Ombudsman Decision
CIFO Reference Number: 24-000449
Complainant: Mr A
Respondent: Rathbones Investment Management International

Complaint

The Complainant, who I shall refer to as Mr A, complains that Rathbones Investment Management International ('RIMI') failed to disclose third party fees that had been applied to his investment portfolios and management fees were not charged at the agreed percentage. As a result, he believes he was overcharged and that RIMI acted in breach of the Terms of Business (TOB) in place and of their fiduciary duties.

Background

Mr A had a discretionary management relationship with RIMI between 2015 and 2023. He had multicurrency investment portfolios, which he held with his wife, from 2015, and as part of plans to cater for inheritance for his children and grandchildren, sub-portfolios were set-up from 2018 which were maintained under Mr A's control.

Mr A initially complained to CIFO about RIMI in 2023 because he was dissatisfied with the investment performance of the sub-portfolios, specifically due to changes made to the investment strategy in 2022. As part of this complaint, Mr A raised further concerns about a failure by RIMI to disclose fees and charges that had been applied to all his portfolios,

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

which he outlined in a letter to RIMI dated 27 May 2024. It is the date of this letter which CIFO accepted as the date the complaint related to this Ombudsman decision was received.

The CIFO Adjudicator confirmed with Mr A that she understood the scope of his complaint as follows: *'….. your complaint is that you believed there was a discrepancy between the agreed fee structure, referred to by Rathbones as 'an all-inclusive rate' of 0.8%, compared to the actual charges taken from your portfolios, in one case identified as a 1.97% total fee. As a result, you believed your portfolios had been subject to a 'misrepresentation of fees, inconsistent fee application, and non-disclosure of third-party charges' and you had 'concerns regarding transparency, and…. seeking reassurance that there was no element of deception, dishonesty, or untruthfulness.' You said that, had you known about the third-party fees, you would not have invested with Rathbones as you had done. Subsequently, ….you estimated Rathbones should refund you £187,130.00, calculated as the total fee amount you believed had been overcharged, including lost interest, over a 10-year period.'*

The CIFO Adjudicator advised Mr A of CIFO's compensation limit of £150,000. Mr A nevertheless agreed to his complaint being reviewed by CIFO. The CIFO Adjudicator's review focused on the sub-portfolios set up from June 2018 which, based on the letter from 27 May 2024, fell within CIFO timing conditions and were therefore in-mandate for CIFO to review. In her recommendation, the CIFO Adjudicator concluded that the information regarding charges and fees provided to Mr A by RIMI, and opportunities offered to him to discuss concerns or issues at the time in both 2018 and 2020, meant that she did not agree with Mr A when he said he had been '*left without the necessary knowledge to make informed decisions regarding the costs associated with managing my assets*.' She also concluded that she could not see where RIMI failed to act in accordance with the TOB in place with Mr A at the time.

Mr A did not agree with the CIFO Adjudicator's conclusion. In his response, he highlighted that the CIFO Adjudicator had not included a review of the RIMI management fee in her recommendation and requested this be considered further. Subsequently, a full review of the management fee was undertaken, the result from which will be included in my review.

Subsequent Submissions

The submissions for this complaint have been lengthy and have included the results from an initial Data Subject Access Request (DSAR) that Mr A submitted to RIMI. When requesting a review by me of his complaint, Mr A provided a considerable volume of information for me to consider. This information included details of a second DSAR request and his belief that RIMI had withheld information from him. Dissatisfied with RIMI's response to his second DSAR request, Mr A lodged a complaint with the Jersey Office of the Information Commissioner ('JOIC'). JOIC's conclusion was that the complaint was unfounded. Mr A has since advised CIFO that he wishes to submit a further, third DSAR to RIMI.

Whereas Mr A may believe there to be correspondence which has not been disclosed to him, and therefore has not formed part of his submission to CIFO, my conclusions have been reached after a review of the information already provided to me. I do not consider it necessary to delay the completion of my review based on an unproven assertion that the evidential record for this complaint is incomplete. That said, should Mr A uncover previously unavailable evidence that would potentially materially change my conclusions as set out here, I would be open to reconsidering this final decision in accordance with our law.

Findings

I have concentrated on specific points that I consider to be the key issues of this complaint. I will not necessarily mention or address every point raised by the parties involved, as permitted by law, but I confirm that I have reviewed everything provided by all parties to decide what is, in my opinion, fair and reasonable in the individual circumstances.

There is a first point I wish to make, which I consider to be fundamental to this complaint. It is that I am satisfied, given his professional experience, Mr A was knowledgeable regarding the investment strategy he wished to adopt when he set up the portfolios with RIMI under its discretionary management. As a result, the evidence shows a relationship between RIMI and Mr A that was cordial and involved frequent discussions on investment options and direction. In these discussions, Mr A also included a friend who was an Independent Financial Advisor (IFA). Although not acting as Mr A's IFA, his friend's opinion and advice were often given to Mr A throughout his relationship with RIMI and, therefore, I have referred to this IFA friend in my review.

Mr A highlighted his professional expertise to RIMI in February 2023. It is from this understanding of what he was doing, and knowledge of the impact of the investment choices he was expecting to make from the start of the relationship with RIMI, that I have based my conclusions (***my emphasis***):

'I had a 20 year career in the life and pensions industry and therefore gained an understanding of the investment world. In choosing RIM as the 'protectors' of our families money ***I was fully aware that;***

1. ***I was partially entering a 'fund of funds' arena that has double-charging implications; the non-Rathbones funds charges plus the Rathbones fee.*** *I saw this as a value-add, spreading the risk to maximise returns'.*

With this in mind, CIFO's legal mandate in relation to timing conditions under Section 11 of the Financial Services Ombudsman (Jersey) Law 2014 law states that a complaint must be made:

(a) 6 years after the act to which the complaint relates; and
(b) 2 years after the complainant could reasonably have been expected to become aware that he or she had a reason to complain in relation to the act complained of.

I am satisfied that, on the basis of our law, the 2015 portfolios set up by Mr A for him and his wife fall outside my mandate to review. Because of his knowledge and the expressed reason he selected Rathbones, I believe he was aware of the 'fund of funds' structure in 2015 and therefore was aware of the non-RIMI and RIMI fees that would be applicable to his investment portfolios. The 2015 portfolios fall outside the 6-year timing condition and, given his understanding of the double-charging implications at that time, the 2-year timing condition in our law is also not applicable.

Mr A's letter, submitted as part of his original complaint to CIFO on 27 May 2024 means the sub-portfolios set up in September 2018 do fall within

CIFO's mandate under the 6-year condition, and therefore the scope of my review is limited to these, and only these, sub-portfolios.

My conclusions in relation to this complaint will be grouped as follows, and I will take each in turn:

1. Third party fee disclosure and requirements under local regulatory requirements following the introduction of the Markets in Financial Instruments Directive (MiFID) II.
2. Agreement and charging of RIMI management fees.
3. Fiduciary duty and compliance with the TOB.

<u>Third party fee disclosure and requirements under MiFID II.</u>

Mr A's response to the CIFO Adjudicator's recommendation was that he had not been told earlier in the review process that CIFO did not act as a regulator and as such, was unable to consider breaches in the Jersey-specific regulatory obligations in relation to MiFID II. I do not find it incorrect for the CIFO Adjudicator to only refer to this in her recommendation and not before. Being advised of this within the Adjudicator's recommendation does not affect Mr A's ability to raise any concerns he may have about a perceived regulatory breach with the Jersey Financial Services Commission (JFSC). The JFSC can be reached at:

PO Box 267, 14-18 Castle Street, St Helier, Jersey JE4 8TP
Telephone: +44 (0)1534 822000

That this could have been done by Mr A earlier is of no consequence to, and has no bearing on, my review. However, as part of his response, Mr A requested my formal consideration of two specific points raised on this specific matter:

'Did CIFO consider or investigate my MiFID II-based concerns at any point?'

MiFID II, or Markets in Financial Instruments Directive II, is a 2018 comprehensive European Union ('EU') law designed to regulate firms to enhance transparency, investor protection and market efficiency within the EU's financial markets. As an EU directive, the CIFO Adjudicator's review would not have considered the MiFID II regulations themselves because they do not apply to Jersey. I am satisfied, however, that the CIFO

Adjudicator considered the obligations of RIMI in relation to the Jersey-specific regulatory expectations post-MiFID II and I will consider these obligations as part of my review.

'Will CIFO now formally refer these points to the JFSC, or must I initiate that separately?'

CIFO will not refer the points raised to the JFSC. This is for Mr A to do so if he wishes. I anticipate my views on his complaint may affect his decision whether to refer his concerns to the JFSC or take matters further through other means, including the courts.

RIMI's obligations in regard to the disclosure and reporting of fees would need to be in line with the relevant specific code of practice issued by the JFSC, in this case the Code of Practice for Investment Business ("CoP"), issued in 2022. In the CoP, Section 4 provides an overarching obligation that '*A registered person must be transparent in its business arrangements*'**.** This aligns with the principles of MiFID II and forms the basis for the provisions in force which RIMI, as a 'registered person' as defined by the Financial Services Commission (Jersey) Law 1998, would be required to comply.

Irrespective of what was required to be disclosed, the relevant provisions of the CoP that were in force at the time state that under Section 4.6, a registered person is required to demonstrate in writing that the client has been made aware of all associated fees and charges including commissions (both initial and recurring). Effectively this ensures a 'no surprises' policy. Where Section 4.6 cannot be strictly complied with, such as in this case where RIMI is operating in a discretionary manager capacity and where it might not be able to advise clients of all fees and charges prior to effecting transactions, then Section 4.7 would apply:

- *4.7.1 Make it clear specific type of associated fees/charges payable, where appropriate estimates (monetary or %); and*
- *4.7.2 Advise its clients in writing and on a timely basis of all fees and charges actually incurred*.

Under the CoP, it was reasonable for Mr A to have expected an indication of the total fee level as part of his agreement with RIMI to establish the sub-portfolios in 2018. The investment proposal included the disclosure of an

estimated fee level of 1.97%, inclusive of the 0.8% management fee. In my view, this satisfied the requirement of CoP Section 4.7.1. Total fees, both those paid by the investor as management fees and those paid by the portfolio to underlying 3rd parties, were shown in a breakdown of costs and charges provided to Mr A upon his request in 2020. Based on the estimate in the portfolio proposal, it should not have been a surprise to Mr A or his IFA friend, that the actual total fee % level as reported in 2020 was approximately this figure. I commend RIMI for the accuracy of their estimations in this regard.

However, 4.7.2 of the CoP, requires clients to be advised in writing and on a timely basis of all fees and charges **actually** incurred. To satisfy this, I would have expected RIMI to have provided a total fee breakdown as part of its annual reporting from the first portfolio valuation point after 2018 (i.e., early in 2019), and not just in response to a request from a client. In this case this does not appear to have happened. The first total fee breakdown was the one provided in 2020 at Mr A's request.

In response to my query regarding this matter, RIMI said that legal advice regarding CoP Section 4.7.2 had been sought in 2021, which concluded that "…*in relation to fees taken by underlying funds and paid out of the fund's assets, not by the investors, we would agree that these do not need to be reported to clients pursuant to the paragraph 4.6/4.7 IB Code requirements*." RIMI confirmed this had been the basis of its policy on disclosure of third-party charges. Whereas I do not agree that this interpretation of the CoP provisions is correct, I am satisfied that RIMI implemented procedures in line with legal advice it had received on the matter and therefore I am satisfied it had not deliberately sought to hide the actual fees applicable from Mr A. In the circumstances, given the accuracy of the estimated fee level as disclosed to Mr A in the proposal in 2018, and the surrounding discussions between Mr A, his IFA friend and RIMI at the time, I would not find the failure of RIMI to report on actual fees prior to 2020 as a compensable error. Call recordings discussing the 2018 portfolios, which have been shared with Mr A, evidenced the opportunities Mr A had to discuss the proposal, including the estimated fee level. I specifically note that one such discussion resulted in what I would consider to be Mr A's informed consent for RIMI to proceed: '*Yeah, I'll invest in line with the proposal.*'

Irrespective of the fee estimation on the 2018 proposal and the breakdown of actual fees charged, which included third-party fees, in 2020, Mr A asserts he was not aware of the 3rd party fees applicable to the sub-portfolios until 2023. Subsequently, he believes these charges had been incorrectly applied by RIMI and that the portfolios had been overcharged which represented a financial loss he has suffered for which he is seeking recompense. With respect, I do not agree. The evidence suggests Mr A had professional knowledge that third-party fees would be charged, had an opportunity to raise any issues with the estimated fee level provided in 2018 and when he was subsequently made aware of the actual fees applied in 2020. With this information, Mr A continued with RIMI's management of the sub-portfolios as he had planned to do. It follows, therefore, that I do not consider it likely, on the balance of probabilities, that, had the total fees and charges been reported for 2018 in early 2019, Mr A would have raised the issue at the time and changed his investment strategy. While I would have expected RIMI to provide all fees and charges for 2018 by early 2019 under CoP 4.7.2 notwithstanding the legal opinion obtained by RIMI, I do not think this caused any loss.

I conclude that the third-party fees were not applied incorrectly and the portfolios were not overcharged. I surmise that the investment performance had not been as Mr A expected, consistent with his first complaint to CIFO. That these fees appeared to be impacting on the investment returns of these sub-portfolios is not the issue or relevant in this case. Therefore, there is no refund of 3rd party fees warranted.

Agreement and charging of RIMI management fees.

I turn now to the management fee charged by RIMI for its discretionary management service to Mr A. The basis of the fee was an 'all inclusive' rate of 0.8% p.a. Throughout all the evidence provided from RIMI, verified in the 2018 proposal, and confirmed to Mr A annually within the '*About Your Investment Mandate'* (AYIM), this 'all inclusive' 0.80%' was to be charged for each sub-portfolio. Subsequently Mr and Mrs A were aware of the 0.80% management fee. Any confusion seems to stem from when a reduced 0.30% fee was charged to the sub-portfolio where invested in RIMI funds, and an adjustment to the management fee was made.

RIMI explained this as follows: '*In order to maintain the agreed RIMI investment management fee rate of 0.8% the charging arrangement was changed so that the RIMI fee debited to the portfolio was set at 0.3% of value …. and this, together with the …. investment management fee of 0.5%, again resulted in the total of Rathbones group investment management fees remaining at 0.8%.*' Mr A said that he understood in these cases there would be a rebate on the management fee that was charged, which would be applied manually; but that there had been no evidence this had been done.

RIMI reviewed the fee amount debited, where the fee rate of 0.30% applied to the total of Rathbones funds held during that fee quarter, and then applied the fee rate of 0.80% to the remaining balance. This then meant RIMI could calculate the difference between the amount debited from the portfolio and the fee amount that should have been debited. This was checked for each of the grandchildren's and children's sub-portfolios from 2018, and a difference was found in the fees that should have been paid. RIMI accepted that this had been an oversight and offered to reimburse the fee overcharge to Mr A, which he did not accept.

Calculations demonstrating the fee difference and the financial impact of the incorrect fee amount being applied is attached as an appendix to this final decision. The total to be reimbursed to Mr A is confirmed as follows:

Portfolio Reference	£ Refund/amount therefore that could have remained invested	£ Portfolio value that would have been received if overcharge amount had remained invested
-	64.22	2.88
-	22.13	0.36
-	4.82	0.13
-	64.73	0.84
-	473.90	11.86
Total	**629.80**	**16.07**

In total, the offered reimbursement is therefore **£645.87.**

That RIMI made an error in the manual adjustment of the management fee does not affect or detract from my overall conclusion that the portfolios were not overcharged 3rd party fees. The oversight in the management fee adjustment did not materially affect the investment performance of the sub-portfolios, as demonstrated in the '*Value that would have been received if overcharge amount had remained invested'* column in the appendix. The error in the management fee adjustment was not identified by Mr A or his IFA friend over the period from 2018 to 2023 and the adjusted value of the portfolio was demonstrably not materially affected. However, RIMI should refund Mr A £645.87 to address this oversight.

Fiduciary duty and compliance with the Terms of Business (TOB).

I turn now to the last key point in Mr A's complaint. Mr A says that RIMI failed in its '*fiduciary duty to act honestly, fairly, and professionally in accordance with the best interests of its clients'.* Mr A supports this assertion by saying that RIMI did not use cheaper 3rd party share classes, although he believed they were available, and instead maintained investment in 3rd party funds with higher fee share classes.

Looking at the TOB in place between RIMI and Mr A, on the basis of providing a discretionary investment management service, RIMI '…*shall provide the service of making decisions to invest the assets comprising the Portfolio in accordance with your Investment Objective and Risk Profile, and ongoing monitoring, with a view to achieving the Investment Objective and subject to our obligations regarding suitability under the Regulatory Rule.'* It goes on to say that under section 8.11.3 '*if it is possible for us to negotiate the conversion to a cheaper unit or share class, we will automatically convert your existing units/shares into these new cheaper unit/share classes'.* The investment strategy was high risk over a 20-year period and Mr A's argument was that based on 8.11.3 of the TOB, alternative cheaper investment choices should have been made.

In response, RIMI said that '*there are many variables considered when approving a third-party fund, such as performance, team stability, investment approach, transparency, accessibility, and investment philosophy. We do not select managers based on management fees alone as a cheaper management fee does not necessarily correlate with the best performance, however once we have selected a fund for investment we will always invest in the cheapest share class available to us*'. It confirmed that '*if a cheaper share class* *becomes available subsequently which we are able to access, we will switch to that share class'.*

Based on this explanation, operationally paragraph 8.11.3 of the Terms of Business does not relate to RIMI's fund selection process. This section of the TOB relates to where RIMI has already chosen a fund and invested into it (in the cheapest share class available to it) and where a new share class **of the same fund** becomes available then it will switch into that new share class. I acknowledge, however, that the TOB is open to interpretation in this regard and where terms could be considered to be open to interpretation, I would look to the party who drafted the terms to make it clearer. To that end I would look to RIMI to review its wording to ensure it correctly reflects the operational application of the investment process.

Acknowledging the oversight in the adjustment of the management fee and the room for interpretation of section 8.11.3 of the TOB, I award Mr A £500.00 for the inconvenience this caused him.

Mr A also complained about the lack of documentation provided to him in regard to the setting up of the sub-portfolios. The 2018 proposal by RIMI was provided to him as an outline prospectus indicative of the type of sub-portfolio to be set up for his children, and in turn his grandchildren. No concern was raised at the time by Mr A or his IFA friend about the lack of specific proposals for the sub-portfolios for his grandchildren and no request was made by either party to formally document a rationale behind investment choices. To raise this after the fact, once investments had been in place for a number of years, to my mind, is not of sufficient material affect to warrant further consideration or compensation.

Final Decision

My Final Decision is that I uphold Mr A's complaint in part and require RIMI pay Mr A the management fee reimbursement of £645.87, as adjusted and previously offered, and £500.00 for the distress and inconvenience caused by the interpretation of the TOB. I wish to stress that I do not uphold the part of his complaint regarding the non-disclosure and subsequent potential over-charging of third-party fees.

Douglas Melville
Principal Ombudsman and Chief Executive

Date: 5 March 2026

Appendix A

Management refund breakdown and financial impact on performance

702711

	Original incorrect fee taken	Correct fee that should have been taken	Refund/amount therefore that could have remained invested	% Portfolio performance for period from date of error to closure gross of fees	£ Value that would have been received if overcharge amount had remained invested
01/07/2021	£0.00	£0.00	£0.00	0.00%	£0.00
01/10/2021	£0.00	£0.00	£0.00	0.00%	£0.00
01/01/2022	£0.00	£0.00	£0.00	0.00%	£0.00
01/04/2022	£0.00	£0.00	£0.00	0.00%	£0.00
01/07/2022	£0.00	£0.00	£0.00	0.00%	£0.00
01/10/2022	£0.00	£0.00	£0.00	0.00%	£0.00
01/01/2023	£244.21	£179.99	£64.22	4.48%	£2.88
01/04/2023	£0.00	£0.00	£0.00	0.00%	£0.00
01/07/2023	£0.00	£0.00	£0.00	0.00%	£0.00
01/10/2023	£0.00	£0.00	£0.00	0.00%	£0.00
	£244.21	**£179.99**	**£64.22**		**£2.88**

702713

	Original incorrect fee taken	Correct fee that should have been taken	Refund/amount therefore that could have remained invested	% Portfolio performance for period from date of error to closure gross of fees	£ Value that would have been received if overcharge amount had remained invested
01/07/2021	£0.00	£0.00	£0.00	0.00%	£0.00
01/10/2021	£0.00	£0.00	£0.00	0.00%	£0.00
01/01/2022	£0.00	£0.00	£0.00	0.00%	£0.00
01/04/2022	£0.00	£0.00	£0.00	0.00%	£0.00
01/07/2022	£0.00	£0.00	£0.00	0.00%	£0.00
01/10/2022	£0.00	£0.00	£0.00	0.00%	£0.00
01/01/2023	£105.56	£98.35	£7.21	4.69%	£0.34
01/04/2023	£108.80	£101.42	£7.38	1.31%	£0.10
01/07/2023	£110.98	£103.44	£7.54	-0.93%	-£0.07
01/10/2023	£0.00	£0.00	£0.00	0.00%	£0.00
	£325.34	**£303.21**	**£22.13**		**£0.36**

703112

	Original incorrect fee taken	Correct fee that should have been taken	Refund/amount therefore that could have remained invested	% Portfolio performance for period from date of error to closure gross of fees	£ Value that would have been received if overcharge amount had remained invested
01/07/2021	£0.00	£0.00	£0.00	0.00%	£0.00
01/10/2021	£0.00	£0.00	£0.00	0.00%	£0.00
01/01/2022	£0.00	£0.00	£0.00	0.00%	£0.00
01/04/2022	£0.00	£0.00	£0.00	0.00%	£0.00
01/07/2022	£0.00	£0.00	£0.00	0.00%	£0.00
01/10/2022	£0.00	£0.00	£0.00	0.00%	£0.00
01/01/2023	£95.07	£93.50	£1.57	7.15%	£0.11
01/04/2023	£99.36	£97.75	£1.61	2.32%	£0.04
01/07/2023	£102.92	£101.28	£1.64	-1.46%	-£0.02
01/10/2023	£0.00	£0.00	£0.00	0.00%	£0.00
	£297.35	**£292.53**	**£4.82**		**£0.13**

702709

	Original incorrect fee taken	Correct fee that should have been taken	Refund/amount therefore that could have remained invested	% Portfolio performance for period from date of error to closure gross of fees	£ Value that would have been received if overcharge amount had remained invested
01/07/2021	£0.00	£0.00	£0.00	0.00%	£0.00
01/10/2021	£0.00	£0.00	£0.00	0.00%	£0.00
01/01/2022	£0.00	£0.00	£0.00	0.00%	£0.00
01/04/2022	£0.00	£0.00	£0.00	0.00%	£0.00
01/07/2022	£0.00	£0.00	£0.00	0.00%	£0.00
01/10/2022	£0.00	£0.00	£0.00	0.00%	£0.00
01/01/2023	£213.42	£196.23	£17.19	4.62%	£0.79
01/04/2023	£219.95	£202.33	£17.62	1.26%	£0.22
01/07/2023	£218.78	£200.78	£18.00	-0.99%	-£0.18
01/10/2023	£131.81	£119.89	£11.92	0.00%	£0.00
	£783.96	**£719.23**	**£64.73**		**£0.84**

703231

	Original incorrect fee taken	Correct fee that should have been taken	Refund/amount therefore that could have remained invested	% Portfolio performance for period from date of error to closure gross of fees	£ Value that would have been received if overcharge amount had remained invested
01/07/2021	£82.43	£30.91	£51.52	-0.68%	-£0.35
01/10/2021	£83.09	£31.16	£51.93	-1.67%	-£0.87
01/01/2022	£86.51	£32.44	£54.07	-5.75%	-£3.11
01/04/2022	£82.45	£30.92	£51.53	-1.30%	-£0.67
01/07/2022	£87.75	£41.77	£45.98	10.16%	£4.67
01/10/2022	£85.07	£40.48	£44.59	13.41%	£5.98
01/01/2023	£88.28	£41.28	£47.00	9.07%	£4.26
01/04/2023	£92.36	£44.33	£48.03	4.05%	£1.95
01/07/2023	£95.90	£46.94	£48.96	0.00%	£0.00
01/10/2023	£57.02	£26.73	£30.29	0.00%	£0.00
	£840.86	**£366.96**	**£473.90**		**£11.86**