

The complaint

Mr K's representative complains on his behalf that Forester Life Limited (Forester) didn't transfer the full value of his Child Trust Fund (CTF) account to another provider.

What happened

Forester held a CTF for Mr K's benefit. Mr K's father, who I'll call Mr K1, was the registered contact with power to instruct on the CTF, and also represents Mr K in bringing this complaint.

In March 2023 Mr K1 submitted a form to Foresters requesting Mr K's CTF be transferred to a Junior ISA with another provider. The transfer was completed in mid-April 2023.

Mr K1 complained to Forester. He said the value of Mr K's CTF had risen between the day he'd submitted the transfer request and the day it eventually went through a month later. But Forester had transferred a sum equal to the CTF's value when the transfer request was submitted. He thought the value on the date of the actual transfer should have been used, instead.

Forester didn't think it had done anything wrong. It said its standard practice was to use the account valuation on the date it received a transfer request when making transfers like this. It said this was to avoid cherry picking valuation dates. It said this could work out to be a positive or a negative, and had the value of Mr K's plan fallen while the transfer was waiting to be processed he'd have been better off.

One of our investigators looked into things. He initially thought Forester had acted fairly. But he then said he didn't think this arrangement had been fair to Mr K. He said it had the effect of taking Mr K out of the market for the time it took Forester to process the transfer, which wasn't what he'd wanted. He said that this meant the transfer value wasn't truly reflective of the value of the investments when they were transferred. He said he didn't think there was any ability for Forester to cherry pick dates in advance and so wasn't persuaded this was a fair reason to have valued Mr K's transfer the way it did. He said Forester should pay Mr K the difference between his CTF's value on the date it received the transfer request and the date it actually made the transfer. And that it should add growth on that loss equivalent to the rate of growth Mr K had achieved on his Junior ISA since then.

Mr K1 accepted our investigator's conclusions on Mr K's behalf. But Forester didn't, and asked for an ombudsman to decide the matter. It said it had operated within its terms and conditions, and maintained this way of valuing Mr K's transfer was fair. It said our service had issued a decision in the past endorsing this approach.

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'd like to address Forester's reference to a previous decision issued by an

ombudsman at our service which it says contradicts our investigator's conclusions. I've read the decision, and I understand why Forester has sent it to us. But my role is to consider each case on its own merits. Our previous decisions don't set a binding precedent for what follows, unlike the courts, so what another ombudsman said in another set of circumstances doesn't dictate the decision I make here. I have an obligation to decide what I consider to be fair and reasonable in the particular circumstances of this case, and I'm satisfied it's fair for me to focus on the information available in relation to the particular CTF and transfer complained about here.

Forester has argued that using the valuation of Mr K's CTF on the date it received the request is its standard practice, and in line with its terms and conditions. The relevant section of the terms regarding transfers says:

"On receipt of your written instructions and within any time period you have stipulated (but not less than 10 business days after receipt of your instructions) we will transfer the Unit Account Value of your Plan [...] We will issue you with a statement of your Plan at the date of transfer."

The term Unit Account Value is defined in the terms as *"effective on a given date means the sum of the units of each Fund of the Unit Account on that date multiplied by the respective unit price effective on that date."*

The contract forms part of the legal agreement between the parties, and in reaching my decision I have to have regard for the law. I note that it would however be for the courts to decide on a matter of contractual interpretation. But bearing that in mind, I'm not persuaded it's fair for Forester to have valued Mr K's CTF the way it did based on the terms of the account.

The terms say Forester will transfer the Unit Account Value of Mr K's plan "on receipt of his written instructions". But that's not what happened – Mr K's plan wasn't transferred until a month later.

And in my view, in defining Unit Account Value, the terms don't provide any further clarity – they just say that it is defined in terms of *"a given date"*. Forester's interpretation is that the date in question is *"on receipt of your written instructions"*, unless some other date is stipulated as provided for by the same section of the contract.

But that's not what the terms say – I think it's reasonable for Mr K1 to have expected the Unit Account Value to be transferred to be the value on the date the transfer took place. There's nothing in the terms that suggests this isn't what would happen in the event of a transfer.

And I think the fact the terms say Mr K is to be issued a statement of his plan at the date of transfer suggests the value of the plan might fluctuate between receipt of his instructions and the transfer. If the value of the plan is fixed once the instructions are received, it's not clear to me what reason there is for a statement referencing a later date. This is particularly relevant given the plan, and the underlying investments themselves, continued to be held in Mr K's name until the transfer took place.

So I don't think the terms say that on receipt of written instructions the value of the CTF will be fixed for however long it takes for the transfer to take place. But even if I'm wrong about that, my remit is to decide what's fair and reasonable in all the circumstances. And here, even if the terms gave Forester a contractual right to do what it did, I'm not persuaded that's fair and reasonable. I'll explain why.

Forester had to comply with the regulator's rules, including COBS 2.1.1R which says *"A firm*

must act honestly, fairly and professionally in accordance with the best interests of its client”.

Mr K1 had asked to transfer Mr K’s CTF from Forester to another provider. The CTF was invested in assets with Forester, and was to be in the Junior ISA it was being transferred to. At no stage did Mr K1 give an indication he had a desire to be out of the market. In fact he selected the option on the transfer form to make the transfer immediately.

By fixing the value of Mr K’s CTF when it received the instruction, Forester have effectively taken Mr K out of the market for however long it took to process the request. Mr K is left in exactly the same position as if his CTF had been sold, or had its units cancelled, on the day Forester got his transfer request. I don’t think that’s what Mr K1 asked for nor do I think it was something Forester explained might happen. Had Forester actually sold Mr K’s investments on the day it got his request, and just not transferred the proceeds for a month, there would be a question of whether that amount of time was reasonable. But here, the impression was given that the CTF was still in place (because technically it was) but Mr K was still effectively left without the benefit of the investment he wanted for the time it took Forester to process his request.

I’ve considered Forester’s arguments about why it thinks this was fair. It’s said this approach avoided cherry picking a date that suited either the provider or Mr K. But I don’t find this persuasive. Forester couldn’t know from one day to the next what the markets, and therefore the value of Mr K’s plan, would do. So I can’t see how it would otherwise have been able to cherry pick a date that suited either itself or Mr K.

Forester is right to say that this approach could work to the benefit or the detriment of Mr K. Had the value of his plan fallen while Forester was processing his request, he would indeed have been better off. But I don’t think Mr K1 wanted Forester to take that risk away from him or Mr K. He had an investment he wanted to move to another provider, and I don’t think it was fair and reasonable for Forester to unilaterally take the decision to artificially take away Mr K’s exposure to the market for so long. I’m not persuaded this was in Forester’s client’s best interests.

I think it’s also important that Forester didn’t actually sell Mr K’s CTF when it got his instructions. So the underlying investments linked to Mr K’s plan continued to be held, for his benefit, up until the date of transfer. Mr K1 has noted that the CTF was still able to be viewed online, with a live valuation, in early April. So where no actual investment transactions took place between Forester receiving Mr K1’s instructions and the eventual transfer, the valuation Forester used became substantially separated from the actual investments which were held for the benefit of Mr K and intended to provide the value of his CTF.

To put it another way, between Forester receiving Mr K’s transfer request and its processing of that transfer, Mr K continued to hold a CTF which was linked to actual investments. Yet his ability to benefit from the value of those investments had ceased by virtue of Forester fixing the valuation of his plan. I don’t find this to be fair or reasonable. By creating an artificial valuation which wasn’t reflective of any actual activity or transactions on Mr K’s account, I don’t think Forester was acting honestly, fairly and professionally in accordance with Mr K’s best interests.

For all these reasons I don’t think it was fair and reasonable for Forester to transfer the amount it did. I find that Forester ought to have transferred the value of Mr K’s CTF at the time it actually sold or cancelled units and sent proceeds to the new provider. I think it would be fair for it to compensate Mr K as if it had done so.

Putting things right

Forester should calculate the Unit Account Value of Mr K's CTF on the date it carried out the actual transfer to his new provider. For clarity this should be the date it processed the transfer on its system and requested a cheque be drawn and sent, rather than the date money was received into Mr K's account with his new provider. It should pay Mr K the difference between this value and the amount it actually transferred.

Had it transferred the correct amount, Mr K would have had the benefit of this additional sum in his Junior ISA. So Forester should also pay Mr K a sum equal to the amount the loss would have grown by – using the overall percentage return on Mr K's Junior ISA from the date of transfer to the date it settles this complaint.

My final decision

For the reasons I've given I uphold this complaint and direct Forester Life Limited to pay Mr K compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 12 December 2023.

Luke Gordon
Ombudsman