

complaint

Mr H is unhappy that the child trust fund (CTF) he holds for his daughter was held in cash by BMO Asset Management Limited.

background

In 2009, Mr H opened a CTF account, and selected the funds to be placed in the Foreign & Commonwealth US Smaller Companies (F&C).

In 2013, due to change in investment managers, F&C notified its investors of the fund change. In January 2014, it sent a letter notifying its customers of options they had available including what would happen if it didn't hear back. Because it didn't hear back from Mr H, it followed the default option and held onto his money in cash.

In 2019, Mr H complained to the business. He feels his money should've been reinvested in a similar fund, rather than held in cash.

The business didn't uphold the complaint. In summary, it said:

- Since 2014, the CTF account has been held in cash, because the funds that he was invested in (F&C) ceased to be an option under its savings plans.
- In January 2014, it wrote to all its customers to let them know of the options available, including transferring to another provider, or selling their shares and reinvesting.
- It wrote to Mr H but the letter was returned by Royal Mail.
- It was only made aware of Mr H's new address when he wrote to the business to complain.
- Because it didn't hear back from Mr H it took the default action which was to sell the shares and hold his money in a cash account.

One of our investigators considered the complaint but didn't think it should be upheld. In summary, she said:

- The address the business had on file was the same address provided on the application form therefore she was unable to say it didn't have the correct address.
- Mr H notified the business of his change of address when he registered his complaint. There's no evidence that he'd notified the business of any change prior to that.
- The business only became aware that it didn't have Mr H's correct address in 2014, when its letter sent to Mr H was sent back undelivered. But it had no other way of contacting him.
- She's unable to say that the business was wrong to do what it did.
- The terms of the business made clear that '*F&C will not exercise any rights on behalf of Account Holders without instructions...*' therefore it wouldn't be fair to say that it should've re-invested the money instead.
- The business sent Mr H a letter explaining what was happening and the options available to him, including what would happen if it didn't hear back from him.
- Although Mr H didn't receive the letter, it's more likely than not the letter was sent.
- From the information provided (since 2013), it was clear that it'd charge an Annual Management Charge (AMC) for accounts opened with them.

- She can't say that the business didn't make Mr H aware of these charges.

Mr H disagreed with the investigator's view. He maintained that the business was at fault for the wrong address and should've used its own discretion to invest in a similar fund rather than selling the shares and holding the cash at a cost to him.

He says business exercised so many decision without his consent this shouldn't be any different. He feels what the business has done was illegal and doesn't feel the investigator has fully understood the implications of the business dramatically changing the asset allocation without his express permission. The business' failings have caused him a significant financial loss. It wasn't his fault that F&C closed the funds, he shouldn't have to suffer for its decision.

In summary, the business made the following observations:

- Mr H's points are contradictory: on the one hand he complains the business is exercising its discretion by selling Mr H's shares, and on the other he then wants it to use the same discretion and invest in similar funds.
- It's not possible to say what 'most similar fund' would've been back in 2014. It had no fund exposed to the F&C funds.
- In its terms and conditions it disclosed information on the removal of investment trusts. But it would be impossible to flag up every term that an investor might want to subsequently rely upon.
- Mr H fails to recognise his own responsibility to ensure the account is kept up to date. Had he done so, he would've been able choose an alternative to the default position.

As no agreement has been reached the matter has been passed to me for review.

my findings

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 agree with the investigator's conclusions for much the same reasons. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Mr H says, I'm not persuaded that the business has behaved unreasonably.

I'm satisfied that the business took reasonable steps to notify Mr H of changes to its fund status. It gave him options, including notifying him what would happen if it didn't hear back from him. I don't think what it did was unreasonable in the circumstances.

The letter that the business wrote to Mr H was addressed to the home address it had for him on file – as it did for all its other customers – I don't think there was any reason for the business to try and contact him in a different way.

I appreciate Mr H says the business didn't take down his correct address on the application – although it's unclear what exactly happened it seems to me the business would've only recorded the information that it was given.

It's possible the business could've made an error – although on balance I'm not persuaded that it did – but even if the incorrect address was recorded Mr H ought to have raised the issue when checking through the paperwork. But I've seen no evidence of that or of any issue being raised until 2019 when he raised the complaint. That was the first time since investing the CTF that Mr H provided his correct address.

So the business wouldn't have known – at the time of writing to Mr H about his options – that he wasn't at the address, and given that it wrote to him (in the same way it did for its customers) I'm unable to say that it failed to make reasonable efforts to contact Mr H and notify him of the changes.

Whatever the reason, I appreciate that because Mr H didn't receive the letter he couldn't have responded or chosen one of the options. I don't think that's his fault, but I don't think it's the fault of the business either, because I'm satisfied it took reasonable steps to notify him of the changes and what he could do if he wasn't happy with it. Therefore on balance I'm satisfied it was entitled to pursue the default option.

That's why the business de-invested and held the cash proceeds for him. I understand that its continued to charge Mr H £25 plus VAT as the AMC, but I think this was for the service it was providing, in other words for holding the CTF account as cash. So I don't think it's required to refund the money. I appreciate this was likely to have had an impact on Mr H's cash assets but I can't blame the business for this.

In the circumstances I don't think the business could've taken steps to re-invest Mr H's money without his express consent. There was simply no contractual basis to do so without his authority. And to have done so, the business would've acted incorrectly and contrary to its own terms and conditions.

Mr H is still free to invest his money into other available funds or transfer to another provider that the business can assist with, but he may wish to obtain financial advice before deciding what to do.

I think the consequence of investing in what the business determined as 'similar' funds without Mr H's consent, and potentially losing his money would've meant there was no way back and would've been far worse than de-investing and keeping hold of his money available for future investments.

There was no way of knowing that investing in similar funds would bring about the closest outcome as there are no guarantees. But if Mr H had chosen funds, and things didn't work out, it wouldn't be the business' fault.

I'm unable to say the business has acted unreasonably in the circumstances. Despite what Mr H now says, I think the first option was a more '*dramatic*' option, and with potentially irreversible consequences.

Whilst I appreciate the business has made many decisions without Mr H's express consent, clearly this was one of those decisions it couldn't have made without his authority and therefore chose to hold onto his investment in cash as the default option. I don't think I can blame the business for this.

This is generally how a business operates in these circumstances, when particular funds are no longer available. It's common industry practice to have a default option rather than using

the business' discretion to invest into funds without the investor's consent. This process isn't unique to the business.

In conclusion, if Mr H didn't notify the business of his change of address I can't hold the business responsible for this, as there was no way it could've reasonably known. And I don't think it could've reasonably done any more in the circumstances to convey the message to Mr H.

Overall, the action it took was reasonable and broadly in line with common industry practice.

I'm mindful of the comments Mr H makes about the legality of this decision but in short the decision would be legally binding upon him and the business only if he accepts my findings. If he doesn't, my decision isn't binding on either party.

my final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 January 2020.

Dara Islam
ombudsman