



# Financial Services Ombudsman Scheme

## **Summary of the determination issued on 27 February 2018 in respect of a claim for financial loss incurred following fraudulent withdrawals from a Bond.**

### **Summary of complaint**

In July 2014 the Complainant invested into a Bond with a Life Company ('the Supplier') on the advice of his financial adviser whilst living in Dubai. In early 2015 the Complainant's email account was hacked by an unknown third party and emails sent to the Supplier via the Complainant's Independent Financial Adviser ('IFA'). These emails contained attachments of the correct withdrawal forms upon which the signature of the Complainant had been forged by persons unknown. Three payments were made to various bank accounts or foreign exchange brokers.

By their own admission the Supplier did not follow its own internal procedures with one of the payments and agreed to refund the sum in question but refused to refund the remaining two amounts. The Supplier stated that they had complied with the terms of the Bond citing clauses which they stated allowed them to accept the electronic instructions.

The Complainant referred to other terms of the Bond which appeared to contradict the claims of the Supplier and specifically stated that electronic instructions will not normally be accepted. In addition the Complainant argued that in any event his signature was a forgery and therefore the Supplier should refund the remaining two amounts.

### **How did the Complainant want the Supplier to put the matter right?**

The Complainant brought a complaint to the Scheme in which they claimed US\$118,000, this being the total amount of the remaining two fraudulent amounts deducted from the Bond.

### **Initial Findings**

The Adjudicator reviewed the sequence of events which led to each of the three payments being made and made the following observations:-

1. Six months after entering into a long term investment an unknown person(s) posing as the Complainant started to sell the investments at times when the market and exchange rates were not in favour of the investor. This should have prompted a more robust investigation, certainly by the IFA. For a client to sell 64% of their holdings via three withdrawals in such quick succession should have raised suspicions especially as the Complainant had confirmed that he had other funds available to him when first making the investment.

2. The variety of bank accounts and alleged business transactions was not consistent with the Complainant's occupation.
3. The outlook email sent 'on behalf of' the Complainant's email address was not one which the IFA or the Supplier had previously received emails from and suggests that the Complainant was not the originator.
4. The emails were forwarded by the Complainant's known IFA and therefore added credibility to them.
5. Terms within the Bond establish that instructions must be originals, not photocopies or scanned attachments to emails which in the Adjudicator's view are the same as a photocopy. This is reinforced by additional terms which state that original documentation, bearing an original signature and received by post at the Supplier's head office, is the only valid method of instruction, unless otherwise agreed.
6. The terms referred to in note 5 above give the Supplier the right to vary what is an acceptable means of communication. However it clearly states that the investor will be given notice of such a change. There is no evidence that such notice was given to the Complainant or their IFA.

### **Arguments made by the Supplier**

1. Responsibility lies with the IFA and the foreign exchange brokers to notice the inconsistencies in the request.
2. Funds relating to the first withdrawal in dispute were paid into a foreign exchange broker's account which was the source of the original investment monies.
3. Failings at the foreign exchange broker allowed an unknown person to transfer the monies elsewhere.
4. Online access would have offered an alternative means of communication providing a secure portal for correspondence between the parties.
5. The IFA acts as the agent of the policyholder. The Supplier therefore believed that when it deals with the IFA, as a matter of law, it is dealing with the policyholder.
6. The IFA and the foreign exchange broker were on notice of unusual activity and failed to notify the Supplier. They maintain that the failings of the two parties occurred prior to any withdrawal correspondence reaching the Supplier.
7. There was contributory negligence on the part of the Complainant who sent sensitive information via email.

### **Determination**

Whilst it is clear that the IFA was acting as agent for the Complainant, this was limited, as acknowledged by the Supplier, to advising on the most appropriate product and to complete any administration required to acquire the product in question.

As far as accepting electronic communication, it is normal business practice for an IFA or the client to amend classes of investment or deal with normal administration. The Adjudicator did not accept that this extends to withdrawal instructions.

It is the responsibility of the Supplier to demonstrate that they have acted in accordance with the Client's mandate. In order to do this they can only act on an original signature, not a photocopy or scanned attachment to an email.

There was no evidence that the Complainant had contributed to the fraud. The Supplier decided to accept a scanned copy of a withdrawal form, despite their own terms clearly stating the need for an original signature to be delivered by post to their Head Office. They decided to do this without the agreement of the Client and did not notify him. The Complainant therefore had no opportunity to express his agreement or otherwise. In effect, the risk was imposed on him unilaterally.

### **Award**

The complaint was upheld and the Supplier ordered to refund to the Bond the two outstanding amounts of US\$75,000 and UD\$43,000.