

The complaint

Ms C complains about fees charged by Colbourne & Company in order to manage her investments.

What happened

In mid 2022 Ms C complained to Colbourne & Company when she heard they had stopped providing any regulated activities.

Ms C was unhappy with the service provided as her investments had fallen in value. She thought this was because of poor practice by Colbourne & Company and not market forces.

Ms C asked for a refund of the fees she had been paying to Colbourne & Company to manage her investments as there had been no annual reviews or communication for several years.

Colbourne & Company didn't respond to the complaint so one of our Investigators looked into what happened. They also didn't receive any substantive response from Colbourne & Company so reached out to the platform provider of Ms C's investments for information.

Our Investigator upheld the complaint saying that Colbourne & Company should repay a total of £1,450 worth of fees that had been charged. They had seen no evidence of an ongoing advisory service for which Ms C was being charged. They thought it was reasonable to conclude that the fees were charged without justification and should not have been taken from Ms C's investment.

Colbourne & Company didn't respond to our Investigator, so the matter has come to me for a decision.

Our rules

When coming to a decision I've considered the rules set down by the Financial Conduct Authority (FCA) in the Dispute Resolution Sourcebook (DISP). These are the rules that give the Financial Ombudsman powers to resolve complaints.

Colbourne & Company have not replied to requests for information on multiple occasions. Nor did they respond to our Investigators view of the complaint explaining how they thought it should be resolved.

One of the objectives of the Financial Ombudsman Service is to resolve complaints informally and at the earliest possible stage, this is reflected in the rules:

DISP 3.5.1 The Ombudsman will attempt to resolve complaints at the earliest possible stage and by whatever means appear to him to be most appropriate, including mediation and investigation.

The rules also allow me to reach a decision on limited information:

DISP 3.5.9 The Ombudsman may: ...

- (3) *reach a decision on the basis of what has been supplied and take into account of the failure by a party to provide information requested*

I'm satisfied this rule applies here as Colbourne & Company have failed to provide the information requested or respond in any substantive way.

Alongside this the rules allow the fixing of time limits for a response:

DISP 3.5.13 The Ombudsman may fix (and extend) time limits for any aspect of the consideration of a complaint by the Financial Ombudsman Service.

Colbourne & Company were first made aware of this complaint in August 2022 by email and again in a letter sent by recorded delivery.

On 16 November 2022 Colbourne & Company confirmed *please use this E-Mail Address* which is what we have done for communications from that date on at least six occasions.

On 16 December 2022 Colbourne & Company said *I will get back to you within the timescale* but this didn't happen.

We have not been provided with any detailed reason for the delay in response other than several one-line email messages with reasons for personal delays, but nothing to suggest why they couldn't respond to the complaint or our requests for information. The last of these was provided on the agreed email address on 13 January 2023. Since then two more emails have been sent by our Investigator without a response.

Our Investigator reminded Colbourne & Company of their obligations to provide information and also gave warning that if there was no response an assessment would be made on the evidence currently held.

I'm satisfied time limits for information requests were appropriately set and communicated with Colbourne & Company. I also don't think the reasons provided, based on the lack of detail, are exceptional or warrant any further extension of time. Emails have been sent to the address declared on the FCA register for Colbourne & Company and we have previously received responses using those details.

Because of the non-cooperation of Colbourne & Company I'm basing my decision on the information I have been provided with which is allowed under the rules:

DISP 3.5.14 If a respondent fails to comply with a time limit, the Ombudsman may:

- (1) *proceed with consideration of the complaint, and*
- (2) *Include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.*

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.

Ms C took advice from Colbourne & Company in 2009 and since 2018 she was charged an 'advisor specified fee' on seven occasions which ordinarily relates to advice being given by their adviser. I've referred to this as an 'ongoing advisory fee' throughout.

Due to the non-response from Colbourne & Company I don't have a copy of the advisory service agreement so can't say exactly what service Ms C was paying for.

What I have seen is that during the period Ms C was being charged her investment strategy remained the same even when dropping in value. There have been no fund switches or additional investments. Also Ms C maintained the same level of withdrawals that were agreed when the investment was taken out.

These things in isolation don't necessarily mean that the investments weren't being reviewed, however I've not seen any evidence this was happening. I'd expect Colbourne & Company to have contacted Ms C sometime between 2018 and 2021 to discuss her investments and see if they were still meeting her needs – at a minimum, providing advice for which it appears she has been charged for. However I've not seen any evidence this occurred and Ms C says this never happened.

I've considered everything I've been provided with and also taken into account the failure of Colbourne & Company to provide any information. Having done so I'm satisfied, on the balance of probabilities, Ms C didn't receive the advisory service she was being charged for.

By charging fees and not providing a service I think Colbourne & Company have not fulfilled their regulatory obligations and also not acted in accordance with the principles set out by the FCA. Therefore the total of £1,450 should be refunded to Ms C.

The fees were taken from Ms C's investment by way of an auto-sell function where units were sold in order to pay the fees to Colbourne & Company. Ms C has since moved her investments, so it isn't possible to replace those units from where they were taken.

I think the most fair and reasonable way of putting things right is to refund the fees to Ms C allowing her to add the funds to her current investments if possible. Colbourne & Company should also pay 8% simple interest from the time each fee was charged until they are refunded.

Ms C has also been put to a level of distress and inconvenience by what happened. Ms C has been receiving treatment for anxiety and depression which she says has been made worse by the situation with her investments. Our Investigator thought Colbourne & Company should pay £300 for the trouble and upset caused.

I've considered everything that happened including the worry about the fall in value, the time and effort it has taken to get a resolution, and the effect this has had on Ms C. Having done so I think Colbourne & Company should pay Ms C £500 for the distress and inconvenience caused.

I sent Colbourne & Company two emails explaining this and setting out my thoughts with deadlines for a response with any comments. I also reminded Colbourne & Company about our powers for setting time limits and our ability to come to a decision on limited information as I've explained above. I received a one line email response with reasons for personal delays, but nothing to suggest why Colbourne & Company couldn't respond to the complaint or our requests for information.

Putting things right

Colbourne & Company should refund the following fees adding 8% simple interest from the date of each charge until the date of refund:

Amount	Date of charge
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£150	13/02/2018
£200	18/02/2019
£200	21/08/2019
£200	20/12/2019
£200	08/04/2020
£200	10/07/2020
£300	01/03/2023

Colbourne & Company should also pay Ms C £500 for the distress and inconvenience caused.

My final decision

For the reasons I've explained my decision is that I uphold this complaint.

Colbourne & Company should take the actions I've outlined above in paying compensation to Ms C.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 22 June 2023.

Warren Wilson

Ombudsman