but chose instead to surrender the Bond, which was entirely at their discretion and the Provider had to await their instructions in this regard, before processing the full surrender.

Accordingly, the Provider is satisfied that it at all times administered the Complainants' International Bond in accordance with the agreed terms and conditions.

### **The Complaint for Adjudication**

The Complainants' complaint is that the Provider failed to correctly administer their International Bond.

### **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 6 February 2019, 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.

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The complaint at hand is that the Provider failed to correctly administer the Complainants' International Bond. In this regard, the Complainants invested GBP £163,144.50 in an International Bond with the Provider on 5 October 2010. Following the maturity of this investment after five years, the Complainants received from the Provider on 24 November 2015 a final surrender payment of GBP £156,171.40. The Complainants note that, *"This product was chosen as it said it provided 100% capital protection"*.

The Provider notes that prior to issuing the final surrender payment, it was necessary to clear the outstanding charges that had accrued on the Complainants' International Bond, which amounted in total to GBP £6,841.45. The Complainants submit that *"I am unable to understand why there are such significant charges, bearing in mind that no changes were allowed to be made to the policy so it was clearly not actively managed in any way. I appreciate that [the Provider] cannot predict how FTSE 100 companies will perform, so can not be held responsible for this. However if you do nothing to manage a fund, what are the charges for?"*

From the outset, I note that the Provider is the regulated insurance company which issued the Complainants' International Bond, however it had no operational or management role in relation to the asset that the Complainants chose to invest in. In addition, the Provider is an execution only provider and it does not make any recommendations or provide any financial advice about any of the permitted assets which a policyholder may choose to be invested in.

In this regard, I note that pg. 3 of the '**Key Features of the...International Portfolio Bond**' document supplied in evidence by the Provider which was issued to the Complainants prior to the inception of their Bond, provides, *inter alia*, at pg. 3:

***"Your commitment***

***What we ask you to do***

- *Seek ongoing financial advice. If you don't, your decision may not be appropriate. ...*
- *Ensure you are satisfied that you understand the important aspects of your plan and the permitted assets you choose, especially the associated risks and charges ...*

***Risk factors***

***What you need to be aware of***

- *The value of your plan can go down and you may get back less than you invested.*
- *The level of risk and potential investment performance depend on the permitted assets you choose".*

In addition, **Section 6, 'Buying and Selling assets'**, of the applicable International Portfolio Bond, Terms and Conditions document provides, *inter alia*, at pg. 9, as follows:

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*“6.2 You choose assets held in you plan entirely at your own risk and you or your adviser should make any checks or seek any independent advice that you consider necessary. You are responsible for ensuring that you have read the prospectus or equivalent document for any mutual fund chosen or the relevant information or terms and conditions for any insured fund or deposit account in your plan”.*

**Section 18, ‘Events outside our control’**, of this Terms and Conditions document provides, *inter alia*, at pg. 21, as follows:

*“18.1 ...deposit accounts are operated and managed by...deposit account providers and not managed by [the Provider]. [The Provider] are not responsible to you for the actions and decisions of any...deposit account provider...[The Provider] are not responsible for the investment growth of any assets you instruct us to buy”.*

**Section 19, ‘General terms’**, of this Terms and Conditions document provides, *inter alia*, at pg. 21, as follows:

*“19.1 We do not provide any advice about the assets in your unit fund. The fact that a permitted asset is available for investment does not imply that it is necessarily suitable for you. You should seek your own advice from a suitably qualified person”.*

I am thus satisfied that the terms and conditions of the International Bond expressly and clearly state that the policyholders choose the permitted assets entirely at their own risk and it is for the policyholders or their advisers to make any checks that they consider necessary. In this regard, it was a matter for the Complainants to seek and obtain the appropriate financial advice before deciding to invest in the particular deposit account they chose, and they ought to have ensured that they were fully aware of the specific details of the product that they were investing in, before doing so.

I note that each of the four Complainants signed the International Portfolio Bond Application.

**Section 8, ‘Investment Instructions’**, of this Application provides at pg. 10, as follows:

***“For new plans you must put at least 3% into the transaction account.***

*You can find the ISIN for most funds in the Funds charges summary.*

*Each mutual fund you invest in will be subject to a trading charge. Please see the information leaflet for details”.*

I note that handwritten instructions inserted in this section indicate, as follows:

*“\*\*\* GROWTH 97%  
TRANSACTION 3%”.*

The Complainants initial premium was GBP£163,144.50. In accordance with the instruction, 3% of this premium, that is, GBP£4,894.33 was placed in the transaction account.

In addition, **Section 11, ‘Fund declaration’**, of the Application provides at pg. 14, as follows:

*“Before signing this fund declaration, your adviser should explain the operation of the mutual fund including all information about risks, charges, commission, penalties and redemption procedures.*

*Before signing this fund declaration, you should seek financial advice regarding the mutual fund you have chosen as investment in the mutual fund is entirely at your own risk.”*

I note that each of the four Complainants signed this section.

In addition, **Section 13, ‘Adviser authority’**, of the Application provides at pg. 16, as follows:

*“I/We understand that [the Provider] will not be responsible for the actions or decisions taken by the adviser in connection with my/our plan”*

I note that each of the four Complainants signed this section on 21 September 2010.

Thereafter the Provider wrote to the Complainants on 5 October 2010, as follows:

*“We’re pleased to enclose your plan schedule which shows the details of your plan. To help you keep track of your investment we will send you quarterly statements.*

*The key features document you’ve already been given explains your right to change your mind and cancel your plan. If you don’t have the key features document, please call us and we’ll send you another copy”.*

The enclosed Policy Schedule dated 5 October 2010 advised, as follows:

**“Charges**

*Establishment charge                      0.42% of the initial payment each year, for 5 years ...*

*Total yearly charge                      We will take a percentage of this investment layer (the proportion of the plan value relating to the initial payment) each year, depending on the total plan value at the time, as set out in the table below.*

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In this regard, I note that **Section 4, 'The transaction account'**, of the applicable International Portfolio Bond Terms and Conditions document provides, *inter alia*, at pg. 7, as follows:

*"4.4. We deduct the following, from the transaction account or any temporary transaction account: ...*

- *Initial charge (see section 9.2)*
- *Establishment charge (see sections 9.2 to 9.4) ...*
- *Yearly charge and additional yearly charge (see sections 9.5 to 9.8)".*

**Section 9, 'Charges'**, of this Terms and Conditions document provides, *inter alia*, at pgs. 12-14, as follows:

***"Charges to pay for initial commission***

9.2 *If you have agreed with your adviser for us to pay the initial commission to them, for each initial payment or any additional payment you will incur either:*

- *an initial charge. This is a charge equal to the initial commission paid to your adviser that you have agreed to have charged by this method. We will deduct the initial charge from the transaction account or any temporary transaction account in your payment currency before buying a permitted asset or, if you have a discretionary asset manager, before we pass the initial payment or any additional payment to them, or*
- *an establishment charge. This is a charge calculated as a percentage of your initial payment or any additional payment and is paid for five years quarterly in arrears. For each 1% of initial commission paid to your adviser that you have agreed to have charged by this method, you will pay 0.24% of your initial payment each year for five years as an establishment charge in your base currency. We will calculate the establishment charge for each initial payment and any additional payment separately ...*

***Calculating the establishment charge***

9.4 *We calculate the establishment charge referred to in sections 9.2 and 9.3 above on each quarter end date quarterly in arrears. For the initial payment and any additional payment invested during the quarter, we reduce the charge to reflect the number of days in the quarter that the initial payment or any additional payment has actually been invested. We deduct this charge from the transaction account within eight weeks of the relevant quarter end date. In order to calculate the establishment charge we convert the initial payment to the base currency on the date it is allocated to your plan. If you*

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*have a discretionary asset manager, we will inform them of this charge and they will deduct it from your plan.*

### **Yearly charge**

9.5 *We calculate yearly charges on each quarter end date quarterly in arrears, based on the plan value. For the initial payment and any additional payment invested during the quarter, or on full cash-in of the plan, we reduce the charge to reflect the number of days in that quarter that the initial payment or any additional payment has actually been invested. We deduct this charge from your transaction account quarterly in arrears within eight weeks of the relevant quarter end date.*

*If you pay any additional payment in the future, charges may be different. If you have a discretionary asset manager, we will inform them of this charge and they will deduct it from your plan.*

### **Additional yearly charge**

9.6 *If you have agreed with your adviser for us to pay trail commission to them, an additional yearly charge will apply. The additional yearly charge is equal to the trail commission you have agreed that we pay to your adviser. The trail commission, and therefore the additional yearly charge, may be different for your initial payment and any additional payments.*

9.7 *We calculate any additional yearly charges on each quarter end date quarterly in arrears, based on the value of each investment layer. For the initial payment and any additional payment invested during the quarter, or on full cash-in of the plan, we reduce the charge to reflect the number of days in the quarter that the initial payment or any additional payment has actually been invested. We deduct this charge from your transaction account quarterly in arrears within eight weeks of the relevant quarter end date. If you have a discretionary asset manager, we will inform them of this charge and they will deduct it from your plan”.*

I am thus satisfied that the Provider provided the Complainants with appropriate notice of the charges that applied to their Investment Bond. In addition, I note that the Provider issued the Complainants with quarterly valuation statements showing all charges deducted during the relevant period, which provided them with appropriate and ongoing notice of the charges as they were applied.

I note that the Complainants are dissatisfied with the way the Provider handled the full surrender of their International Bond. I see that the Provider wrote to the Complainants on 28 September 2015, as follows:

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*“The deposit account...that is held within your plan will be maturing on 16 October 2015. On maturity the proceeds will be placed into the plan’s transaction account and will be available to invest in another permitted asset.*

*If you would like to invest in another permitted asset, please complete and return the enclosed trading instruction form. The proceeds will remain in the plan’s transaction account until we receive your instructions”.*

In this regard, there is no automatic surrendering of the International Bond and it was open to the Complainants at that time to reinvest for another period of time in other permitted assets and so the Provider had to await their instructions. The Complainants chose to surrender the Bond and thus had to complete a cash-in request form.

**Section 11, ‘Full cash-in of the plan’**, of the applicable International Portfolio Bond Terms and Conditions document provides, *inter alia*, at pg. 17, as follows:

*“11.1 You can fully cash in your plan by completing a cash-in request form, available from us or your adviser. A cash-in request form can be sent to us by post, fax, or a scanned image by email...*

*11.3 On full cash-in of the plan, the plan ends on the day we pay the cash-in value to you...*

*11.4 The amount payable is the plan value when all assets have been sold and the proceeds from their sale have been received in the transaction account less the following deductions: ...*

- a proportion of the yearly charge or additional yearly charge (see sections 9.5 to 9.8)*
- any outstanding fees payable to a discretionary asset manager*
- any costs we incur in cashing in your plan”.*

The Provider received from the Complainants the relevant cash-in request form on 11 November 2015. This form had been signed by the First Complainant on 23 October 2015, the Second Complainant on 27 October 2015, the Third Complainant on 1 November 2015 and the Fourth Complainant on 3 November 2015.

Prior to issuing the final surrender payment, and in accordance with the Bond terms and conditions, it was necessary for the Provider to clear the outstanding charges that had accrued on the Complainants’ International Bond. These charges amounted in total to GBP £6,841.45. Once these charges had been cleared, I note that the Provider issued the final surrender payment to the Complainants on 24 November 2015 in the amount of GBP £156,171.40.

Having examined the documentary evidence before me, I am satisfied that the Provider administered the Complainants’ International Bond correctly in accordance with its terms

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and conditions. As there is no evidence of any wrongdoing on the part of the Provider, it is my Decision therefore, that this complaint cannot be upheld.

### **Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

**The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.**

**MARYROSE MCGOVERN**  
**DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES**

28 February 2019

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.**