



<b><u>Decision Ref:</u></b>	2020-0158
<b><u>Sector:</u></b>	Investment
<b><u>Product / Service:</u></b>	Bonds
<b><u>Conduct(s) complained of:</u></b>	Errors in calculations Failure to provide correct information Maladministration
<b><u>Outcome:</u></b>	Substantially upheld

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

The Complainants hold an international portfolio bond with the Provider. The Second Complainant advised the Provider in **January 2018** that it had failed to pay the dividends due on the bond into the Complainants' transaction account for a number of months.

**The Complainants' Case**

The Complainants state that they purchased an international portfolio bond in **2011** from an entity subsequently acquired by the Provider in **2015**. The Complainants explain that within the bond were assets/ishares which accrued dividends and when dividends were paid, they were transferred to a transaction account within the bond. The ishares were in different currencies – US dollar, euro and sterling. The Complainants state that in **2014** “... *unknown to ourselves small inaccuracies crept into the amounts paid as dividends.*” The Complainants explain that in **2016** all dividend distributions for the ishares in euro and dollars ceased being paid into the transaction account and some dividends for the sterling shares also went unpaid. The Complainants emphasise that “... *the dividends had been paid out [from the] ishares, but they had not been credited to our Transaction Account by [the Provider's] administration department.*”

It was not until **January 2018**, when the Complainants received a statement from the Provider, that they became aware that their transaction account was understated.

The Complainants state the shortfall as follows:

*“The figures owing were:  
Euro 4,026.00  
GBP 6,814.00  
USD 23,858.00”*

The Complainants advise that they immediately contacted the Provider and the Provider “... never disputed that the dividends had not been paid nor that they were owing, nor the amounts, but they **DID** dispute that they were responsible or liable to make good the money.” The Complainants state that the Provider insisted at all time that their third-party Custody and Dealing agent (the **Broker**), who was appointed by the Provider, was to blame and that the Provider could not and would not reimburse the Complainants until the money was received from the Broker. The Complainants state that they “... even have it in writing from [the Provider] that if their agent failed to pay, we would lose the money.”

The Complainants submit that the Provider denied responsibility for what had happened until **1 May 2018** when their complaint was upheld. The Complainants state that the Provider “... procrastinated until they received the money from their third party, and then upheld our complaint.” The Complainants add that the Provider also failed to adhere to its own timeline for dealing with complaints. The Complainants are also dissatisfied with the Provider’s Final Response letter describing it as “completely disingenuous.” The Complainants further state: “The risible amount they have offered of 250GBP does not indicate they are sorry.”

The Complainants state that they have an expectation that a company such as the Provider “... has a fully functioning back-office department, and if they have any problems they will make good.” The Complainants feel the Provider has “... taken advantage of our vulnerability and insulted our intelligence ... [and] ... completely let us down.”

In resolution of this complaint, the Complainants want the Provider to pay “5000 GBP to reflect an amount for our own administration ... 5000 GBP to compensate for stress ... [and] ... 3000GBP to reflect that the money was not available when we needed it ...”

### **The Provider’s Case**

The Provider states that it “... has accepted full responsibility for the errors or omissions in relation to investments held under the Complainants’ Bond, including as a result of [the Broker’s] acts or omissions as confirmed to the Complainants in its Final Response Letter dated 1 May 2018.”

The Provider states that it appointed the Broker and the Broker provided brokerage and custody services in relation to a number of investments held under the Complainant’s portfolio bond from **November 2013** to **October 2018**.

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The Provider states that while the Broker has its own claims handling process, the Complainants did not deal with the Broker directly as the contractual relationship was between the Broker and the Provider. The Provider states that it managed the services provided by the Broker and resolved problems arising from transfers of dividends through its Outsourced Services Provider (**OSP1**).

The Provider states that it *"... regrets that its responsibilities were initially not clearly communicated to the Complainants in January 2018."* The Provider states that the Complainants were erroneously informed by its Outsourced Services Provider (**OSP2**) that the Provider was not responsible for any dividends that the Broker fails to pay or if the Broker is unable to meet its responsibilities. The Provider states that when the complaint was escalated to it for review in **March 2018** it corrected the position and confirmed to the Complainants that *"... it accepts full responsibility to ensure that policyholders are not affected by errors made by any of its suppliers."*

The Provider explains that the error in respect of the Complainants' bond *"... occurred due to a change in process within the [Broker] whereby dividends were no longer sent to the Provider's bank account ... in the usual manner."* On **2 May 2016**, the Broker was acquired by another entity and *"[a]s a result of the systems migration which occurred as part of the change of ownership, dividends ceased to be paid directly to the Provider's Bank account ... and were instead retained in the Provider's income account at [the Broker]."* The Provider further explains that *"[a]t no point during this transition period did any dividends go missing."* Prior to **April 2016**, the Provider states that dividends were sent directly to its bank account where they were credited to the underlying client transaction account. The Provider acknowledges that the *"... non-allocation of dividends continued for a two year period from April 2016 to April 2018 when all relevant dividends were applied to the Complainants' transaction account."*

The Provider states that it made a strategic decision in **2017** to change its intra-group OSP and transferred all residual policy administration services from OSP1 to OSP2. This led to a migration of all assets from OSP1's systems to OSP2's systems and a detailed reconciliation of bank accounts took place. In addition, the Provider states that a risk event related to this issue was raised internally in **January 2018**. The Provider advises that this resulted in a number of recommendations including the transfer of broker services from the Broker to another entity. The Provider also advises that it instructed OSP1 to review its income account with the Broker on a weekly basis to ensure dividends were deposited with the Provider's bank in a timely manner. The Provider then lists the various measures it has now put in place to ensure that the problem identified by the Complainants in this complaint does not occur again.

The Provider states that it has since terminated its relationship with the Broker in respect of the Complainants' bond and confirms that all outstanding dividends have been applied to the Complainants' bond for **2018** and are up to date for **2019**.

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Finally, the Provider also acknowledges and *“... regrets that there was a delay in the handling of this Complaint and has apologised to the Complainants for the deficiencies in this case.”* The Provider advises that it has reviewed the complaints handling process of OSP2 and training has since been provided to ensure that the deficiencies in the handling of this complaint do not occur again.

### **The Complaints for Adjudication**

The complaints are that the Provider:

1. Failed to apply the dividends due from the Complainant’s bond to their transaction account in a timely manner;
2. Failed to take responsibility for the error at the first available opportunity; and
3. Failed to deal with this error in a timely manner when the Complainants brought it to the Provider’s attention.

### **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 19 February 2020, outlining my preliminary determination 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.

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Following the issue of my Preliminary Decision, the parties made the following submissions:

1. Letter from the Provider to this Office dated 5 March 2020.
2. Letter from the Complainants to this Office dated 10 March 2020.

Copies of these submissions were exchanged between the parties.

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

The Second Complainant first notified the Provider of a potential issue with the dividends due on the bond on **20 January 2018**. On **22 January 2018**, the Provider advised the Second Complainant that it was “... currently investigating all dividends applied to your policy as well as looking at why nothing has been added to the plan since 2016.” The Provider informed the Second Complainant on **23 January 2018**, that her query was being passed to its funds investigation team.

In an email to the Second Complainant dated **24 January 2018**, the Provider advises that:

*“... our team in Ireland have confirmed that they haven’t received any EUR or USD dividends from [the Broker] since late 2016. We have contacted [the Broker] to find out why these have not been made to us and asked them to pay all distribution proceeds since the last transfer and to ensure this is set it up (sic) so we automatically get sent the cash ... We will provide a further update when we hear back from [the Broker].”*

The Provider wrote to the Second Complainant on **29 January 2018**, to inform her that:

*“[t]here was a change of administrator ... which we had to record on the system as each fund was renamed by [the Broker] ... [we] are just waiting on some responses from [the Broker] which they are chasing daily.”*

On **2 February 2018**, the Provider advised the Second Complainant as follows:

*“It has transpired that we have not received any dividends for any policy with an ex-div date of around 16/06/2016 from [the Broker] which we are querying with [the Broker] at the moment. ... we are still waiting to hear back from [the Broker] about receiving the EUR and USD divs from mid-2016. Unfortunately we won’t be able to apply any of these dividends owed until these amounts are received from [the Broker] which unfortunately we do not have an estimated time from [the Broker].”*

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By email dated **5 February 2018**, the Complainants expressed their dissatisfaction and disagreement with the Provider's comments that it would not be able to credit their transaction account with the unpaid dividends until the Provider received them from the Broker. In an email dated **6 February 2018**, the Provider responded to the Second Complainant stating:

*"[The Provider] is not responsible for any dividends that [the Broker] fail or are unable to meet its liabilities. Until the funds are received in our account from [the Broker] we are unable to apply these dividends to the bond. I can confirm that we operate on a cash receipts basis and with this there is no visibility if dividends are outstanding by the asset provider which you have chosen."*

The Provider forwarded a response received from the Broker to the Second Complainant on **13 February 2018**, wherein the Broker advised that it was reviewing the Provider's request regarding the payment of dividends.

The Second Complainant forwarded a letter of complaint to the Provider under cover of email dated **14 February 2018**.

On **14 March 2018**, the Provider updated the Complainants as to the status of its investigation:

*"We have been in contact with [the Broker] and they have confirmed that the delay was caused by their dividend processing. We have raised the issues with their senior management and they are investigating the cause further. Following numerous communications we have finally received payments from them, however as these are bulk payments ... we are waiting for a breakdown from [the Broker] to be sent to us so that we can provide a correct allocation to each Bond.*

*We realise this is a poor level of service from [the Broker] and this has been communicated to them. We will also look to work with them to ensure this issue does not reoccur.*

*We do apologise for this frustrating situation and the stress it must be causing you and can assure you we are actively trying to resolve this issue."*

A further update was given to the Complainants on **20 March 2018**. This was followed by a series of email exchanges between the parties to this complaint from **20 March 2018** to **23 March 2018** in terms of trying to ascertain the amounts due to the Complainants.

The Provider wrote to the Second Complainant on **3 April 2018**, acknowledging that the deadline for resolving the complaint had been reached but the Provider was still chasing the relevant parties.

The Provider again wrote to the Complainants on **13 April 2018**:

*"I apologise for the frustration and inconvenience this situation has caused you and your husband and I empathise with your concerns. ... our Senior Management and Managing Director are fully aware of the matter, which I have reported to them since this case was escalated to me in early March.*

*We are taking this matter very seriously and I am sorry you have not been given visibility of the escalations that have happened internally within [the Provider].*

*My understanding is that we have not written to you at the 40 days timeline which is not in compliance with the complaint handling process which should have updated you on the current position and given you the referral rights to the Irish Ombudsman.*

...

*We have been liaising with [the Broker] ...We have escalated the matter with [the Broker] and have asked for an explanation on the delays and the reason the dividends were not been sent (sic) to us in the first instance.*

*At this point we have since received part of the dividends due and are working with [the Broker] to ensure these have been applied in the correct currency. [The Broker] have confirmed that the last outstanding dividend payment has been paid today. ...*

*We have asked [the Broker] for a full explanation as to why these issues have arisen ..."*

In a further update on **23 April 2018**, the Provider advised the Second Complainant that:

*"I would like to send you a note to say that your case is with me and since we spoke, I've been working with all relevant stakeholders to get it resolved. I will be in a position to send you a resolution letter soon and if possible by the end of the week."*

In an email dated **24 April 2018**, the Provider advised the Second Complainant that *"... all dividends are now applied and you can view the details on your valuation statement."*

The Provider sent the Complainants a Final Response letter on **1 May 2018**. This letter states in part:

***"Findings:***

- *I confirm all dividends due on your bond have been received (last payment made on 23 April 2018) and credited to your transaction accounts ...*

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- *With respect to our dividends process, I confirm that we seek to credit them to the transaction account on receipt. We have an arrangement with our Broker to pay these to us when received from the asset/fund. However it appears that our Broker failed to do so in this instance. In order to address the identified gap in the dividends process, I confirm we have implemented a control to ensure all dividends are paid by our Broker in a timely manner.*
- *I can also confirm that we have initiated a service review of our Broker's offering which we hope to conclude in the coming weeks.*
- *The statement from our teams about our responsibility for missing dividends from our Broker is not correct. [The Provider] seeks to ensure at all time that you are unaffected by errors made by any of our suppliers. I have ensured that all staff is aware of this.*
- *You did not receive the 40 day letter due to a training issue within the team which has been addressed.*

**Conclusion:**

*Your complaint is upheld and I sincerely apologise for the concern and distress these errors and delays have caused you and your husband.*

*I am comfortable that the additional controls we have put in place in the dividends process will ensure these issues do not occur again.*

*As a gesture of goodwill, I would like to offer you £250 to apologise for the distress and inconvenience you have experienced and to account for any potential interest lost. ..."*

In response to this, the Second Complainant wrote to the Provider on **2 May 2018** stating:

*"... I am pleased that the complaint has been upheld.*

*As regards the offer of £250 in compensation: the amount fails to cover the days and weeks of work which I have had to put into this, never mind the worry, distress and missed investment opportunities over a long period."*

**Analysis**

The Second Complainant informed the Provider of an issue with the payment of dividends in respect of the bond in **January 2018**.

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Following an investigation into the matter, it transpired that dividends were not deposited to the Complainants' transaction account for approximately 18 months as identified by the Second Complainant in her email to the Provider dated **20 January 2018**. This amounted to reasonably substantial amounts of money in respect of the Complainants' bond across three different currencies. While the Provider was not obliged to immediately take responsibility for the oversight associated with the payment of the Complainants' dividends, it should have done so at the first available opportunity having ascertained the cause of the error. The Provider failed to do this and has acknowledged this failure and apologised to the Complainants. The Provider has also acknowledged the payment error, eventually took full responsibility for it and apologised to the Complainants. I accept that the Provider failed to take responsibility for the payment error at the first available opportunity and also that it failed to deposit the dividends due on the Complainants' bond in a timely manner.

The Complainants received their overdue dividend payments approximately four months after informing the Provider of the issue. The Provider advised the Complainants on **14 March 2018** that it had received the relevant dividend payment from the Broker. However, it did not yet have precise details as to how much was owed to the Complainants due to the number of affected bonds. The evidence in this complaint indicates that the Complainants received the amounts due to them by **24 April 2018**. The correspondence outlined above demonstrates that the Provider and the Second Complainant were in regular contact throughout process. There can be no doubt that it would have been frustrating and worrying for the Complainants that the Provider's agents initially tried to place responsibility for the missing dividends elsewhere.

It is not disputed that there was a failure on the part of the Provider to ensure the Complainants received their dividend payments. While the Provider has advanced an explanation for how this error occurred, which I accept, this error endured, unknown to the Provider, for quite some time.

In its submission to this Office dated **29 June 2019**, the Provider offers the following gesture of goodwill:

*"The Provider has apologised to the Complainants for the distress caused as a result of the deficiencies in its complaints handling process and as a gesture of goodwill confirms its offer to pay compensation of £1,000."*

The Complainants are dissatisfied with the level of compensation offered by the Provider. I accept that the Complainants, in particular the Second Complainant spent a large amount of time dealing with the Provider in an effort to resolve the payment error. I also accept that this caused the Complainants distress, inconvenience and worry as a not insignificant sum of money was missing from their transaction account. The Complainants maintain the position that they have been deprived of certain investment opportunities as a result of not having access to their dividend payments. The Complainants have not tendered any evidence setting out the investments they have missed or would have invested in.

Given the level of worry, inconvenience and frustration caused to the Complainants, I do not consider the goodwill gesture offered by the Provider is sufficient to compensate the Complainants for the conduct of the Provider.

Therefore, I substantially uphold this complaint and direct the Provider to pay a sum of stg. £3,000 to the Complainants.

In my Preliminary Decision I indicated that on the basis that there could be other customers of the Provider affected by the errors identified in this complaint, I proposed to bring this matter to the attention of the Central Bank of Ireland.

The Provider in its post Preliminary Decision submission, dated 5 March 2020, stated that it undertook an investigation and found a number of affected customers. The Provider states that the identified customers have had the issue rectified by applying the overdue dividends and interest to their accounts.

While I welcome the fact that the Provider undertook its own investigation and sought to rectify the matter, it remains my intention to bring this matter to the attention of the Central Bank of Ireland.

### **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) (b) and (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 make a compensatory payment to the Complainants in the sum of stg. £3,000 to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants 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**

2 April 2020

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.**