

The complaint

Mrs M complains Julius Baer International Limited (JBI¹) actioned a switch of funds in her offshore bond without her consent. She is also unhappy about the management of her investment portfolio, the ongoing communications that have been provided and problems in making withdrawals.

What happened

In 2013, Mrs M transferred her investment portfolio and instructed for it to be managed by JBI. She held general investment and pension accounts as well as an offshore bond account.

Around July 2022, Mrs M discussed the possibility of changing the mandate on her portfolio. After considering her options she decided not to go ahead with the transfer. Despite this the mandate for her bond was transferred. It was only in late August 2022 Mrs M found out the full details of why the account had been cashed out. This led to her raising queries and ultimately making a complaint.

In March 2023, JBI provided Mrs M with a response to the complaint. In summary it said:

- It admitted an error in the processing of a mandate change that led to the transfer of the offshore bond. It accepted its adviser should have taken action on an instruction not to proceed. It agreed to calculate if Mrs M has suffered a loss as a result of the transfer taking place.
- Its discretionary mandates are constructed to deliver expected returns over an investment horizon of five to ten years. Given the inherent uncertainties and risk associated with forecasts, performance may differ in reality. It drives to deliver consistency within its discretionary portfolios by making investment decisions that follow a set process – which includes various investment committees and implementation teams in order to deliver the best trading ideas for clients based on their chosen mandate.
- In respect of ongoing communication, efforts have been made over the last months to determine what works best and going forward it will seek to come to an agreement on what Mrs M is most comfortable with.
- The process to make one-off withdrawals has a number of steps and does add up to a lengthy process. JBI will assist in anticipating and planning for when a withdrawal will be needed to help to alleviate that waiting time.

Following this Mrs M referred her complaint to this service for an independent review.

Mrs M and JBI continued to discuss a resolution to the complaint after the referral to this service. And JBI made a further offer in an attempt to resolved things. In summary it said it would:

- Refund the last three quarterly charges for the bond portfolio totaling £1,623.14.
- Provide options for a future investment mandate, a change of relationship manager or if none of this was acceptable the ability to transfer the portfolio to another provider.
- Complete a performance comparison which outlines the difference in performance since the bond was incorrectly transferred to the Strategy Fund compared to the Pension account which is invested in the Multi-manager Balanced Discretionary Mandate. It calculated the difference in performance between the two portfolios – which it calculated as just under £400.

Mrs M didn't accept the revised proposals and asked this service to investigate whether we thought it was fair.

One of our investigators looked into the complaint. He found that the offer made by JBI was fair and didn't think it needed to do anything further. In summary he said:

- JBI's offer covers any underperformance due to the transfer, refunded three quarterly fees, and outlined the options available going forward. In addition, it would waive any fees that may arise from a transfer out. He was satisfied this offer was fair and reasonable in the circumstances.
- He was satisfied JBI's response to the concerns about its discretionary management's approach to managing portfolios and volatile market conditions was adequate and its actions were justified. He didn't find evidence to suggest that JBI has acted unfairly.
- Apart from the communications around the incorrect transfer, the evidence doesn't indicate problems with ongoing communications. JBI has been forthcoming in responding to queries and concerns and it's been proactive in trying to reach a satisfactory outcome.
- He was satisfied by JBI's explanation for the delays when instructing single withdrawals. And there isn't evidence to suggest that JBI caused any unreasonable delays to the instruction of the withdrawals.

Mrs M responded and requested that an ombudsman reviews the complaint, specifically relating to the unauthorised transfer, communications, and the delays in withdrawals from her bond. Her concerns particularly relate to 2022 and some previous years, leading up to the unauthorised transfer in July 2022 and the account management inadequacies which JBI have admitted are unacceptable.

Mrs M provided further submissions and evidence. She set out her remaining concerns. In summary she said:

- The unauthorised transaction has caused her considerable stress for about 12 months and JBI was not only slow to resolve this but seemed to be waiting for the value to rebuild in order to calculate the loss which peaked in the Autumn of 2022. The value calculation for the refund was made six months later on 23rd April 2023 when the cash out transaction happened on 12th July 2022. She does not know how the calculation is made or whether it includes the refund of fees and it seems that date was chosen given it's the highest value the account has seen since the July transaction.

- The portfolio manager has confirmed that JBI should not have sought its approval without the client's agreement. The manager told her JBI, had to tick a box on the form requesting authorisation that the client agrees, or it cannot proceed.
- She has experienced a low level of account management over a long period of time which was highlighted by JBI, and the Managing Director agreed the level of service she has received was below expected standard.
- She experienced difficulties when requesting withdrawals from her bond account, which are normally planned for June each year. For the last three years it has been difficult to get these payments on time. One of the problems was that JBI did not put the accurate references on the form preventing the processing of the request. This caused delays and worried her as relies on these payments for her general living expenses. She was concerned she would run out of money to pay her bills on time.

Following this the investigator completed further investigation and sought further information from JBI about the up-to-date position of Mrs M's portfolio.

JBI confirmed that Mrs M's portfolio (including the bond) was transferred to another firm in June 2024. At the time of transfer the bond which was incorrectly transferred to the Strategy Fund remained in this fund. JBI recalculated the position of this investment compared to it remaining invested in the Multi-manager Balanced Discretionary Mandate to see if she had lost out. Its calculations showed she received a higher value from the bond as a result of the unauthorised transaction as it was worth more than it would have been had it remained under the original mandate. The investigator accepted Mrs M hadn't suffered a financial loss as a result of the unauthorised transaction.

JBI confirmed it had refunded the fees it agreed to pay Mrs M. The investigator was satisfied that JBI had treated Mrs M fairly by refunding these fees.

In respect of Mrs M's concerns about JBI's handling of her withdrawal request, the investigator found there had been some errors on its part. He didn't find JBI fully responsible for all of the delays experienced. But he did think Mrs M had suffered a practical and emotional impact due to JBI's errors.

Finally, JBI offered to pay Mrs M £500 for the distress and inconvenience she had suffered as a result of its handling of her investment portfolio. The investigator thought this offer was fair and reasonable in the circumstances.

Mrs M didn't accept the offer. In summary she confirmed the crux of her complaint stems from the unauthorised transaction JBI completed in July 2022 that changed the mandate on her bond, and the related actions. She believes she is entitled to receive the performance of her portfolio had the transaction not taken place. She said the offer of £500 doesn't adequately compensate her for all of the stress she has suffered as a result of JBI's actions.

As no resolution could be agreed, the complaint has been passed to me to reach 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.

It is clear Mrs M has very strong feelings about how JBI has conducted itself when managing her investment portfolio. I've read and considered all of the concerns she has raised.

However, I trust she won't take the fact my findings focus on what I consider to be the central issues, and that they're expressed in less detail, as a discourtesy. The purpose of my decision is not to address every point raised in detail, but to set out my conclusions and reasons for reaching them.

I would also like to be clear that the purpose of my decision is to come to a fair and reasonable outcome. My role isn't to punish or sanction JBI. The Financial Ombudsman Service was set up to consider complaints from customers about financial service providers. We are not the regulator and we do not oversee the industry, that's the role of the Financial Conduct Authority (FCA).

It is clear to me there have been errors by JBI. The most significant of which was the unauthorised transaction which led to Mrs M's bond moving to a different mandate. Having read all of her submissions it is clear this is the key issue that has led to her making a complaint and what she is seeking a resolution for. I'm not going to comment in detail about the reasons for the unauthorised transfer. JBI has admitted failings on its part caused the transaction to occur, so there isn't a dispute about it being at fault.

As JBI has admitted this error, the focus of my decision is whether it has taken sufficient action to put things right for Mrs M. Firstly I have considered whether she has suffered a financial loss as a result of the unauthorised transaction.

Mrs M says she is entitled to receive the performance the bond would have achieved if the transaction had not taken place. She says this calculation should be made from the date of the transaction until the date her account was transferred away from JBI. And it would not take into consideration any performance post the transfer of her bond to another provider.

I agree with Mrs M's assessment of how it can be established if she has suffered a financial loss as a result of the unauthorised transaction. In order to do this JBI needs to compare the actual performance of her bond since it was moved to the Strategy Fund with the hypothetical value it would have achieved if it had remained in the Multi-manager Balanced Discretionary Mandate it was held in prior to the transaction. The date parameters of this comparison are the date of the transaction (in July 2022) until the date Mrs M moved her investment away from JBI (in June 2024). I understand that Mrs M has received payments as withdrawals from the investment during this period. These payments should be taken from both sides of the calculation. If the result of the comparison indicates the investment was worth less as a result of the unauthorised transaction this will mean Mrs M has suffered a loss, but if the actual performance of her bond has led to her achieving a higher value, she will not have suffered any financial loss.

When JBI made its offer to compare the performance of the bond with what the investment had achieved if it had remained with the original mandate, it calculated Mrs M had suffered a loss of around £400 when the offer was put forward in June 2023. But as this offer wasn't accepted by Mrs M at the time, it is now out of date because value of the investment has changed. To provide an accurate position, I asked JBI to complete an updated comparison calculation, and as the bond has been transferred out a crystallised position can now be established. JBI agreed to update and set out the position. It says its calculations show Mrs M hasn't suffered a loss as the value of her bond at the time it was transferred away from JBI was worth more than if the funds had remained invested in the original mandate. It isn't clear from the calculations it has provided how the withdrawals have been taken into account in the comparison. So as part of the resolution of the complaint I require JBI to set its calculation in a format that clearly sets out the performance of both sides of the comparison including how the withdrawals have been included on both sides. As explained, it is possible that it will not need to pay compensation for financial losses despite the admitted error, but this will be dependent on the relative performance of the bond.

JBI has also confirmed that it refunded three quarterly fee payments from the bond. I have seen evidence that the fees for Q3 and Q4 of 2022 were refunded, as well as the fee for Q1 of 2023. In the circumstances this was a fair and reasonable action to take, and I'm satisfied that JBI has already honoured this offer, so doesn't need to do anything further.

For completeness, I've also considered the points Mrs M has made about the problems she incurred attempting to make withdrawals from her investment. She says she experienced difficulties in her annual withdrawals over several years. One of the problems raised was that JBI did not use accurate references on the forms, and this was not adequately followed up and the delay was much longer than expected. Mrs M says she relies on these payments for her general living expenses and was concerned she would run out of money to pay her bills on time.

JBI says that as Mrs M's withdrawals were ad hoc rather than at specific regular points, its processing did have a longer timeline. It did acknowledge there had been delays but said it sought to work with Mrs M to address her concerns. So, it does appear that there have been delays which JBI are responsible for. I will take this into account when looking overall at what JBI needs to do to put things right.

Mrs M has explained that there has been further impact on her as a result of errors by JBI. She says the situation has caused stress and impacted her lifestyle. She mentioned the considerable stress which hasn't helped her cope with the degenerative health condition she suffers from. She also mentions that her concerns weren't initially dealt with before referring the complaint to this service. She says she felt disrespected and ignored. Mrs M has provided evidence of the interactions she had with JBI prior to bringing her complaint to this service to demonstrate the difficulties she had getting to JBI to deal with her concerns.

JBI has offered to make a payment of £500 for the distress and inconvenience Mrs M has suffered as a result of its handling of the whole situation. Mrs M doesn't agree that this offer is enough and asked for the ombudsman to make a decision as to what might be fair.

It is clear JBI's management of Mrs M's portfolio has caused her considerable distress and worry – as well as inconvenience that meant she spent time trying to resolve things. Mrs M has particularly suffered impact as a result of the unauthorised transaction, but also due to the other service issues identified. I'm persuaded that the evidence supports her points about the stress caused by JBI being slow to resolve the issues. This caused her worry about the impact to her funds and a lot of hassle trying to resolve the situation. This was also at a time when she was not in good health.

Having considered everything, I'm satisfied that the offer of £500 fairly compensates Mrs M for the impact caused as a result of JBI's failing. While Mrs M has requested a much larger payment, I find this level of compensation in line with the type of award I would make in the circumstances.

Putting things right

In assessing what would be fair compensation, I consider that my aim should be to put Mrs M as close to the position she would probably now be in if the unauthorised transaction hadn't taken place. I think Mrs M would have left her funds invested in the existing mandate up to the point she transferred to a new firm. I am satisfied that what I have set out below is fair and reasonable in this situation.

What must JBI do?

To compensate Mrs M fairly, JBI must:

- Compare the performance of Mrs M's bond with the notional value if it had remained with the original mandate. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.
- Provide a breakdown of the calculations in a clear and simple format so that Mrs M can understand the performance of each element and show withdrawals have been in the comparison.
- Pay to Mrs M £500 for the distress and inconvenience she has suffered due to JBI's management of her portfolio.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")
Bond invested in Strategy Fund	Transferred out	Notional value if investment remained in Multi-manager Balanced Discretionary Mandate	Date of unauthorised transaction	Date transferred away from JBI

Actual value

This means the actual amount paid from the investment at the end date.

Notional Value

This is the value of Mrs M's investment had it remained in the original mandate until the end date. JBI should set out how this value is calculated.

Any withdrawal from the Bond should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if JBI totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

My final decision

I uphold the complaint. My decision is that Julius Baer International Limited should pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 29 August 2024.

Daniel Little
Ombudsman