

## **The complaint**

The estate of the late Miss M complains that Rathbones Investment Management Limited (“Rathbones”) charged Miss M portfolio management fees for a shareholding that wasn’t held in its custody, that couldn’t be sold, and for which it didn’t provide any investment management service.

The complaint is brought by the executor of the estate, who I will refer to as Mr V. He says he wants Rathbones to refund the fees it charged on this shareholding, plus interest.

## **What happened**

Miss M had a discretionary investment management agreement with Rathbones. She transferred her portfolio to Rathbones from her previous provider in June 2014. The portfolio included a shareholding which I’ll refer to as “A”. But the share certificate was held by a third party. Miss M had given instructions that the shares should not be sold, but she wanted them included in her portfolio, so they didn’t get forgotten about.

Miss M passed away in May 2020. In February 2021, Mr V complained about the fees charged on A shares.

Rathbones said Miss M was fully aware that A shares were subject to its management fees; that she wanted the shares reflected in her portfolio; and that, whilst the shares couldn’t be sold without her agreement, they were taken into account by Rathbones in the management of her portfolio.

When the complaint was referred to us, Rathbones didn’t consent to us considering it as it thought it had been brought too late. It referred to the time limits applicable to this service’s jurisdiction whereby a complainant must bring a complaint within six years of the event complained of or, if later, within three years from when the complainant knew or should reasonably have known they had cause to complain.

One of our ombudsmen considered whether we could investigate the complaint or if it had been brought too late. He decided that we couldn’t consider what happened when the portfolio was transferred to Rathbones in 2014 – and specifically the inclusion of A shares in the portfolio – because the complaint hadn’t been brought within six years of that event. He also concluded that Miss M had been aware the A shares formed part of her portfolio because she received statements in 2014 showing this.

But the ombudsman decided we could consider the fees charged to the portfolio in respect of A shares from 30 January 2015, because this was within six years of the date that the executor of the estate complained to Rathbones.

Our investigator considered the merits of the complaint and recommended that it should be upheld. They didn’t think there was enough evidence to show that Rathbones had specifically told Miss M that A shares would be subject to its management fees. And that it hadn’t treated her fairly by applying its fees without letting Miss M know of other options for

her A shares. The investigator concluded Rathbones should reimburse the estate with the management fees charged on A shares from January 2015 until the portfolio was liquidated.

Rathbones didn't agree and explained, in some detail, why. In summary, it said:

- The decision to include A shares in the portfolio was Miss M's, and she was happy with the arrangement. It gave her the required peace of mind that A shares wouldn't be forgotten about.
- Mr V had authority on Miss M's portfolio from January 2020, a few months before she passed away. He told Rathbones that, "*Miss M confirms that she wishes to continue to hold these shares, despite their significant proportionate reported value within her Rathbone portfolio*". Both Miss M and Mr V would have been aware of the associated fees. And Mr V didn't raise a complaint about the fees until after Miss M had died and the portfolio had been liquidated.

### **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.

Firstly, I'm aware that I've summarised this complaint, and Rathbones' response to our investigator's conclusions, in far less detail than the parties and in my own words. There is a considerable amount of information here but I'm not going to respond to every single point made. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

As noted above, another ombudsman has already issued a decision to the parties regarding whether we are able to look at this complaint. Having also considered this matter, taking into account the time limits set out in the Dispute Resolution (DISP) rules contained in the FCA handbook, my view is that this service can consider the fairness of fees charged by Rathbones in relation to A shares within six years of the date they were first complained about. Mr V complained to Rathbones about these fees on 30 January 2021. So I will consider the fairness of the fees charged from 30 January 2015.

The holding of A shares was shown in Miss M's portfolio when the portfolio was transferred to Rathbones in June 2014. When the portfolio was transferred, Miss M agreed to Rathbones' terms and conditions. These allowed for shares of her choice to be held in the discretionary portfolio. Clause 2.3 explained that:

*"We may, at our discretion, accept suggestions or requests from you in relation to specific investments to be held, bought or sold in respect of your Portfolio. Where we accept such suggestions or requests from you, we will only do so by exercising our discretion in deciding whether or not to deal in such an investment in respect of your Portfolio. Investments purchased as a result will be included in your discretionary Portfolio. Any such suggestions or requests will not be regarded as in any way limiting or amending the discretionary authority provided by you to us. Where we decide in our discretion that such an investment or transaction is not suitable for your Portfolio, we will make separate arrangements for you to deal in such an investment on an execution only basis."*

I think this made it reasonably clear that Miss M was able to hold A shares in her portfolio, with Rathbones' agreement, and that those shares formed part of her discretionary portfolio.

And the terms also made it reasonably clear that the management fees were charged “*by reference to the value of your Portfolio at the end of each Quarter*” (9.10.2). I don’t find there was anything in the terms to suggest that any investments held in the portfolio would be exempt from Rathbones’ management fees. I’m satisfied that Miss M was aware that A shares formed part of her portfolio and that she was, most likely, aware that the value of A shares was included in the calculation of Rathbones’ investment management fee.

But, whilst I’ve found that Rathbones acted in line with its agreed terms and conditions, and I’m satisfied that Miss M was most likely aware that fees would be charged on her A shares, Rathbones had an obligation to treat Miss M fairly and reasonably. So I need to consider whether it acted fairly and reasonably when it included the value of A shares in its management fee calculation. Having considered this very carefully, I agree with the investigator that Rathbones didn’t treat Miss M fairly. I’ll explain why.

The Financial Conduct Authority (“FCA”) requires Rathbones to conduct its business with integrity and to pay due regard to the interests of its customers and treat them fairly. As part of these requirements, the fees Miss M paid should have been in exchange for a clear service that was delivered. I’m not persuaded that the fee Rathbones’ charged fairly reflected the work it said it did for her.

A shares rose in value to be worth around 20% of her portfolio. And that 20% didn’t need any specific work or analysis, because Miss M had instructed that A shares could never be sold or transferred. Rathbones hadn’t recommended or arranged the purchase of A shares. It didn’t incur any administration costs for the custody of A shares – because custody was with a third party. And, other than warning her when the value of the shares reached a specific percentage of her overall portfolio, it didn’t provide any advice about the shares.

Rathbones says it had to take the shares into account in its management of the portfolio. But I consider it would have needed to do this anyway, assuming Miss M had disclosed she owned the shares when deciding the mandate for her portfolio. Rathbones would have needed to construct her portfolio, and provide on-going management, taking into account her overall financial circumstances, including her holding of A shares.

Miss M wanted A shares to continue to be held in the portfolio for “information purposes” because she was fearful of them being lost or forgotten. I’m not persuaded that the inclusion of these shares caused Rathbones more work or time. Overall it doesn’t seem fair that Miss M paid 20% more in fees for essentially the same service. I think it would have been fair for Rathbones to exclude A shares when it calculated its management fee. In coming to this decision, I’ve taken into account that Rathbones should have treated Miss M as a vulnerable consumer, because of her age and I’ve considered the particular circumstances of this individual complaint.

Rathbones says the complaint was only raised after Miss M had died and the portfolio had been liquidated. But I don’t find that makes a difference to my conclusion. I’ve decided Rathbones didn’t treat Miss M fairly and when the complaint was made, and by whom, doesn’t change that conclusion.

### **Putting things right**

Rathbones Investment Management Limited should refund the management fees applied to A shares from 30 January 2015 until the portfolio was liquidated or transferred. It should also pay the estate of Miss M 8% simple interest from the date the fees were charged to the date of settlement. \*

\* HM Revenue & Customs requires Rathbones Investment Management Limited to take off tax from this interest. Rathbones Investment Management Limited must give the estate of Miss M a certificate showing how much tax it's taken off if it asks for one.

### **My final decision**

For the reasons I've explained, my final decision is that I uphold this complaint. Rathbones Investment Management Limited should compensate the estate of Miss M as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Miss M to accept or reject my decision before 21 March 2023.

Elizabeth Dawes  
**Ombudsman**