

**Ombudsman determination**

**CIFO Reference Number: 15-000016**

**Complainants: [The complainants]**

**Respondent: [Company X]**

It is the policy of the Channel Islands Financial Ombudsman (CIFO) not to name or identify complainants in any published documents. Any copy of this determination made available in any way to any person other than the complainant or the respondent must not include the identity of the complainant or any information that might reveal their identity.<sup>1</sup>

The complaint relates to a capital protected structured deposit investment sold by [Company X].

**Background**

On 28<sup>th</sup> May 2010 [the complainants] were sold a [Bank Y] structured deposit by [Company X]. The investment was for a period of three and a half years with a repayment date of 6<sup>th</sup> January 2014.

The terms and conditions state that the investment would run to the end of the term, at which time the interest accrued would be calculated and paid, unless a 'barrier event' occurred. If a barrier event occurred, then only the initial deposit would be returned at the end of the term.

A barrier event occurred on 29<sup>th</sup> October 2013. Under the terms of the investment the deposit remained dormant until the repayment date, which was 70 days later.

The complainants say that they were led to believe the deposit would be returned immediately following a barrier event. They referred to the summary sheet prepared by [Company X], which states:

*'If the thresholds are breached then the deposit will mature immediately and all that will be returned is your initial deposit'*

The complainants say this phrasing misled them about the risks of the product, specifically the reinvestment risk in the case of a barrier event.

As a barrier event could have occurred at any time, the complainants were concerned that their funds could have potentially remained dormant for most or all of the term. They say this was not a risk they were willing to take and subsequently argued that the investment was missold.

---

<sup>1</sup> Financial Services Ombudsman (Jersey) Law 2014 Article 16(11) and Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 Section 16(10)

In a meeting with the case handler, the complainants suggested they would have placed the funds into a fixed rate savings account instead. As a result, they were seeking compensation which reflected the historical interest rates which could have been obtained in a fixed-rate savings account. In addition, they sought compensation for the stress and inconvenience caused.

The investigating case handler did not uphold the complaint. The case handler appreciated the risk of dormancy but considered that in reality the complainants only received their funds 70 days later than they expected.

The case handler concluded that the only potential loss incurred by the complainant was 70 days' worth of interest, which amounted to £19.17.

[Company X] had already offered to reimburse the 70 days' worth of interest as a gesture of goodwill, so the case handler did not consider the complaint should be upheld. [Company X] also made an ex gratia offer of £100 shortly after the complaint was referred to CIFO, which was not accepted by the complainants.

The complainants did not agree with the case handler's conclusions, and the case was referred to me for review.

## **Findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I have taken note of further representations made by each party following the case handler's initial conclusions.

I consider the nature of capital protected investments is that the risk is not to your invested capital, but to any potential return on the investment. I understand that the complainants were aware that they may not realise any return on their investment.

I appreciate the concern of the complainants that their funds could have remained dormant for a significantly longer period of time had the barrier event occurred sooner, with resulting opportunity costs.

However, I would not consider it reasonable to compensate for a potential financial loss due to reinvestment which did not in fact materialise. The risk of loss of interest on the invested amount up to the barrier date was known and willingly assumed by the complainants. The loss of interest on the 70 day remaining term after the barrier event was arguably the only loss incurred in these circumstances as a result of the unclear product disclosure.

I therefore agree with the conclusion of the case handler. I conclude the loss incurred is the 70 days' worth of interest, which [Company X] have previously offered to reimburse as a gesture of goodwill.

## Decision

My final decision is that [Company X] should pay the complainants £19.17 in compensation, as they have previously offered.

## Next steps for the complainants, [redacted for anonymisation purposes]

You must confirm whether you accept this determination either by email to [ombudsman@ci-fo.org](mailto:ombudsman@ci-fo.org), or letter to Channel Islands Financial Ombudsman, PO Box 114, Jersey, Channel Islands JE4 9QG, by **9th September 2016**. The determination will become binding on you and [Company X] if it is accepted by this date. If we do not receive your email or letter by the deadline, the determination is not binding. At this point you would be free to pursue your legal rights through other means.

If there are any particular circumstances which prevent you confirming your acceptance before the deadline of 9<sup>th</sup> September 2016, please contact me with details. I may be able to take these into account, after inviting views from [Company X], and in these circumstances the determination may become binding after the deadline. I will advise you and [Company X] of the status of the determination once the deadline has passed.

Douglas Melville  
Principal Ombudsman and Chief Executive

Date: \_\_\_\_\_