

## The complaint

Mr P complains about the service he received from Killik & Co LLP trading as Killik & Co (Killik) in respect to his Child Trust Fund account (CTF).

Mr P is being represented on this complaint by his mother, but for ease of reference, I'll refer to any submissions as being made by Mr P personally.

## What happened

In January 2006, a CTF account was opened for Mr P, meaning that Mr P's mother, as the registered contact, was in control of choosing, buying and selling investments before he turned 18. A deposit for £1,450 was made to the account on opening, but this remained on Mr P's account as a cash deposit.

In January 2021, Mr P queried why his deposited funds remained uninvested. Killik explained this was because it had received no instructions to invest them. Unhappy with this, Mr P complained. Killik maintained the CTF account required his mother to make investment decisions on the account prior to Mr P turning of age. It further explained annual statements illustrating the account's unchanged position had been sent to the address it held on file until 2007 following which time it placed a 'gone away' marker after mail was returned. But as a gesture of goodwill, it offered Mr P £500 for any stress or inconvenience caused.

Mr P thought it was fairer for Killik to pay interest on his cash deposits for the time his cash deposits remained uninvested, so he referred the matter to this service.

The complaint was considered by one of our investigators who came to the view that it shouldn't be upheld. She said she was satisfied that no instructions had been given for shares to be purchased with those funds. Mr P disagreed. He explained that he had given instructions in the application form – he'd selected his risk profile as to fall within the medium to high risk category, so he thought Killik had failed to action his instructions. As no agreement could be reached, the matter has been passed to me to decide.

## My provisional decision

I issued a provisional decision on 26 August 2022. I said:

*"Mr P says it was for Killik to invest his deposited funds. He says he'd never been told he would be expected to have control and that he had no desire to have an account that would require for him to manage the investments. Mr P also references the risk profile he selected on the application form and says it was for Killik to discuss what investments could be made in accordance with his appetite for risk.*

*I've got very little to go on about the application process, so it isn't clear whether Mr P was responsible for giving an instruction on where the money should be invested after it was initially deposited on the opening of the account. But what I do know is that when Killik wrote to Mr P for the first time in 2006 where it sent a copy of his annual statement, it issued the letters to a wrong address. This resulted in the post*

*being returned and Mr P not receiving statements in 2006 nor in 2007 showing the deposit sat as cash in the account.*

*I've seen the initial application form which has Mr P's correct address so I'm satisfied it was Killik's error that resulted in mail not being addressed correctly and a 'gone away' marker being placed on the account to prevent any further correspondence from being issued. And as the account was a long-term investment for a child, I'm persuaded the account would less likely be monitored as closely if it was understood it wasn't to be needed until Mr P reached 18. Therefore, but for that mistake with the address, I'm satisfied it is more likely than not Mr P would have realised in March 2006 that his deposit sat as cash in the account and taken steps to remedy this. This means I think Mr P should be compensated for fact his money wasn't invested when it otherwise would have been. So, any redress against Killik should take into account any financial loss from that date.*

*Mr P says he was shocked to find out his money wasn't invested and that Killik had never explained it had been corresponding with him using the wrong address. Understandably this has caused him distress and inconvenience, so I don't doubt the strength of feeling behind this complaint. Killik accepted that it had failed to provide an acceptable level of communication. As such, it's offered to pay £500 for any distress and inconvenience it has caused. To be clear, this sum is a separate award to the financial loss Mr P has incurred. Taking all the circumstances into account, I intend saying Killik's offer to pay Mr P £500 to make up for inconvenience he experienced is a fair and reasonable one."*

I then set how what I thought Killik needed to do to put things right. In summary, I said it needed to compare the performance of Mr P's investment with that of a benchmark and pay the difference between the *fair value* and the *actual value* of the investment. I also said Killik should pay Mr P £500 for distress and inconvenience it had caused.

Neither Mr P nor Killik accepted my provisional decision. Mr P said the benchmark suggested by me was too low a volatility and in its place the FTSE UK Private Investor Balanced Risk ought to be used to represent the appropriate level of risk he was willing to take. Killik in summary said it disagreed with the reasoning and approach in my provisional decision. It emphasised that the measures I'd suggested it take on a discretionary account were legally unsound and that I had compensated Mr P for the same thing twice. It thought I had reached an erroneous conclusion in this circumstance.

### **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.

Having done so, I haven't found reason to depart from my provisional findings.

I thought about the comments made by Killik. It says that I am directing it to invest money on a discretionary basis, on advised accounts, where it is not the manager. For clarity, my provisional decision made no finding on this. My provisional decision said I had very little information on the application process, so it wasn't clear whether Mr P was responsible for giving instructions after it was initially deposited. Instead, I emphasised that my conclusions were based on Killik's error that resulted in mail not being addressed correctly and a 'gone away' marker being placed on the account to preventing further correspondence from being issued. I was persuaded that had it not been for this error, it was more likely than not Mr P would have realised in March 2006 that his deposit sat as cash in the account and taken steps to remedy this. As Killik was responsible for this error, I found it ought to compensate

Mr P the financial loss he experienced for the period his money wasn't invested when it otherwise would have been.

In response to Killik's final point that I've awarded Mr P twice for the same thing, it may be helpful to explain that financial loss and distress and inconvenience awards are two separate considerations. I am in no doubt that Killik caused Mr P distress when he came to realise his money had remained uninvested since 2006. It's clear from the communication that Killik fell short in its communication and Killik accepts this in its final response. So, in light of everything I've seen, I think the award of £500 is fair compensation here

I've considered Mr P's comments about the suggested compensation. When considering fair compensation, it's difficult to be certain what type of fund Mr P would have invested in – so I've used the available evidence to help me reach a finding. The application form Mr P completed selected a mix of low, medium and high risk - so suggests he was looking for a spread of risk as all three options of risk were selected. The redress calculation I've proposed here is a mix of diversified indices representing different asset classes that contain different risk levels. In addition, the proposed fund put forward by Mr P isn't in line with the information in the application form i.e. it doesn't just say medium or high. Therefore, in line with the attitude to risk Mr P selected, I find it to be a reasonable measure of comparison given the information I've seen.

### Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr P as close to the position he would probably now be in if he had not been given unsuitable advice.

I think Mr P would have invested differently. It is not possible to say *precisely* what he would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr P's circumstances and objectives when he invested.

### Putting things right

To compensate Mr P fairly, Killik must:

- Compare the performance of Mr P's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.
- Killik should also pay interest as set out below.
- Pay Mr P £500 for distress and inconvenience.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Cash Deposit	Still exists and liquid	FTSE UK Private Investors Income Total Return Index	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days

					of the business receiving the complainant's acceptance)
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### ***Actual value***

This means the actual amount payable from the investment at the end date.

### ***Fair value***

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

### **Why is this remedy suitable?**

I have chosen this method of compensation because:

- Mr P wanted Capital growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr P's circumstances and risk attitude.

### **My final decision**

I uphold the complaint. My final decision is that Killik & Co LLP trading as Killik & Co should pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 26 September 2022.

Farzana Miah  
**Ombudsman**