



<u>Decision Ref:</u>	2021-0179
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Unit Linked Whole-of-Life
<u>Conduct(s) complained of:</u>	Encashment delays Delayed or inadequate communication
<u>Outcome:</u>	Partially upheld

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

The complaint concerns an investment product.

The Complainants' Case

The Complainants assert that the Provider *“operates a system for the encashment of funds that [the Complainants] believe is unfair”*, by using *“the unit value for the next working day”* when processing a customer’s instruction to encash funds. The Complainants state that the Provider’s process is:

“... unfair; it is equivalent to buying an item in a shop and then being told to come back on Monday morning and [the Provider] will tell you the price”.

The Complainants contend that they had *“funds with [the Provider]”* and that they *“wished to do an encashment”*. The Complainants assert that *“by 2pm on Friday [they] had submitted all the necessary forms and documents for the encashment to [the Provider]”*. The Complainants assert that they *“then asked [the Provider] about the unit price at which the encashment would be made.”* The Complainants state that they were *“told that the price would be that at the start of the NEXT working day, the Monday morning price.”*

The Complainants state that *“the markets were quite volatile at the time and [they] certainly did not want to lose out between Friday and Monday”.*

The Complainants state that they then *“asked [the Provider] what the current unit price was?”* The Complainants contend that, in response, the Provider advised a figure *“from two days before”*. The Complainants assert that the Provider also advised them that *“the figures shown online are always two days behind”*.

The Complainants state that they were *“not happy with”* these responses from the Provider which led them to *“request a phone call [from the Provider] before the encashment would be made”*. The Complainants state that they *“did not receive this call”* and that *“it wasn’t until two days later...that the encashment was finally completed”*.

The Provider’s Case

The Provider maintains that the encashment was carried out in accordance with the terms of the policy.

The Provider states in its Final Response Letter to the Complainants dated **3 January 2019**, in relation to the *“time lag in updating the price of funds on [its] system”*, that:

“The price of unit funds are priced one day in arrears...All funds are calculated in this way.

The policy conditions provided to you confirm that when an encashment is being processed, the units are encashed at the price on the day after you notify us.”

The Complaints for Adjudication

The complaint is that the Provider:

1. *“...operates a system for the encashment of funds that [the Complainants] believe is unfair”*.
2. Proffered poor communication and customer service throughout.

The Complainants want the Provider to confirm the unit price for encashment on the day the request for encashment was made.

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 20 May 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.

In the absence of additional submissions from the parties, following the issue of my Preliminary Decision, I set out below my final determination.

Before embarking on my analysis, I will set out the relevant terms of the policy.

Policy Terms and Conditions

Section B of the Policy is entitled 'Details of the Policy' and provides as follows at No. 4:

4. Benefits

Encashment

You can encash part or all of your policy at any time. If you are encashing part of your policy, the Company can set a minimum level of encashment, and may require that a minimum fund value remain attached the policy.

To pay an encashment, units are encashed from the policy at the price on the day after you notify us.

Analysis

The Complainants take issue with the fact that, notwithstanding having submitted all documentation necessary for the encashment of funds by 14:00 on a Friday (30 November 2018), the unit price to which the transaction was to be subject was the relevant unit price as of the following Monday. The Complainants view this protocol, which they characterise as their “*main issue*”, as “*unfair*”.

A review of the terms and conditions of the Complainants’ policy discloses that the policy clearly provides for the encashment of funds by way of this procedure. The terms of the policy are the ‘rulebook’ governing interactions between the Complainants and the Provider, and the Provider has clearly complied with the rules. Insofar as the Complainants are dissatisfied with this procedure it would have been open to them to decline to invest in the policy having reviewed the applicable terms and conditions.

They did not do so and therefore they are bound by the terms to which they agreed. In the event, the Complainants in fact benefitted from an increase in value to the policy.

Insofar as the Complainants take issue with the Provider’s inability to inform them prior to the Monday of the precise unit price to which the transaction would be subject, this was simply not possible until the price of the units on the transaction day (the Monday) was established. The price was established only after close of business on the Friday.

Therefore, I do not uphold this aspect of the complaint.

The second aspect of the Complainants’ complaint relates to the First Complainant’s request for a phone call prior to the transaction being processed. This request was made initially in a phone call on 28 November 2018 during which it was explained to the First Complainant that the encashment price would be the price on the next working day after the encashment request was formally made. In this call, the Provider’s agent agreed with the First Complainant that the First Complainant could include, along with any formal encashment instruction, a written request for a phone call to be made prior to the transaction processing. The First Complainant duly included such a request with his email sent at 23:41 on Thursday 29 November 2018 (deemed to be received on Friday 30 November 2018) which formed his formal encashment instruction. The email stated as follows:

*I am told by your advisor that encashment will take place on the next working day after you receive my request. That leaves open the possibility that the funds could tumble between now and when encashment takes place. **To avoid a problem I am asking that you phone me with an accurate valuation of the fund before you activate the encashment.** My mobile number is [redacted].*

[Complainants’ emphasis]

/Cont’d...

Thereafter, the First Complainant contacted the Provider on Monday 3 December 2018 at which point he highlighted that he had not received the call he had requested. The Provider's agent pointed out that the encashment had not yet been processed. The First Complainant called again on 5 December 2018 again noting that he had yet to receive a call. In response to a question as to whether the transaction had been processed, the Complainant was advised that the encashment was being "*looked at now*". The First Complainant reemphasised that he wanted a phone call "*before the encashment took place*". The First Complainant was promised a call back. Thereafter, the Provider called the First Complainant to advise that the transaction had been authorised and that the funds should be in the Complainants' account shortly thereafter. The First Complainant reiterated that he had wanted to know the unit price before the transaction was processed.

The Provider has failed to grasp the Complainants' concern to this aspect of the complaint. The First Complainant clearly requested a phone call prior to the transaction being processed. He did not receive this. The purpose of the request was so that the First Complainant could satisfy himself that the unit price was acceptable and had not suffered a 'tumble'.

It may well be that the request for a phone call may have been futile insofar as it may be that, once the encashment instruction was formally made on 30 November 2018, there was no possibility of withdrawing the instruction. However, this is not the point.

The First Complainant requested a phone call prior to the transaction processing. The First Complainant was assured during the phone call of 28 November 2018 that such a request was in order. The purpose of the request for the phone call was entirely clear as set out in the email of 29 November 2018. In the various phone calls made by the First Complainant, he was clear that he wanted a phone call prior to the transaction processing. Therefore, the First Complainant should have received a phone call prior to the processing of the transaction either advising him of the price and seeking his confirmation to proceed with the transaction or, if as noted above it was the case that he could not in fact cancel the transaction as set out above is correct, he should have received some communication advising him that it would not be possible to provide a conditional encashment instruction that would be subject to final confirmation on the transaction date. The First Complainant received neither of these. Accordingly, I uphold this aspect of the complaint.

For the reasons set out in this Decision, I partially uphold this complaint and direct the Provider to pay a sum of €500 in compensation to the Complainants.

Conclusion

My Decision is that this complaint is partially upheld pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, on the grounds prescribed in **Section 60(2)(b) and (f)**.

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 €500, 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

3 June 2021

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.