

The complaint

Mr and Mrs D complain about fees charged by Colbourne & Company in order to manage their investments.

What happened

In mid 2022 Mr and Mrs D complained to Colbourne & Company when they heard they had stopped providing any regulated activities.

Mr and Mrs D were unhappy with the service provided and asked for a refund of the fees they had been paying to Colbourne & Company to manage their investments.

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 Mr and Mrs D's investments for information.

Our Investigator upheld the complaint saying that Colbourne & Company should repay a total of £219,000 worth of fees that had been charged. They had seen no evidence of an ongoing advisory service for which Mr and Mrs D were being charged. They thought it was reasonable to conclude that the fees were charged without justification and should not have been taken from Mr and Mrs D's investment.

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

Our rules

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.

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 by email in September 2022.

On 20 October 2022 Colbourne & Company said *I will respond as soon as possible* but this didn't happen. We also received several one-line email responses sighting family bereavement and health problems as reasons for the delay in 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.

Mr and Mrs D took advice from Colbourne & Company in 2004.

Between 26 June 2019 and 22 August 2022 Mr and Mrs D have been charged an 'advisor specified fee' of £600 on 365 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 Mr and Mrs D were paying for.

What I have seen is that during the period Mr and Mrs D were being charged their investment mix has remained the same even when dropping in value.

In isolation this doesn'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 Mr and Mrs D sometime between 2019 and 2022 to discuss their investments and see if they were still meeting their needs – at a minimum, providing advice for which it appears they have been charged for. Mr and Mrs D say this never happened.

The only transactions during this time were deposits made in February 2021 and again a few months later in June 2021. There's no evidence about why these transactions took place

and nor any proof the deposits were initiated because of advice given by Colbourne & Company. So I'm not persuaded any advice was given.

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, Mr and Mrs D didn't receive the advisory service they were 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 amount of fees taken should be refunded to Mr and Mrs D.

The fees were taken from Mr and Mrs D's investments by way of an auto-sell function where units were sold in order to pay the fees to Colbourne & Company.

I think the most fair and reasonable way of putting things right is to refund the number of units sold to pay the fees back to Mr and Mrs D's investments.

Mr and Mrs D have also been put to a level of distress and inconvenience by what happened. Our Investigator thought Colbourne & Company should pay £150 for the trouble and upset caused.

I've considered everything that happened including the worry about what happened, the time and effort it has taken to get a resolution, and the overall effect this has had on Mr and Mrs D. Having done so I think Colbourne & Company should pay Mrs and Mr D £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 contact the platform provider of Mr and Mrs D's investments to confirm the number of units sold on each of the 365 occasions a fee was taken.

They should then repurchase the units for the respective investments and put Mr and Mrs D back in the position they would be in had the fees not been taken.

Colbourne & Company should also pay Mr and Mrs D £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 Mr and Mrs D.

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

Warren Wilson

Ombudsman