

Ombudsman Determination**CIFO Reference Number: 16-000376****Complainants: [The complainants]****Respondent: [Bank X]**

It is the policy of the Channel Islands Financial Ombudsman (CIFO) not to name or identify complainants in any published documents. Any copy of this determination made available in any way to any person other than the complainant or the respondent must not include the identity of the complainant or any information that might reveal their identity.¹

[The complainants] complained about the decision taken by [Bank X] to close [the asset manager].

Background

[The complainants] invested in [the Bank X fund]. In March 2014, [Bank X] carried out a review of their investment portfolio and recommended that they move their holdings to [the asset manager]. The recommendation was made by the bank on the basis that it would be best for a long-term investment. According to [the complainants], [Bank X] stressed the need for the investment to be on a long-term basis.

Between 1-8 April 2014 [the complainants] placed £555,972.64 into [the asset manager]. The majority of this investment was made up of cash holdings. Approximately £102,200 was from [the Bank X fund]. In connection with this move, [Bank X] charged a financial advice fee of £4,447.78.

On 12 February 2016 [Bank X] wrote to [the complainants] to say they were closing [the asset manager]. They recommended that they transfer their investments back into [the Bank X fund], from where they had been transferred less than two years previously. Redemption proceeds totalling £527,574.19 were credited to the complainants' bank account on 27 May 2016.

[The complainants] complained to [Bank X], asking for a refund of the financial advice fee. They did so because [Bank X] advised the complainants to move from one [Bank X] investment service to another, stressing to them the benefits of the move to [the asset manager]. [Bank X] then closed [the asset manager] and transferred [the complainants] back to a service they had discouraged them from being in less than two years earlier.

[Bank X] did not uphold the complaint, on the grounds that the closure of [the asset manager] was a commercial decision. [Bank X] said that [the complainants] were given

¹ Financial Services Ombudsman (Jersey) Law 2014 Article 16(11) and Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 Section 16(10)

136 days' notice of the closure and four options, before they proceeded with a formal recommendation to reinvest £500,000. This reinvestment was completed free of charge.

The case handler upheld [the complainant's] complaint. He considered that it was not reasonable for [Bank X] to receive a financial advice fee for recommending [the complainants] enter [the asset manager] on a long-term basis and then close the fund less than two years later. He concluded that [Bank X] should refund the financial advice fee of £4,447.78 charged on 6 March 2014.

Subsequent submissions

[Bank X] did not agree with the case handler's conclusions. The bank provided additional details to CIFO of the breakdown of the fees:

Total investment made into [the asset manager] in March 2014 = £555,972.64

Advice fee of 0.8%, comprised of:

- £400,000 cash = £3,200 fee
- £122,098.32 existing [Bank X fund] Portfolio and [Fund Z] holdings = £976.78 fee
- £33,874 [Fund A] switch = £271.00 fee

Total advice fee = £4,447.78

The bank identified that it charged advice fees in relation to [the Bank X fund] and [Fund Z] on two occasions; once where the initial investment was made in 2010 and once in 2014 when these monies were switched to [the asset manager].

[Bank X] suggested that because [the complainants] were placed back into their original investment fund - albeit in clean share classes with lower ongoing charges - the bank would consider reimbursing the original advice fee of £976.78 in relation to this proportion of monies as a gesture of goodwill. This proposed reimbursement was based upon the higher invested amount of £122,098.32 and not the original fee in 2010 on the lower investment amount of £30,000 and £1,500 per month invested from 2010 to 2014.

The bank confirmed that a further calculation would need to be undertaken to account for the money taken for fees as this would have otherwise been invested. This calculation would be based on the overall [the asset manager] portfolio performance.

[Bank X] advised that the four options made available to [the complainants] at the time of the closure of [the asset manager] were as follows:

- 1. Seek advice from a [Bank X] adviser to:**
 - (a) Re-invest into [the Bank X fund]**
 - (b) Invest in another [Bank X] fund or product**
 - (c) Invest in a third-party product**

According to the bank, no financial advice fee or initial charge was incurred for re-investing into [the Bank X fund]; however, customers would no longer have access to a discretionary wealth manager if they moved to another [Bank X] product.

2. Liquidate and receive cash in their bank account

No trading commissions or no wire transfer charges.

3. Transfer *in specie* to another provider

No stock delivery or wire transfer charges.

4. Register assets into customer's own name or third-party nominee

No registration charge.

According to [Bank X], it was the decision of [the complainants] to reinvest into [the Bank X fund] without charge. Three further options were offered to the complainants at the time should they have decided that the [Bank X fund] proposition did not fulfil their needs. These options included the ability to transfer to another discretionary wealth manager.

[Bank X] asked for the case handler's conclusions to be reconsidered, taking into account the fee breakdown and further advice provided free of charge. [Bank X] proposed that a reimbursement of £976.78 should be made, together with a further calculation to account for the money taken for fees that would have otherwise been invested.

Findings

I recognise that [Bank X] considers it has met all regulatory requirements applicable to its decision to close the fund, has acted in accordance with the Terms of Business, and has provided [the complainants] with 136 days' notice of its commercial decision. Nevertheless, [Bank X] instigated the process whereby the investments would be reviewed in March 2014 and, at that time, based on the advice given, [the complainants] considered they would be placed into [the asset manager] as a long-term investment.

[Bank X] confirm that an initial £555,972.64 was invested into [the asset manager] in 2014. A total of £527,574.19 was subsequently redeemed to [the complainants] after the closure of [the asset manager].

[Bank X] submitted that, at the time of the closure of [the asset manager], the [Bank X fund's] assets as part of that investment were worth approximately £105,700, whereas they would have been worth £102,718 if they had remained in [the Bank X fund]; however, [Bank X] has made an error in these figures submitted to CIFO. The bank has since confirmed, following the case handler's review, that the complainants had £122,098.32 in the [Bank X fund] investment.

Furthermore, the fee rate charged for [the asset manager] was 1.25%, whereas the complainants would have been charged 1.47% in [the Bank X fund] between March 2014 and February 2016. Nonetheless, the overall investment into [Bank X fund] was lower, so the amount paid in fees would have been substantially lower than that paid for [the asset manager].

Irrespective of the fee amount, I take the view that the financial advice fee would also have made an impact on the amount returned to [the complainants] and, taken together with the fees charged, including the annual management fee of 1.5%, I consider it would not be reasonable for [Bank X] to receive a financial advice fee for inviting the complainants to enter [the asset manager] on a long-term basis when the fund was closed by [Bank X] within two years.

Final decision

My final decision is that I uphold this complaint.

In calculating an appropriate figure for redress, the £122,098.32 in the complainants' [Bank X fund's] investment should be removed from the total amount invested of £555,972.64. This is because I do not consider that the bank is responsible for any losses incurred on the remaining £433,874.32 as the decision to pursue this investment was made by the complainants.

[Bank X] should, therefore, pay [the complainants] as follows:

1. £6,236.20, representing the [Bank X fund] proportion of the overall investment of £555,972.64 and relating to the performance difference between the total amount invested and the total amount redeemed in 2016.
2. £4,447.78, representing the advice fee paid by the complainants in March 2014.
3. An amount for the money taken for fees that would have otherwise been invested. This figure should be based on the overall [the asset manager] portfolio performance.
4. Interest from 27 May 2016 to the date of this determination on the total amount of 1,2 and 3 above at 8% per year simple; calculated by multiplying the daily interest rate by the total amount of 1,2 and 3 by the number of days that have elapsed.

[The complainants] must confirm whether they accept this determination either by email to ombudsman@ci-fo.org, or letter to Channel Islands Financial Ombudsman, PO Box 114, Jersey, Channel Islands JE4 9QG, by **21 March 2018**. The determination will become binding on [the complainants] and [Bank X] if it is accepted by this date. If we do not

receive an email or letter by the deadline, the determination is not binding. At this point [the complainants] would be free to pursue their legal rights through other means.

If there are any particular circumstances which prevent [the complainants] confirming their acceptance before the deadline of 21 March 2018, they should contact me with details. I may be able to take these into account, after inviting views from [Bank X], and in these circumstances the determination may become binding after the deadline. I will advise both parties of the status of the determination once the deadline has passed.

Please note there is no appeal against a binding determination, and neither party may begin or continue legal proceedings in respect of the subject matter of a binding determination.

Douglas Melville
Principal Ombudsman and Chief Executive

Date: _____