



<u>Decision Ref:</u>	2021-0098
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Shares/Equities Investment
<u>Conduct(s) complained of:</u>	Complaint handling (Consumer Protection Code)
<u>Outcome:</u>	Substantially upheld

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

The Complainant incepted a life assurance policy with a financial services provider in **December 1995**. This financial services provider was acquired by the Provider, against which this complaint is made [the Provider] in **February 2011**. In **April 2014**, the Complainant raised a query with the Provider regarding certain withdrawals from the policy between **December 1998** and **June 2002**. The Complainant raised the matter with the Provider again in **October 2017** and made a formal complaint in **July 2018**.

The Complainant's Case

The Complainant submitted a Complaint Form to this Office in **August 2018** attaching a number of emails. In these emails and in subsequent correspondence with the Office, the Complainant explains that he held a life assurance policy with the Provider. The Complainant explains he was withdrawing 5% of the sum invested in the policy on a regular quarterly basis and the withdrawals were credited to a designated bank account. The Complainant says that around **April 2014**, he found a discrepancy between the Provider's withdrawal figures and his own figures. The Complainant states the discrepancy related to the period between **December 1998** and **June 2002** where quarterly withdrawals of £2,237.50 were arranged. The Complainant identifies five transactions which occurred during this period and says they were cancelled on his instruction and not paid into the designated bank account.

The Complainant explains he raised a query with the Provider regarding these transactions in **April 2014**. The Complainant states the Provider failed to properly investigate and correct the above transactions in a timely manner and *"[e]ach time I got the same response that they were looking into it but nothing came of it ..."* The Complainant says it was not until **July 2018** that the Provider advised him that the transactions were correct and that he had not been disadvantaged.

The Complainant explains he received a further letter from the Provider on **1 August 2018**, and *"... many hours were spent struggling to understand the incomprehensible."* The Complainant says he is *"... extremely disappointed in what I regard as [the Provider's] contemptuous attitude in sending me a meaningless listing in a spurious attempt to evade my complaint and they have done nothing to correct their errors, promising to do sometime in the future."*

The Provider's Case

The Provider explains the policy the subject of this complaint was originally inceptioned in **December 1995** and was assigned to the Complainant in **June 2014**.

The Provider states that it acted on the signed instructions from the policyholder to suspend the regular withdrawals on **26 October 1998, 29 August 2001, 28 November 2001** and **18 February 2002**, and to fully terminate all regular withdrawal payments on **28 May 2002**. The Provider says that suspension of regular withdrawals is not a standard offering of the policy but it agreed to- facilitate these requests.

The Provider explains that to cancel these regular withdrawal transactions, it reversed the units which had been deducted from the policy to ensure the policyholder's transaction details and policy value were accurate. The Provider says it confirmed to the policyholder on numerous occasions that the withdrawal payments in question were not paid out in accordance with the requests to suspend these transactions.

The Provider states that there were no irregularities or fraudulent activity in relation to these transactions, and transaction reports and valuation statements have been provided to the policyholder to verify that all transactions were processed in accordance with the requests. The Provider reiterates that the policy values are correct and the issue was in relation to the incorrect *total encashment amount* displaying on the policy valuation obtained through the Provider's online system, which the Provider explains, was subsequently resolved. The Provider also states there were no negative tax consequences for the Complainant.

The Provider says it did not refuse to respond to the Complainant or refuse to rectify the situation. The Provider refers to the information contained in the *Timeline of Events* regarding the correspondence and transactions which occurred between the Complainant and the Provider to date.

/Cont'd...

The Provider also wishes to reiterate that there was no financial loss incurred by the Complainant. However, the Provider *“... does acknowledge and regret that [the Complainant] has suffered inconvenience as a result of the time taken to resolve the issue for him.”*

The Provider explains that following receipt of the Complainant’s email in **April 2014** an internal investigation took place to ensure that the policy was in the correct position and none of the payments had been deducted from the policy or paid out. The Provider advises that the issue identified was in relation to the total encashment amount on the online valuation. The incorrect total encashment amount of £155,478.92 GBP was reflected on the online valuation statement instead of the total the correct amount of £146,528.92 GBP. However, it states that the total encashment value was correct on the life administration system.

The Provider says attachments displaying the transactions in Excel format were sent to the Complainant in addition to a valuation statement. The Provider advises that the Complainant was not fully satisfied with this explanation. The Provider *“... agrees that the original query in 2014 was not fully addressed with the Policyholder, however all transactions on the policy were correct.”* The Provider advises that the information on one section of the valuation statement was inaccurate but the total policy value was accurate at all times. The Provider says that it has been frequently dealing with the Complainant during the period from **2014** to **2017** on numerous complex queries in relation to the policy.

In the Complainant’s **October 2017** email, the Provider says the Complainant contacted it in relation to general rules and the tax implications should he proceed with full encashment. The Complainant again queried the incorrect total encashment amount reflected in his valuation statement. The Provider explains that in **November 2017**, it apologised for the oversight in not finalising his original query. The Provider says a follow-up investigation took place as to why the valuation statement was still reflecting the incorrect total encashment amount. The Provider states that during this time, it engaged with the Complainant by phone and email on numerous occasions.

In **June 2018**, the Provider advises that it explained the cause of the incorrect information on the valuation statement and confirmed the policy value was correct and the discrepancy in the total encashment amount had not been deducted from the policy. The Provider reiterates that the only inaccurate information in relation to the policy was the total encashment amount on the valuation statement which required IT support to rectify. The Provider advises that the total encashment amount was amended on the policy valuation system in **April 2019**.

In **July 2018**, the Provider says the Complainant lodged a formal complaint. The Provider says the list of transactions on the policy was again provided to the Complainant to verify that all information was correct and no ghost payments had occurred.

The Provider also explained that no unpaid regular withdrawals were reported to Her Majesty's Revenue and Customs (**HMRC**) and no chargeable event letters were sent in relation to the policy. Therefore, no tax implications could have arisen from this.

The Provider *"... acknowledges that the issue should have been resolved in a more timely manner when originally contacted in 2014. As a gesture of goodwill the Company have again apologized for the delay and offered an amount of 150 GBP for this inconvenience"*

The Provider states that its Finance Department confirmed that no payments had been paid out on the relevant dates outlined above. It also states that the Actuarial Department provided oversight, analysed and verified that all transactions and unit adjustments on the life administration system were correct, and confirmed the policy value was accurate. The IT Department provided support for data and online information, and was contacted as the total encashment amount was displaying incorrectly on the online valuation. The Operations Department actively co-ordinated with other departments to seek to resolve the issue, and liaised and communicated all information from all departments to the Complainant. The Provider says the Complainant was informed that he was not financially disadvantaged and was provided with evidence to support this.

The Complaint for Adjudication

The complaint is that the Provider failed to investigate and correct the five queried transactions in respect of Complainant's policy in a timely manner.

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.

/Cont'd...

A Preliminary Decision was issued to the parties on 28 January 2021, 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.

Following the issue of my Preliminary Decision, the Complainant made a submission to this Office under cover of his e-mail dated 5 February 2021, a copy of which was transmitted to the Provider for its consideration.

The Provider has not made any further submission.

Having considered the Complainant's additional submission and all submissions and evidence furnished by both parties to this Office, I set out below my final determination.

Background

The Complainant emailed the Provider on **28 March 2014** regarding the encashment of his policy and his wife's policy, which included the following query:

"... I have been looking at the withdrawals we have taken from our 2 policies since their inception and I find that there is a considerable discrepancy between the figure of circa £105,000 Total Encashments quoted in our Annual Valuations of 31st December 2013 and that which has been paid into our bank accounts.

Are other charges being added to these so-called 'encashments' and, if so, are they included in the 5% per annum withdrawal that we are nominally allowed for tax purposes? ..."

The Provider responded on **3 April 2014** as follows:

"I have attached a document for each of your policies, showing the amounts that have been withdrawn and the dates of the withdrawals which have been paid to your bank accounts. Please note they include the regular withdrawals and also any partial encashment.

There have been no penalties on the withdrawals that you have taken to date for both policies. Any charges for these policies are laid out in the policy schedule Regarding your chargeable event calculation, only the payment amount received by you is included in this calculation. ..."

The Complainant emailed the Provider again on **18 April 2014** as follows:

"Secondly, I am aware that the correspondence regarding the drawdowns from our funds may be a little contentious but I would be pleased to hear from you if you have made any progress on the subject."

The Provider responded on **22 April 2014** advising the Complainant that his query was being investigated. The Complainant emailed the Provider on **4 May 2014** requesting an update on "... [t]he circa £22000 that were secreted from our accounts and logged against our withdrawals. ..."

On **7 May 2014**, the Provider advised the Complainant that:

"We have been working on your request regarding the regular withdrawals for both of your policies. As this involves a complete reconciliation of the policies, it is taking some time to gather the required information necessary to answer your query. I cannot provide an exact time for when I will have a response, but, please note that I will be working to provide you with this information as quickly as possible.

I am also attaching two full transaction reports for each of your policies, which detail all the transactions that have taken place on the policies. ..."

In an exchange of emails on **14 May 2014**, the Provider advised the Complainant that the Provider was working on the request in respect of the withdrawal payments and, as this involved a complete reconciliation of the entire policy, it would take some time to complete. The Complainant was also advised that the Provider would be in touch as soon as the investigation was complete. A similar message was conveyed to the Complainant in an email from the Provider dated **21 July 2014**.

The Complainant emailed the Provider on **17 October 2017** with a query in respect of his policy documents. Following this, the Complainant emailed the Provider on **27 October 2017**, as follows:

"... These questions tie with the email I sent to you on 17th October in which I was concerned that the withdrawal amounts quoted on the website do not agree with the amounts that I have banked. This applies to my wife's policy ... as well as my own. I am awaiting a response from Finance Department regarding these figures."

The Provider responded to the Complainant on **2 November 2017** stating that it was currently looking into the Complainant's query regarding previous encashments. The Complainant emailed the Provider again on **16 November 2017** explaining that:

"Just a reminder to ask you to follow up with the Finance Dept regarding our withdrawals. I asked for this to be looked into a couple of years ago and got no response from them.

/Cont'd...

This time I will badger them until I get a reply as it could impact on our tax position. I maintain that we have taken almost £10,000 less from each policy than they have calculated.”

The Provider wrote to the Complainant again on **20 November 2017** advising that:

“Please note that both our Operations department and our Finance department are currently reviewing your entire file to get to the bottom of your query.

As the withdrawals date back so far, the query is going to take some time to resolve however, I can assure you that it is being investigated.”

The Complainant emailed the Provider on **4 January 2018** noting that it had been 10 weeks since he contacted the Provider and the matter had yet to be resolved. The Provider emailed the Complainant on **5 January 2018** and requested his mobile phone number to discuss the policy. The Complainant responded to the Provider on **6 January 2018** asking:

“Are you in a position to send me an audit trail or detailed analysis of the ‘Total Encashments to Date’ for each of our portfolios before the phone call? In other words, the transaction dates and amounts that [the Provider] have on file when these settlements were made, to reconcile with the totals.

Then we will have something meaningful to talk about. Otherwise we will just be discussing unknown details and going around in circles.”

It appears from the Provider’s email to the Complainant dated **10 January 2018**, that the Provider attempted to telephone the Complainant. The Provider emailed the Complainant the following day, in response to his previous email, stating:

“Apologies, I had not seen this email before I contacted you yesterday.

This is an extremely complex query and is still being investigated, we are involving the relevant department managers as we did when the query originally came up three years ago.”

The Provider emailed the Complainant on **7 February 2018** enquiring as to whether he was available to take a phone call to discuss his query. The Complainant emailed the Provider on **12 February 2018** referring to an earlier telephone conversation and also provided information regarding *“... the dates ... we received and banked the income distributions from [the Provider] since the inception of both of our policies.”*

The Complainant emailed the Provider on **13 April 2018**, seeking, in essence, an update on his query. Somewhat belatedly, the Provider responded on **5 May 2018**, addressing this query and a number of other policy related queries.

/Cont’d...

In respect of the query the subject of this complaint, the email states:

"... I can confirm that this has been actively investigated by my colleagues in my team, and our Finance department.

At this stage, we are in the process of approaching [the insurer] to determine if archived accounts information is still available, which may assist in resolving this matter.

The Provider emailed the Complainant with an update regarding his query on **1 June 2018** and also referred to a telephone conversation from earlier in the week, explaining that:

"As discussed, we have received the account information and had it analysed by our finance department and we believe we have identified the issue. We are currently awaiting confirmation on a piece of information which we hope to be in a position to provide to you early next week. ..."

The Provider emailed the Complainant and his wife on **8 June 2018** offering the following explanation in respect of his query:

"As discussed by phone, we have established the issue with the encashment figure on your policy valuations.

On four occasions, you had sent in letters to request that no payment leaves for your regular withdrawals, the payments were stopped however, they were still processed from the policies, we will ensure to correct this matter and will confirm to you once completed. ..."

On **20 June 2018**, the Complainant emailed the Provider stating:

"Thank you for your welcome news on our withdrawal figures, although I am disappointed that they are still showing on the website. Any idea why it is taking such a long time? Can you please tell me the dates that were affected so that I can update my records? ..."

In response to this, on **27 June 2018**, the Provider advised that:

"... this is not showing due to the manual nature of the corrections however, I can assure you that it is being processed, the dates no payments were made are as follows:

01/12/1998

01/03/2001

01/09/2001

01/12/2001

/Cont'd...

...”

The Complainant made a formal complaint to the Provider on **2 July 2018**. This concerned, what the Complainant believed to be, the wrongful withdrawals from the policy, the delay on the part of the Provider in investigating these transactions, and the delay in correcting the *website figures*. This complaint was acknowledged by the Provider on **4 July 2018**. The Provider informed the Complainant by email dated **30 July 2018** that it was finalising a response to his complaint and a response would issue no later than **1 August 2018**. The Provider issued a Final Response letter under cover of email dated **1 August 2018**. The Final Response letter stated:

“... Firstly, please accept our sincere apologies for any inconvenience and undue stress this matter has caused to both you and [your wife]. A full investigation has been made into the matter and we can confirm that while the regular withdrawals were not paid to you as a suspension request was sent in, they processed from your policy. Following these regular withdrawals processing, unit adjustments were made straight away to ensure that you were not disadvantaged. The attached excel valuation will evidence this.

The total encashments figure on your policy valuation is incorrect and will be updated by our IT team manually however again, the unit values are correct.

*Please be aware that where a policy or contract was taken out **before 6 April 2000 (type A policy)**, the insurer is only required to report to HMRC the nature of an event bringing the policy to an end, and the amount of proceeds paid on that event and as such [the Provider] did not report any unpaid regular withdrawals to HMRC as you have queried. We wish to re-assure you that in the event anything was incorrectly reported and brought to our attention, we would contact HMRC to rectify the reporting. ...”*

The Complainant wrote to the Provider on **22 August 2018** raising a number of queries in respect of the Final Response letter and the attached Excel spreadsheet.

A further Final Response letter was issued to the Complainant under cover of email dated **28 September 2018**. This letter states:

“... The excel document provided to you shows all the policy movements, this can be filtered to show specific transaction types or dates. This was not amended prior to sending to you as we felt it would not have been right to do so. However please see attached a transaction report specifically related to the regular withdrawals and unit adjustments.

...

We apologise for the extensive amount of time it has taken to resolve your query, this is due to the time these transactions took place and the records kept at that time.

/Cont'd...

Unfortunately, as the withdrawals took place some time ago, we are using an older system which we no longer have access to. This was replaced by a new system which has since also been replaced by another system so the information has now been transferred twice since it was recorded which has caused the dates of the unit adjustments to appear incorrect on the attached filtered valuation however, it has been reviewed by our Finance and Regulatory Operations managers and our actuarial department, all of whom have confirmed that the calculations and units are correct and you have not been at a disadvantage due to the regular withdrawals processing off the policy as these were corrected with unit adjustments.

...

Please be aware that the matter has been raised with our IT department and will be rectified ...

The issue has not put your policy at a disadvantage as it was corrected by adjustments ...

The withdrawals were not paid to you as you requested that they were suspended. At the time, we did not have the system functionality to suspend a regular withdrawal which is why they processed off the policy. Again, these were rectified with unit-adjustments. ...”

The Complainant responded to this letter on **12 October 2018**, setting out a number of observations. By email dated **23 November 2018**, the Provider enclosed a letter advising, in particular, that it was not in a position to offer any further information than what had already been provided.

Analysis

The Complainant first raised a query regarding the value of his policy in **March 2014**. This was acknowledged by the Provider in **April 2014** and the Complainant was assured the query was being investigated. In **May 2014**, the Complainant was provided with transaction reports in respect of the policy. The Complainant was also advised that the investigation of the query was somewhat complex and involved a complete reconciliation of the policy.

It does not appear that the Provider responded to the Complainant’s query. The Provider’s email of **21 July 2014** is recorded in its Timeline of Events furnished to this Office. The entry immediately after this is as follows and appears unrelated to the Complainant’s query: “*23/07/2014 – The Company confirmed to the client assignment was processed*” The next entry is dated **27 May 2015**.

The Complainant contacted the Provider again in **October 2017** in respect of his query and, in his email dated **16 November 2017**, the Complainant states that: “*I asked for this to be looked into a couple of years ago and got no response from them.*”

/Cont’d...

Further to this, in its Formal Response, the Provider “... agrees that the original query in 2014 was not fully addressed with the Policyholder ...”

Therefore, in respect of the policy query made in **March 2014**, while a certain level of assistance was given by the Provider, I am not satisfied that the Provider properly responded to the query nor am I satisfied that the Provider properly investigated the query. Additionally, the Provider has not offered any explanation as to why the query was not fully addressed in **2014**.

The Complainant raised the matter again with the Provider in **October 2017**. The Complainant also advised the Provider that the “... withdrawal amounts quoted on the website do not agree with the amounts that I have banked.” This was followed by a series of email exchanges and telephone conversations between the parties. The Complainant was also advised as to the complexity of the query and the nature of the work involved to address this query.

I note that in its correspondence to the Complainant, the Provider makes reference to the fact that the matter was previously reviewed by the relevant departments. If this is the case, then it would necessarily follow that its investigation into the Complainant’s query this time round should have been more expeditious. However, as can be seen from the evidence, this was not the case. This would further suggest that a proper investigation was not carried out in **2014** as the Provider should have had the benefit of the policy reconciliation and analysis carried out in **2014**, but this is not evident from the Provider’s responses to the Complainant in **2017/2018** or its response to this complaint.

The Provider’s response to the Complainant’s query comprises the passage I have quoted from the email dated **8 June 2018**. Given the complexity of the Complainant’s query, the level of effort and departmental co-operation required, and the assistance sought from the insurer; it is surprising that the Provider’s response was capable of being set out in a single paragraph and without any supporting documentation. Further to this, given the extent of the Provider’s response, it is also difficult to see how it could have taken approximately 8 months to investigate and provide a response.

A formal complaint was made to the Provider in **July 2018** and Final Response letters issued in **August** and **September 2018**. Having considered the evidence, I believe these letters were the first occasions on which the Complainant’s query was properly addressed by the Provider. These were accompanied by various Excel attachments.

Separately, in its correspondence dated **8 June, 27 June 2018, 1 August 2018** and **28 September 2018**, the Provider assured the Complainant that the encashment figure for his policy valuation would be corrected as this was displaying incorrectly on the Provider’s on line system. Despite the Provider’s knowledge of this error and its assurances that it would be rectified, the Provider states in its Formal Response to this Office that this issue was not corrected until **April 2019**. It is also stated in the Timeline of Events “April 2019 0 IT rectified the value on RAD”.

/Cont’d...

It is very disappointing that it took this length of time to rectify this issue and no explanation has been offered by the Provider as to why this was the case. In the circumstances, I consider the delay on the part of the Provider in correcting the Complainant's policy valuations to have been unreasonable.

For the reasons outlined in this Decision, I substantially uphold this complaint and direct the Provider to pay a sum of stg £1,000 to the Complainant for the inconvenience caused.

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), (f) 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 Complainant in the sum of stg £1,000 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**

20 April 2021

/Cont'd...

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.

