

The complaint

Mr and Mrs D complain that Blevins Franks Financial Management Limited failed to provide full costs relating to investment advice it provided.

What happened

Mr and Mrs D reside in mainland Europe. In 2015 Blevins Franks made an initial recommendation of an investment portfolio to them. They committed £170,000 at the outset and added a further £600,000 the following year. The advisory relationship continued through until 2021, at which point Mr and Mrs D raised concerns about the advice.

Although the complaint initially covered several areas, the primary issue in dispute that I'm considering here concerns the underlying charges for funds held in the portfolio. Mr and Mrs D feel these should've been explicitly disclosed to them, along with the other charges applied by Blevins Franks relating to the advice. More specifically, they question why Blevins Franks failed to provide Key Investor information Documents (KIID), which would've shown these fund-related costs.

Blevins Franks didn't uphold Mr and Mrs D's complaint. It said, in brief –

- Having reviewed the provision of information to Mr and Mrs D it was satisfied it had made all disclosures required under the relevant regulatory regimes at the time.
- In this respect, there was no requirement at the time of the advice for KIID or other similar documents to be provided.
- The relevant terms of business stated that Blevins Franks may receive payment from fees charged by the fund managers.

The complaint was referred to this service, but our investigator didn't feel it should be upheld. He looked at the general charging information about Blevins Franks' services that had been provided to Mr and Mrs D and was satisfied the fees had been applied correctly. But he acknowledged that their primary cause for concern was with the fund charges and the lack of KIID. In that respect, he was satisfied there'd been no requirement for the provision of that type of information at the time of the advice – prior to the implementation of the Insurance Distribution Directive in 2018.

The investigator also noted Blevins Franks' reference to its terms covering the possibility of it receiving fees from fund managers and while acknowledging that Mr and Mrs D saw this as unfair, he didn't feel able to conclude that Blevins Franks had acted outside of its terms when advising them. It had confirmed the difference between fees deducted from the portfolio and fees taken at the fund level, which it didn't consider to be an additional charge for Mr and Mrs D, and he felt this was a fair explanation.

Mr and Mrs D remained unhappy. They felt that KIID should've been supplied, for transparency and fairness (in line with the Financial Conduct Authority's (FCA) principles), even where there may not have been a regulatory requirement to do so. They provided some examples of how charges were communicated by other providers, which they felt were clearer. They maintained the charges had been taken without their consent or knowledge.

The investigator acknowledged Mr and Mrs D's ongoing concerns but wasn't persuaded to change his opinion. As no agreement could be reached, the matter's been referred to me to review.

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.

Consideration of Mr and Mrs D's complaint had been ongoing for some considerable time, not least because of various jurisdiction matters that have arisen. I appreciate their patience and also note their strength of feeling about the matter. But, while I recognise they'll be very disappointed, I find I've come to the same conclusion as the investigator – that the complaint shouldn't be upheld, and for broadly the same reasons.

I understand Mr and Mrs D's frustration and recognise that feel they were deliberately deceived by Blevins Franks. But I've seen nothing that persuades me that was the case. I'm satisfied that the actions of Blevins Franks were in line with the regulatory regime applicable, given Mr and Mrs D were resident outside the UK and, importantly, when the advice was provided.

The regulatory requirement for advisers to provide KIID in Mr and Mrs D's country of residence didn't apply at the time they made their investments in 2015. The regulations that impacted upon what businesses needed to do in this respect – MiFID 2, PRIIPs regulation and the Insurance Mediation Directive – didn't come into force until 2018, some years after they were advised. The situation may have been different had they been residing in the UK at the time in question, but in reaching a fair conclusion I must consider Mr and Mrs D's particular circumstances.

Clearly, the introduction of new rules and regulations (whether in the UK or in Europe) that were specifically designed to increase transparency concerning communication of various charges shows that there was an acknowledgement that the existing requirements weren't as clear as they could've been, and this was resulting in poor outcomes for investors. But, while I've noted Mr and Mrs D comments about fairness and the FCA principles, I don't feel I can reasonably hold Blevins Franks to a standard that wasn't in place when the advice was given.

My final decision

For the reasons given, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 14 December 2023.

James Harris
Ombudsman