

The complaint

The estate of K complains that Wealth At Work Limited couldn't divide the late Mr K's investment portfolio equally and transfer the assets in-specie to the beneficiaries, requiring instead for the investments to be liquidated and then reinvested. The estate of K says it believes it has suffered a loss as a result, but Wealth At Work Limited refuses to answer its question whether it has or not.

What happened

The following is a summary of the background and key events leading up to this complaint.

The late Mr K held an investment portfolio with Wealth At Work Limited. Following Mr K's death, the estate of Mr K asked Wealth At Work Limited if, once probate was granted, it could divide the investment portfolio equally in two and transfer the assets in-specie to the beneficiaries investment accounts also held with it.

Wealth At Work Limited said it couldn't carry out the transfer in-specie. It said it couldn't split the assets equally and gave an example of where an odd number of shares couldn't be split 50:50 which would mean it couldn't act within the legal mandate to administer the estate. It also said its systems didn't allow it – any change would require IT development work which was the responsibility of its custodian. It said the only option was to encash the investments and then re-invest. It agreed that it would do this using a shorter timeframe – around 10 working days – rather than its usual 90-day timeframe.

In early January 2023, on the estate of Mr K's agreement, the late Mr K's investment portfolio was liquidated. The funds were then redirected as instructed.

On 9 January 2023, the estate of Mr K complained to Wealth At Work Limited about its concerns at having to encash the late Mr K's investments. It also complained that Wealth At Work Limited sent a letter addressed to the late Mr K about his investment.

On 22 February 2023, Wealth At Work Limited responded to the complaint. It apologised for its error in addressing the letter to the late Mr K and it upheld the complaint on this basis. But it said, while it understood the estate of Mr K was unhappy at having to encash the late Mr K's investments, it was necessary to do so and it had previously explained why. It also confirmed the agreed shorter re-investment period of 10 days.

Following a further exchange of correspondence between the parties and the estate of Mr K's continued dissatisfaction, on 27 April 2023 Wealth At Work Limited issued a further response to the complaint.

On the two key complaint points, it said it had explained why the in-specie transfer could not happen, and said its terms and conditions did not say that it would transfer assets in-specie upon death. It said in answer to the estate of Mr K's question as to whether it had been financially disadvantaged by not carrying out the transfer this way, because it didn't offer this service there was no basis to calculate what the position might have been. On a separate point, it accepted that it had not re-invested the investments over the agreed 10 day period,

which the estate of Mr K had brought to its attention, due to an error. But it said its loss calculation showed the estate of Mr K had not been financially disadvantaged by this. But it said it would pay £200 as a goodwill gesture for its errors.

The estate of Mr K then brought its complaint to us. It said that Wealth At Work Limited had refused to answer its question it had repeatedly asked about whether it had lost out as a result of its system not allowing an in-specie transfer to happen.

While the complaint was with us, the estate of Mr K raised further complaint points. Because these were addressed by Wealth At Work Limited to the estate of Mr K's satisfaction, I haven't set these out here.

One of Investigators considered the original and outstanding complaint and they didn't uphold it. They said there was no regulatory requirement for Wealth At Work Limited to provide an in-specie transfer option to the estate of Mr K in these circumstances. And they said it wasn't the role of the Financial Ombudsman Service to tell a business what processes or systems it should have. They said they didn't consider it was necessary for Wealth At Work Limited to assess whether the estate of Mr K had lost out had the investment been transferred in-specie, because this wasn't a service it could provide anyway.

The estate of Mr K disagreed. It said the Investigator has failed to grasp the crux of its complaint – it wasn't about trying to get an answer about whether a loss had been suffered. It said its complaint was that it was forced to liquidate the investment portfolio when Wealth At Work Limited would not consider the alternative, despite it not being set out in its terms and conditions.

Because the Investigator wasn't persuaded to change their opinion, the complaint was referred for a final decision.

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.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

Having done so, I've decided to reach the same conclusion as the Investigator and for broadly the same reasons. My reasons are set out below.

Firstly, I disagree with the estate of Mr K that the Investigator failed to grasp the crux of the complaint. The estate of Mr K's complaint form submitted to us was, in my view, clear that its complaint was about Wealth At Work Limited's failure to answer its question about whether it had suffered a loss as a result of having to liquidate the late Mr K's investments. And the Investigator addressed this point.

But I can see they also gave their opinion on the broader point about whether Wealth At Work Limited had acted unfairly or unreasonably by not agreeing to carry out the transfer in-specie. I will also consider these two complaint points here.

I've seen nothing within the regulatory rules that Wealth At Work Limited had to follow, which says it had to offer or provide an in-specie transfer process in these circumstances. And Wealth At Work Limited's terms and conditions, which set out the service it provides and

what a customer could expect, did not say that it would carry out in-specie transfers on death. So, because Wealth At Work Limited does not appear to have acted contrary to either the regulatory rules or the terms of its service, I don't think it has acted unfairly or unreasonably here.

I can see the estate of Mr K says that, because the terms and conditions are silent on the matter – they don't say either way how a transfer of this nature should be handled – it is down to the parties to agree the position, which wasn't done. It says Wealth At Work Limited forced it to go down the route of encashing the investments because it would not consider the alternative despite it not being set out in the terms and conditions. But crucially here, Wealth At Work Limited's systems did not allow a transfer to happen as the estate of Mr K wanted. So, in my view there was no reasonable alternative other than to liquidate and then reinvest. And for the sake of completeness, while the estate of Mr K says it was forced to do this – it was Hobson's choice – I'm satisfied that it agreed to this knowing it couldn't be done in-specie. It was not the case that Wealth At Work Limited carried things out without its agreement.

I can see Wealth At Work Limited has, on more than one occasion, provided the estate of Mr K with an explanation why its systems couldn't accommodate an in-specie transfer in the circumstances, and that it was not its responsibility to make changes to its IT system to allow it to do so – that responsibility lay with its custodian. I consider this is a fair and reasonable explanation and rationale. While I understand the estate of Mr K's frustration, I cannot tell Wealth At Work Limited to do something it cannot do. And as the Investigator explained, it is not the role of the Financial Ombudsman Service to tell a firm what system or internal processes it should employ.

Overall, I don't think Wealth At Work Limited has done anything wrong here.

The estate of Mr K's other complaint point is about Wealth At Work Limited's refusal to answer its question about whether it has suffered a loss as a result of having to liquidate the late Mr K's investments versus an in-specie transfer. Wealth At Work Limited says there is no basis to carry out what the position might have been because it didn't offer this service. And I think this is reasonable. I don't think it is fair for Wealth At Work Limited to carry out what is a hypothetical scenario, so I'm not going to tell it to do so.

For these reasons, I don't uphold this complaint.

My final decision

For the reasons above, I've decided to not uphold this complaint, so I make no award in the estate of Mr K's favour.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr K to accept or reject my decision before 7 March 2024.

Paul Featherstone

Ombudsman