<u>Ombudsman Decision</u>
<u>CIFO Reference Number:</u> 25-000154
<u>Complainant:</u> Mr C
<u>Respondent:</u> Dominion Fiduciary Services Limited

Complaint

The complainant, who I will refer to as Mr C, complains about Dominion Fiduciary Services Limited in the context of how it managed and communicated in relation to the management and sale of pension funds.

Background

The background is well-known to the parties, so I will not rehearse the full details.

Mr C's complaint centres on an instruction to Novia client service on 6 September 2024 for the urgent sale of 25% from each of two pension funds being managed. He followed up to Dominion on 9 September and the following day, Dominion replied:

- It set out what documentation the Trustee required, informing Mr C that it didn't give tax advice but strongly recommended obtaining tax advice.
- It advised Mr C of indicative fees at £7,500 per plan but agreed a combined fee of £9,000, outlining why and giving an alternative option to save fees by a full distribution, rather than partial as had been requested.

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

Further correspondence between Mr C and Dominion continued in September and he revised his request to close both funds, superseding an initial request of 25%. An issue remained around the fees, which were reduced to £4,000. Mr C set out his unhappiness at the funds' performance, which in his opinion fell short of market benchmarks. Mr C proposed a resolution, and on mutual agreement of the fees due, he would submit relevant documentation required for the funds' closure. Dominion set out the work to be undertaken and proposed a fee of £1,500 per fund (£3,000 in total) but pointed out that Novia's fees would be in addition and gave details of Novia's fee schedule.

Initial assessment

I set out detailed initial thoughts to the parties summarising that having considered the complaint carefully and the demand for compensation, I wasn't satisfied Dominion had treated Mr C unfairly or mis-managed the funds. The only caveat to this was that I agreed it was a mistake and incorrect that Mr C's surname was included in an email chain that went to a third party. However, I did not consider it had a material impact and so didn't intend to require Dominion to do anything further. I was careful NOT to opine on the legality or otherwise of the potential breach of data protection law as that would be a matter for the Jersey Office of the Information Commissioner, details of which I sent to Mr C. For the reasons stated, I did not believe I could fairly uphold the complaint or make an award in Mr C's favour.

Subsequent submissions

Mr C disagreed with my initial assessment, and from further clarification he gave about the impact of the disclosure of his surname, I was minded to uphold part of his complaint. I issued a provisional decision explaining why and copy that below:

It is clear to me that there is distance between the parties' positions and so I'm setting out my provisional conclusions in this decision having thought carefully about everything that's been provided. I am minded to reach a slightly different conclusion to my initial assessment and so set this out in the following paragraphs.

- *Unreasonable fees.*
    - *Fees are not linked to performance and on 10 September 2024, Dominion set out to Mr C that usually, in its experience for similar distributions and closures, the indicative fee was £7,500 per fund.*
    - *Dominion offered a combined reduce fee of £9,000, and this was reduced to £4,000 and then £3,000 by 27 September.*
    - *As fees are not linked to performance, but the work required to distribute and wind up the two plans. Dominion set out a proposal and Mr C negotiated a reduced amount. I don't agree with Mr C that the fees were unreasonable.*
- *Poor communication and delays.*
    - *I remain of the view that that Dominion is not responsible for the delays in selling the investments.*
    - *As previously mentioned, the issues lay with Novia and for one fund there appeared to be a limited monthly trade day.*
    - *Dominion was proactive in contacting Novia for updates on the position and I do not think it would be reasonable for me to hold Dominion responsible for issues with an independent third party such as Novia. Dominion held no status to change Novia's systems or processes.*
- *Poor fund performance.*
    - *The FINANCIAL SERVICES OMBUDSMAN (JERSEY) LAW 2014 sets out, among other things, complaint matters that may be considered inappropriate for this office to consider. Section 12 (3) (d) (ii) specifies investment performance so I will not be considering the fact of the funds' performance.*
    - *I can consider issues around the management of the funds and negligent selection of investments.*
    - *Mr C refers to an excessive number of lines in the portfolio, which in his view contributed to underperformance and higher fees.*
    - *Mr C has not provided any evidence to support this assertion. Having looked again at the information Dominion sent him about the work to be done to sell the investments, the majority of specified acts are related to compliance issues, document reviews and preparation for and attendance with the Trustee.*

- *It is well known that investments may rise or fall, and an investor may not get back what they put in. The portfolio was invested in a number of lines and as arguable as it is that it was 'too many', a smaller number of lines may have exposed Mr C to an unnecessary or disproportionate risk, particularly if that smaller number of lines didn't provide any return. As such, I'm not persuaded the 'number of lines' played a material role in terms of the fees Dominion proposed.*
- *And in any case, Dominion had discretion to invest and did so in line with Mr C's risk appetite for the investment aims.*
- *The fact the fund didn't grow to the extent Mr C wanted or meet the investment objective of achieving growth of CPI +2% in the long term, is not evidence of poor management or negligent selection.*
- *The fact that other funds or lines may have done better than the selected funds for Mr C's investment, the issue he raises is about mismanagement. The portfolio appears suitable for the stated level of risk and performance is not the determining factor of poor management.*

- *Missed investment opportunities.*
    - *I'm still not of the view Dominion should be liable for any potential missed investment opportunities.*
    - *I've not seen anything that suggested Mr C wanted the funds to re-invest in a specific fund at a specific time. And in any case, for reasons already explained I'm not persuaded Dominion is responsible for the delays in closing down Mr C's plans. As such, I don't intend to require Dominion to compensate Mr C.*
- *Breach of client confidentiality.*
    - *This is the area of Mr C's complaint that I intend to reach a different outcome to that which I recommended initially.*
    - *Confidentiality of client information is of course a requirement for Dominion, not least because of legislation in this regard.*
    - *While I initially considered the impact was minimal and unlikely to have identified Mr C specifically, he has now provided an email from a third-party referencing 'the [C] situation'.*

- *I have shared the relevant part of the email with Dominion which is, "I got your name under strange circumstances through Dominion…Please can I give you a quick call to explain."*
- *It is clearly the case that Mr C was readily identifiable by the third party who received the email chain. And so, I can readily appreciate the distress, frustration and embarrassment Mr C felt as a result.*
- *Mr C has informed me that he had a call with the third party who apparently stated Dominion tried to downplay the situation, and that his case was handled by relatively junior members of the team.*
- *I should clarify that I don't see it as my remit to determine whether Dominion breached any particular data protection law. The Jersey Office of the Information Commissioner is the relevant body that considers whether there has been a breach of date protection legislation.*
- *Dominion has always accepted including Mr C's surname in an email thread mistakenly sent to a third party was an error.*
- *While I initially concluded this error had no material impact I have changed my view.*
- *Being contacted unexpectedly by the third party in the context of what I have described was clearly distressing for Mr C. And so, I am satisfied there was a material impact.*
- *The next step is to consider what, if anything, Dominion should do to remedy this.*
- *I have considered the fact that Dominion responded relatively quickly (circa 16 days) after Mr C had raised the issue as part of his wider complaint. However, I do note the absence of an apology in its written correspondence. I understand why Mr C thought Dominion was attempting to downplay the issue.*
- *There was a degree of Mr C not knowing the full extent of what may have been disclosed but there were no financial or wide-reaching consequences as a result.*
- *In thinking carefully about what fair redress is to reflect the distress and inconvenience the mistake caused Mr C, I am satisfied £250 compensation is a fair reflection.*

Replies to provisional decision

Dominion accepted my provisional decision. Mr C accepted it for the most part except for my recommendation of compensation, in summary, saying:

- He accepted my conclusions regarding the rejected aspects of the complaint (Unreasonable Fees, Poor Fund Performance/Management, and Delays associated with Novia).
- He considered the proposed award for distress and inconvenience underestimated the severity and impact:
    - The disclosure caused significant professional embarrassment.
    - Immediate anxiety of having a private and sensitive financial dispute exposed to a professional acquaintance.
    - Citing *"the [C] situation"* created an immediate sense of humiliation and required significant time explaining the situation to mitigate potential reputational damage.
    - Dominion's failure to apologise and attempts to minimise the breach of confidentiality prolonged the distress.
    - He had to spend significant time and effort to determine the extent of the breach, raise a complaint, provide evidence warrants recognition of a higher compensation figure.
    - £1,900 is a fairer reflection of the impact of the distress and inconvenience caused.

I shared Mr C's disagreement with Dominion and invited further comment. Dominion, in summary, said:

- The data released was simplistic in nature, and whilst it was an error, the reference to Mr C's surname was not disparaging.
- Dominion has no control over what the third party chose to do with this information, but they did decide to contact Mr C of their own accord to determine whether the inclusion of the word "[C]" in its internal correspondence was in fact reference to Mr C, despite not maintaining contact with him for 18 years.
- Nevertheless, it was unfortunate that this impacted Mr C. Once made aware, Dominion provided him with more information about the extent of the data that was shared helping to allay his concerns.
- It awaited my conclusion on whether Dominion is deemed at fault for the actions taken by the third party to make "unwanted contact" with Mr C.

Findings

I have considered all the available evidence and arguments to decide what is, in my opinion, fair and reasonable in the individual circumstances of this complaint.

As the parties have indicated they accept my provisional findings on Unreasonable Fees, Poor Fund Performance/Management, and Delays associated with Novia I have nothing further to add except to confirm that I'm not persuaded Dominion did anything wrong on those matters for the reasons previously given.

I will address the unresolved issue of Mr C's surname being disclosed to a third party. Dominion had a duty to act with due skill, care and diligence and, in its terms of business, sets out several terms about protecting and keeping confidential Mr C's information. The fact of the mistaken disclosure is not in dispute and so it remains for me to consider the impact on Mr C.

It remains relevant that Dominion did not offer an apology but accepted the erroneous disclosure. There is insufficient information to demonstrate that anything disparaging against Mr C was made evident to the third party. Mr C shared the email he received from the third party, and it evidences that the disclosure readily identified him. However, any further communication between Mr C and the third party took place over the phone. On the face of it, any further information about the situation the third party learned is likely to have been passed in conversation(s) between them and Mr C. Mr C has referenced a summary of what the third party told him about a conversation they had had with Dominion. Given the second-hand nature of this information, I'm not giving it much 'weight' in terms of my balancing of the evidence. Even if I took what Mr C relayed to me at its height, there's nothing in the summary that comments on Mr C personally, rather it relates to the distribution situation.

Nonetheless, I fully accept that receiving the email from the third party was a significant cause for concern for Mr C and what may or may not have been disclosed by Dominion. In considering fair compensation I keep in mind our approach to compensation, available on our website. It is relevant Dominion responded to Mr C's concern in just over two weeks, and the matter was a single error. It wasn't a failure that Dominion could correct as the information had been released, but the absence of an apology had an impact on Mr C as he felt the matter was being underplayed and a general lack of concern. I accept that it was embarrassing for Mr C to be contacted ‘out of the blue’ by the third party and until he was able to speak with the third party, his anxiety and distress at not knowing the extent was elevated. And while there is nothing specific that is disparaging about Mr C he was entitled to rely on and expect that his information was kept confidential. Indeed, he wouldn’t have expected any other party to know that he was considering or had requested release of investment funds.

While Dominion rightly says it had no control of what the third party chose to do with the information, that is precisely the reason why information is kept confidential – once released there is no control.

In the circumstances, while acknowledging a single error, the impact of the mistaken release of Mr C’s surname to a third party had a substantial but short-lived impact. I determine £500 compensation fairly reflects this.

Final Decision

My final decision is that I uphold Mr C’s complaint and require Dominion Fiduciary Services Limited to pay Mr C £500 compensation for the distress and inconvenience caused in wrongly disclosing his surname to a third party.

Sean Hamilton
Ombudsman

Date: 7 November 2025