DRN-4987871

The complaint

Mr E complains that Columbia Threadneedle Management Limited (Columbia) didn't properly and fairly inform him about the costs of the investments held in his ISA account.

What happened

In about 2012 Mr E opened a stocks and shares ISA account with Columbia. In the ISA he had two investment holdings.

In about April 2022 Mr E closed the ISA.

In February 2023 Columbia sent Mr E a final statement which included information about costs he'd paid in his ISA. The statement said it summarised costs and charges split by product costs and service costs. It said product costs included '*All costs and associated charges related to the underlying investment trust fund(s) that you are invested in.*' For each of product costs and service costs the statement provided a single monetary figure and a single percentage figure for: one-off costs, ongoing costs, transaction costs, ancillary costs, and incidental costs.

On 6 March 2023 Mr E called Columbia and asked for more information about the costs and charges he'd paid.

On 13 June 2023 Columbia wrote to Mr E saying it understood he sought more information about the costs and charges that had applied to his investments. Amongst other things it explained the difference between service costs and product costs. And it said the information about costs it had given him was an aggregation of costs on both his investment funds. And if he wanted the costs for each individual investment fund Columbia could provide that on request. About product costs, Columbia also said the following:

> '*The figures are taken from the latest published reports of the funds. These are then converted into monetary amounts, again using the average value of your investment over the statement period, to give you an illustration of your contribution towards the overall costs that the funds report.*'

There followed an extensive email exchange between Mr E and Columbia. I've summarised or reproduced the most relevant parts below.

Mr E said he was concerned the '*ongoing costs*' and '*incidental costs*' costs he'd paid were high and he wanted a breakdown of them for 2012 to 2022.

Columbia provided a breakdown of product costs between Mr E's two funds going back to 2018 which was when the current disclosure requirements had been introduced. It said the figures Mr E saw on his statement were a weighted average of these costs based on the value of the two holdings during the year. And it said one of his investment funds tended to have higher charge because it invested in private equity '*both directly and through funds managed by other managers'* which required in-depth research and which meant indirect costs from other managers were also included in the costs figure for that investment fund.

And it said the incidental costs reflect the fact that the fund had a performance fee structure which was typical with private equity managers.

Mr E said he had no record or recollection of being given the information Columbia had been required to disclose from 2018 until he'd received his closing statement in February 2023. And he said despite current disclosure regulations having existed since 2018 only, Columbia had always been required to provide key information, including about charges.

Columbia said it was posting Mr E copies of the previous statements it had sent. It said that as well as sending annual statements, it had also sent him annual reports which included links to the full financial statements of the funds Mr E was invested in, where he could see full details of underlying costs. It also described what information it had disclosed prior to 2018 and provided an example from 1999.

Columbia mentioned it had also sent copies of Mr E's statements to his financial adviser. Mr E said he didn't have a financial adviser so he wasn't notified of the charges. Columbia said an adviser had been linked to his account since 2008 when the adviser sent a signed instruction from Mr E saying the adviser was acting for Mr E. Mr E said he'd stopped using the adviser, so he didn't receive statements from Columbia, and Columbia should've sent the statements direct to him. He said Columbia had written to him direct when it changed its name so it must've known at that point that he didn't have an adviser. Columbia said it sent statements to him direct as well as to the adviser. And it was in those statements – not separately – that it communicated its name change.

Mr E said it wasn't fair to aggregate costs for his investments as a group rather than itemise them for each investment fund held in the ISA. Columbia said it had given Mr E an itemised breakdown because he'd requested it, but standard practice was to provide aggregated costs – which was a weighted average for the period in question – for all investments in the ISA combined.

Mr E asked Columbia to explain by reference to rules/legislation why providing a weighted average without a per-investment breakdown was fair. Columbia described its view of the disclosure requirements that were introduced in 2018 by the Markets in Financial Instruments Directive 2014 (MiFID II) and its supplementing directive – Directive 2014/65/EU and Commission Delegated Regulation (EU) 2017/565. It said the following:

> '*… Costs and charges are disclosed across the whole account, regardless of how many underlying funds/trusts are held within it…*
>
> *In [its] … email of 21 July [Columbia] … provided a further breakdown of those cost elements (ongoing, transaction and incidental costs), split into the two funds/trusts you were invested in – ICG Enterprise Trust and F&C Investment Trust. This was given as part of a bespoke response to some questions you raised, with the intention of enhancing your understanding.*
>
> *However, what we're not required or obliged to present as standard is the Product Cost figures for each individual fund/trust held within the account. We obtain percentage costs for each of them (referred to below as financial instruments), and these are then used as a basis to calculate personalised combined (aka aggregated) figures based on the values of your total investments throughout the year.*
>
> *The legislation behind the production of the disclosures is lengthy but the main parts which pertain to the aggregation of the figures and the timing of the disclosures are Articles 50(2) and 50(9) MiFID II Delegated Regulation …*'

Mr E said Columbia had misinterpreted MiFID II. He said the relevant provisions referred to aggregating the costs and charges of a financial investment in the singular. And he said, *'The reason for the obligation to provide aggregate costs by financial instrument (singular) is so that there is a clear, easy to understand, single figure for the client in relation to the particular instrument … It is surely common sense that aggregating the costs of a number of financial instruments held in differing amounts renders the single aggregate amount provided pretty useless.*'

Columbia referred Mr E to Answer 13 under '*Information on costs and charges*' in the '*Questions and Answers On MiFID II and MiFIR investor protection and intermediaries topics*' which was published by the European Securities and Markets Authority (ESMA). Columbia said Answer 13 referred to aggregating costs of instruments (plural) and so supported Columbia's interpretation of MiFID II. And it said it felt Columbia had sufficiently addressed Mr E's concerns but he could make a formal complaint if he wasn't satisfied.

Mr E said Columbia hadn't engaged with Article 24(4) of MiFID II and the overall purpose of the regime. He added that Table 2 in Annex 2 of the Delegated Regulation showed costs should be aggregated by financial instrument (singular).

Mr E complained to Columbia. He said that, by telling him only the aggregated costs of his holdings, Columbia didn't allow him to understand how the fees for individual funds affected his returns on individual holdings. He said MiFID II required Columbia to give him aggregated information about the costs of each financial instrument in his ISA. He wanted Columbia to compensate him for fees he would've saved and additional investment return he would've made if he'd switched his investment.

Columbia said its position was unchanged – it believed it had correctly interpreted MiFID II. It also referred to the rules in the FCA Handbook which – at COBS 6.1ZA – transposed the relevant provisions of MiFID II. It cited COBS 6.1ZA.11 which it said required disclosure of costs and charges for the service and the instrument it had marketed to Mr E. And it cited COBS 6.1ZA.12R which said the following:

> *(1) A firm must aggregate the information about costs and charges required by COBS 2.2A.2R and COBS 6.1ZA.11R, where those costs and charges are not caused by the occurrence of underlying market risk. This is to allow the client to understand the overall cost, and the cumulative effect on the return, of the investment.*
>
> *(2) A firm must provide the client with an itemised breakdown of the costs and charges information required by (1) and COBS 6.1ZA.11R when requested by the client.*

Columbia also cited COBS 6.1ZA.14UK which it said set out the general aggregation rule for costs and charges as follows:

> '*…investment firms shall aggregate the following:*
>
> 1. *all costs and associated charges charged by the investment firm or other parties where the client has been directed to such other parties, for the investment services(s) and/or ancillary services provided to the client; and*
>
> 2. *all costs and associated charges associated with the manufacturing and managing of the financial instruments.'*

Columbia further said that it, and other firms, had taken the approach of presenting *ex-post* costs in aggregated form only, and *ex-ante* costs on a per-fund basis. And it explained its reasoning.

Mr E referred his complaint to this service. He said Columbia was required to disclose the costs of his individual investments to him and it hadn't done so. He said if he'd known he'd be paying such high fees on one of the funds he was invested in he would've sold his holding in that fund and invested in a low-cost tracker.

One of our Investigators looked into Mr E's complaint. The investigator didn't think Columbia had done anything wrong. In summary, he said the following:

- The FCA Handbook set out at COBS 6.1ZA.12R (as of 1 October 2018) that a firm had to aggregate the costs of a customer's investments and provide the aggregated information at least annually, to help the customer understand the overall costs and the cumulative effect on the return of the investment. And it required the firm to provide an itemised breakdown of that cost when requested by the client.

- Columbia had provided aggregated information in accordance with the rules. And there was no evidence it had been requested to provide an itemised breakdown but had failed to do so.

- Columbia had provided links to the costs of individual investments and those costs were available on Columbia's online investment platform. This allowed Mr E to have access to the information and make informed decisions about his investments.

Mr E didn't agree with the investigator's view. In summary he said the following:

- Columbia accepted that *ex-ante* information had to include costs for individual investments, to help customers make decision about investing. The rules didn't provide that *ex-ante* and *ex-post* costs could be disclosed in different ways. Doing that would confuse customers and prevent investors understanding how any particular fund's ongoing performance had been affected by costs.

- Mr E's ISA account couldn't be treated as a single investment. It consisted of two separate funds with distinct aims. So Columbia should've provided separate costs information for each fund.

Because no agreement could be reached, the complaint was passed to me to review afresh and make a decision.

Before I made my final decision on this complaint I issued a provisional decision in which I said I was minded not to uphold the complaint. I said I'd consider any further submissions from either party before making a final decision. Columbia said it accepted my provisional decision. Mr E didn't accept my provisional decision. In summary he said the following:

- In January or February 2023 Columbia sent Mr E a statement showing ex-post aggregated costs on a per-fund basis for 2022. So Columbia had changed how it disclosed aggregated costs. And this was presumably because Columbia had realised the rules required per-fund disclosure or it had realised per-fund disclosure was a fairer way to disclose aggregated costs.

- FCA rules (not ESMA guidance) had to be the starting point for deciding Mr E's complaint, in particular COBS 6.1ZA.11R which said, '*A firm must provide a client with at least the following information about all costs and related charges (see also*

COBS 2.2A.2R) … the cost of the financial instrument'.

- COBS 2.2A was also relevant because it was referred to by COBS 6.1ZA.11R. COBS 2.2A.2R said, '*(1) A firm must provide appropriate information in good time to a client with regard to … (d) all costs and related charges*'.

- COBS 2.2A.3R said the information had to be '*in such a manner that a client is reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument … that is being offered … to take investment decisions on an informed basis*'.

- The FCA rules defined '*financial instrument*' and the definition didn't include an ISA which was a tax wrapper containing financial instruments.

- The relevant rules in COBS referred to a singular investment and didn't reasonably allow an interpretation that the costs of multiple investments should be grouped together.

- Nothing in the rules suggested *ex-ante* and *ex-post* disclosure should differ. And it wasn't reasonable that they should differ.

- The requirement in COBS for '*an itemised breakdown*' upon request referred to the fact an aggregate costs figure for an investment would by definition be made up of various costs. It was a further breakdown of costs by investment that the client was entitled to ask for.

- The FCA's consultation paper CP16/29 proposed the above requirements in the same language as the published rules in COBS. And the FCA's rules were in keeping with Article 24(4) of MiFID II which made clear costs should be aggregated by instrument so the client could understand their effect on the return of that instrument.

- Columbia accepted it wouldn't be appropriate to aggregate *ex-ante* costs across instruments. But ESMA's guidance (amongst other sources) showed *ex-ante* and *ex-post* costs should be disclosed in the same way. It couldn't be reasonable to interpret ESMA's guidance to mean costs should be aggregated across multiple instruments.

- ESMA's answer 22 related to transaction costs which wasn't the issue here. But in any case, it made clear the importance of disclosing costs per fund.

- Instead of providing costs per fund as it should, Columbia left Mr E unaware he was paying costs of 7-8% on one investment and so unable to readily form a view on that investment's performance.

- Mr E could've requested more information before 2023, but that missed the point that the regime required firms to disclose costs and charges for each investment.

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.

Having done so, I'm not upholding the complaint. I'll explain why.

The purpose of this decision is to set out my findings on what's fair and reasonable, and explain my reasons for reaching those findings, not to offer a point-by-point response to

every submission made by the parties to the complaint. And so, while I've considered all the submissions by both parties, I've focussed here on the points I believe to be key to my decision on what's fair and reasonable in the circumstances.

The requirements established by MiFID II and set out in the FCA Handbook required Columbia to give Mr E information about aggregated costs on an ongoing basis. And they required Columbia to give Mr E an itemised breakdown of those costs upon request. As I'll set out below, I'm satisfied Columbia did both of those things.

Mr E acknowledged receiving communication from Columbia about its name change – and the name change was communicated in one of Columbia's annual statements. Columbia said it didn't have any of its statements for Mr E returned to it. So on balance I think Columbia did send the statements to Mr E. The statements included aggregated information about costs. So – notwithstanding Mr E's comments about the adequacy of the information, which I'll go on to address – I'm satisfied Columbia did send Mr E aggregated information about costs on an annual basis.

When Mr E asked Columbia for a breakdown of costs at the level of his individual investment funds, Columbia provided that. And in doing so I think Columbia gave Mr E a good amount of helpful information to explain all aspects of the costs, including what they covered, why they were at the levels they were, and why they were disclosed the way they were. So Columbia took into account Mr E's information needs when disclosing the breakdown of costs and charges.

I note too that Columbia didn't provide that breakdown as part of a standard statement – it provided it to Mr E in response to questions he asked. Mr E has disputed this, saying that Columbia changed its disclosure policy in 2023 and provided a statement which disclosed costs on a per-fund basis. But Columbia has expressly contradicted this and said it hadn't changed its approach to disclosure. The 2023 statement included costs and charges aggregated across investment funds. The evidence I've seen – which includes a copy of the 2023 statement – persuades me that Columbia is correct on this point.

The aggregated information Columbia sent annually was aggregated at the level of Mr E's portfolio on the Columbia platform, including all the investments in the ISA that he held with Columbia – so it didn't provide costs per investment fund within the ISA. This point is the crux of Mr E's complaint – he says it's contrary to regulations and generally unfair for Columbia to have disclosed costs and charges this way without providing a per-fund breakdown. I've considered first what the regulations have to say about this.

In my provisional decision I referred to Answer 13 under '*Information on costs and charges*' in ESMA's '*Questions and Answers On MiFID II and MiFIR investor protection and intermediaries topics*'. Mr E disputed the relevance of ESMA's Answer 13. However, I'm satisfied it was reasonable for Columbia to be guided by ESMA's Answer 13 in the circumstances of this complaint.

The rules in COBS which relate to the disclosure of costs and charges were introduced by the FCA expressly to implement provisions of MiFID II. This is clear from – amongst other things – the FCA's consultation paper CP16/29 which Mr E referred to, as well as notes in COBS 6.1ZA which show which provisions of the MiFID regime the rules are implementing. And the FCA has publicly said firms may find it helpful to refer to ESMA's Questions and Answers on investor protection under the MiFID regime. So, I'm satisfied ESMA's Answer 13 was a relevant consideration for Columbia, and it's a relevant consideration for me.

Mr E also said Answer 13 supported his argument that costs must be reported on a per-fund basis. But I'm not persuaded by this. Answer 13 set out an example of how a firm might

communicate costs and charges – and that example grouped costs and charges for multiple investment instruments into a single figure. Having looked at ESMA's Answer 13, as well as the MiFID provisions themselves, I'm satisfied it was reasonable for Columbia to interpret the regulations as meaning that costs relating to individual investment funds could be aggregated in such a way that all funds were grouped together. And they only needed be itemised on a per-fund basis if the client requested that. The way Columbia set out aggregated costs in its annual statements is consistent with ESMA's example in Answer 13.

As both Columbia and Mr E have said, COBS 6.1ZA in the FCA Handbook sets out how a firm must give clients information about all costs and charges relating to investment services, and the cost of financial instruments. It says all the investment services charges should be aggregated and given as an overall figure, and the same for costs associated with the managing of the financial instruments. It doesn't say anything more about aggregation, or how different accounts or products held for the same client should be treated. It doesn't say, for example, that annual costs information needs to be given on a per-fund basis. It does say the client should be given an itemised breakdown upon request.

Because the provisions in MiFID II and the FCA rules expressly said an itemised breakdown was to be provided on request, it was reasonable for Columbia to believe the rules didn't require an itemised breakdown as a matter of course. Columbia's statements already broke costs down into the items required by COBS 6 Annex 7 (which were one-off costs, ongoing costs, etc.). And this was provided separately for the investment service as a group, and the investment products as a group. So it wasn't unreasonable to take the position that any further break down of Mr E's costs would involve breaking the costs down by individual investment funds.

Mr E noted that, where they specified what information about costs and charges had to be provided, most of the rules in COBS 6.1ZA, including COBS 6.1ZA.11R, referred to information about a financial instrument in the singular. But COBS 6.1ZA.12R goes on to say information provided under COBS 6.1ZA.11R must be aggregated. And it's also the case that some of the relevant provisions refer to instruments in the plural. And, as I've said, the example at ESMA's Answer 13 indicates that amounts for multiple investment funds should be aggregated together. Taking everything together I'm satisfied it was reasonable for Columbia to take the view that the information it had to disclose about any individual instruments held by Mr E had to be aggregated together for the disclosure.

Mr E also cited COBS 2.2A. That section of the FCA Handbook relates to information firms must disclose before providing services. Having considered this I don't find that COBS 2.2A shows Columbia was wrong to aggregate information the way it did in the statements it provided to Mr E about costs and charges he'd paid on the investment he'd made in his account with Columbia.

Mr E said information provided *ex-ante* and *ex-post* should be the same. And he reiterated this in response to my provisional decision. I said in my provisional decision as a general proposition I didn't see it was unreasonable to take the position that the information a consumer needed before investing may differ from the information a consumer needed after having invested. But in any case, what is at issue here is whether Columbia's *ex-post* disclosure was adequate. Even if Columbia had misinterpreted requirements for *ex-ante* disclosure (which is not something I'm making a decision about here), I'm satisfied for all the reasons I've set out that Columbia's interpretation of the requirements for *ex-post* disclosure was reasonable. And I don't think regulatory provisions which relate expressly to *ex-ante* disclosure should necessarily have guided Columbia's disclosure of *ex-post* disclosure where those provisions weren't also expressly made to apply to *ex-post* disclosure.

Taking all of this together, I can't conclude Columbia interpreted its regulatory obligations in a way that was unfair or unreasonable.

Having found no express regulatory requirement for Columbia to disclose per-fund costs and charges as a matter of course on an ongoing basis, I've considered whether it was fair in general terms for Columbia not to provide that information annually as a matter of course. Amongst other things I've kept in mind the requirements of the FCA's Principle 7 to have due regard to the information needs of clients and communicate in a way which is clear, fair and not misleading.

In this case I think it was reasonable for Columbia to comply with the information disclosure requirements of COBS. As mentioned earlier, the FCA made clear that firms had to comply with the provisions. And putting aside the specific regulatory rules, I don't think the information Columbia provided failed to be clear, fair and not misleading. The statements Columbia sent Mr E made clear that the information they disclosed about costs and charges was aggregated across his investment funds.

Columbia has said that along with the statements it sent Mr E it also sent annual reports of the individual investment funds he was invested in. These reports included information – or links to information – about the fund's costs and charges. So I think information about that was sufficiently available to Mr E. If he'd wanted to see the costs associated with the individual funds he was invested in he could reasonably have found that information. As Columbia told Mr E, the information it provided about the product costs of his individual investment funds was taken from the published reports of the funds. So it was open to Mr E to find and monitor that information himself.

It's also the case that Mr E could've asked Columbia for a per-fund breakdown if he wanted that. When he did so in 2023 Columbia provided information in response which was clear, fair and not misleading and took into account Mr E's information needs. If Mr E had considered he needed to know the ongoing effects of the per-fund product costs of his investments in order to decide whether to remain invested, it's unclear why he didn't contact Columbia about that given the information wasn't provided to him during the years he was invested.

It's worth noting that, had I found that Columbia had failed to disclose costs and charges appropriately, I'd need to consider whether that caused Mr E any detriment – and if so what. As I've said, I'm satisfied the way Columbia disclosed costs and charges made clear that the costs and charges were aggregated across investment funds rather than disclosed on a per-fund basis. And so if, for the purpose of his investment decisions, Mr E had wanted to know the per-fund costs and charges I would expect him to have taken some steps to find them out. At the least, I'd expect him to have read and considered the statements that Columbia sent if he'd been prepared to switch his investment on the basis of the costs and charges they were incurring. But Mr E didn't recall receiving any annual statements from Columbia. The fact he thought he hadn't received the statements doesn't suggest to me that he used them with a view to making investment decisions. So I'd be unlikely to conclude that Columbia had caused Mr E to miss out on switching his investment for a period of years, even if I found Columbia had failed to give him appropriate information about costs and charges (which I haven't).

Overall, I understand Mr E feels that a lack of information prevented him from making a different investment decision. But I can't conclude his investment choices were affected by any shortcoming on the part of Columbia. In all the circumstances of this case I can't see that Columbia has failed to act fairly and reasonably towards Mr E. So I'm not asking Columbia to do anything on this occasion.

My final decision

For the reasons I've set out above, my final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 9 January 2025.

Lucinda Puls
Ombudsman