

## **The complaint**

Mr and Mrs K, and Mr A, as trustees of the R Trust, complain about information provided by Frenkel Topping Limited when the trust attempted to encash funds in a general investment account (GIA) held within the trust.

They complain that they weren't provided with correct information about the ability to encash funds. As a result, this has caused a financial loss due to the falling value on the underlying investments.

As Mr and Mrs K are representing the R Trust in bringing the complaint, I'll refer to them throughout.

## **What happened**

In 2001, the R Trust was established with Mrs K, Mr A and another party as the trustees – and Mrs K's son as the settlor. Mr and Mrs K's son was the principal beneficiary. In 2008, the trust was amended to remove the third trustee and add Mr K as a trustee.

Frenkel Topping provided a financial advice service to the trust. The funds were also managed on a discretionary basis by a subsidiary of the Frenkel Topping Group.

In August 2021, Mr and Mrs K's son sadly passed away. Mr and Mrs K informed Frenkel Topping of their son's passing and they made inquiries about accessing the funds held in GIA.

On 20 September 2021, Mr and Mrs K met with Frenkel Topping. They say they were informed of the value of the funds. And were told by an adviser that he would inform the relevant financial businesses holding funds of their son's passing. They asked about withdrawing funds but were told this wouldn't be possible as all funds would be frozen until probate was complete – and as there was no Will, Letters of Administration would need to be provided.

Despite this, in October 2021 and February 2022, payments of £6,000 and £3,000 respectively were paid to Mr and Mrs K from the trust.

In September 2022, Mr and Mrs K received the Letters of Administration and forwarded this information to Frenkel Topping. Following this the funds from the GIA were made available to Mr and Mrs K to encash. But they noticed the value had dropped from what they were told in September 2021 when they first made inquiries about accessing the funds.

On 27 October 2022, Mr and Mrs K raised a complaint with Frenkel Topping. They were unhappy to find out that funds had remained invested (and not frozen as they were told) and this had led to a drop in value. They said they had received conflicting information - initially the funds were frozen and they cannot have any access to them, to then be told they could have given instruction on the management of the funds. This came as a shock and they felt let down.

Frenkel Topping responded and did offer to refund some fees. But it was unable to resolve the complaint, so Mr and Mrs K referred the complaint to this service for an independent review.

I issued a provisional decision in January 2024. This is what I said:

*“The crux of this complaint relates to whether the trustees were given accurate information in September 2021 about the status of the GIA investment held within the trust. Mr and Mrs K say they were told that the asset was frozen and they would not be able to encash until the relevant probate was completed.*

*Probate is the legal right to deal with someone’s property, money and possessions when they die. Following the passing of Mr and Mrs K’s son, they were the relevant persons by law to apply for Letters of Administration for the estate. But crucially, the investment in the GIA wasn’t held in their son’s name, but rather the owner of this investment was the trust. So, when considering the circumstances, I don’t find this is a situation where the owner of an investment has died. For this reason, I don’t agree that the product provider terms and conditions referred to are relevant to the scenario I’m considering.*

*It appears to be accepted that Mr and Mrs K were told by Frenkel Topping that they would need to obtain Letters of Administration in order to give instructions on the GIA. Frenkel Topping say that the product provider would not allow encashment without the legal authority for Mr and Mrs K to act on behalf of the estate. There is a dispute about whether the product provider would have accepted instructions from the trustees to encash the GIA before the Letters of Administration were received. I note the investigator has reached a finding through his investigation that the product provider could have taken instructions from the trustees. This is based on information he received directly from the product provider. But I understand there is some debate on this point – and there is evidence of contradictory information being given to Frenkel Topping on the same matter. I note the evidence provided by Frenkel Topping was received during complaint handling process not at the relevant time. So, I can’t say it was acting on incorrect information when it told Mr and Mrs K instructions couldn’t be accepted until after probate was complete.*

*Frenkel Topping say there is evidence that completion of probate was required as there was tax to pay on the estate. I note the email extract provided that indicates an accountant had calculated there was an IHT liability for the estate that would need to come from another investment held (a bond). I accept there is evidence that the estate likely needed to consider an IHT liability, but this is separate to the functions of the trust – specifically in relation to the GIA account. I don’t find the potential tax liability, is reason that the trustees couldn’t have given an instruction on the GIA. As previously mentioned, this account was held in the trust’s name and not in their son’s name, so it wasn’t an asset held by the deceased. It is also possible the bond referred to was set up differently and included life assurance, but in any case, I haven’t seen details of the bond.*

*I’ve also reviewed the trust deed. This contains a section that covers the scenario of the death of the principal beneficiary (Mr and Mrs K’s son). This confirms in the event of his death, the beneficiaries would be Mr and Mrs K. Practically, this does mean they would hold multiple positions within the trust, as they would be both trustees and beneficiaries. But I don’t think this impacts on their ability to make instructions as trustees – or that this prevented them from continuing as trustees.*

*On balance, I’m satisfied an instruction to encash could have been given by the trustees in September 2021. This means that the information given to Mr and Mrs K by Frenkel Topping about the requirement for Letters of Administration was inaccurate. It follows that that I find Frenkel Topping failed to provide clear, fair and not misleading information to the trustees.*

*I've gone on to consider what likely would have happened but for this failing. I consider that the trust would have acted differently and given an instruction to encash the GIA. When Mr and Mrs K's son died there is evidence they contacted Frenkel Topping to notify it of the death almost immediately. They say their intention was to encash the GIA after receiving a valuation, but they were informed this wasn't possible as the asset was frozen. Following this they set about to obtain the letters of administration. And once they were received, they gave the instruction to encash the GIA. So, I find this supports their testimony that this was what they intended to do when they first contacted Frenkel Topping.*

*On balance, I think the evidence supports that Mr and Mrs K, in their capacity as trustees, were seeking to liquidate the GIA in September 2021. I find that that the reason it remained invested was because of information given to Mr and Mrs K by Frenkel Topping. If they had been given accurate information, I'm persuaded an instruction would have been given in September 2021. I've reviewed the timescales set out by the investigator to establish what likely would have happened if an instruction was given to encash at this time. In the absence of precise information, I think the dates the investigator set out are reasonable assumptions of how long it would take to process the instruction."*

Mr and Mrs K responded on behalf of the trust to confirm they had no further comments to make.

Frenkel Topping didn't respond within the time frame set for further submissions.

### **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.

As neither party has provided further evidence or arguments in response to my provisional findings, I've got no reason to change the outcome I set out in my provisional decision.

To confirm, for the reasons described in my provisional decision, I find failings by Frenkel Topping prevented Mr and Mrs K providing the instructions they intended to for the trust. It follows, I uphold the complaint.

### **Fair compensation**

In assessing what would be fair compensation, I consider that my aim should be to put the trust as close to the position it would probably now be in if the trustees had not been given incorrect information.

I take the view that the trustees would have taken a different action and encashed the GIA sooner. It is not possible to say *precisely* what date the trustees would encash. But for the reason given above I am satisfied that what I have set out below is fair and reasonable given the trust's circumstances.

### **What must Frenkel Topping do?**

To compensate the trust fairly, Frenkel Topping must:

- (A) Calculate the value the trust would have received if they'd requested to encash the GIA on 21 September 2021
- (B) Add interest on the value in (A) from 4 October 2021 until 22 October 2022. This should be calculated at a rate of 8% simple interest per year\*

- (C) Take the amount that was paid to the trust from the GIA (in October 2022) plus the quarterly withdrawals that were taken after 21 September 2021
- (D) Deduct the amount calculated in (C), the actual value, from the amount calculated in (B) (i.e. the surrender value in September 2021 plus the calculated interest), the fair value. If the trust is worse off, this represents the trust's crystallised loss. If the actual value is greater than the fair value, no compensation is payable.
- (E) Pay interest on any loss calculated in (D) at 8% simple per year\* from 22 October 2022 to the date of settlement.

\*Any withdrawal from the GIA between October 2021 and October 2022 should be deducted from the interest calculation at the point it was actually paid. But to keep calculations simpler, Frenkel Topping can ignore the withdrawals from the interest calculation.

Pay to the trust £250 for the distress, inconvenience and loss of expectation they experienced due to finding out the investment had lost a significant amount of its value.

Frenkel Topping doesn't need to refund the fees it offered to, as the compensation set out above means any fees will be included in the investment value comparison rather than by way of separate refund.

### **My final decision**

My final decision is that Frenkel Topping Limited should pay the amount calculated as set out above.

Frenkel Topping Limited should provide details of its calculation to the trust in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs K, as trustees of the R Trust to accept or reject my decision before 7 March 2024.

Daniel Little  
**Ombudsman**