

The complaint

Mr C complains about the fees James Brearley & Sons Limited (JB&S) has charged for holding assets in an investment account. He is unhappy that it is charging him fees for an investment that he can't redeem and is illiquid.

What happened

Mr C originally invested in a loan note (also referred to as a bond by the parties) through a third-party firm. This firm who sold him the investment, the business holding custody of the investment and the underlying business who issued the bond have all since run into financial difficulties. In late 2020, after the previous broker holding custody of the investment went into liquidation, Mr C was informed by the administrators that custody of his investment would be transferred to a new broker. He was informed JB&S were the nominated firm as a default option. As Mr C didn't opt out of the proposed transfer, in January 2021, JB&S wrote to Mr C to introduce itself, and he became a client of its in February 2021.

In July 2021, Mr C says he first queried the fees he was being charged with JB&S. Around the same time he attempted to transfer his investment to another business. This transfer failed and the new provider said it could not accept the assets Mr C was attempting to transfer into its custody.

In July 2022, JB&S responded to a complaint from Mr C. Essentially this was about taking charges when the bond is effectively suspended, deliberately overvaluing the bond to maximise income, and preventing him from transferring the investment.

JB&S responded and said it was justified in charging fees as holding client's assets necessitates certain administrative activities. It recognised that charges are not appropriate where investments fail and so its policy is to discontinue charging if investments fall to nil value. But at this point it wasn't aware Mr C's bond was worthless. It said there was no benefit to JB&S overvaluing the bond because there is a minimum charge applicable. Lastly it said it can only complete a transfer when there is another firm that is willing to accept custody of the investment.

In September 2022, JB&S informed Mr C that it would be changing the fees he needed to pay. It recognised the bond had no secondary market which would allow a sale, also it wasn't possible to re-register the holding into his own name and it was difficult to value the bond. Because of all of this it removed the dealing rights on the account, effectively making it a pure custody account. It proposed to apply a flat account charge of £5 per month, rather than the current £20 per month minimum – and the charge will only be payable at the point the bond holding is redeemed or Mr C receives funds for it. If in the future it is deemed worthless, then no accrued charges will be applied from this date.

In November 2022, Mr C raised a further complaint with JB&S raising further concerns about the charges applied and the service he had received since it took custody of his investment.

JB&S looked into the complaint. It didn't uphold it. In summary it said:

- It is not responsible for the original sale of the investment, so wasn't required to

assess suitability or appropriateness for Mr C. It doesn't agree that it should pay monetary compensation for the failure of the investment.

- It was also not responsible for the failed ISA transfer in 2021. The new manager rejected the transfer, so there was nothing JB&S could do.
- In respect of fees generally, it explained that holding client's assets involves costs for activities that are required due to regulation. So, it is fair to charge for providing these facilities.
- Up to July 2022, Mr C was charged the £20 per month minimum account charge. Not all payments were made, so the account is now £135 in debt. In recognition that the investment had not matured as expected from a reduced fee of £5 a month was to be applied – and this was deferred until such time Mr C realises value from the investment.

Mr C didn't accept the responses and referred his complaint to this service for an independent review. I issued a provisional decision in January 2023. This is what I said:

"Firstly, I note and I agree with the findings the investigator reached that JB&S isn't responsible for the sale (or performance) of the investment. I also haven't seen evidence to support that that it is responsible for the failed transfer in August 2021.

JB&S's involvement with Mr C's investment commenced when it took custody following the liquidation of the previous broker. The crux of the issue in dispute relates to the charges JB&S has applied and whether it should have stopped (or deferred) charging account fees. This means the focus of my decision will be on the remaining issues relating the fees charged.

I've reviewed the history of how Mr C became a customer of JB&S. The business that had custody of Mr C's bond went into liquidation in 2020, so the investment needed to be moved to a new business. I've seen evidence of the correspondence sent to Mr C giving him his options late 2020. Moving his investment to JB&S was the default option given to Mr C, he could have opted out and chosen a different business but I've seen no evidence he did this. The correspondence sent to Mr C at this time indicates that when he became a client of JB&S, he accepted its terms and conditions. It is noted that a condition of the transfer was the terms were to be varied immediately from the previous brokers terms to JB&S's standard terms and conditions. Part of this was the charging structure - this included an account charge of 0.25% of value of the assets, with a minimum charge of £20 per month.

I'm satisfied that Mr C was required to pay these charges after his investment was transferred to JB&S. There was the chance to opt-out of the transfer in, but as mentioned I haven't seen anything to show that he requested this. So it is reasonable to conclude he accepted the terms of the transfer. JB&S says Mr C is responsible for paying this minimum charge between February 2021 (when he became a client) and August 2022 (when it changed the charging structure). The account fee covered the costs of administering the investment and also gave Mr C access to a dealing service. While it doesn't appear Mr C used the dealing service for this investment or any other transaction, I'm conscious this was something that was still available to him. I also recognise that JB&S did work in completing the initial transfer to its custody and I note the comments it makes about costs incurred in holding the investment on Mr C's behalf. It appears Mr C did pay the account fees initially, but JB&S says he still owed £135.

JB&S did make a proactive decision when it changed the charging structure. Essentially it recognised that due to the status of the investment (e.g. no secondary market available to sell and uncertainty as to what is a fair value to allocate) the charges should be reduced and effectively deferred until Mr C realises value from his investment. This is a positive decision to take and supports that it had considered Mr C's best interests, so I don't think I need to

decide anything after this point. But the investigator has argued that JB&S should have taken the action sooner than it did and referenced the fact the underlying business who the investment was issued by went into administration in August 2021.

Having considered this point, I intend on reaching a conclusion that JB&S doesn't need to do anything further for the following reasons:

I'm satisfied JB&S is entitled to charge the fees it set out when Mr C's investment was transferred over – for the reasons I've already covered. The account fees also weren't dependent on the performance of the investment. There wasn't a specific requirement for it to reduce the charges. But it did take reasonable steps to adjust the charges, so going forward I'm satisfied Mr C is being treated fairly. This is particularly relevant in the circumstances where there is a total loss on his investment because as he won't be charged any account fees from the date they were reduced.

While it can be debated whether JB&S could have taken an earlier decision to amend the charges, this isn't clear cut particularly when considering my point that it didn't have a specific obligation to do so. I acknowledge the points made by the investigator about the financial position of the underlying firm that issued the investment. I note the JB&S says it received notices from the stock exchange about the investments it holds for its clients. In respect of Mr C's investment, it said the first notice it received was about a missed annual interest payment in March 2022. The second concerned a right to vote. The third concerned a possible restructuring of the bond, in June 2022. It argues the London Stock Exchange (LSE) notice of 21 June 2022, was the point that it was aware the bond was not operating normally, so it is from this point it agreed Mr C should not pay for a service where he had no benefit. And it took the decision to amend the charging structure so no payment would be due if the bond expired without value. It still maintains that it is uncertain if the bond has any residual value or if it has how much the eventual payment to clients will be). So I do appreciate that it is likely JB&S weren't put on notice of the underperformance of the bond until it received the LSE updates. And I think you could even argue that not operating normally doesn't necessarily equate to no value, JB&S's actions were precautionary and reasonable in the circumstances.

I've also considered the reasons JB&S gave Mr C in August 2022 for reducing the account fee and making it a deferred charge. The letter it sent said:

We believe you are utilising your James Brearley account, solely for the purposes of holding your investment in a bond issued by [Bond issuer], to its maturity date and redemption. As such, you are unlikely to utilise the account's associated dealing facilities. We are also very conscious that the bond has no secondary market, providing you with the ability to sell the position and to the best of our knowledge it is not possible to re-register the holding into your own name. Another factor influencing our planned course of action is the fact that we are equally unsure as to what is a fair value to allocate to the bond which for larger holdings could influence the level of our charges."

So, it appears there were a number of factors that it considered. This supports the conclusion, JB&S was considering Mr C (and other affected investors) needs when making the decision to amend the account charges. On balance, I'm not satisfied it was treating Mr C unfairly by not reducing the fees sooner. So it follows that I don't intend asking JB&S to refund any fees or do anything further."

Both parties responded before the deadline I set had passed, so the complaint has been passed back to me to reach a final decision.

JB&S didn't have anything further to add.

Mr C provided further comments for me to consider. In summary he said:

- Other brokers handling the same asset, agreed from the date of administration to cease charging. He was holding this same asset with another broker, and that is how he established the fact fees should not be levied at their full rate if at all, for the asset now in administration. This other firm ceased its charges completely, not even accruing a fee in the way JB&S has.
- He feels penalised by JB&S who seem to have taken full advantage of a person who was mis-sold the asset in the first place, and clearly had no knowledge of the processes and procedures. The fees levied by JB&S were from it taking over the asset and were at the time accepted while the asset was live and coupons were being paid. There can be no moral or ethical acceptance of charging him full fees on an asset of nil value, which was the case from the day of administration. JB&S was profiteering from the demise of the asset and the ignorance of people like him.
- The bond is now under the scrutiny of the FSCS, Action Fraud, the FCA and the ombudsman service, and awaiting completion of many investigations into all the firms involved. The ombudsman service is looking into the broker who sold this asset.
- If JB&S were to retrospectively adjust its £5 fee to the date of administration, it would strike a constructive compromise and bring the matter to a close.

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.

In doing so, I've considered the further submissions Mr C has made, but they haven't led me to reach a different conclusion to that I set out in my provisional decision. I will explain why.

I note the comments he makes about other brokers taking different actions to JB&S – in that they ceased to charge fees sooner. I understand the point he makes here, but I don't agree that this must mean JB&S have treated him unfairly. The fact another broker took a different approach doesn't compel JB&S to do the same. I've already set out why I'm satisfied JB&S took reasonable steps to adjust the charges and referenced the fact there wasn't a specific requirement for it to reduce the charges at particular point in time.

Mr C says he feels penalised by JB&S and it has taken advantage of him because he was mis-sold the investment. I haven't seen anything to suggest that JB&S had any involvement or knowledge of how Mr C came to take out the investment. Rather, the evidence indicates that its involvement with Mr C came about purely because of the liquidation of the previous broker who held the asset when the administrators attempted to find alternatives for Mr C. I can understand why Mr C feels aggrieved when the investment demised not that long after he became a customer of JB&S, but I don't think there is evidence to support it was seeking to take advantage of him when it took custody of his investment.

Mr C says that there can be no moral or ethical reason for charging fees on an asset with nil value. I understand the principle of the point he makes here. As explained the valuation of his investment wasn't clear cut. Even at the point of administration of the underlying company, there isn't clear evidence that was available to JB&S to say it would have known Mr C's investment had no value at all.

I note Mr C says he has now made a complaint about the sale of the investment. This matter isn't subject to this complaint, so I don't think it has a direct impact on my findings on JB&S's actions in this complaint. He also refers to investigations being completed by other

organisations. So again, while I note his comments, I don't find that they impact my overall thinking on this complaint.

While Mr C has proposed that JB&S should adjust the fee structure from the date of administration, I'm not persuaded it needs to do this. As explained in my provisional decision, I'm satisfied the proactive steps it took in August 2022 were fair in the circumstances. So, it remains that I don't find that JB&S is required to meet Mr C's request.

In conclusion, for the reasons given in my provisional decision and those above, I'm not satisfied JB&S was treating Mr C unfairly by not reducing the fees sooner. It follows that I don't require JB&S to refund any fees or do anything further.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 9 February 2024.

Daniel Little
Ombudsman