



<u>Decision Ref:</u>	2019-0194
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Cash Investment
<u>Conduct(s) complained of:</u>	Value of policy at surrender less than expected or projected
<u>Outcome:</u>	Rejected

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

Background

In **2014** the Complainants invested €60,000.00 in a fund managed by a third party with the Provider acting as intermediary. The investment instrument was a secured capital bond which was due to mature in **May 2018**. The €60,000.00 investment was denominated in UK Sterling in the sum of **Stg£46,680.00** rather than in Euro. The Complainants say that they understood that, at a minimum, the €60,000.00 investment would be guaranteed.

In **January 2018**, the Complainants ascertained that the proceeds of their investment would be paid in UK Sterling rather than in Euro and that this might result in the Complainants receiving less than the €60,000.00 invested.

In **May 2018**, the bond matured at a value of **Stg£49,720** and the Complainants were issued with a cheque in the sum of **Stg£48,595.20** after tax, which was worth approximately €55,000.00, crystallising an overall loss to the Complainants of some €5,000.

The Complainants' Case

Firstly, the Complainants note that they had a meeting with the Provider's representative in which the Complainants stressed that they were conservative and wanted to invest the €60,000.00 in a capital secured investment. The Complainants say that they specifically

indicated that they did not want to lose anything from the sum of €60,000.00. The Complainants say that the representative recommended the particular secured capital bond that was ultimately used, on the basis that it was guaranteed capital secure.

Secondly, in the Provider's documentation which sets out the details, objectives and requirements of the Complainants, it is stated that the only products discussed were '*capital secure investment bonds*'. In the section detailing the reason why this particular product was chosen, it is stated that the product '*targets positive returns regardless of equity market conditions*.' Furthermore, it is stated that the product has '*100% capital security provided*'.

Thirdly, the Complainants contend that the manner in which their complaint and appeal were dealt with by the Provider was unfair, in that the review of the original decision was not sufficiently independent.

The Complainants assert that the Provider was aware at all times that the Complainants understood that they would, at a minimum, be entitled to payment of €60,000.00 once the bond matured.

The Provider's Case

In respect of the documentation relating to the Complainants' application for the investment, the Provider notes that this sets out the details, objectives and requirements, within which it is stated that '*investment into and returns from the bond are denominated in Sterling*.'

In the application form signed by the Complainants on 31 October 2014, the following is one of the three warnings included in the warning box:-

'WARNING: Your investment in this product may be affected by changes in currency exchange rates'.

In the product producer's investment literature, the above statement is repeated and it is also stated that '*all payments to and from this investment are in Sterling and you are exposed to currency risk if you exchange to/from Euro*.'

The Provider also relies on the terms and conditions of the third party product producer, in which it is a term of the agreement that '*all payments to and from the Bond are denominated in UK Sterling*'. In addition, on **31 October 2014** the Complainants signed a document entitled Instruction to Convert Funds from Euro to UK£ Sterling. In this document, the Complainants accepted that they understood, firstly, that the capital security in the product applied to the Sterling amount invested after the Euro conversion occurred and, secondly, that movements in exchange rates could reduce or increase the return of the amount invested.

The Provider also asserts that the Complainants must have been aware that their investment was not denominated in Euro, as in all of the client valuation statements sent by the third

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party throughout the term of the investment, the value of the investment is denominated in UK Sterling.

Regarding the Complainants' complaint to the Provider, the Provider asserts that, while the initial letter and final response letter were signed by the same person, nevertheless, all handling and responses were reviewed and agreed by the head of the relevant department within the Provider's organisation. Furthermore, the Provider's head of the relevant department asserts that the individual who signed the letters has 30 years' experience in the financial services industry and conducts all investigations in a professional manner.

The Complaints for Adjudication

There are two complaints for adjudication:

1. The Provider acted wrongfully in selling an investment policy to the Complainants that was '*capital secured*' but which resulted in the Complainants suffering a loss at maturity due to the currency fluctuation.
2. The Provider acted unfairly when it issued the initial response and then the final response letter in respect of the Complainants' complaint.

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 12 June 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

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

The first complaint is that the Provider acted wrongfully in selling an investment policy to the Complainants that was 'capital secured' but which resulted in the Complainants suffering a loss at maturity due to the currency fluctuation.

In my opinion, the document entitled "***Instruction to Convert Funds from Euro to £Sterling***" is written in clear English, and I note that it carries a number of bullet pointed information points including:-

- *The capital security detailed in the product brochure(s) applies to the UK£ Sterling amount invested after the conversion from Euro is completed.*
- *Movements in exchange rates may reduce or increase the return on the Euro amount invested in the Bond independently of the performance of the Bond itself."*

I note that the Statement of Suitability on file in respect of the Complainants' investment notes that they had opted for this particular investment product as the third party provider was noted to "*have a very good investment history performance and excellent service*".

The Statement of Suitability also noted that:-

*"[The Complainants] indicated that they wished to invest their original €60,000 into a Capital Secure Bond, and take the profit accrued on Bond NO*****. They looked at various options, with a preference for a short-term, as a result they decided to invest the €60,000 into the [third party provider bond]. This Bond provides diversification from traditional Bonds such as assets, equities and property. This Bond targets positive returns regardless of equity market conditions. Investment into and returns from the Bond are denominated in Sterling. Investment term 3 years plus 6 months. 100% capital security provided by [named bank]. The underlying fund has a proven 25 year track record both [the Complainants] were happy to proceed."*

I note in that regard that although the application which was processed for this investment, was made on 31 October 2014, which was the closing date of the investment product, the Statement of Suitability clearly documented the reasons why the Complainants had chosen to invest the lump-sum in question. This document, in addition to the other documentation noted that the investment would be denominated in UK Sterling and that this fact may result in the value of the investment being less (or indeed more) at the date of maturity.

In my opinion, the document entitled "***Instruction to Convert Funds from Euro to UK£ Sterling***" is of particular relevance as quoted above. Unfortunately, as events transpired, the value of UK Sterling decreased over the course of the investment term. This however, was a risk that the Complainants assumed when investing in the UK Sterling denominated

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investment. I take the view, from the evidence before me, that this risk was clearly brought to the Complainants' attention, at the time when they decided to proceed with the investment.

The Complainants wanted a product that would, in all circumstances, guarantee their capital investment. This investment product did guarantee the investment sum, albeit in a different currency, and consequently, was subject to currency fluctuation. It is important to note that if the value of UK Sterling had increased over the course of the investment term, then the Complainants would have obtained an additional benefit over and above the positive growth of the fund at 6.51%. As events transpired however, the value of Sterling fell, to the detriment of the Complainants' position.

On the basis of the evidence available, I am satisfied that the Provider acted appropriately and did not act unfairly or unreasonably in its dealings with the Complainants regarding this investment. In those circumstances, on the basis of the evidence before me, I do not consider it appropriate to uphold this complaint.

The second complaint is that the Provider acted unfairly when it issued the initial response and then the final response letter in respect of the Complainants' complaint.

In respect of the second complaint, I note that the initial response and the final response letter were both authored by the same representative in the Provider. Whilst I accept the Provider's assertion that the final response letter was reviewed by the Department Head, and in that sense, the Provider's mechanism for reviewing the initial decision was fair and impartial, nevertheless, in my opinion it would have been preferable for the Provider to have ensured that its procedure for dealing with a complaint of this nature, would include the escalation of the matter to an appropriate person so that the Final Response Letter was authored by a separate person, as a fresh pair of eyes. The Provider may wish to consider reviewing its internal procedure with this in mind, and with a view to avoiding the level of dissatisfaction which has ensued in this instance, where the Complainants believed that they were denied any independent review of their complaint.

Be that as it may, I am satisfied that in both of the letters dated 19 April 2018 and 12 June 2018, the Provider engaged with and addressed the complaints raised by the Complainants and in my opinion, did so in a reasonable manner.

It is disappointing that the phone conversation between the Complainants and the Provider's representative in the period between the letter of complaint and the final response letter, was not recorded and accordingly, the audio evidence is not available. Whilst this is disappointing, nevertheless, I take the view that the Provider dealt with the Complainants fairly after they articulated their complaint and on the evidence available to me, I do not consider it appropriate to uphold this complaint.

Conclusion

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

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

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

4 July 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.