



<b><u>Decision Ref:</u></b>	2022-0165
<b><u>Sector:</u></b>	Investment
<b><u>Product / Service:</u></b>	Bonds
<b><u>Conduct(s) complained of:</u></b>	Dissatisfaction with final fund value Failure to provide warning re. Nature of investment Failure to process instructions Encashment delays
<b><u>Outcome:</u></b>	Rejected

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

The Complainant held an investment bond (the “**Bond**”) with the Provider.

The terms of the investment were governed by the laws of England and Wales, but the Provider and the Complainant have consented to the Complainant’s complaint being investigated by the FSPO and have agreed that the laws of Ireland will be the applicable law for the purposes of the FSPO investigation.

#### **The Complainant’s Case**

The Provider sold a life assurance arrangement by way of initial single investment designed to provide lifetime cash-in benefits and a single payment benefit when the life assured dies, if not fully cashed-in before then. The Bond commenced on **12 December 2019** with a single premium investment of £210,000 (two hundred and ten thousand pounds) with top ups allowed. The policy was 100% invested in the Fund A and was fully surrendered on **9 April 2020**. The surrender amount paid to the Complainant was £189,004.05 (one hundred and eighty-nine thousand and four pounds and five pence) on **17 April 2020**.

The Complainant submits that the surrender paperwork for her Bond was received by the

Provider on **17 March 2020** in its office in England. The Complainant states that the Provider redirected the paperwork to Ireland, but as the **17 March 2020** was a bank holiday in Ireland, the Provider used the unit price on **18 March 2020** for the encashment.

The Complainant maintains that a negative price adjustment of -11.38% was applied on **18 March 2020** which resulted in a significant financial loss. The Complainant wants the Provider to use the unit price on **17 March 2020** to avoid *the negative price adjustment*. The Complainant asserts that the original investment in the bond, was £210,000.00 (two hundred and ten thousand pounds) on **2 December 2019** but she ultimately received £189,004.05 (one hundred and eighty-nine thousand and four pounds and five pence) after surrender, three months later.

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

The Provider, in its email dated **5 May 2020**, submits that it received a full surrender request on **17 March 2020** at its centre in England. It states that it forwarded the request to its payments team in Ireland.

The Provider submits that on the **18 March 2020** the product producer announced a Unit Price Adjustment on the Fund. The Provider submits that when the Complainant's third party called, it confirmed receipt of the surrender request and advised that the process start date was **18 March 2020**. The Provider further submits that its sales team also confirmed that the unit price would be **18 March 2020** because **17 March 2020** was a bank holiday in Ireland.

The Provider states that on **23 March 2020** its payments team emailed the Complainant's third-party advisor to request the reason why its client was surrendering her policy so soon after investing in **December 2019**.

The Provider submits that the third party replied to its email of **23 March 2020** on **8 April 2020** to confirm that its client wanted to surrender due to the global market situation and because of a change in her personal circumstances. The Provider submits that its payments team processed the full surrender on the **9 April 2020**, with a unit price date of **8 April 2020**, being the date of receipt of the last outstanding requirement to complete the request. The Provider states that the surrender payment was sent to the Complainant on **17 April 2020**.

The Provider submits that, at all times, it has adhered to its **Terms & Conditions**.

### **The Complaint for Adjudication**

The complaint is that the Provider failed to recognise **17 March 2020** as the date of receipt and the unit price for encashment, as a result of which the Complainant was impacted by a negative price adjustment.

### 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.

A Preliminary Decision was issued to the parties on **20 April 2022**, 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.

The Provider relies on the following provisions housed within the contract conditions booklet (the "**Terms & Conditions**"). I note that on Page 4 of the **Terms & Conditions** it states:

*"1.1 Definitions...*

*'Acceptable instruction': means a written instruction specific to the type of:  
Cash in benefit required, see part 4;*

*Or*

*Adviser Charge (s) to be paid from the Bond, see part 5,*

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The instruction must be correctly completed and sent to our administration centre in Ireland together with any additional documentation we may require at the time."

[my underlining for emphasis]

On Page 8 of the **Terms & Conditions** it states:

*"Working Day' means any normal business day that the [Provider] 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."*

[my underlining for emphasis]

On Page 32 of the **Terms & Conditions** it states:

*"Date of receipt, Part 4 Conditions*

*4.5.2 [ ... ] An acceptable instruction to fully cash in the bond will be effective on the date of receipt at our administration centre in Ireland...*

*4.5.3 Cash in Value. The cash in value will be the value of the units held 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 receive an acceptable instruction at our administration centre 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."*

[my underlining for emphasis]

On Page 22 of the **Terms & Conditions** it states:

*"Where the Unit Price of a Fund within the [Fund] of Funds has been adjusted in line with the above process there will NOT be any communication sent to the Policyholders. Unit Prices are available on the [Provider's] website."*

The **Central Bank's Consumer Protection Code, 2012 (as amended) ("CPC")** is relevant and states at page 7 and 8, paragraph 2.1, 2.6 and 2.12, as follows:

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*“A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it: ...*

*2.1 acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market...*

...

*2.6 makes full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer.*

....

*2.12 complies with the letter and spirit of this Code.”*

The **CPC** states, at page 21, paragraphs 4.1 and 4.2, as follows:

*“4.1 A regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information.*

...

*4.2 A regulated entity must supply information to a consumer on a timely basis. In doing so, the regulated entity must have regard to the following:*

- a) the urgency of the situation; and*
- b) the time necessary for the consumer to absorb and react to the information provided.”*

I note that under the policy, there were initially two lives assured, the Complainant and her spouse. The Provider submits that a **Deed of Assignment**, assigning the policy from the Complainant and her spouse to the Complainant only, was received on **9 January 2020** and that the policy was assigned to the Complainant on **10 January 2020**. I note that, in the context of the encashment of the bond, the Complainant’s Independent Financial Adviser has queried the surrender price date and raised a complaint on behalf of the Complainant.

I note the Provider’s submission that the surrender request was received on **17 March 2020** at its mailing facility in the UK and then sent to the Dublin [Provider] offices in an overnight post bag. I note the Provider’s submission that this is standard practice. The Provider notes that the UK facility is not an administrative office, and it says that the post bag was received in the administration office in Dublin on **18 March 2020**, the day after the bank holiday in Ireland on Tuesday **17 March 2020**. The Provider says that the Provider’s International Call

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Team was notified of the surrender on **18 March 2020** and it confirmed the withdrawal paperwork had been received on **17 March 2020** and sent for processing to Dublin.

I note the Provider's submission that because **17 March 2020** was a Bank Holiday in Ireland, no prices were available, and so the price of **18 March 2020** was applied to this surrender.

I note that the Provider says as follows:

*"the latest valuation available on the 17 March was the fund price as at 16 March, before the surrender request was received. However, this price was not available to the Complainant's surrender as her surrender request was not received on time. Only surrender requests received in our Dublin Administration Centre between 12 noon on 15 March and by 12 noon on 16 March would qualify for the prices on 16 March 2020. Any requests received after 12 noon between 16 March and 12 noon on 18 March would qualify for the next available price date, which was on 18 March 2020 when the [Complainant] applied."*

I note that the **Terms & Conditions** defines "acceptable instructions" and notes that "the instruction must be correctly completed and sent to our administration centre in Ireland together with any additional documentation we may require at the time." I note that a working day is defined in the **Terms & Conditions** and excludes public holidays in Ireland. In particular, the **Terms & Conditions** note that "public holidays in Ireland may fall on different days to those in the United Kingdom and elsewhere."

I note that the **Terms & Conditions** says that "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." I note that the date of receipt in the **Terms & Conditions** is when "an acceptable instruction to fully cash in the bond will be effective on the date of receipt at our administration centre in Ireland."

I also note that the cash in value as per the **Terms & Conditions** "will be the value of the units held 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."

I am satisfied that the **Terms & Conditions** put the Complainant on notice that the cash-in would become effective on the date of receipt at the administration centre in Ireland and that where the effective date of a transaction or valuation falls on a non-working day, the following working day would be used as the effective date. I am satisfied therefore that the **18 March 2020** was the correct day on which to calculate the unit price.

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I note the Provider's submission that:

*"A Unit Price Adjustment (UPA) was announced on the [Fund A] and confirmed that a reduction in the unit price of -11.38% will apply from 18/03/2020."*

The Provider has explained that a Unit Price Adjustment ("**UPA**") is a "*smoothing formula and is non-discretionary*" and that it is adopted as industry practice and is automatically applied to the fund. The explanation for how UPAs work is that Expected Growth Rates are estimated or in other words, the performance of the fund is estimated over the long term (up to 15 years). Expected Growth Rates are reviewed every 3 months, and if the shorter-term performance differs too much from the current Expected Growth Rate, the value of the fund is adjusted up or down (UPAs). This is reviewed daily and adjusted accordingly. The Provider submits, in that context, that on **18 March 2020**, a difference presented itself and was adjusted and that this occurred due to difficult market conditions at the time, which impacted the underlying performance of Fund A in March 2020.

The Provider notes that "*as [Fund Group] invest in a range of assets across the world they, like other funds, were affected by volatile markets at this time. These conditions meant that unsmoothed prices dropped significantly, moving away from the smoothed price which resulted in this adjustment being automatically applied on 18th March 2020.*"

I note that the Provider says that UPAs are not communicated to customers or their representatives in advance of being implemented, and that this isn't possible as UPAs are non-discretionary and automatic and are in any event dependent on future market performance. The Provider says that the smoothing process is transparent and I note that Unit Prices are available on the Provider's website.

Overall, I note the Provider's explanation and that as a result of the UPA, a more preferential rate was available for the **17 March 2020** than on **18 March 2020**, but I am satisfied that a reasonable explanation has been given by the Provider for the drop of unit price on the **18 March 2020**. I am also satisfied that the adjustment of the unit price couldn't reasonably have been made known to the Complainant, prior to her instructing a surrender of the bond.

I note that the Provider submits that the unit price was confirmed in the Policy Documents posted to the client on **15 April 2020**. The contents of the Provider's letter dated **15 April 2020**, and addressed to the Complainant confirmed that the bond had been cashed-in and thereafter, the surrender proceeds payment of £189,004.05 was sent to the client's account by telegraphic transfer on **17 April 2020**. I note the contents of the **Full Cash in Unit Statement** in this amount.

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The Provider submits that it acted "*honestly, fairly and professionally in the best interests of its customers and the integrity of the market*" and that it complied "*with the letter and spirit of this Code*" and that "*in order to ensure that we can fulfil both these principles in dealing with all our customers we have set rules in determining how we execute surrenders which are clearly outlined in our Terms & Conditions.*"

I am satisfied that the Provider has abided by Provisions 2.1 and 2.12 of the **CPC** and that the mechanism for identifying the unit price is very clear from the terms and conditions.

I note the Provider's submission that as part of its anti-money laundering procedure there is a requirement to request a reason for surrender, if this surrender takes place less than 12 months from when the Bond is issued, and I note that the Provider says that "*this requirement is not communicated to policyholders at the inception of the bond.*"

I note the contents of the letter dated **15 April 2020** from Provider to Complainant which acknowledged receipt of instructions and confirmed that the Bond has been cashed in. I note the Provider's submission that there were no surrender penalties, and in particular its assertion that:

*"In this particular case however the customer benefited from the delay in terms of the unit price that they received. The customer received a unit price of 08/04/2020 which was a higher and more beneficial unit price than the unit price of 18/03/2020 which is the unit price that would have applied if this requirement was not needed."*

I note that the Provider submits that while it received the Complainant's surrender request on **17 March 2020** it did not email the Complainant's third party until **23 March 2020** to clarify the reason why the Complainant was surrendering her bond. I note that this is a delay of 4 working days. I note the Provider's submission that "*due to precautionary measures in place for the Coronavirus (COVID-19) we have had a reduced number of staff available and have been operating outside our normal turnaround times Consequently your request was not reviewed until 23 March at which time, they sent an email to you, requesting confirmation of the reason for the surrender to be provided, in order to proceed.*"

I note that the Provider applies a 5 working day administrative turnaround timescale to review for requests that are not ready to be processed. I note that the Complainant's Independent Financial Adviser responded to an email sent to him on **23 March 2020** by the Provider and confirmed that the client was surrendering due to concerns with the global markets and a change in her personal circumstances. The Provider says it is entitled to adhere to anti-money laundering policies and that it is logical that long term investments that are cashed in shortly after investment, would invite scrutiny.

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The Provider further submitted as follows:

*“There is no unit price available for 17/03/2020 for the [Fund A].  
The unit price on 18/03/2020 for the [Fund A] was £2.3756.  
The unit price on 08/04/2020 for the [Fund A] was £2.3834.”*

The substance of this complaint is that the Complainant missed the preferential rate on the **17 March 2020**. I note that an *Acceptable Instruction* is defined in the **Terms & Conditions** where it stipulates that *“the instruction must be correctly completed and sent to our administration centre in Ireland together with any additional documentation we may require at the time.”*

I also note that a telephone call occurred between the Provider and the Complainant’s Independent Financial Adviser who asked about which date would be used for the surrender and this raises the question of whether the Provider should have mentioned during this call that further information was required.

The Provider submits that *“in this case the final requirement was confirmation of the reason for surrendering so soon since the initial investment date and this was received on 8 April 2020. Therefore, the surrender received unit prices of the 8 April 2020.”*

The Provider’s four-day delay in responding to the Independent Financial Adviser was not unduly lengthy in commercial terms however, in circumstances where such a delay may impact on a unit price the customer may receive, or will receive, such delay could have serious consequences.

In this instance, I am satisfied that the Complainant had no entitlement to the unit price which she believes ought to have been available on 17 March 2020. No such price was available to her because 17 March 2020 was a Bank Holiday in Ireland and, having missed the unit price for 16 March 2020, the next available price was the price available on 18 March 2020 which was impacted by the UPA which had been applied.

I am conscious that the terms and conditions require that the instruction to surrender must be correctly completed and received by the administration centre in Ireland and this is what triggers the unit price, except that the terms and conditions make clear that not only must the instruction be correctly completed and received, but in addition, the Provider must receive *“any additional documentation we may require at the time”*.

I take the view that in circumstances where such requirements can include matters (such as in this instance) which are not specified in the terms and conditions, this procedure has the potential for being unfair to a policyholder if there are delays in ensuing communications.

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Whilst it is understandable that the very swift (in overall terms) encashment of the investment triggered some scrutiny by the Provider, I am not convinced that the Provider's queries concerning the reason for the encashment were such that the unit price ought to have been impacted or in any way affected once the completed correct encashment instruction had been received by a particular date.

Whilst the Provider might in such circumstances wish to delay the release of the funds, I am not convinced that the delay of the encashment itself was appropriate.

In any event, in this instance, the delay of the unit price until 8 April 2020, had a positive impact upon the value which the Complainant received and, in those circumstances, I do not consider it appropriate to make any further comments regarding this aspect of the matter.

Insofar as the substantive complaint is concerned however, I am satisfied on the evidence before me that there is no reasonable basis upon which this complaint should be upheld.

### **Conclusion**

My Decision, pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017** is that this complaint is rejected.

**The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.**



**MARYROSE MCGOVERN**  
**Financial Services and Pensions Ombudsman (Acting)**

16 May 2022

### **PUBLICATION**

#### **Complaints about the conduct of financial service providers**

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—

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- (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.

### **Complaints about the conduct of pension providers**

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.