



<u>Decision Ref:</u>	2019-0161
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Cash Investment
<u>Conduct(s) complained of:</u>	Failure to provide correct information Delayed or inadequate communication Failure to provide accurate investment information
<u>Outcome:</u>	Substantially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The complaint relates to an investment fund switch instruction and the alleged mis-information given by the Provider regarding this investment fund switch.

The complaint is that the Provider gave incorrect information which has resulted in the Complainant being disadvantaged in the number of units held. It is argued that had correct information been provided at the time, the trade may not have gone ahead.

The Complainant's Case

The Complainant's position is that the Trustee emailed the switch instruction to the Provider on 8th September 2016 at 4.11pm. The Provider requirement was that it needed to receive the instruction before 12pm to get the previous days price. Therefore, it is the Complainant's claim that he should have received the price as at 9th September 2016. The Complainant states that the fund value on 9th September 2016 when the switch should have been placed was a lot higher than on 12th September 2016 when the trades went through. This the Complainant says this has resulted in him being disadvantaged and missing out on units.

The Complainant submits that when he called the Provider on 12th September 2016 at 2.51pm he spoke to a representative who advised that the financial adviser had requested to put the trade on hold unless the value was £523,259.96.

The Complainant states that on 16th September 2019 his financial adviser telephoned the Provider and it was confirmed that the trade was completed on Friday 9th September 2016 and received the price as at 8th September 2016.

The Complainant says that however upon receipt of the contract note it stated the value of the policy when the trade was placed was the lower sum of £517,489.88.

To resolve the complaint the Complainant wants the Provider to adjust the value at the time of the switch to £523,259.96 (the figure verbally quoted by the Provider) securing the value (less ongoing charges) at the lock-in date of 31-10-2016.

The Provider's Case

The Provider says that it provides a range of international investment bonds in the UK market. The Provider states that the product that the Complainant's Pension Trustees invested in, the Provider's Secure Trustee Investment with Guaranteed Capital, allows policyholders to link the value of their bond to certain investments selected by either the policyholders or their appointed financial advisor. The Provider states that investments that could have been chosen for this transaction include a range of internal life funds offered by Provider.

The Provider states that as it is prohibited by law from providing investment advice, investors such as in this plan, are required to appoint a financial adviser to provide them with independent financial advice.

The Provider explains that the Trustees are the policyholder of this plan and the Complainant is the life assured.

The complaint arose out of an instruction to switch from the 70/30 core portfolio B fund to the UK cash B fund which was received by the Provider at 16.11 on Thursday 8 September 2016 from the Trustees. The Provider says that as this was past the cut off time of 12 pm that day, in line with its procedures, this instruction was actioned on Friday 9 September 2016 with the trade being placed on the next working day, being 12 September 2016.

The Provider's position is that the switch, was completed on time and in accordance with the instructions it received on the switch form. The Provider states that it must be noted that once a request is actioned, as was done by the Provider on 9 September 2016, it is not possible to amend or cancel that request.

The Provider says that it is acknowledged that after it actioned the request received, it unfortunately provided both the Trustees and the Independent Financial Advisor with incorrect information in relation to the fund switch which occurred on 12 September 2016. The Provider states that a number of calls were received on Monday 12 September 2016 from both the Adviser and Trustees regarding the price involved with the switch where inconsistent information was given by the Provider in advance of the usual confirmation of trade issuing to the Trustees in respect of the trade. The Provider submits that the view of the Trustees and the Complainant appears to be that they were financially disadvantaged as a result of the incorrect information provided by phone on 12 September 2016. The Provider states that this is not correct as at that stage the switch instruction had been actioned and the trade had been placed. The switch was at that stage completed.

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The Provider sets out the following time line of events

- 8 September 2016 (Thursday) - Instruction received at 4.11pm
- 9 September 2016 (Friday) - Instruction carried out as requested
- 9 September 2016 (Friday) — Confirmation email sent to Trustees at 11.39 confirming the switch was received.
- 12 September 2016 (Monday) 12.03pm - call number 1 - Call between Provider representative and the Adviser in which the Provider's representative tells the Adviser the instruction has not gone through yet. There is confusion over price and value between the Adviser and the Provider's representative. The terms are used interchangeably and the Provider states that this resulted in miscommunication between them.

Incorrect information:

The Provider's representative stated the instruction was received on Friday 9th when it was in fact received Thursday 8th at 16.11.

- 12 September 2016 - (Monday) 1.38pm - call number 2 - the Trustees had a call with the Provider's representative. The Provider's representative states that the switch was received at 16.11 on Thursday 8th and would get Friday price. The Provider's representative explains as per the instruction that cut off is 12 noon.
- 12 September 2016 - (Monday) 2.51pm - call number 3— The Trustee calls and speaks to a Provider representative. In this call the Trustee notes that the representative in the first call gave the Adviser a value and not a price of £523,259.96. The Provider representative states the switch has gone through and gives a bond value of £523,259.96 advising the amount is not guaranteed and is indicative. The representative agrees with the Trustee that the amount of £523,259.96 is the valuation and not a price. The Trustee asks if the switch went through on Friday and the Provider's representative says "it did indeed". While she is saying 'it did indeed' the Trustee says 'at the value'. Both are talking at the same time.

The Provider states that the representative's statement relates to the date the instruction went through and she does not confirm the value element. It happens quite quickly. The Provider's representative states that a confirmation letter will be issued to the Trustees and the Adviser.

- 13 September 2016 (Tuesday) — Confirmation letter sent to Trustees advising switch details.
- 16 September 2016 - (Friday) 11.26am - call number 4 - Call with the Provider's representative and the Adviser. They discuss when a switch is received and what price it gets as a result. The Provider representative noted if it received sometime before 12 on 8 September it would (be input) and get that days price.
- 16 September 2016 (Friday) — The Provider's representative writes a letter to the Adviser setting out the correct information and apologising for the misunderstanding.

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The Provider states that as can be seen from the above timeline the Complainant was never "financially disadvantaged" as noted in the complaint submission. The Provider submits that the instruction was received and actioned by the Provider in line with their instruction prior to any queries from the Trustees or the Adviser.

The Provider's position is that it actioned the instruction received in line with its procedures which it says clearly are stated on the switch instruction form:

"We'll apply these instructions as follows.

For any instruction we receive before midday, we'll apply the unit price as at the following business day.

For any instruction we receive at or after midday, we'll apply the unit price as at the second business day following receipt".

The Provider states therefore that the confusion in the call on Monday 12 September had no bearing on the outcome of the instruction which it says was carried out as per the instruction and before any queries on price were received by the Provider.

The Provider says that the initial call was received on Monday 12 September and the Adviser was incorrectly told that the instruction was not received until Friday, however, this information was clarified within 1.5 hours to the Trustees, who had also received an email to confirm this and who had given the Provider the instruction. It is the Provider's position that any information given on Monday 12 September had no bearing on the outcome of the switch instruction. The Provider says that neither of these incidents resulted in the Complainant being financially disadvantaged as the instruction was carried out in line with their wishes before any telephone queries regarding price were received and it says that at no point on Thursday 8 September did they contact the Provider to stop the deal.

The Provider submits that whilst the Complainant was not financially disadvantaged it acknowledges that there was a breakdown in communication after the instruction was carried out. The Provider says that as a result it made an offer as a gesture of goodwill of £500. The Provider states that however, the Complainant or the Trustees did not respond to this offer.

The Provider states that it acts on an execution only basis and cannot provide financial, investment, legal or tax advice to policyholders. The Provider says that all investors, including the Complainant, must appoint a financial adviser to provide them with independent financial advice, to ascertain attitude to risk and to review fund options when choosing an investment. The funds are linked to underlying external funds. As noted in the Policy Conditions pack under section 6 "The Investment Funds" fund details are available via the Provider's head office or its website for customers to view.

Further submissions from the Complainant and the Provider

The Complainant's submission of 23rd March 2018

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The Complainant states that he does not agree with the Provider's stance on this complaint and feels that its argument differs from the information provided to the Complainant and his adviser at the time of the investment.

The Complainant states that on the first call that the Trustees made to the Provider on Friday 9th September 2016, it was advised that any instruction received before 12 would be processed as at that days unit price.

The Complainant says that he understood that the switch would have been processed with the unit price of 9th September 2016. The Complainant states that the second conversation that the Trustees had with the Provider on the 9th September 2016 suggested that units to the value of £523,259.96 would be acquired. The Complainant submits that he appreciates that the Provider has subsequently explained that its standard processing times meant that this transaction would in fact be processed with unit price of the 12 September 2016 however, the Trustee spoke with the Provider on the 12 September 2016 and was told that this transaction had not yet been processed and the Trustee then gave clear instruction that unless the 9 September 2016 price of £523,259.96 was achieved that the switch was to be put on hold.

The Complainant states that he accepts that the Provider has now apologised for providing misleading information, the apology letter dated 16 September 2016 states "The price for the 9th rather than the value as at the 9 September is what should have been quoted " again indicating that the unit price for the 9 September was being used.

The Complainant says that the original goodwill gesture offered by the Provider was rejected, as confirmed through the Ombudsman's office and was not ignored. The Complainant's position is that the Provider should honour their verbal confirmation of £523,259.96 and credit the difference in monetary value or the equivalent in additional units.

The Provider's submission of 5th April 2018

The Provider states that in the second paragraph of the Complainant's submission, reference is made to "the first call that [the Trustees] made to [the Provider] on Friday 9th September 16" where the Trustees "were advised that any instruction received before 12 would be processed as at that days unit price". The Provider says that it is to be noted that the Provider has no record of this call, and it has not been referred to by the Complainant in any submission before then.

The Provider also says that it does not have a record of a second phone call with the Trustees on Friday 9 September 2016. The Provider reiterates that the correct information was given to the Trustees before they placed the switch instruction with the Provider on 8 September 2016, and that once the Provider processed the instruction (which it says happened on the morning of 9 September 2016), it was not possible to reverse or otherwise cancel or amend the instruction regardless of any conversation or correspondence thereafter.

The Provider says it does not agree that the Trustees could have been under the impression, as they have stated in their submission "Up until now we have understood that the switch would have been processed with the unit price of 9th September". The Provider draws attention to the clear information provided on the Dealing Form submitted to the Provider which was signed by the Trustees. The Provider says that this dealing form stated explicitly the dealing administration timelines as follows:

- "We'll apply these instructions as follows.*
- *For any instruction we receive before midday, we'll apply the unit price as at the following business day.*
 - *For any instruction we receive at or after midday, we'll apply the unit price as at the second business day following receipt.*

The Provider says that it is not true to state, as is done in the Trustee's submission that the Trustee "gave clear instruction that unless Friday's price of £523,259.96 was achieved that the switch was to be put on hold". The Provider submits that the Trustee never gave instruction to hold the deal. The Provider states that the Trustee representative does note that he gave the instruction to Trustees on Wednesday 7th September where he mentions "I gave it to them 2 days previous".

The Provider submits that the Trustees indicate that the Provider financially disadvantaged the Complainant in the information that was provided. The Provider's position is that this is not the case as it actioned the dealing instruction submitted by the Trustees in line with the information and timelines set out clearly on the dealing form. The Provider's position is that incorrect information which was unfortunately subsequently given out did not financially disadvantage the Complainant, as it was not possible at any point after it actioned the instruction it received, to alter or cancel that instruction. The Provider says that the relevant correct information on the timelines involved was provided to the Trustees on the dealing form prior to this instruction being given to the Provider.

16th April 2018 submission from the Complainant

"Firstly please accept my apologies for an error made on my last submission. The two calls I was referring to were made on the 12th September 16 not the 9th September as previously stated.

We appreciate that the process cut off times are stated on the form, however we feel that the continued misinformation given by [the Provider] on several occasions clearly contradict these times, and have caused a lot of confusion which has resulted in financial detriment to [the Complainant].

12/09/16 [Mr B] was told that [the Trustees] didn't send the instruction on 8th September when they had

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12/09/16 [Provider representative] advised the cut off is 12, [Trustee] asks it needs to be received before 12 to get that date's price, [the Provider's representative] responds exactly.

12/09/16 [Provider] advised that the switch hadn't been processed, [Mr B] asked for this to be put on hold if 9th price not met (the switch had been processed)

16/09/16 [The Provider] discussed and noted if we received something before 12 on 8th September it would be input and get that days price

16/09/16 [The Provider] sent a letter of apology for quoting "the price of the 9th, rather than the value as at the 9th is what should have been quoted.

[Mr B] wanted to ensure a specific return for [the Complainant] and based on the information provided by [the Provider] he was misadvised regarding the date the switch was going to be processed, the unit price and the value that would be attained. As such, we feel it reasonable that [the Provider] compensate the difference between the sums expected and those finally received".

The Provider's submission of 19th April 2018

"The Trustees] indicate that [the Provider] are misinforming the FSPO. [The Provider] absolutely disputes this.

No misinformation has been submitted to your office regarding this complaint. We have set out correctly the information we provided prior to the instruction being completed by [the Trustees]. We have also set out correctly the timeline of all phone recordings and email correspondence for the relevant period after we had actioned the instruction received from [the Trustees].

It is clear that at no time did actions taken by [the Provider] financially disadvantage [the Complainant]. Also, at no point did information provided to [Mr B] disadvantage the customer. As noted, the phone calls that took place after the deal was placed had no bearing on the outcome of the deal".

The submissions concluded with an e-mail from the Complainant of 24th April 2018, the Complainant states:

"As regards to the comments made by [the Provider] that we have not submitted any evidence of misinformation. I have been referring to the calls and documents that had already been submitted to your office by [the Provider]. As per your letter, we did not feel it necessary to duplicate these submissions".

Communications between the Complainant's Financial Adviser and the Complainant

7th September 2016 – Financial Adviser to the Complainant

"Following on from our earlier telephone conversation I have provided verbal instructions to [Trustees] to switch 100% of the fund from 70/30 fund to the UK cash B fund. I will confirm when this instruction has taken place".

8th September 2016 – e-mail at 16.11 from Trustees to the Provider: *"Please find attached a switch instruction on behalf of the above account"*

9th September 2016 – e-mail at 11.39 to Trustees from the Provider;

"Thank you for your request for a switch .. We're currently processing your instruction and written confirmation will be posted shortly".

12th September 2019 – the Complainant to the Financial Adviser

"Rather hoping this crystalised last Wednesday or Thursday given what has happened to markets Friday and today! Can you let me know what happened when you have a moment".

13th September 2019 – the Financial Adviser to the Complainant

"Further to our telephone conversation yesterday I have been verbally advised that the switch from 70/30 fund to the UK Cash B fund took place at a value of £523,259.96. I should receive confirmation of this transaction from both [the Provider] and [Trustees] in due course".

13 September 2016 – Letter issue to the Trustees advising of switch details. The letter advises that the effective date of the switch was 09/09/16 and that the "transaction amount" was €517,489.88.

16 September 2016 call 12.26am - Call with the Provider's representative and the Adviser. They discuss when a switch is received and what price it gets as a result. The Provider representative noted if it received something before 12 on 8th September it would (be input) and get that days price.

16th September 2016 – Letter from the Provider to the Complainant's Adviser

The Provider's representative writes a letter to the Adviser confirming the correct information and apologising for the misunderstanding. Explaining that when they originally spoke the switch had already been actioned correctly and he had not been aware that the switch had been completed.

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Policy Provisions

“8. Switching investments

8.1 You can tell us to cancel all or any of the units allotted to your policy in any investment fund, and to allot, in their place, units in any of the other investment funds that are available to your policy. If you choose to do this, the following conditions will apply.

8.1.1 You must tell us in writing. This is subject to condition 17.

8.1.2 Where the units are cancelling and the units we are allotting are denominated in different currencies, we will convert the value of the units being cancelled into the currency of the investment fund in which units are to be allotted, before we allot units. The conversion rate will depend on market conditions when we do the conversion and the currency conversion rate our bank gives us. We will take a currency conversion charge from the value of units cancelled. You will be responsible for the cost of conversion. We will deduct this cost from the value of units cancelled.

8.1.3 Subject to conditions 8.1.1 and 8.1.3 we will cancel and allot units at the relevant unit prices. We will calculate the unit prices at the second valuation of the investment funds after we receive your instruction.

8.1.4 We will apply your instruction proportionately to all related policies, unless you and we agree something different”.

The Complaint for Adjudication

The complaint is that the Provider gave incorrect information which has resulted in the Complainant being disadvantaged in the number of units held. It is argued that had correct information been provided at the time, the trade may not have gone ahead.

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 Complainant was 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

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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 15th April 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.

The only post Preliminary Decision correspondence was an e-mail request of 3rd May 2019 from the Provider seeking additional time to consider the Decision and a later e-mail confirmation of 7th May 2019 stating that it had nothing further to add.

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

Analysis

The identified mis-communications from the Provider were as follows:

- An incorrect date for the Provider's receipt of the switch request was given by the Provider.
- Incorrect information was given as to the valuation that would be applicable for the switch.
- Incorrect information was given as to when the trade was completed and as to the price it was completed at.

I accept that the Provider correctly administered the switch in accordance with what was advised to the Complainant on the Switch Instruction Form. That said, I accept that the Provider could have been clearer in its communications identified above and as to the position of not being able to stop the switch once the switch process had been actioned. I also consider that the Provider could be clearer on the switch process, in particular as to the timing of fund valuations and the actioning of requested switches. It is noted that the information in the Terms and Conditions document on "Switching investments" is not similarly reflected in the Switch instruction Form. There are no specific timeframes set out in the Terms and Conditions for when a switch would be actioned. Overall I consider that the Provider could have been clearer in its communication on how a switch of funds would be processed.

On balance and in order to do justice between the parties, I consider that rather than a return of the difference that the switch funds would have made if the Complainant had got the unit price as at the following business day, a compensatory payment is called for in this complaint. Therefore, it is my Legally Binding Decision that the complaint is substantially upheld and the Provider is to pay the Complainant the compensatory payment of Stg£3,000 (three thousand pounds sterling). This payment is instead of the £500 payment offered by the Provider. I also direct the Provider to rectify its communication process

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(written and verbal) in relation to switches, in particular that when the Switch Instruction Form is received that the client is advised of when it is expected that the switch instruction will be actioned and what day's unit price will be applied. This I consider would remove any of the confusion that was caused in this complaint.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially 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 to rectify the conduct complained of by advising the client of when it is expected that the switch instruction will be actioned and what day's unit price will be applied and to make a compensatory payment to the Complainant in the sum of Stg£3,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant 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

8th May 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**

ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.