

Ombudsman Determination**CIFO Reference Number: 16-001104****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.¹

[The complainants] complained about a loss incurred following a fund switch.

Background

According to [the complainants], [Company X] lost USD 3,325.47 of their money when a switch was conducted in 2014.

The statements provided by [Company X] indicated that the price at sale was 1.74; however, according to [Company X], the price was dictated by the fund, and the attribution price of 1.53 was instead used for the switch. In the response to CIFO's queries, [Company X] responded that the fund was suspended and became illiquid; therefore, the proceeds had to be applied manually, causing the discrepancy between the stated proceeds on the statement and the actual proceeds applied to the plan.

[The complainants] were of the view that the discrepancy was the result of a system error and [Company X] would not have returned USD 3,325.47 to them if they had not raised the issue. [The complainant's] subsequent email correspondence with [Company X] suggested that there were I.T. problems and significant internal controls issues.

[Company X] denied that there was a system deficiency. They admitted that the statements were not clear but said that the payment they had already made of USD 3,325.47 compensated for any inconvenience caused by this lack of clarity.

[The complainants] considered that the error in the application of the proceeds caused them to lose confidence in the ability of [Company X] to manage their investment. As a fair and reasonable resolution to the complaint, they asked for the ability to exit the policy without penalty.

The case handler did not uphold [the complainants'] request to exit without penalty, and noted that [Company X] had already paid USD 3,325.47 to him as a result of the statement discrepancy. Given that [the complainants] were in no worse position than they would have otherwise been had the alleged error not occurred, no further action was necessary.

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

The case handler did, however, conclude that there was an issue which could affect other consumers and informed me so that I could consider informing the [jurisdiction 2] Financial Services Commission as the regulator of [Company X].

Findings

I acknowledge [Company X's] assertion that the proceeds of the switch needed to be applied manually but, if this was the case, it would have been reasonable for [Company X] to indicate on the statements to their customers that a price was unavailable. It would also have been reasonable for [Company X] to ask customers to call them to obtain the price. In addition, the discrepancy was spotted by [the complainant] rather than [Company X].

I note that [Company X] has already paid USD 3,325.47 to [the complainants] which reflects the disputed amount. CIFO generally looks to place complainants back into the position in which they would have otherwise been had the event which gave rise to the complaint not occurred. Given that [Company X] has paid the sum in question, it would not be reasonable for me to use this error to invalidate the entire contractual agreement of the investment and allow [the complainants] to exit the policy without penalty.

In his email following the case handler's review, [the complainant] said that CIFO's approach referred to above is not written anywhere on either CIFO's complaint submission form or website. [Relevant legislation]:

"For the purposes of a money award or a direction...the Ombudsman –

(b) may seek –

(i) to put the complainant into the position that the complainant would have been in but for the matter complained of..."

[The complaint] queried why CIFO requires a complaint submission form, because the money had already been returned by [Company X]. However, [the complainant] sent a further email which suggested that the money had not been returned because [Company X] called the payment of USD 3,325.47 a "redress payment", rather than a return of the money. He suggested:

"Therefore, legally, [Company X] has still not repaid me my money, so whether or not CIFO is willing to support me in my quest to exit without penalty, CIFO must be able to support me in getting my money back."

I find [the complainant's] distinction between "redress" and "repayment" to be without merit. I understand that he seeks a further award from this office, but given that he has already been paid the disputed USD 3,325.47, a further award is not warranted. CIFO's mandate does not extend to making additional awards to punish firms.

I do, however, recognise the inconvenience experienced by [the complainant] in pursuing his claim with [Company X]. Initially, [Company X] had disagreed with him that a refund was required and there was a significant amount of subsequent correspondence between

[the complainant] and [Company X] that in my view could have been avoided. In the circumstances, I consider a further payment by [Company X] to [the complainant] of £350 would be reasonable for the inconvenience caused by [Company X's] handling of [the complainant's] complaint.

Finally, I agree with the case handler that the circumstances surrounding the fund switch may affect other consumers and will inform the regulator accordingly.

Final decision

My final decision is that I uphold this complaint in part. [Company X] should pay [the complainants] £350 for inconvenience arising from [Company X's] complaint-handling process.

I will also notify the [jurisdiction 2's financial services commission] of the issue which gave rise to the complaint.

[The complainants] must confirm whether they accept this determination either by email to ombudsman@ci-fo.org, or letter to Channel Islands Financial Ombudsman, PO Box 114, Jersey, Channel Islands JE4 9QG, by **16 October 2017**. The determination will become binding on [the complainants] and [Company X] if it is accepted by this date. If we do not receive an email or letter by the deadline, the determination is not binding. At this point [the complainants] would be free to pursue their legal rights through other means.

If there are any particular circumstances which prevent [the complainants] confirming their acceptance before the deadline of 16 October 2017, they should 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 both parties of the status of the determination once the deadline has passed.

Please note there is no appeal against a binding determination, and neither party may begin or continue legal proceedings in respect of the subject matter of a binding determination.

Douglas Melville
Principal Ombudsman and Chief Executive

Date: 18th September 2017