Ombudsman Determination
CIFO Reference Number: 16-001218
Complainant: [The complainant]
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 complainant] complained about a wide range of issues concerning the administration of his pension plan by [Company X].

Background

In February 2011 [the complainant] submitted an application to become a member of the [redacted for anonymisation purposes] Pension Plan. He joined in March 2011.

The pension plan was a Qualified Recognised Overseas Pension Scheme or QROPS. This is an overseas pension scheme that meets certain requirements set by UK tax legislation. A QROPS must normally have a beneficial owner and trustees and can receive transfers of UK pension benefits.

A QROPS is generally appropriate for those who have built up a (non-state) UK pension but wish to live abroad and avoid having to deduct and remit UK tax at source.

On 27 May 2011 a total of £130,111.73 was paid into [the Bond], in [the complainant's] pension plan.

[The complainant] informed CIFO that his complaint about [Company X] included the following issues:

i) *"Gross negligence in execution of the Fiduciary duties and Administrative responsibilities.*

ii) *Failure to disclose crucial information at the onset of QROPS set up which only came to be highlighted in year 2016. This is contradictory* [sic] *to* [relevant legislation].

iii) *Failure to provide Deed and Scheme rules and quoting Clauses from these documents for acceptance in the Agreement. It is the*

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

responsibility of the pension Scheme provider to provide Scheme documents with accurate information prior to set up of the scheme.

iv) Failure to provide any variation or replacement to the Deed or Scheme prior to and after the delisting of the QROPS and introduction of new pension reforms by HMRC and [jurisdiction 2] Legislators.

v) Failure to obtain consent from the Member to transfer to another scheme after delisting of QROPS.

vi) Failure to advise changes to the Deed or Scheme rules after changes to the UK Flexible Access Rules and in response to [jurisdiction 2] introduction of Flexible benefits in October 2015 to the UK pension reforms.

vii) Mis-sold [the bond] Policy. Only information provided was [the bond] brochure, no [the bond] Terms and Conditions or the Agreement contract provided prior to signing by [Company X] of "Whole Life Assurance Policy", which Member was not aware of. Signing to Clauses in the [bond] Agreement on critical points and under the Declaration making false and misleading statements on the Member's behalf without his knowledge.

viii) [Company X] as Bond owner failed to disclose the 8% charge levied by [the Bond] as Early Redemption Charges were for payment of commission to the financial adviser. Considering the financial adviser had no responsibility in selling the Bond product as [Company X] restricted all investments to [the Bond] products and specifying Bonds as instruments for asset investment.

ix) [Company X] failing to accept contractual responsibility as owner of the Bond in spite of two definitive responses provided by [redacted for anonymisation purpose]. Exhibits [C] and [D].

x) [Company X's] failure to provide important documents on Fund Particulars for [redacted for anonymisation purposes] Fund (GBP) resulting in significant losses.

xi) [Company X] failing to transfer the pension fund from existing QROPS without providing any reason and only allowing Flexible Access transfer through their new Scheme at exorbitant costs even after receiving authorisation to transfer the funds, thereby illegally withholding the funds resulting in huge loses to the Member.

xii) [Company X] without initially informing me and without my prior authorisation transferred the [the bond] contract they had with [the Bond] from inception to my name in the last two months. This is incredible that [Company X] can unilaterally take such action and equally surprising that [the Bond] accepted the transfer to my name

without my having sign [sic] *any agreement with them. This was a deliberate act on [Company X's] part to take illegal action to transfer the contract instead of liquidating the [the bond] as they were instructed to do back in June 2016 and transfer the Funds. The question is if they were able to transfer the contract now after six years to my name, why did they enforce the contract to be held in their name at the onset and also only with [the Bond] products. Why did [Company X] flagrantly assume that I wanted to continue my contract they signed on to with [the Bond]. This has serious ramification as [Company X] are in violation of [jurisdiction 2] Trust law that without the permission of the Beneficiary they took upon themselves to transfer the pension Fund, which has cost implications without referring to myself whether this was acceptable to me or not.*

The effect of [relevant legislation], which provides that: "Nothing in the terms of a trust shall relieve a trustee from liability for breach of trust arising from his own fraud, wilful misconduct or gross negligence". The provision came into force in July 1989. [Company X] are in breach of "wilful misconduct and are negligent".

xiii) [Company X's] deliberate act of not transferring the Fund as instructed in June 2016 has cost implications, such as not using the resources for other investment opportunity and also additional fees paid to [the Bond] and [Company X] since June 2016. This has to be remedied."

As a fair and reasonable resolution to his complaint, [the complainant] sought:

1. £11,000 of commission paid to financial advisers;
2. £1,900 paid in annual charges;
3. £15,000 for losses sustained following the alleged mis-selling of the policy;
4. £10,000 for not providing documents – including a "Fund Particulars" document - sent by [the Bond] to [Company X];
5. £5,000 of set-up cost charged by [Company X];
6. £2,000 for consequential damages;
7. £20,000 for losses sustained when being unable to purchase a buy-to-let property after funds were not transferred timeously to flexible access;
8. £64,900, to put him in the same position as if the contract had been performed; and
9. £2,000 each day until the funds were received in his account.

This service provided an initial view of the complaint. The reviewer explained why it was felt that the complaint should not be upheld. [The complainant] did not agree and set out at length his reasons. [The complainant] asked for a decision from the Ombudsman as he is entitled to do. And so the case was referred to me.

Findings

I have considered all the evidence that [the complainant] has submitted including the extensive response to CIFO's initial review dated 25 March 2018. I have not referred to each and every one of the very numerous points that have been made and instead concentrated on the overall merits of the complaint against [Company X] and on those issues I feel are most relevant to the final decision. I have also used the helpful summaries [the complainant] has provided to focus specifically on some of his particular concerns and the remedies he seeks.

Before I turn my attention to my findings I think it is important to set out some background issues which I think are important and impact upon my powers and the scope of my decision.

- CIFO cannot consider acts or omissions (in [jurisdiction 2]) which occurred before [CIFO's mandate is operable].
- [The complainant] took advice from [redacted for anonymisation purposes], an independent financial adviser (IFA), when the pension plan was arranged. That adviser was based in [redacted for anonymisation purposes] and is not subject to CIFO's jurisdiction.
- The Investment Bond provider is based in the [redacted for anonymisation purposes] and is not subject to CIFO's jurisdiction.
- [The complainant] was the appointed Investment Manager of the Investment Bond and his independent financial adviser was originally appointed as the Investment Adviser until being removed in early 2014.

These issues shape much of my reasoning. The following are my findings in relation to the overall complaint.

Use of a Trust

I start with a consideration of the role of a trust and its trustees in the holding of assets set aside to fund provide pensions and other retirement benefits.

In jurisdictions where tax relief has been given in respect of contributions to pension arrangements, it is frequently a requirement of tax legislation that funds are not immediately available to the individual pension holders to use as they wish on reaching retirement age. The funds are retained in a trust or other arrangement from which the payment of retirement benefits can be controlled in order to meet applicable tax rules.

In the case of a personal pension arrangement, such as the matter reviewed, a pension scheme established so as to qualify as a Qualifying Recognised Overseas Pension Scheme (QROPS) may receive accrued pension benefits from existing UK registered schemes. The complainant's IFA advised him to transfer his accrued pension benefits to a [jurisdiction 2] based QROPS administered by [Company X].

[Company X] as Promoter and Trustee of the QROPS

Looking at the particular role of [Company X], it could certainly be argued they were the "promoter" of the QROPS product which was "sold" to [the complainant]. They produced the application form, brochure and other product material which has been disclosed by the complainant.

Part of the package that [Company X] sold to [the complainant] included the provision by them of membership of a sub-fund within what is referred to in the industry as a master trust. This is a single trust with a trustee in which separate member sub-funds could be set up for individuals who were transferring accrued benefits into the QROPS. Such member sub-funds are kept at least notionally separate from the sub-funds of other scheme members. Assets in the sub-funds would be invested for the benefit of the member and in due course distributed by way of the payment of retirement benefits in accordance with the rules of the scheme.

The services provided by [Company X] included the provision of the trustee of the trust, one trustee for one master trust with multiple sub-trusts, and as with other trusts, it is the trustee who is the legal owner of the trust assets which it holds for the benefit of the members or beneficiaries. This is why it is no surprise to me to observe in the product documentation that [Company X] as trustee was the “owner” of the insurance policy wrapper in which the underlying investments were held.

The [Pension Plan]

Although the nature of a pension plan master trust, with multiple sub-trusts for members, is somewhat different to the type of trust under which an individual settles or transfers assets to a trustee to hold for the benefit of named individuals, typically for family members or for non-charitable or charitable purposes, similar principles apply when considering the role, powers, duties and responsibilities of the trustee.

The [Pension Plan] was set up subject to [jurisdiction 2] law and the applicable duties and obligations are to be found principally in the trust deed and rules and in applicable trusts legislation, in particular the [relevant legislation], as amended. The trust deed and rules provide that the trustee may not be responsible for certain matters, such as investment advice and management, in certain circumstances, and may participate in arrangements that may involve the trustee being "directed" to do certain things in areas where it would have had the responsibility itself in the absence of a direction. This reservation of certain powers is also expressly permitted by [relevant legislation].

This is important as it answers some of the allegations made by [the complainant], which in many cases have involved general criticism of [Company X] for not attending to matters which were not its responsibility in the first place. For example, save in certain limited circumstances, the trustee shall have no duties in relation to the assets of the sub-fund and may not exercise any investment powers where the member has exercised his power to appoint an investment manager, which was done in this case.

Roles of the Parties

This brings me to the consideration of the relationships between the various parties to this dispute. The principal parties are [the complainant] himself, the [redacted for anonymisation purposes] IFA [redacted for anonymisation purposes], the trustee [Company X] and the insurer [the Bond]. It is a feature of this type of multiparty arrangement that misunderstandings can arise unless documentation is clear, explanations provided to "clients", particularly lay clients is clear and understood, and all parties complete what they have "contracted" to do. I use the word "contracted" deliberately, as the documentation entered into between the parties is in some parts contractual, but in some cases not. In particular, a trust is not a contract. A trustee owes duties to scheme members not because of the existence of any contract but because of trust law contained in legislation, case law and the applicable trust deed itself. On the other hand, the rights and obligations of the insurer and policy holder are clearly contractual, being set out principally in the insurance contract with applicable policy provisions.

At its most basic, it is my understanding of the facts of this case that the complainant contracted with [the IFA] to procure for him a pension product which would enable him to store in one place his accrued UK pension benefits, from which he could at some stage start to draw a retirement income. Given that the accrued pension benefits were in UK-based schemes, the UK pension administrators/trustees would only have been permitted under UK law to transfer the benefits to a suitable product such as a QROPS. [Company X] was a [jurisdiction 2]-based and [jurisdiction 2]-regulated QROPS provider.

I have reviewed the documentation completed when [the complainant] entered into his arrangement with [Company X]. The documentation appears to me to have been in standard form, makes it clear that this was a trust arrangement, that it had approved QROPS status and involved the placing of the trust funds in an insurance product provided by the entity then known as [the Bond]. I consider later the use of an investment "wrapper" to hold the funds representing the accrued pension benefits. What seems clear to me is that [the complainant] and his IFA had ample opportunity to consider the nature of the transaction that was taking place. [The complainant] may well be correct in asserting that he relied on the IFA to select for him a suitable product for his pension benefits. This would have been an unexceptional approach from an IFA with a client who wished to transfer his pension benefits into a QROPS product.

[The complainant] has made various allegations. The question as to whether or not the IFA was independent of the insurer, given that he seemed to have an agency number and to have received a commission from the insurer, is not in my view a matter to which [Company X] was required to pay attention when deciding to accept the transfer of pension benefits into its product. As trustee, [Company X] was required to establish that the benefits were suitable to be transferred into the product, and in particular, met the criteria set out in the [jurisdiction 2] tax approval regime applicable to the scheme, and met other criteria set out in the scheme documentation.

Life Assurance

I then turn to the nature of the trust arrangement. As stated, the [redacted for anonymisation purposes] QROPS was established as a master trust. When pension benefits were received in respect of a new member of the scheme, a sub-trust was set up for that individual. Save that the only beneficiary of that sub-trust could be the member and his family, the funds were held subject to trusts set out in the main master trust document.

The actual assets received from the member's previous schemes were cash transfers which were then used to purchase the investments which were to be held through the insurance bond issued by [the Bond].

It is a significant feature of the complaint that the complainant says that he did not know that the arrangement was to feature a life assurance product and that [the complainant] would not have proceeded with the contract had he known this. It is a common feature of investment schemes that individual investments are held in what is commonly known as an investment wrapper which is a life assurance product. This can offer significant tax and other advantages. As with any life assurance contract, there is a life assured on whose life insurance is effected but it is also a feature of life assurance contracts which exist to provide secure investment returns during the life of the life assured, rather than a significant fund on the death of the life assured. In such cases, the sum assured is of minimal value. This is true in this case where it is clear from the documentation that in the event of the death of the life assured the return on the policy was 101% of its value (i.e., the only additional life assurance benefit was 1% of the value at death).

It is certainly the case that transfers of assets to trusts can be set aside where there is a genuine mistake on the part of the transferor. He or she would not have made the transfer into the trust had he or she known (for example) that, as established, the trust did not do what the transferor wanted to achieve. However, I do not see this as such a case. The transfer was being made into a [jurisdiction 2] QROPS to enable the complainant to "warehouse" his accrued pension in various schemes from which he could subsequently draw down his pension benefits. The trust documentation that I have seen empowered the trustees to hold those accrued benefits in an insurance bond and the documentation signed by the complainant indicated that he knew that the fund would be held in a [the Bond] and indicated his acceptance of this arrangement.

Suitability

This leads to another area of [the complainant's] complaint, namely whether the product supplied was suitable for his requirements, given that he was already in his sixties when he entered into the arrangement, and he was looking for a product from which he could start to withdraw his retirement benefits in short order. [The complainant] questions whether the pension provided him was suitable for his needs.

This brings me to the role of [Company X] as trustee under the trust deed which stated clearly that the trustee was not responsible for the investment management of the fund. If [the complainant], in his role as investment manager, was content to permit the underlying investments which he selected to be made, I cannot see that [Company X] can

be held to blame for the fact that some part of a policy or policies would have to be surrendered on a regular basis to enable the 5% payments to be made.

Trustee Obligations

I now turn to the more detailed considerations of the obligations of [Company X] as trustee. As stated above, [Company X] was trustee of the master trust and all of the sub-trusts for the individual members and its powers, duties and obligations were set out in the trust deeds and general [jurisdiction 2] law trust as set out in [relevant legislation].

In a master trust such as this, the trustees' obligations are principally to hold the relevant investments in a safe and secure environment for the benefit of the members who have transferred their benefits into the scheme and to establish separate sub-funds so that a member's interests in the trust can be identified at any time. In the case of this scheme, and following the completion of the relevant documentation, it was clear that the trustees were neither responsible for the investment advice and management, nor did they directly hold the underlying investments for the benefit of the member, but would be the holders and legal owners of an insurance bond within which the underlying investments would be held. The trustees would not normally be expected to receive the detailed information from the underlying fund investments, such information would only be ordinarily given to the insurer ([the Bond] in this case) and not to the trustee who was always one step removed from the underlying investments as the insurance bond holder. This is relevant to another complaint raised by [the complainant] in this case.

It is clear from all the documentation that I have seen that it was [the complainant] who was appointed as the investment manager for the investments held within his sub-fund and it was accordingly not the duty or responsibility of [Company X] as trustee to review and take decisions in relation to the investments of his sub-fund, nor to notify him of matters which would not necessarily have come to its attention anyway.

[Company X] as a Regulated Fiduciary

As a regulated fiduciary in [jurisdiction 2], [Company X] was and has remained subject to applicable codes of practice. As CIFO may not consider matters arising before [redacted for anonymisation purposes], I considered its activities and alleged omissions during the period after that date.

At the relevant time, [Company X] was regulated pursuant to provisions contained in [relevant legislation]. It is my view that [the complainant] would fall within the definition of a "client" of [Company X] for the purposes of the [relevant legislation] and related codes of practice. This means that [Company X] owed certain duties to the complainant and it is necessary to understand to what extent those duties continued beyond the earliest date on which CIFO may consider any activities or omissions of [Company X]. In my view, whilst it remained the duty of [Company X] to ensure that the investments in the sub-fund remained suitable investments to be retained within a sub-fund of the scheme, it did not owe specific duties to the complainant to take over the investment management and advisory duties which had clearly been reserved under [jurisdiction 2] law and vested in [the complainant] himself at the outset.

[Company X's] responsibilities as trustee remained up until the time when it no longer ceased to hold assets (i.e., the insurance bond) in the member's sub-trust and [the complainant] ceased to be a member of the scheme. When it was necessary for the bond to be transferred out of the original sub-fund, there was a transfer to a second plan. I am satisfied that this transfer was reasonably considered necessary to preserve the inheritance tax benefits of the remaining members. It was therefore entirely appropriate that this step be taken. In any event, it is clear that the complainant knew of the requirement for this transfer and indeed gave instructions that it be effected. The issue became one of fees to be charged.

Fees and Charges

Finally, in connection with the fees and charges, it is fair to say that as was, and perhaps is still common with pension scheme arrangements of this nature with multiple parties, the charges can be multiple, complex and on occasions somewhat opaque.

As a matter of trust law, acting as a trustee is a voluntary activity and a trustee may not charge for acting as such without due authority. Such authority is normally contained in the trust deed itself, as it is in the [Pension Plan] deed. The regulatory regime also requires a regulated person to be open about the charges that it levies. It appears to me that the fees were clearly listed in the original brochure.

General Conclusion

I conclude that the arrangements as established and administered by [Company X] were in line with industry practice, that adequate explanations were given by [Company X] in relation to its role and that the documentation as completed was clear as to the duties and obligations undertaken by [Company X].

Those duties and obligations did not extend to investment management or advice. The application form signed by the complainant confirmed that he was appointing himself as the investment manager and that he would be receiving investment advice from [the IFA]. There is nothing in the trust documentation that in any sense overrode the clear provisions of the application form as signed by the complainant.

Specific Issues Raised by [the complainant]

I will now address some of the specific points [the complainant] has made:

i) Gross negligence in execution of the Fiduciary duties and Administrative responsibilities

ii) Failure to disclose crucial information at the onset of QROPS set up which only came to be highlighted in year 2016. This is contradictory to [relevant legislation]

iii) Failure to provide Deed and Scheme rules and quoting Clauses from these documents for acceptance in the Agreement. It is the responsibility of the pension Scheme provider to provide

Scheme documents with accurate information prior to set up of the scheme

As I have set out above, I am not permitted to consider complaints arising from events which occurred before [redacted for anonymisation purposes]. This means that I cannot look at issues which arose in 2011 at the time the QROPS was arranged. It follows that I cannot consider any failure by [Company X] that may have occurred when the QROPS was set up as this is outside the scope of this service. So even if [Company X] had made errors (and I do not find that they have) such as failing to disclose crucial information or failing to prevent unauthorised commission being paid to the financial adviser, I cannot consider them.

I have noted [the complainant's] reference to the fact the he only became aware of some these issues recently, including the payment of commission. But the time limits he refers to are secondary to the scope of our jurisdiction. I cannot look at acts or omissions before [redacted for anonymisation purposes] even if awareness of them may only have arisen later.

iv) Failure to provide any variation or replacement to the Deed or Scheme prior to and after the delisting of the QROPS and introduction of new pension reforms by HMRC and [jurisdiction 2] Legislators

[Company X] says that it could not amend [the Pension Plan] to allow flexible access. This was because inheritance tax protection for all existing members would have been lost. Therefore, to accommodate needs such as [the complainant's], [Company X] created a new scheme with flexible access, to which existing [Pension Plan] members could transfer. I cannot, therefore, reasonably conclude that [Company X] did not provide an alternative option.

I am also of the view that the decision by [Company X] not to amend [the Pension Plan] appears to have been a legitimate exercise of its commercial judgement and out of concern for the preservation of legal rights of all plan members. It would not be reasonable for CIFO to interfere with this decision in the absence of any evidence that it was based on an incorrect assumption or inherently unreasonable. The approach of offering an alternate scheme to provide flexible access rather than amending the existing scheme is common industry practice. Amending an existing scheme will often result in the loss of some benefits and protection the plan provided and so it does not appear unreasonable to me that [Company X] concluded this was not a viable option.

v) Failure to obtain consent from the Member to transfer to another scheme after delisting of QROPS

I am satisfied that [Company X] offered [the complainant] the chance to transfer to another provider.

There was an exchange of correspondence about a potential transfer but a dispute arose about the fees payable. There was stalemate for some time until [Company X] accepted a condition that its fees would be subject to review by CIFO. It then went ahead.

So whilst there was some delay, I am satisfied that there was good reason for this. I am also satisfied that [the complainant] had requested and consented to the transfer.

vi) Failure to advise changes to the Deed or Scheme rules after changes to the UK Flexible Access Rules and in response to [jurisdiction 2] introduction of Flexible benefits in October 2015 to the UK pension reforms

I am satisfied that [Company X] did inform [the complainant] about the changes and the fact that a new scheme would have to be created to prevent IHT exposure to members of [the Pension Plan].

vii) Mis-sold [the bond] Policy. Only information provided was [the bond] brochure, no [the bond] Terms and Conditions or the Agreement contract provided prior to signing by [Company X] of "Whole Life Assurance Policy", which Member was not aware of. Signing to Clauses in [the Bond] Agreement on critical points and under the Declaration making false and misleading statements on the Member's behalf without his knowledge.

[The complainant] was accepted as a member of the [Pension Plan] product in 2011 and so for the reasons given above I cannot consider this. But in any event, [the complainant] was relying on advice from a financial adviser who appears to have recommended this plan. It would have been the adviser's responsibility to have sufficient information about the plan so that he could recommend it as being suitable for [the complainant] (as he appears to have done).

If [the complainant] was unaware that the investment bond featured a whole-of-life element, then I think this was a failure of his financial adviser. But in any event, I do not think it is a significant issue. Many investment bonds are, in reality, a whole-of-life insurance policy. The insurance element offers the investment bond certain tax advantages when compared with investing directly. The fact that the [redacted for anonymisation purposes] bond was described as a whole-of-life policy is typical of bonds like this. The arrangement creates an investment vehicle with certain tax advantages. I do not think it is likely that [the complainant] would have chosen a different course had he been provided with better information by his financial adviser about the nature of the bond. In addition, I cannot see that he has suffered any direct loss as a result of the whole-of-life nature of the bond.

viii) [Company X] as Bond owner failed to disclose the 8% charge levied by [the Bond] as Early Redemption Charges were for payment of commission to the financial adviser. Considering the financial adviser had no responsibility in selling the [redacted for anonymisation purposes] Bond product as [Company X] restricted all investments to [the Bond] products and specifying Bonds as instruments for asset investment.

This is another issue which arises before July 2011 and so it is outside the scope of this decision. But I would normally expect the adviser to have disclosed commission arrangements to his client. And as I have said, the adviser is not subject to this jurisdiction.

ix) [Company X] failing to accept contractual responsibility as owner of the Bond in spite of two definitive responses provided by [redacted for anonymisation purposes]. Exhibits [C] and [D].

I have considered the correspondence from the [location redacted for anonymisation purposes] [relevant regulator]. They explain why the [relevant regulator] is unable to consider [the complainant's] complaint.

I agree that to the extent that [Company X] may have failed to pursue any complaint on [the complainant's] behalf, I think this can be corrected as he is now the owner of the bond.

I should reiterate at this point that although [Company X] was the legal owner of the bond, it was not responsible for the investments within the bond itself. The choice of investment was the responsibility of [the complainant] and his financial adviser.

x) [Company X's] failure to provide important documents on Fund Particulars for [redacted for anonymisation purposes] Fund (GBP) resulting in significant losses.

Again, [Company X] was not responsible for the choice of investment within the bond. [The complainant] invested in the [redacted for anonymisation purposes] Fund in 2011 and again in 2012. On both occasions his advisers, [redacted for anonymisation purposes] were involved. [Company X] was not responsible for the investment choices. And in any event both investments were made before [effective date that CIFO can review in this jurisdiction].

I am not satisfied that any losses from the [redacted for anonymisation purposes] Fund flow from any act or omission of [Company X]. But even if they did these acts or omissions would be outside the scope of this service as they occurred before [effective date that CIFO can review in this jurisdiction].

xi) [Company X] failing to transfer the pension fund from existing QROPS without providing any reason and only allowing Flexible Access transfer through their new Scheme at exorbitant costs even after receiving authorisation to transfer the funds, thereby illegally withholding the funds resulting in huge loses to the Member.

As I have said, [Company X] decided not to amend [the Pension Plan] to allow flexible access. I think there were legitimate reasons for this. The charges levied for the transfer were in line with its disclosed charges.

xii) ***[Company X] without initially informing me and without my prior authorisation transferred the [the bond] contract they had with [the Bond] from inception to my name in the last two months.***

I am satisfied that [Company X] had the necessary authority and consent to make the transfer [the complainant] had requested. There had been a deadlock over the fees [Company X] proposed to charge but this was resolved when [Company X] agreed that the fees would be subject to review by CIFO.

So I do not agree that there has been a breach of trust. I am satisfied that [Company X] had the necessary authority.

xiii) ***[Company X] deliberate act of not transferring the Fund as instructed in June 2016 has cost implications, such as not using the resources for other investment opportunity and also additional fees paid to [the Bond] and [Company X] since June 2016. This has to be remedied.***

I am satisfied that [Company X] were acting reasonably when they did not make the transfer sooner as [the complainant] had said that he was only agreeing to their fees under duress.

So for the reasons I have set out above I don't uphold this complaint on the specific issues raised and make no award to [the complainant]. But for completeness I will look at some of the specific claims for loss that he has made.

1. £11,000 of commission paid to financial advisers

I note that [the complainant] is the designated investment manager for his pension plan. I consider that any complaint about the commission paid to [the complainant's] financial adviser, [redacted for anonymisation purposes] should be directed to them. It is not, in my view, a matter for [Company X]. But even if it were, the commission was paid in 2011 and is outside the scope of this service.

2. £1,900 paid by [the complainant] in annual charges

The charges [Company X] has made appear to be in line with the original agreement and fairly disclosed. I do not, therefore, think it has acted unfairly by charging them. Barring an error in the charge, the general level of annual charges is a commercial decision and not an issue CIFO will generally review. I make no decision with respect to this issue.

3. £15,000 for losses sustained following the alleged mis-selling of the policy

[The complainant] was accepted as a member of the [Pension Plan] product in March 2011.

The legislation that establishes CIFO's jurisdiction in [jurisdiction 2] does not permit me to review complaints arising from actions which occurred before [effective date that CIFO can review in this jurisdiction]. This aspect of the complaint appears to relate to an act which occurred in [prior to our review date], which would mean that I am unable to review it.

In any event, [Company X] was not responsible for the advice [the complainant] relied on when choosing this plan. He relied upon advice from [the IFA]. [Company X] is not responsible for investment choices. The decisions were taken by [the complainant] and his financial adviser.

4. £10,000 for not providing documents – including a "Fund Particulars" document - sent by [the Bond] to [Company X]

On page 5 of the application form for [the Pension Plan], [the complainant] instructed [Company X] to apply for [a bond]. On page 6, it is confirmed that he appointed himself as investment manager. [The IFA] was appointed to provide him with investment advice. Based on the above, I do not consider that [Company X] was responsible for providing [the complainant] with documents relating to the Fund. I therefore do not consider [Company X] has acted unreasonably. The decision to invest in the fund was the responsibility of [the complainant] as investment manager and/or his financial adviser [redacted for anonymisation purposes].

[Company X] considered that [the complainant] had reviewed the fund particulars document for assets he was invested in because he had signed and submitted declarations for each asset, confirming he was aware of the fees payable and that the fees included promotion and distribution expenses, including a commission payable to [the IFA].

The powers of investment were vested in [the complainant] and [redacted for anonymisation purposes] as his Investment Manager. This included the primary responsibility to monitor the investments within the bond. I note that [the complainant] raised concerns with [Company X] in 2013 that he was not receiving satisfactory information from his advisers or [the Bond] about the bond. He requested on-line access to the bond and steps were then taken by [Company X] to arrange this although it's not clear to me if this access was arranged. However, if it was not, I do not think it was due to any failure by [Company X].

It appears that [Company X] are licensed in [jurisdiction 2] as a fiduciary pursuant to the [relevant legislation], rather than being licensed to provide investment advice. The documents ought to have been provided to [the complainant] by [the IFA] as part of the provision of investment advice. Therefore, I conclude that this aspect of the complaint is best directed to [the IFA].

5. £5,000 of set-up cost charged by [Company X]

Given that the structures for the pension were set up as requested (and advised), I cannot conclude that [Company X] should refund [the complainant] £5,000 in set-up costs.

6. £2,000 for consequential damages

In order to uphold claims for consequential loss and make an award, I need to be satisfied of the following:

1. The losses must have been caused by [Company X's] actions, and they would not have been incurred otherwise;

2. The losses were reasonably foreseeable and not overly remote, meaning that [Company X] could have reasonably foreseen that they would have been incurred as a result of their actions; and,

3. It would be fair and reasonable to hold [Company X] accountable for the losses.

I am not satisfied that there are any losses flowing from an error attributable to [Company X].

7. £20,000 for losses sustained when unable to purchase a buy-to-let property after funds were not transferred timeously **[sic]** *to flexible access*

The initial view sets out a detailed chronology on this point. I will not repeat that here but I agree with the conclusion reached. I am not satisfied that [Company X] were responsible for any unreasonable delay.

8. £64,900, to put [the complainant] in the same position as if the contract had been performed

As I have said, [Company X] has explained why it would not amend [the Pension Plan] to allow flexible access. I am satisfied that decision by [Company X] not to amend [the Pension Plan] appears to have been a legitimate exercise of its commercial judgement.

9. £2,000 each day until the funds were received in [the complainant's] account

I see no basis for this claim that [Company X] should pay [the complainant] £2,000 per day his funds were not transferred. As noted above, I do not conclude that [Company X] is responsible for the funds not having been transferred to [the complainant's] satisfaction. If a complaint is upheld, CIFO seeks to place complainants in the position they would have been in if errors had not occurred. We do not make punitive or arbitrary awards such as this. As I am not satisfied that [Company X] acted in error, I make no award in this regard.

I have considered all that [the complainant] has said in response to the initial view. I have noted points which [the complainant] has reiterated. As I have said, I do not intend to respond to each and every point he has made. I have tried to focus on the points which

are most relevant to the outcome. However, I have noted the following where [the complainant] says;

- [Company X] did not make it clear that the [pension plan] scheme was set up as a collective investment.
- The law requires funds to be available in free access drawdown.
- [Company X] failed to explain why a deed of assignment was necessary for the change in ownership of the bond. [The complainant] has pointed to ongoing difficulties in fully surrendering the bond.
- [The complainant's] complaint is made in time and we have not applied the rules correctly.

At the risk of repeating myself, what [Company X] said or did not say when the scheme was arranged is not something I can make a determination on. That is because it occurred in 2011 and is outside the scope of this service. I have considered all that [the complainant] has said about our rules and the time limits but I disagree. Our rules do not allow us to consider acts or omissions (in [jurisdiction 2]) [redacted for anonymisation purposes]. The application of the time limit rules is secondary to the fundamental scope of our jurisdiction set out in law.

I also disagree with [the complainant] when he has said that funds must be available in free access drawdown. There was no obligation on [Company X] to amend the scheme to allow this. There was, however, the option to transfer out of the scheme.

Finally, with regard to the Deed of Assignment, the assignment appears to have been effective as [the complainant's] correspondence with [the Bond] suggests that it has been transferred putting him in a position to surrender it if he wishes. I can see the surrender is complicated by the status of the [redacted for anonymisation purposes] Fund but that does not mean the assignment has not been effective. The status of the fund is a separate issue and not something for which [Company X] is responsible.

Final decision

My final decision is that I do not uphold this complaint.

[The complainant] must confirm whether he accepts 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 **30 July 2018**. The determination will become binding on [the complainant] 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 complainant] would be free to pursue his legal rights through other means.

If there are any particular circumstances which prevent [the complainant] confirming his acceptance before the deadline of 30 July 2018, he 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: 2 July 2018