

The complaint

Mr D complains about fees charged by Colbourne & Company in order to manage his investments.

Mr D is using a representative to bring his complaint but for ease I will refer to all actions as being those of Mr D

What happened

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

Mr D was unhappy with the service provided and asked for a refund of the fees he had been paying to Colbourne & Company to manage his 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 D's investments for information.

Our Investigator upheld the complaint saying that Colbourne & Company should repay a total of £2,350 worth of fees that had been charged. They had seen no evidence of an ongoing advisory service for which Mr D was being charged. They thought it was reasonable to conclude that the fees were charged without justification and should not have been taken from Mr D'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 Service 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 by email in September 2022.

On 20 October 2022 Colbourne & Company said *I will respond as soon as possible* but this didn't happen and on this complaint we have not been provided with any reason for the lack of 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 D took advice from Colbourne & Company in 2004 and 2018. Since 2018 Mr D has been charged an 'advisor specified fee' on nine occasions which ordinarily relates to advice being given by his adviser. I've referred to this as an 'ongoing advisory fee' throughout.

Mr D holds two investment accounts an Individual Savings Account (ISA) and a General Investment Account (GIA).

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 D was paying for.

I'd expect Colbourne & Company to have contacted Mr D sometime between 2018 and 2021 to discuss his investments and see if they were still meeting his needs – at a minimum, providing advice for which it appears he has been charged for. However I've not seen any evidence this occurred and Mr D says this never happened.

The only transaction during the time the fees were being charged was a fund switch on both the ISA and GIA in June 2019. For this Mr D was charged £100 on each account. There's no evidence about why this transaction took place, nothing to show what the fee was for nor any proof the swap was initiated due to advice from Colbourne & Company.

Our Investigator thought it possible that the £200 was for advice to switch, though there's no evidence of this. I think it's just as likely that the fees were a transaction fee that would've been charged with or without advice. Either way these fees weren't the same as the other advisory fees which were £600 per time.

Because of the lack of information from Colbourne & Company I can't say for certain what these fees were for. But looking at all the information I do have I think, on balance, these fees were attached to the fund switch that happened and weren't fees for an ongoing advisory service. Because of this I don't think these particular fees need to be refunded.

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 D didn't receive the advisory service he 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 £2,350 should be refunded to Mr D.

The fees were taken from Mr 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 fund the fees back to Mr D's investments.

Mr D has also been put to a level of distress and inconvenience by what happened.

I've considered everything that happened including the level of worry, the time and effort it has taken to get a resolution, and the overall effect this has had on Mr D. Having done so I think Colbourne & Company should pay 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 D's investments to confirm the number of units sold on each occasion a fee was taken as detailed below. Colbourne & Company should then repurchase the units for the respective investments and put Mr D back in the position he would be in had the fees not been taken.

GIA

Amount	Date of charge
£525	24/07/2018

£75	13/02/2019
£100	13/02/2019
<u>ISA</u>	
£150	07/02/2018
£550	14/06/2018
£350	08/03/2019
£600	01/06/2022

Colbourne & Company should also pay Mr 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 D.

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

Warren Wilson

Ombudsman