



Financial Services Ombudsman Scheme

Summary of the determination dated 7th July 2019 in respect of a complaint made to the Scheme regarding the acceptance of incomplete dealing instructions by a life insurance company ('Provider')

The Complaint

The Complainant gave instructions to their Independent Financial Adviser ('IFA') to sell units from a fund held in US dollars (USD) with the Provider. The IFA omitted to state the number of units to be sold on the dealing instruction and, without reference to the IFA or the Complainant the Provider sold the total holding in the fund.

The proceeds were exchanged into sterling before another instruction was placed to buy back a reduced number of units in the same fund. The movement in the fund price resulted in a capital loss which equated to USD 39,000.

The IFA admitted their error in not completing the dealing form correctly but stated that the Provider did not have authority to deal on an incomplete instruction. The Provider asserted that where the number of units is left blank they are authorised to sell the whole fund.

The Complainant requested repayment of their losses which totalled USD39,000 in settlement of their complaint.

Summary of the Life Company's response

The Provider disagreed that they had acted incorrectly stating that they had accepted dealing instructions in this manner for several years and it was an established process. In addition they suggested that

1. the IFA had failed in their duty to correctly complete the dealing form; and
2. the IFA failed to monitor the progress of the sale online and therefore missed the opportunity to amend or cancel the sale of units.

Investigation

The Adjudicator established that the complaint revolved around the correct way to treat the blank or incomplete instruction form. He scrutinised the dealing form which states the Provider cannot be held responsible for failure to action instructions if they are unclear, incomplete or illegible. However there is no meaningful warning that in the case that a number, amount or percentage is not filled in; then a dealing form will be actioned by the sale of the whole of an investment holding.

On referring to the everyday dictionary meaning of the word 'incomplete' the Adjudicator determined that the form was one which should not have been actioned by the Provider. This is backed up by the precise wording in the form that puts the onus on the owner of a policy or their adviser to 'Tell us how much you wish us to sell or buy of an investment. You can choose a cash amount... or a number of units'

The Adjudicator considered whether the IFA contributed to the losses incurred by the Complainant. It was not in dispute that the IFA was at the root cause of the loss by submitting an incomplete form which did not stipulate a number, amount or percentage of units to be sold, but if the Provider had queried the form there would have been no loss as the error would have been rectified and the correct number of units sold.

There was a suggestion by the Provider of contributory negligence as the IFA did not access the correct website and notice that there was a pending instruction to sell the whole of the holding in the fund. However the evidence of what was available to view was contradictory and the Adjudicator did not place any weight on this suggestion.

In addition the Adjudicator also considered whether the IFA had failed to mitigate the losses incurred. As soon as the IFA saw the dealing/settlement note they contacted the Complainants who instructed them to re purchase the units sold in error. Regrettably there had been a rise in the market and fewer units were able to be purchased.

Findings

The Adjudicator concluded the following:-

- The IFA was negligent breaching its duty of care to the Complainants in submitting the dealing form without inserting the amount, number or percentage
- The dealing form was unclear and incomplete
- The Provider was negligent, breaching its duty of care to the Complainants in acting upon an unclear or incomplete dealing form and selling the entire holding without referring to the IFA
- The legal principle of novus actus interveniens applies, placing the entire responsibility for the loss caused to the Complainants upon the Provider
- There was no contributory negligence by the IFA and the IFA did everything they could on behalf of the Complainants to mitigate

Award

The complaint was upheld and the Provider instructed to pay to the Complainants a sum just less than USD39,000 in compensation for their loss.