



<b><u>Decision Ref:</u></b>	2021-0417
<b><u>Sector:</u></b>	Investment
<b><u>Product / Service:</u></b>	Bonds
<b><u>Conduct(s) complained of:</u></b>	Maladministration Delayed or inadequate communication Failure to process instructions in a timely manner Encashment delays
<b><u>Outcome:</u></b>	Partially upheld

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

### **Background**

The Complainants incepted an investment policy with the Provider in **April 2018**. The Provider is based in Ireland with customers in the UK. The Complainants are customers in the UK. A surrender request was made to the Provider by the Complainants' Financial Advisor, which resulted in a payment based on a later date, and at a lower price than that expected by the Complainants.

### **The Complainants' Case**

On **16 March 2020**, the Complainants' representative issued a surrender request on the Complainants' behalf to the Provider in respect of their policy. The Provider received and signed for the surrender request on the morning of **17 March 2020**.

The Complainants received an e-mail from the Provider on the afternoon of **18 March 2020**, which outlined a downward unit price adjustment, in respect of the fund the Complainants were invested in. The Complainants' representative contacted the Provider by telephone, requesting that the Provider make contact in relation to the downward price adjustments. The Complainants' representative made further contact with the Provider by e-mail on **18 and 20 March 2020** seeking confirmation that that the surrender price "*will be at close of day 17 March and will not include the price adjustment*". The Complainants' representative spoke to a staff member of the Provider on **25 March 2020**. The

Complainants' representative submits a summarised transcript of the **25 March 2020** telephone conversation, during which the Provider's call handler:

*"Confirms [a request for the bond to be encashed] has been received. Advises that there are some delays to processing payments due to the current situation [Covid-19] but can see that Team has confirmed that the full surrender will be processed as at 17/03/2020."*

The Complainants submit they anticipated receipt of approximately £535,064.00, had the surrender request been processed at the **17 March 2020** price. On **06 April 2020**, the Provider transferred a payment of Stg£474,609.79 to the Complainants' account. The Complainants describe being shocked upon learning of the actual amount transferred to them.

The Complainants' representative contacted the Provider on **06 April 2020**, where they submitted:

*"Both we and our clients [the Complainants] are very dis-satisfied with this outcome and feel that our clients have been materially disadvantaged based on [the Provider] using a pricing point a day after all the relevant documentation was received by [the Provider]."*

The Complainants lodged a formal complaint with the Provider. In its response dated **15 April 2020**, the Provider set out that **17 March 2020** "was a bank holiday in Ireland and no prices were available", therefore prices of 18 March 2020 applied to the surrender request. The Provider acknowledged the policy notes used by the Provider's staff "should have noted that 17 March is a bank holiday" apologised for furnishing the Complainants' representative with incorrect information, and apologised for the delay in replying to the Complainants' representative's e-mails. The Provider outlined that public health restrictions in place during March 2020 impacted on the Provider's ability to respond to communications within its normal timescales.

In their Complaint Form submitted to this Office dated **19 May 2020**, the Complainants state:

*"We feel that our adviser and therefore us have been very misled by [the Provider] having been assured that everything was received and dealt with on 17 March prices. We then only found out that this was suddenly no longer the case when payment was received on 6<sup>th</sup> April."*

In resolution of the Complaint, the Complainants seek "a refund of the difference" between the anticipated surrender value on **17 March 2020**, and the actual surrender value transferred to the Complainants, approximately Stg**£60,454.00**.

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### **The Provider's Case**

The Provider explains that the Investment Bond is a life assurance arrangement set up with an initial single investment. That it is designed to provide lifetime cash-in benefits and a single payment benefit when the life assured dies, if it has not been fully cashed-in before then. The Provider states that the Bond permits investment into a range of unit linked funds.

The Provider says that the Complainants, along with their Financial Adviser, would have received the policy documents from the outset.

The Provider states that the investment commenced on **24 April 2018** with a single premium investment. An additional amount was invested in the Bond on **11 March 2019**.

The Provider states that the Complainants' complaint is that their full surrender request which was received on **17 March 2020** at its contact centre in the UK, should not have been affected by the Unit Price Adjustment which applied to their chosen fund on **18 March 2020** before the surrender was processed.

The Provider states that its rules for processing surrenders and the effective price date for a surrender are detailed in the product's Terms and Conditions. The Provider says it is satisfied that it has processed the full surrender according to these Terms and Conditions.

The Provider states that the surrender request was received on the morning of **17 March 2020** at its contact centre in the UK. The Provider says that all its correspondence is then sent from to its Dublin office in an overnight post bag by courier. The Provider states that the post bag was received in Dublin on **18 March 2020**. Tuesday **17 March 2020** was a bank holiday in Ireland, that is a non-workday public holiday.

The Provider submits that the Complainants' Bond Terms and Conditions confirm the following in respect of surrender: page 40, chapter 4.5 Fully Cashing In the Bond, paragraph:

#### 4.5.2 Administration:

*"An acceptable Instruction to Fully Cash In the Bond will be effective on the Date of Receipt at Our Administration Centre in Ireland. See 4.5.3 below"*

#### 4.5.3 Cash in value

*"The cash in value will be the value of the Units under the Bond that We cancel on the Date of Receipt of an Acceptable Instruction at Our Administration Centre in Ireland. If We receive an Acceptable Instruction at Our Administration Centre on or before 12 noon on a Working Day, that day will be the Date of Receipt. If We*

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*receive an Instruction after 12 noon on a Working Day or on a non-Working Day, the Date of Receipt will be deemed to be the next Working Day.”*

The Provider submits that all trade instructions are processed by the Provider in chronological order of receipt. The Provider says that due to restrictions introduced following the Covid-19 outbreak, all staff were moved to working remotely from their own homes. The Provider says that this caused a delay in dealing with instructions and call backs received in the days following **12 March 2020**.

The Provider states that had there been no such restrictions, the Complainants' surrender instructions would have started being processed on **18 March 2020** the earliest prices they would qualify would be those on **18 March 2020**. The Provider says that due to the bank/public holiday in Ireland no fund price was available on **17 March 2020**. The Provider states that it is satisfied that it carried out the Complainants, surrender instruction at the applicable price, had the instruction been processed on Day of Receipt at its Dublin Administration office, that is **18 March 2020**. The Provider submits that the Bond was 100% invested in its Growth Fund and the Unit Price Adjustment which was applied to this fund on **18 March 2020** is based on the funds smoothing formula and is non-discretionary. The Provider says that if a fund infringes the smoothing limits, then an adjustment is automatically applied to the fund.

The Provider explains that its Fund has an established smoothing process which uses Expected Growth Rates (EGRs) and, where required, Unit Price Adjustments (UPAs), to deliver a smoothed investment journey.

The Provider sets the Expected Growth Rates; which are the annualised rates the investment would normally grow at. The Provider states that the rates reflect the view of how it thinks each fund will perform over the long term (up to 15 years), and are reviewed every 3 months, when they could rise or fall.

The Provider says that although it uses a long term view of performance to set the rates, it also has to take into account shorter-term performance. If the shorter-term performance differs too much from the current Expected Growth Rate, it would have to amend the value of the fund up or down to ensure it is not returning too much or too little. The Provider says it calls these Unit Price Adjustments. This is done by comparing the smoothed price of the fund and the unsmoothed price of the fund on a daily basis.

The Provider states that the difference between the smoothed and unsmoothed prices is checked on a daily basis against Daily Smoothing Limits. A price adjustment is made based on the Daily Smoothing Limits if the unsmoothed price differs from the smoothed price by 10% or more, based on the actual unsmoothed price and a 5-day rolling average of the unsmoothed price for the fund. The Provider submits that in this scenario and as happened on **18 March 2020**, the smoothed price will be adjusted immediately to reduce this difference to 2.5%.

It is the Provider's position that difficult market conditions at the time impacted the underlying performance of the Fund in March 2020. The Provider says that as its Funds

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invest in a range of assets across the world, they, like other funds, were affected by volatile markets at this time.

The Provider states that these conditions meant that unsmoothed prices dropped significantly, moving away from the smoothed price which resulted in this adjustment being automatically applied on **18 March 2020**. The Provider says that on **18 March 2020**, a Unit Price Adjustment of -11.35% was applied to the Fund.

As regards the delay in contacting the Complainants' representative between **18 March 2020** and **25 March 2020** the Provider states that, all trade instructions are processed by the Provider in chronological order of receipt and due to restrictions introduced following the Covid-19 outbreak, all staff were moved to working remotely from their own homes from **12 March 2020**. This caused a delay in dealing with instructions and call backs received in the days following **12 March 2020**.

The Provider says it accepts it did not reply to the Complainants' representative's e-mails following the **25 March 2020** telephone conversation.

As regards the policy notes not showing that **17 March** as a bank holiday in Ireland, the Provider's response is that the staff vetting the surrender request and updating the policy notes, indicated that the surrender would be "*backdated to 17 March 2020 due to coronavirus*". The Provider says this was inaccurate as the member of staff should normally specify to the notes the price date that would apply to the surrender, that is prices of **18 March** due to the bank/public holiday.

The Provider explains that this was identified as an inaccuracy. The Provider states that it apologised for this inaccuracy in the complaint response sent to the Complainants' representative on **15 April 2020**.

In an email dated **1 June 2020**, the Complainants' representative states:

*"[The telephone call transcript] has served to re-inforce [the Complainants' feeling of having been very misled by [the Provider]. Having been assured that 17th March value would apply to the surrender they were and continue to be shocked that they only found out this had been rescinded when the vastly reduced payment was made to their account on the 6 April".*

The Provider's position is that the call handler confirmed to the Complainant's representative that the surrender receipt date had been noted as **17 March 2020** and would be processed as per that date. The Provider says that the call handler could not confirm the value of the policy on that day. The Provider says that the surrender would be backdated to 17 March; this meant in reality it would receive the price date applicable on the following working day, that is **18 March 2020** in accordance with the Terms and Conditions. The Provider accepts that this was not clarified by its call handler to the Complainants' representative. The Provider says that this was identified as an inaccuracy during the complaint investigation. The Provider apologised for this inaccuracy in the complaint response sent to the Complainants' representative on **15 April 2020**. The

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Provider states it also confirmed that feedback has been communicated to the team involved to make sure they update the notes correctly going forward.

As regards whether the Provider alerted its policyholder to a different situation applying when there is a bank/public holiday, the Provider states that it is communicated in its Terms and Conditions as follows:

Page 8 “Working Day”

*“Working Day” means any normal business day that the Company would be ordinarily open for business which will exclude public holidays in Ireland. Public holidays in Ireland may fall on different days to those in the United Kingdom and elsewhere. Where the effective date of a transaction or valuation falls on a non-Working Day, We will use the following Working Day as the effective date.”*

Also page 20, 3.3.3.1 Unit Pricing/ General:

*“Where Units are due to be credited or cancelled on a non-Working Day, the Unit Price applicable to the next Working Day will apply”.*

The Provider states that this is also communicated in its Service Charter.

As to whether there was an opportunity to cancel the surrender, the Provider states that the surrender received the price applicable to **17 March 2020**. As this was a bank/public holiday in Ireland and a non-working day, the prices of the following working day applied in accordance with the terms and conditions; that is **18 March 2020**. The Provider states that as the surrender received the price that would be applicable on 17 March in accordance with the terms and conditions, it was deemed not necessary to inform the Complainants/their representative, as no change was made to the price date they were entitled to. The Provider states that as a valid surrender instruction was received in line with the terms and conditions, no option to cancel or amend the surrender request was offered which is in line with its normal practice.

The Provider states that it is satisfied that its product literature and Terms and Conditions clearly detail the surrender process, how the effective surrender price date is determined and defines what constitutes a working day for the purposes of a surrender.

The Provider says it regrets that the Complainants are unhappy with the timing of their full surrender request, but states that the Bond has at all times been administered correctly and strictly in accordance with the Bond Terms and Conditions.

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## Evidence

### Telephone call of 25 March 2020 between the Financial Advisor and the Provider

**Call Handler:** greets and asks for identification of caller:

**The Complainants' Financial Advisor:** confirms the policy details and his identity.

**Call Handler:** asks how she can help.

**The Complainants' Financial Advisor:** confirms that their office had sent by recorded delivery a request for the bond to be encashed and can see it has been received on the **17/03/2020** and they are seeking reassurance that it will be **17/03/2020** that is used for the surrender.

**Call Handler:** Confirms it has been received. Advises that there are some delays to processing payments due to the current situation [Covid-19] but can see that Team has confirmed that the full surrender will be processed as at **17/03/2020**.

**The Complainants' Financial Advisor:** asks if they can confirm the value of the policy on that date.

**Call Handler:** states that she cannot confirm the value, but can refer the request to the back-office Teams.

**The Complainants' Financial Advisor:** confirms that there is no need as long as it's processed at **17 March 2020** because it was 18<sup>th</sup> that reduction was made [the unit value reduction].

**Call Handler:** Confirms that she can see it in front of her [reading from policy notes] that they are going to process the surrender as at **17/03/2020** – *“They are taking from 17th - I can see that, its right in front of me – they are going to value it as at that date”*

**The Complainants' Financial Advisor:** asks if she can confirm her name again.

**Call Handler:** confirms her name.

The Telephone Call ends

### The Complaints for Adjudication

The Complaint is that the Provider maladministered the Complainants' policy; improperly executed a policy surrender request in **March 2020**, wrongfully furnished misleading communications to the Complainants' representative, and unreasonably delayed in responding to correspondence.

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## 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 **13 October 2021**, 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.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

## Analysis

As regards the delays in responses and actions by the Provider, the Provider submits that all trade instructions are processed by the Provider in chronological order of receipt. The Provider says that due to restrictions introduced following the Covid-19 outbreak, all staff were moved to working remotely from their own homes. The Provider says that this caused a delay in dealing with instructions and call backs received in the days following **12 March 2020**. I accept that the circumstances that prevailed would have resulted in the delays in communication responses and delays in transaction timelines.

As regards the encashment request, I accept that the terms and conditions clearly set out what happens when an encashment request is made on a day that is not a working day (a bank holiday). The terms and conditions clearly state that *"where the effective date of a transaction or valuation falls on a non-Working Day, [The Provider] will use the following Working Day as the effective date"*.

I also accept that the terms and conditions are clear as to the Cash in value that will apply. The terms and conditions state that: *"The cash in value will be the value of the Units under*

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*the Bond that [the Provider] cancel on the Date of Receipt of an Acceptable Instruction at [its] Administration Centre in Ireland. If [the Provider] receive an Acceptable Instruction at [its] Administration Centre on or before 12 noon on a Working Day, that day will be the Date of Receipt. If [the Provider] receive an Instruction after 12 noon on a Working Day or on a non-Working Day, the Date of Receipt will be deemed to be the next Working Day."*

Therefore, I accept that the Provider's receipt of the Complainants' instruction on **17 March 2020** (a non working day) was correctly deemed by the Provider to have been received on the next working day which was **18 March 2020**, and the price as of that date, was correctly applied by the Provider.

I accept that as the surrender instruction was carried out in accordance with the terms and conditions of the Bond, there would be no option given by the Provider to cancel or amend the surrender request.

I accept that in addition to the terms and conditions being clear on the above, the Complainants had the assistance of their Financial Advisor in making the encashment request, and I accept that the Advisor should have been familiar with how such transactions operate when an instruction is given on a non-working day.

That said, I also accept that the information given by the Provider's agent on the telephone was lacking. The Provider's agent could reasonably have better communicated the actual position, as set out in the terms and conditions, to the Complainants' representative in the telephone call of **25 March 2020**. In that telephone call the Complainants' representative clearly queried whether it was an earlier price that would apply as opposed to the adjusted price of **18 March 2020**. I accept that the Provider's agent was not specific on this point, but referred to the case notes which showed that the relevant price would be the price, as at, **17 March 2020**. The fact that this was categorised as a non-working day and that the next working day price was going to be the applicable price was not highlighted by Provider's agent.

I note, and welcome that the Provider accepts that this was not clearly clarified by its agent to the Complainants' representative. I also note that the Provider apologised for this in its response of **15 April 2020** and stated that feedback has been given to the team involved to make sure they update the notes correctly going forward.

I accept that as part of good customer service the Provider's agent should have reminded the Complainants' representative in the telephone call of **25 March 2020** of the investment terms and conditions, and that the applicable price would be that, as at, **18 March 2020**, and not a price from the non-working day that the instruction was received by the Provider. However, I accept that this would not have altered the application by the Provider of the surrender request, which was carried out in accordance with the terms and conditions of the Investment Bond.

I partially uphold this complaint, for the Provider's poor and improper communications, and I direct that the Provider pay the Complainants compensation of Stg£250 (two hundred and fifty pounds Sterling) for the inconvenience caused.

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## Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld on the grounds prescribed in **Section 60(2)(g)** *the conduct complained of was improper*.
- 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£250, 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.



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GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

11 November 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

ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.