

The complaint

In 2009 Mrs S and Mr S ('the complainants') were advised by their adviser to invest into an Onshore Investment Bond ('OIB') provided by Zurich Assurance Ltd trading as Sterling ('Zurich').

The OIB was divided into multiple policies. At the time of advice, and until around 2023, Zurich allowed the assignment of ownership of the OIB's individual policies, which could then be managed separately whilst remaining within the same OIB – the 'assignment facility'.

The complainants challenge Zurich's decision to stop the assignment facility. They say the OIB was either mis-sold in that respect in 2009 or that Zurich cannot legitimately withdraw the facility. They also say their efforts to resolve the matter since 2024, when their attempt to use the facility was denied by Zurich, have been frustrated, so they recently decided to cash in the OIB. They now seek financial redress for their losses in doing so.

What happened

The complainants have a linked complaint about their adviser, on the same facts but with focus on suitability of the adviser's OIB recommendation. That complaint has been determined separately.

Around August 2024 Mr S enquired into using the assignment facility. Zurich confirmed it could no longer be used. Its explanations included –

"... whilst we can note a cluster assignment on our records, we are unable to physically split the plan for administration purposes. This means that the investment within the bond will need to continue to be managed as a whole — with all parties agreeing to any change in investment funds or consenting to withdrawal requests. Cluster owners will be able to request a full withdrawal of ALL their clusters at any time, but they will not be able to take partial withdrawals from their clusters.

If the individual assignees wish to retain their investment and act independently, they will need to cash in the current investment and move to a product with another provider."

and

"Although we could assign bonds at individual cluster level, this is over and above the contractual right within the terms and conditions that allow simply for ownership of the Investment Bond (so the plan in its entirety) to be transferred.

While we did this with the best intentions of meeting customer need, you'll appreciate that, as the terms and conditions of the plan don't specify this as a feature, our administration system wasn't built with the functionality to split investments in this way.

Instead, system constraints mean that splitting plans entails a lengthy process (taking months rather than days/weeks) of unwinding the original plan and rewriting the investment proportionately in line with the assignment. Effectively leaving all owners/assignees unable

to easily access information about, or manage, their investment until the process completes.

As you'll appreciate the end-to-end time lapse for splitting plans, and resulting inconvenience to customers, has only increased as time has gone on, so we've concluded that this significant disruption to our ability to service these plans is more detrimental to those involved than removing the facility altogether."

Both sides engaged in further correspondence on the matter, with Mr S leading for the complainants. He made points directly related to Zurich's decision to remove the assignment facility, and wider points about the circumstances of his and Mrs S' case (including the impacts of the decision on them). For the former, his main arguments were –

- The assignment facility was a main feature in the sale of the OIB. It is standard practice for such bonds to be used for assignments within families, for investment and financial planning purposes. That practice was a benefit they believed they could consider in the future, with reliance on the fact that the OIB had the assignment facility. The reasonableness of their reliance is supported by the facts that the facility was part of the product at the point of sale, it continued in the same state for many years thereafter, and Zurich affirms that it facilitated assignments under the facility for customers, without restrictions, in the past. Therefore, overall, provision of the assignment facility is something its OIB holders are entitled to expect, where needed, and Zurich is duty bound to honour that.
- In their case, Zurich's decision to withdraw it amounts to an unlawful unilateral change of one of the fundamental terms on which they were sold, and bought, the OIB. It is also an unnecessary step, given that the change could have been limited to the new OIBs sold subsequently, as opposed to imposing a retroactive change on OIBs sold previously and breaching the terms on which they were sold.
- *"The starting point legally is that assets can be freely assigned without restriction unless the express terms of the contract clearly preclude this."*
- On proper reading, the terms for their OIB do not support Zurich's claim that there is no right to the assignment facility. The terms do not actually state that, and there is enough to argue, in the correct context, that the terms say the opposite. The OIB consists of 1,000 policies, and the terms are presented in a way that says they apply to each policy, so it is arguable that reference to a right of assignment to *the policy* applies to each of the 1,000 policies – which broadly achieves the same type of effect that the assignment facility could previously be used to achieve. Support for the argument also exists in Zurich's conduct in allowing the assignment facility for many years. It did that because the terms – as interpreted in this argument – provided for it to do so.
- *"... the way in which Zurich have covertly introduced these changes is in breach of Rules 1 and Rule 5 of the FCA Conduct Rules as their conduct in imposing this change not only lacks transparency, integrity and fairness but also discriminates between customers who have invested in exactly the same product."*

With regards to Zurich's conduct and its impact, Mr S said –

"Our concern is not just in relation to the unlawful actions Zurich has taken already but for the future. If Zurich's approach were lawful there can be no assurance that they will not change their position again and (at any time as suits them) refuse to allow assignments of policies at all. That is the logic of their argument that these are just procedural changes. This

uncertainty in the context of a very long-term investment that potentially carries on for several generations is completely unacceptable and can only discredit a provider of products designed for estate planning.

Our loss of trust for the future is underlined by the way Zurich have introduced the restrictions they seek to pass off as simply changed procedures. They have done this without notice or an opportunity for customers to take advice/make assignments before such changes were introduced in a manner which is discriminatory between customers, unfair and contrary to the conduct that should reasonably be expected of a financial institution. On the basis of their conduct to date they might again choose to keep customers in the dark and covertly impose further restrictions or changes. The seriousness of the damage this could inflict on customers is disgraceful. Had we not made an enquiry about assignments when we did and left it for another few years (as we might easily have done) planning to proceed at a later date, the implications would be worse. It is very likely that other customers are still exposed in this way in ignorance of Zurich's actions."

Zurich says –

"Cluster assignments were never a policy feature and do not form part of the terms and conditions of the Sterling Bond, as such we have not previously agreed to offer such assignments indefinitely."

"It is not a change to the contract, however, is removing a facility originally offered which over time has been deemed inappropriate given the potential risk and detriment to customers. Also, we did not inform our customers or their advisers of this change to our procedure, as there is no way potentially of identifying all customers that may be affected and therefore the first opportunity to notify customers and advisers is when either correspondence regarding a cluster assignment is received or if we are contacted by telephone."

In this context, it also says – no terms in the OIB were changed in the matter; the terms allowed for ownership of the OIB as a whole to be assigned and that facility remains; by definition, the assignment facility that the complaint is about is different, and it has explained why that facility has been withdrawn; but there is still an option whereby "... an assignee could take a partial surrender by surrendering whole clusters only or fully surrender their assigned clusters and we would just require the instruction of that particular assignee".

One of our investigators looked into the complaint and concluded it should not be upheld. In broad terms, she considered that the balance of evidence supports Zurich's position. Mr S disputed her view, with reasons. She shared his response with Zurich and made some additional enquiries. Thereafter, she shared Zurich's response (in which it elaborated slightly on its reasons for withdrawing the assignment facility) with him, and she confirmed that she had not been persuaded to change her view.

The points Mr S made in his response to the view broadly matched the arguments he had previously made. He considered that the investigator had given insufficient weight to some of those points, and had missed others. The investigator said his arguments are outweighed by the fact that the assignment facility was never a part of the terms of the OIB, and that his point about a general right to assign an asset is met by the fact that the OIB is assignable.

The matter was referred to an Ombudsman.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

The complaints about Zurich and about the complainants' adviser were both referred to me. I have issued a separate decision on their complaint about the adviser.

The first point to make in the present complaint is that my remit is limited to determining the claims concerning the complainants within it. Our service is not the industry regulator, so it is beyond my role to make isolated regulatory findings or findings about Zurich's general operation of its OIBs or about its internal procedures within that operation. I say this because some of Mr S' submissions include, at least implicitly, invitations to make such findings. For example – in his allegation about regulatory breaches; in his submissions about the wider effects of Zurich's conduct on its customers in general, presently and in the future; and in his allegation about discrimination between bond holders.

I mentioned these submissions in the background section above because Mr S is entitled to have his arguments reflected in this decision, and I have noted a concern he appears to have about some of his key points being previously missed. However, I make no findings on these general and/or operational matters and allegations. Any such matters would likely fall in the regulator's domain. This does not mean I will ignore any parts of the submissions directly relevant to the facts of the complainants' case. I will not. However, my approach in dealing with those parts will remain in the context of their case.

An important issue to determine is that of the terms binding on both parties at the point the OIB was invested in 2009, those being the terms on which Zurich presented and sold the OIB and on which the complainants agreed to invest in it. I acknowledge that their decision to invest in it was advised, and I have dealt with that aspect in the complaint about their adviser. Zurich was not party to that advice. It was the product provider. Its relationship with the complainants is defined by the terms that it offered for the OIB, and that they accepted.

The complainants' OIB's schedule document has the following opening statement – *“This schedule and the terms and conditions are the basis of your contract with us.”*

The schedule refers to only one Investment Bond corresponding to one Investment Bond number. The complainants have cited a provision in the terms and conditions which, they say, separates the OIB into individual policies, each of which the terms apply to. That provision states –

“Your Investment Bond is made up of a series of 1,000 insurance policies. These terms and conditions apply to each Policy”

“Policy

One of the insurance policies that make up your Investment Bond. Your Payment and any New Payments will be divided equally among the individual policies.”

The above is somewhat self-explanatory. However, the contents of the entire document give reasons to conclude that where the quote above refers to the terms applying to each policy, this means application of the terms to the OIB (or 'Investment Bond'), as a whole, affects each policy within it. The complainants' interpretation is different. As I understand it, they say the provision means the terms apply to each policy separately and individually, distinct from the OIB (as a whole). On balance, I disagree.

The terms consistently refer to the 'Investment Bond' as its subject matter. Each term focuses on the bond itself. In its description of *“Your Investment Bond”* and its provisions under the headings *“Payments to your Investment Bond”*, *“Investing your Payment or New*

Payment, Units”, “*Changing the funds you invest in*” “*Taking money out of your Investment Bond*”, “*Death Benefits*”, “*Claims*”, “*Charges*”, “*Changes we can make to the Investment Bond*” and “*General Terms*” the document repeatedly refers to the ‘Investment Bond’ as the subject it is addressing.

The *General Terms* section includes provisions for assignments. This section acknowledges and applies the legal right to assign an asset, so this meets the complainants’ argument in this respect. However, as the investigator noted, the right in this instance is recognised only for the OIB as a whole. The section sets out requirements for arranging an assignment, and it does so with reference to the ‘Investment Bond’, not to each individual insurance policy. It says –

“If the ownership of the Investment Bond is transferred to someone else, we need to be informed by a notice of assignment. This protects the legal position of the person to whom it is transferred. Notices of assignment must be given to us In Writing at our Administration Office. A notice of assignment must give the date and details of the assignment, including the full name of the person to whom ownership is being transferred.” [my emphasis]

The *Changes we can make to the Investment Bond* section of the terms and conditions confirms Zurich’s right to vary the terms on specific grounds, and its obligation to give bond holders notice of any material changes either 30 days before the change or as soon as it reasonably can. I address this further below, where I deal with the points made by the complainants about the effects on them of the withdrawal of the assignment facility without prior notice.

Thus far, I have established that the assignment provisions agreed by the complainants in the terms of their OIB applied to the OIB only, they did not also apply separately and individually to each of the insurance policies within it. In other words, the assignment facility that features in the complaint was not part of the agreed OIB terms.

Having said this, it is also a fact that the assignment facility was provided by Zurich in its operation of the OIB for many years between 2009 and up to around 2023. In this respect, the complainants’ points about the implications (for them) arising from Zurich doing this, their reliance on the facility being a main feature of the OIB for this reason (amongst others) and the effects upon them of its withdrawal without prior notice, come into play.

I need to consider if Zurich’s ongoing provision of the assignment facility over the stated period gave the complainants a right to it for the life of the OIB (despite no such right existing in the terms), and/or if, based on those circumstances, the complainants were entitled to perceive and rely on such right. In doing so, their claim about the impact of the manner of the facility’s withdrawal can be addressed too.

On balance, I am not persuaded that the implications argued by the complainants arise from the fact that the assignment facility was provided during the relevant period, or that they were entitled to perceive such implications and/or a right to the facility.

I understand the wider points Mr S has made about how the facility commonly exists in OIBs from other providers across the market, and about the facility having a natural home in the estate planning benefits that OIBs generally offer (with this, he says, explaining why it is a common feature). I have also noted the examples he has given of other providers who offer the facility based on terms creating the bond holders’ right to use it.

However, as established above, none of this was/is the case for him, Mrs S and their Zurich/Sterling OIB. Subject to the relevant laws and regulations, individual firms can determine how they produce and provide their products and services. The approaches taken

by the firms Mr S has referred to are not automatically binding on Zurich, so it does not automatically follow that it should have done what others did.

Zurich provided the assignment facility during the aforementioned period, but as far as the terms agreed with the complainants is concerned it never took the step to create a contractual entitlement to the facility. Instead, based on the terms, the complainants were entitled, only, to assign the OIB, not to separately and individually assign its 1,000 policies.

In some cases, depending on the circumstances, consistent provision of a service over a considerable period of time might present grounds on which to consider whether (or not) an obligation to continue that service exists.

In the complainants' case, administration of the OIB and its underlying funds, as defined by the agreed terms, was the main service provided to them by Zurich during the life of their OIB. There is nothing in their complaint about a problem in the administration of their OIB or of the fund holding(s) within it. In strict terms, there was no issue in the *administration* of the assignment facility. It was not part of the agreed terms, the complainants never used it whilst it was available and it was no longer available when they sought to use it, so, in their case, no administration of it ever happened.

On balance, I consider that the complainants' argument about the implications arising from Zurich providing the assignment facility for many years is somewhat redundant to them. They never used the facility during that period, so they are not in a position to say it was part of the service they received and therefore part of the service they were entitled to continue receiving. For this reason, the linked notion of an entitlement to continue receiving it arguably falls away. Their fundamental argument is that it was part of the service they were contractually entitled to receive, but as I have already addressed, that was not the case.

I am reluctant to drift into addressing the details of the reasons Zurich has given for withdrawing the facility because those reasons, as it has explained to us and to the complainants (some of which I quoted in the previous section), mainly relate to commercial decisions taken by Zurich in an operational context. It is not my role to appraise, generally, such decisions.

I can consider whether (or not) Zurich's reasons relate to it exercising reasonable commercial discretion in its business. On balance, and based on available information (including about the service capacity and service delivery problems Zurich says provision of the facility was causing), I consider that its decision to withdraw the assignment facility was part of an exercise of its reasonable commercial discretion.

Even if the assignment facility was part of the terms and conditions agreed by the complainants, those terms, as noted above, allowed for their unilateral variation by Zurich on specific grounds. One such ground relates to circumstances in which a change is deemed necessary in order to administer the OIB more effectively and efficiently. The reasons given by Zurich for withdrawing the assignment facility fit this category, so even if the facility was part of the agreed terms – which it was not – it could and probably would have still been withdrawn in the circumstances described by Zurich.

With regards to the manner of withdrawal, and the requirement in the terms and conditions for notice, the fact is that withdrawal of the assignment facility was not a change to the agreed terms – the facility was not agreed in the terms – so it did not trigger the notice requirement in the terms. Zurich's position on notifying its customers generally is not something I need to consider in dealing with the complaint. Instead, I will consider whether (or not), in the circumstances, it ought reasonably to have given prior notice to the complainants. Given that the withdrawal did not relate to an agreed term, given that the

complainants had no history of using the facility and in the absence of evidence that Zurich had reason to believe they had a plan in place to use it, I am not satisfied that it was obliged to issue them with prior notice.

The complainants might argue that they would have benefited from a general notification from Zurich prior to the withdrawal, so, by implication, they have suffered from the absence of such notification.

I understand this point. It is indeed possible that they could have benefitted from general prior notification. For example, with notice that the assignment facility was due to be withdrawn at a future date they might have sought to use it before it was withdrawn. However, this is not the only consideration. I am also mindful of the elements already established above – it was a facility they were not entitled to in the OIB's terms, a facility they had never used, it was not part of the usual service they had received, it was not part of the service they were entitled to continue receiving and they never attempted to use it until *after* it had been withdrawn.

In this context, whilst I accept that general notice from Zurich about withdrawal of the assignment facility before it happened could have benefited the complainants, I do not consider there is enough reason to uphold this aspect in isolation. In addition to the above elements, the withdrawal was not a change to the terms they agreed, so the matter of notice about it is qualified by this fact. In this respect, my finding above that their entitlement to notice under the terms was not triggered has some bearing on the notion of them receiving or having access to general notice. Furthermore, the complainants clearly seek much more than an acknowledgement that general prior notice of the withdrawal could and/or should have been given by Zurich. Their complaint is mainly about the withdrawal itself.

Overall, on balance and for all the above reasons, I am not persuaded to uphold the complainants' complaint. I acknowledge and understand the reasons for and grounds of their complaint, but, overall, I have not found that the facts, and the balance of evidence, support it.

My final decision

I do not uphold the complaint by Mrs S and Mr S.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 31 December 2025.

Roy Kuku
Ombudsman