DRN-3726330

## The complaint

Trustees for the JD Trust complain about their advisers from the Openwork Limited network, following encashment of an investment.

## What happened

Following a death in February 2020, the terms of the JD Trust allowed its beneficiaries to receive their shares of what it held. At that time there were six beneficiaries. Four were to receive a one-fifth share each. And two were to get a one-tenth share each.

All six beneficiaries decided to take the cash value of their share from the trust. That meant the investment holding the trust's money had to be encashed. Openwork carried out the administrative task of passing the encashment instructions to the investment provider.

But the instructions came in two waves. The trustees – due to receive two-fifths of the investment between them – gave their instructions a week after the other four beneficiaries.

To pass the first withdrawal instruction along, Openwork worked out the value of 60% of the investment – three-fifths – using its unit value for that day. They then told the investment provider to encash that value. But the withdrawal was done the following day, at which point the unit value of the investment had fallen. So to get the value Openwork had asked for, the investment provider had to encash just under 64% of the investment.

A week later, the remaining 36% of the investment was sold. All of the proceeds then ended up in the same trust bank account. The trustees divided everything in the account at that point into fifths and tenths, and paid the beneficiaries their shares.

That approach led to disputes between the trustees and the other beneficiaries. That in turn drove the trustees' complaint to Openwork, set out formally on 1 February 2021.

The trustees felt Openwork delayed encashing the investment from February to March 2020 – a period where its value dropped significantly. They also felt Openwork shouldn't have acted on instructions from the beneficiaries without the trustees' approval. And the trustees felt it had been wrong to divide the investment using its value rather than the number of units. The trustees also raised complaints about actions in the years prior to 2020.

In response, Openwork explained why they thought their service had been reasonable. They gave a brief history of the advisers that had worked with the trustees, but focussed on events related to the withdrawal. They pointed out that it was one of the trustees who had passed Openwork's details to the beneficiaries, which in turn had led to instructions coming from the beneficiaries rather than the trustees. They confirmed the instructions had been given in two waves, and explained how these had been affected by the investment's change in unit price.

Key to Openwork's position was that they said the investment provider only allowed partial withdrawals of a specific value, rather than specific numbers of units.

Openwork acknowledged a delay in their complaint handling had caused distress and inconvenience for the trustees. So they offered to pay them a total of £300 for that. But the complaint wasn't resolved, and it came to us.

Our investigator found the correspondence from 2020 showed Openwork had dealt reasonably with the requests they received from the trustees and beneficiaries, up to a point. But the investment provider told her withdrawals of a specific number of units from an investment had been an option available to Openwork in 2020.

From that, our investigator concluded the first withdrawal could – and should – have been smaller –60% of the units, rather than 64%. That would have made the second withdrawal larger. And – because the unit price had risen by the time of the second withdrawal – the overall money received to the trust's cash account would have been £549.55 higher.

Our investigator said that to resolve the complaint, Openwork should pay this amount to the trust's account. It'd then be for the trustees to decide how to distribute it to the beneficiaries. Openwork accepted that view. But the trustees asked for a formal decision, so they could consider their options to take the matter forward. So the case has come to me.

**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've decided to uphold this complaint, in line with what our investigator already set out, and Openwork's offer. I'll explain my reasoning.

The approach Openwork took to instructing the investment provider to withdraw 60% of the investment's value was – foreseeably – flawed. It didn't do enough to consider the possibility of the unit price for the investment changing between the instruction being given and it being carried out. Openwork should have been aware of that possibility.

A better approach was to simply tell the investment provider to withdraw a set number of units – 872,392.22. That was 60% of what the investment held. By not doing that, Openwork have caused an avoidable loss for the trust. I'll explain what this is shortly.

On the other parts of this complaint though, I find there are some points that don't really fit our time limits. A complainant usually has six years from an act or omission to raise their complaint about it. Some of what the trustees have added to their 2021 complaint are about things that happened – and would have been apparent to the trustees – prior to 2015. So they don't meet the time limits for our service.

Other matters seem to be things the trustees were happy with at the time. For example, no encashment being made immediately after the death in February 2020. I can't see any instruction from the trustees to take that sort of action. And although the investment's value was dropping rapidly at that point, that reflects the unpredictable global events of the time. I don't see Openwork had a duty to handle the investment any differently, prior to the instructions being given in March 2020.

Looking at those instructions, I find it was reasonable for Openwork to discuss the investment with the beneficiaries directly. One of the trustees had given the beneficiaries Openwork's details to do exactly that. I find Openwork's actions were in line with what the trustees did and could have been expecting at the time. That was a reasonable way for Openwork to act.

But I can see it would have been helpful for Openwork to recognise the issues with the withdrawals. They could then have warned the trustees or beneficiaries that what was received from the first encashment was more than the 60% that had been asked for. That could have helped the trustees diffuse some of the dispute with the other beneficiaries.

**Putting things right**

My main aim is to put the trust and its trustees in the position they would have been in if the service had been reasonable. Here that means units being withdrawn from the investment at different unit prices. And it means beneficiaries and trustees being clearer about what each wave of withdrawal had achieved.

The first wave of withdrawals should have seen 872,392.22 units sold at a unit price of £0.4250 each. That gives a total value of £370,766.69 for the first wave of withdrawals.

The second wave of withdrawals should have seen 581,594.81 units sold at a unit price of £0.4347 each. That gives a total value of £252,819.26 for the second wave of withdrawals.

The two amounts would then have been combined in the trust's cash account. Adding £370,766.69 to £252,819.26 gives a total of £623,585.96. That's £549.55 more than was actually sent to the trust's cash account.

So to put things right, Openwork should pay the trustees £549.55 for the value that the trust lost due to the unreasonable handling of the withdrawals.

It'll then be the trustee's duty to decide how this should be distributed to the beneficiaries to best meet the trust's terms. It looks like their position up to now has been to divide the total received to the cash account into fifths or tenths and distribute that. Taking the new total I've directed, that would mean a one-fifth share of the investment was now worth £124,717.19.

I've thought about adding interest to acknowledge the time the trust has been without this money. But the trust would have only had the extra money briefly, before passing it to the beneficiaries. So I don't see the trust has lost out on any growth or interest for the money. The beneficiaries may well have done, but they aren't eligible complainants here, under our rules. My powers don't extend to directing compensation for the benefit of non-complainants.

But I note the trouble and upset the trustees have experienced in this case. Much of this traces back to the mishandling of the investment withdrawal requests by Openwork, and the expectation this gave the beneficiaries about what they would receive. Had Openwork acted reasonably, some of that dispute wouldn't have arisen, or may have been easier to resolve.

I can't undo that impact. But to acknowledge the added distress and inconvenience caused for the trustees, I've decided Openwork should pay some compensation.

I can see Openwork already offered £300 to the trustees for this sort of impact – albeit linked to a delay in the complaint handling rather than the actual issues I've identified. I find the impact of both of those things is the same though – the emotional toll on the trustees.

I've decided the £300 offered is a reasonable figure in this case. It reflects that the emotional impact – arguing with family over money – is significant. But it also recognises that – in absolute terms – the actual financial loss caused for the trust is relatively small.

This would be a personal remedy for the trustees, rather than a reimbursement of trust money. It'll be for the trustees to decide how to divide the money between themselves.

## My final decision

I've decided to uphold part of this complaint about Openwork Limited. To put things right for the trustees of the JD Trust, Openwork should:

- pay the trustees £549.55 of trust money; and

- pay the trustees personally a total of £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask the trustees of the JD Trust to accept or reject my decision before 30 November 2022.

Paul Mellor
**Ombudsman**