



<u>Decision Ref:</u>	2019-0327
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Shares/Equities Investment
<u>Conduct(s) complained of:</u>	Failure to process instructions
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a retirement savings plan, which was a unit linked investment fund that the complainant had with his former employer which was managed by the Provider.

The Complainant's Case

The Complainant made an application to withdraw the funds in the retirement savings plan on 28 July 2015 through his online account. The Complainant submits that he completed all the required instructions on that date to withdraw from the plan.

The Complainant contacted the Provider and his former employer to confirm that he wanted the monies transferred to his bank account. The Complainant submits that this bank account is the same bank account which his former employer paid his salary into. The Complainant submits that he contacted the Provider to confirm that there were no issues on 30 July 2015.

The Complainant submits that the Provider stated that they could not transfer the funds to his bank account, because the account was not in his name.

The Complainant submits that the Provider ultimately transferred his funds on 4 September 2015 to the same account that he had originally given to the Provider. However as there was a delay of 38 days in acting on his instruction to withdraw the fund, the value of the fund dropped by about \$56,147USD in the intervening period. The Complainant states *"It seems*

to me that someone got worried that I could potentially sue and decided to accept my bank account”.

The Complainant submits that the issues with the bank account should not have prevented the Provider from withdrawing the funds from the plan, as he had directed. The Complainant submits that the Provider should have acted on the instruction and kept the amount in cash until the account issue was resolved.

The Complainant submits that he should have been called or contacted by the Provider to let him know of the problems. The Complainant submits that if he had known he could have transferred the fund to a cash fund where there were either less or no market risks.

The Complainant submits that the Provider acted “*inefficiently*” and with a lack of “*professionalism*”. The Complainant is seeking reimbursement of \$56,147, the difference between the value of the fund on draw down and the value when the instruction was given.

The Provider’s Case

The Provider submits that the Complainant submitted an application to withdraw his funds online on 28 July 2015.

The Provider states that the Complainant requested to transfer his funds to a third party bank account (a bank account that was not in the Complainant’s name). The Provider submits that subsequent clarification of these details delayed the disinvestment process and resulted in the loss to the Complainant. The Provider submits that it “followed due process” by not disinvesting the account until a valid instruction was received.

The Provider submits that they were unable to withdraw the Complainant’s fund at the time as they required relevant authority and verification by the Complainant’s former employer. The Provider submits;

“[The Provider] will only process a valid withdrawal application that has been approved by [the former employer] and the Trustees (the legal owners of the Plan). Due to being an international arrangement, controls in the withdrawal processes were implemented as a preventative measure to mitigate fraudulent claims. As part of these security measures (as agreed with [the former employer] to ensure payments are made to the rightful recipient, [the Provider] only accept instructions that have been verified and approved by [the employer].”

The Provider submits that they advised the Complainant on the 30 July 2015 to provide his bank account details to his former employer so that they could update the form and verify the relevant information.

The Provider submits that they requested the former employer to verify the Complainant’s bank details on various occasions. The Provider submits that they finally received verification with the requisite information to withdraw the funds on 25 August 2015.

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The Provider submits that it commenced the disinvestment process on the 3 September 2015. The Provider submits that it uses forward pricing which meant the disinvestment date was 04 September 2015.

The Provider submits that the transfer was made to the Complainants account on 4 September 2015 and this was confirmed to him on 11 September 2015.

The Provider states that the Complainant had access to review his account online, during the time that the disinvestment was awaiting verification. The Provider submits that the Complainant requested a change to a less volatile fund by telephone on 7 September 2015, which could not be executed as the withdrawal request had been implemented.

The Provider submits that the Complainant's account is not guaranteed and fluctuated daily in line with normal market movement. The Provider submits that it could not have predicted the market trends within that period which could equally have seen an upward trend. The Provider submits that it is not reasonable for the Complainant to seek compensation.

The Complaint for Adjudication

The complaint for adjudication is that the Provider failed to act on the Complainant's request to withdraw the funds from the retirement savings plan, which was a unit linked investment fund in a timely manner in July 2015.

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 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.

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A Preliminary Decision was issued to the parties on 3 September 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.

Following the issue of my Preliminary Decision, the Complainant made a further submission to this Office under cover of his letter dated 9 September 2019, a copy of which was transmitted to the Provider for its consideration.

The Provider has not made any further submission.

Having considered this additional submission and all of the submissions and evidence furnished to this Office, I set out below my final determination.

At the outset, I note that the plan at issue in this complaint is an international pension scheme. The Trustee Company and Policy Holder of the Retirement Savings Plan is a named third party. The conduct of that third party was not investigated and does not form part of this adjudication.

The Complainant holds an account in the plan. The Provider who administers the plan on behalf of the Trustee and the Trustee Company/Policyholder has confirmed that they are happy for the Complainant to proceed with this complaint in his name. As such, this office is satisfied that it has jurisdiction to deal with this complaint.

It is understood that the Complainant submitted an application to withdraw the funds in the plan on **28 July 2015** through his online account. I note that this was in accordance with the [Employer] International Retirement Plan document entitled "Your Plan explained" which states "*Any withdrawal request should be requested via your [Online] account*". It is not in dispute between the parties that the application to withdraw funds was submitted online on 28 July 2015. At the outset, I note that there is no issue in this complaint as to whether the Complainant was eligible to make the withdrawal.

Overview of relevant interactions

There are a number of interactions between the Complainant, the Provider and the Complainant's former employer, which are relevant to this complaint that I will set out in the following paragraphs.

The Complainant emailed the Provider on **28 July 2015** as the online platform didn't facilitate his specific banking instructions as follows;

"I have just completed my withdrawal instructions from my plan on your site.

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The banking instructions are not straightforward as per my banking instructions.

I am attaching the wire transfer instructions so you have on file to compare with my written instruction done on your site.”

The Provider emailed the Complainant and requested that he contact the Provider to discuss the withdrawal on **29 July 2015**.

Recordings of telephone calls between the Complainant and the Provider have been provided in evidence.

The Complainant placed a call to the Provider on **30 July 2015**. During that call, the following exchange took place between the Provider’s representative and the Complainant;

***Telephone Rep:** I have a Withdrawal application form here and it looks like there is more information in your email attachment than there is available on the form? I believe as everything goes through [former Employer] when we do the withdrawal, it will probably be best for you – if you submitted this on [online platform] it goes flies over (not literally but online) to the benefits department in [location] to authorise. So they would need to see these bank details so that they can authorise them. Have you contacted [former Employer] in this regard?*

***Member:** No*

***Telephone Rep:** I would suggest that you email the bank details to them now, because your withdrawal form will be with them for the “1st Approval”- otherwise if they come back to us and we see there is not enough information there...*

***Member:** There should not be a problem as my paychecks all go there*

***Telephone Rep:** But just as a precaution, I would send this to them because if there is any discrepancy with these, they would have to go back to you and then back to us again as [former Employer] need to authorise everything.*

So if you email them, it might mitigate that

They’ll need it so that we can be instructed to pay the money out correctly.

We cannot accept these instructions directly from members; it has to come from [former Employer]

***Member:** Why can’t you just email it to [former Employer]?*

***Telephone Rep:** [Former Employer] will not accept the banking instruction from us you see, it can only come from you.*

***Member:** OK”*

It is understood from the email evidence submitted that the Complainant then contacted his former employer by email on **30 July 2015**, as follows;

"I have completed the withdrawal procedure from [the Provider] for my pension plan.

The online banking information does not allow me to complete all the information that my bank requires so I have sent the attached instructions to [the Provider.]

I have just spoken with the [Provider] and they have asked me to email to you this information.

Basically my banking information is the same bank where [former employer] deposited my monthly pay checks so there should not be any doubts with the wire transfer instructions.

Please advise if you need any further information."

The Complainant's former employer responded to the Complainant by email on **30 July 2015**, as follows;

"Can you please verify if this is a bank account in your name or in the name of [named third party Bank 1]?"

While your paycheck is sent to this account, [the Provider] does have different requirements and rules that it must follow when making their payments. In order for [the Provider] to make payment to you, the bank account must be in your name."

The Complainant responded to the former employer, by email on **30 July 2015**, as follows;

"The bank account is in my name but [named third party Bank 1] uses [named third party Bank 2] for the funds to go to my account.

My account with [named third party Bank 1] is [Account Number] and is in my name.

You may verify with payroll my bank account."

It is understood that the Provider received the online withdrawal form from the Complainant's former employer by email on **03 August 2015**.

On **04 August 2015**, the Provider sent an internal email to its banking team, which outlined the Complainant's bank account details, as submitted by the Complainant. It was outlined *"May you please advise, if these details can be used for sending the payment or is there any further information we require from the member to transfer the funds?"*.

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The Provider's banking team responded, by email on **06 August 2015**, as follows;

"Please advise what entity [named third party Bank 1] is, is it to be considered as a 3rd party payment?"

The member name shouldn't be in both levels, below is a suggested payment method for the client to confirm with their bank if it is acceptable (if this is not a 3rd party payment)".

The Provider emailed the Complainant's former employer on **07 August 2015** and outlined as follows;

"Can you please contact the client and confirm the below details.

Also, please confirm the below bank details if it is acceptable (if named bank is not a 3rd party)".

At this point in time the Provider included the Complainant's case in its "Chaser Spreadsheet". A copy of the Chaser Spreadsheet and the emails from the Provider issuing the spreadsheet to the Complainant's former employer has been furnished in evidence. On review of the spreadsheet it is understood that the Chaser Spreadsheet issued by the Provider to the Complainant's former employer on **07, 11, and 14 August 2015**. The description section of the spreadsheet outlines as follows;

"Please confirm if [named third party Bank 1] is a third party or not.

If not then please be advised that our banking team has given the below format for sending the payment, so please can you check with the member and confirm the below format with his bankers, if this is acceptable or not. If not, then please provide us with the correct format.

Beneficiary Bank details

Bank name; [named third party Bank 2]

Bank address; [Address]

Account name; [named third party Bank 1]

Account number; [Account number]

Swift Code; [Swift]

Reference for further credit to; [Complainant name and account number]"

On **14 August 2015**, the former employer emailed the Complainant as follows;

"I have provided this information to the [Provider] and this is considered a third party payment (because the account with [named third party Bank 2] is in [named third party Bank 1], not yours).

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[The Provider] has different requirements that must be maintained when making payments and they cannot make third party payments. Can you please forward banking information for an account in your name?"

The Complainant responded to his former employer by email on **18 August 2015**, as follows;

"The transfer is from [the Provider] is from the UK or from the USA? Can we use a ABA number instead of a SWIFT?

Another option can I give a cancelled check and they can use the routing number?

Please advise since this is crazy what [the Provider] is asking for when I have a bank account, where you as my employer sent my paychecks."

On **18 August 2015**, the Complainant's former employer emailed him, as follows;

"The payment will be coming from the UK – a SWIFT code will be required to make the payment as the funds are coming via a wire transfer."

The Provider issued a copy of the Chaser Spreadsheet again to the Complainant's former employer on **18, 21 and 25 August 2015**.

It appears from the Chaser Spreadsheet that at this time the Complainant's employer responded to the Provider's request on the Chaser Spreadsheet, *"waiting for member reply"* on **18 August 2015**. This entry was also recorded on **21 August 2015**.

On **25 August 2015**, the Complainant's former employer emailed the Provider and outlined as follows;

"Further to the below, we have raised this with the client as per the attached email and the client has provided the below response;

It appears that [named third party Bank 2] is a correspondent bank. And [named third party Bank 1] is the Beneficiary Bank. The employee explained that the account at [named third party Bank 1] is in his name, but that [named third party Bank 1] uses [named third party Bank 2] as a correspondent Bank."

On **02 September 2015** the Provider's banking team confirmed that the bank details could be loaded. It is noted that the sale was placed on **03 September 2015** with a dealing date of **04 September 2015**.

Overview of provisions of the Trustee Investment Account Policy

There are a number of provisions in the Trustee Investment Account Policy which are relevant to this complaint.

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At the outset I note that the Trustee Investment Account Policy document is a contract between the Provider and the overall Policyholder. As outlined at the beginning of this decision the Policyholder is a third party. The Complainant holds an account in the plan.

“Condition 2 – Risks

“All investments carry risks. Policy holders are exposed to the risks associated with investment through this Policy....We will not be responsible for losses arising through our providing services under the Policy or for anything we do or omit to do unless that failure is the result of fraud, recklessness and/or negligent act or omission”

“Condition 5 – Allocation of Units

5.7 Deferral of execution of instructions

We reserve the right to defer and/or stagger making changes of Funds, redirection of future Contributions or cancellation of Units you let us know of:

- *where, due to illiquidity of the assets of the Fund(s) concerned we reasonably consider that making the change is not practical; or*
- *where we reasonably believe to do so is appropriate to protect policyholders generally; or*
- *if, in the case of Underlying Funds (and without prejudice to the foregoing) the Underlying Fund Provider exercises any right it has reserved to defer any transaction under the terms of our agreement with that Underlying Fund Provider; or*
- *where there are circumstances which we reasonably consider exceptional*

We will execute your instructions as soon as reasonably practicable after the end of the period of deferment.”

“Condition 7 – Administration Services

...Our administration services will include giving effect to any investment elections made by Plan Members in relation to any records we may keep for them. You agree that in so doing we are acting on your behalf and under your instruction (howsoever given). We may effect any such investment elections as soon as reasonably practicable. You agree to carry out such tasks as we reasonably require (the information that we require may include telling us where plan members reside) to enable us to provide the administration service. You agree to supply us with such information as we may from time to time require in an electronic medium approved by us and in a format approved by us.”

“Condition 9 – General Conditions

Process for Instructions

“We will not act on any instruction until we received any evidence that we require in a form acceptable to us and our normal procedures have been compiled with, including the completion of any forms in use by us at that time. We will not be obliged to make any enquiries as to your authority or as to the authority of your agents to give instructions.”

Analysis

I note that the Provider informed the Complainant that the Provider aims to *“disinvest participant withdrawal requests within 5 working days of the withdrawal being approved by both the employer and trustee and furthermore verification that the bank information provided is complete and correct and in a format that [the Provider] can instruct payment via the international banking system to ensure it reaches the intended recipient.”* It is understood that this is in accordance with the service level agreement in place between the Provider and the Trustees. This office has not been provided with a copy of the service level agreement in evidence. However, in any event, this is of no consequence, as both parties accept that the expectation was a 5 working day turn around.

The issue to be determined is whether the Provider failed to act on the Complainant’s request to withdraw the funds from the retirement savings plan, which was a unit linked investment fund in a timely manner in July 2015.

I have considered the interactions between the parties, as set out above. I note that the Provider informed the Complainant at the outset in the call on **30 July 2015**, that the bank details had to be verified by the Complainant’s former employer. I note that the Provider followed up with the Complainant’s former employer in this respect repeatedly until the required verification was received on **25 August 2015**. The process to disinvest was then executed by the Provider within the 5 working day period.

While I appreciate the Complainant’s frustrations in this respect, given the level of communications with his former employer during the intervening period, I cannot accept that the Provider was in any way at fault for the delay in receiving the confirmation.

The Complainant, in his post Preliminary Decision of 9 September 2019, describes himself as being caught in the middle of a loop between these entities. I accept this was the case but I cannot accept that the Provider was under any obligation to process the withdrawal, pending the issue with respect to the bank account details being resolved.

Although I note that the account to which the payment was ultimately processed was in fact the same account as that to which the details had been furnished by the Complainant at the outset, the correct format had not been given by the Complainant.

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It was not until the email of **25 August 2015**, that the Complainant's former employer provided the required confirmation of the relationship between the named third party Bank 1 and the named third party Bank 2, such that the Provider had full confirmation of the bank details for the payment to be processed.

In this regard, I note that the Provider had suggested the correct format, where the account was not a third party account, for the account details to the Complainant's employer from as early as **07 August 2015**, as follows;

*“Beneficiary Bank details
Bank name; [named third party Bank 2]
Bank address; [Address]
Account name; [named third party Bank 1]
Account number; [Account number]
Swift Code; [Swift]
Reference for further credit to; [Complainant name and account number]”.*

It appears from the evidence submitted that the Complainant's former employer did not issue this format to the Complainant for confirmation, but rather by email on 14 August 2015, outlined that the account was considered to be a third party account, which was not the case.

Finally, I note that the provisions of the Trustee Investment Account Policy provide for instructions to be carried out *“as soon as reasonably practicable”* once the required documentation is received. I have not been provided with any evidence to suggest that the Provider has not complied with its obligations to the Trustees and the Policyholder or to the Complainant under that Policy.

For the reasons set out above, I do not 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.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

7 October 2019

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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.

