DRN-4668771

The complaint

The estate of Mrs C complains that M&G Securities Limited ('*M&G*') failed to respond to two emails regarding M&G's financial relationship with the late Mrs C. It says this caused additional legal work relating to an inheritance tax ('*IHT*') liability, at a cost to the estate.

What happened

Mrs C sadly passed away in January 2022. Prior to her death, she had held an investment ISA with M&G – though this was not identified by Mrs C's next of kin. Thereafter, the legal representative for Mrs C's estate appointed a third party to seek information about Mrs C's holdings with any financial businesses, including M&G.

The third party says it sent two emails to M&G on 28 April 2022 to establish if it held any records concerning Mrs C, but it did not receive a reply. Thereafter, Mrs C's estate was administered by the legal representative.

In November 2022, Mrs C's family identified through paper statements that she held an investment with M&G and accordingly notified their legal representative about its existence.

On 25 January 2023, the legal representative rang M&G to confirm that Mrs C had passed away. M&G asked for a copy of Mrs C's death certificate. The certificate was uploaded to M&G's portal by the representative the same day. After it had reviewed the evidence, M&G wrote to the representative on 8 February 2023 to confirm the valuation.

In March 2023, the third party complained. It said M&G's initial failure to respond to its emails meant additional legal work was required to resubmit inheritance tax submissions for the estate. Specifically, the estate was fully administered and closed without consideration of the late Mrs C's M&G investment. This led to both a late interest payment for IHT of £1,429.88 as well as further administration on the estate totalling £2,383.88.

M&G asked the third party for evidence that it had sent the emails of 28 April 2022. The third party confirmed after consulting with its email transfer agent, that the emails had been sent, but they were blocked by M&G's server. It therefore believed M&G was liable for the additional costs incurred by the late Mrs C's estate.

In May 2023, M&G rejected the complaint, sending a final response letter to both the legal representative and the third party. It said that emails it receives regarding estate searches, with a valid verification document, would be sent an emailed response to confirm if M&G holds an active account for the late customer. A lack of response from M&G did not indicate that an account did not exist.

M&G also said that the third party had informed it of another business which the Financial Ombudsman Service had found liable when an email regarding an estate search was not responded to. However, it said it couldn't comment on the procedures of any other business.

The third party then brought the complaint to this service. Mr W, who works for the third party and was appointed by the legal representative, brings this complaint on behalf of the estate

of Mrs C.

Mr W said that a complaint with almost identical circumstances was lodged at this service in 2018. In that complaint, a respondent business hadn't replied to an email requesting information about a late customer's holdings, which in turn caused additional legal costs to the estate. This complaint was upheld on the basis that the business ought to have responded to the email. Mr W said the complaint against M&G should succeed on the same basis.

An investigator thereafter reviewed the complaint, but did not agree it should succeed. He said that he was satisfied the emails had not been received by M&G in April 2022. The first contact M&G had regarding the late Mrs C's investment holdings was in January 2023, after the third party had been informed by Mrs C's next of kin that a statement from M&G had been located. He did not believe M&G had acted unfairly or unreasonably, such that it ought to be liable for any additional costs incurred to the estate.

Mr W said the estate of Mrs C did not accept the investigator's view on the complaint, and it should be sent to an ombudsman for review. He also made further comments, noting:

- it was Mrs C's next of kin that wrote to the legal representative for the estate on 19 November 2022 to highlight M&G's failings;
- the investigator had presumed that the third party would have been notified in April 2022 in the form of bounce back emails, but this was conjecture;
- if this was the case, the third party could allege that M&G had blocked its emails in the first instance, and that would still be unreasonable;
- the focus ought therefore to be why M&G's systems blocked the emails from the third party in the first place;
- on 24 May 2023, M&G told the third party that the emails would have been blocked by a firewall;
- he questions how, given the Financial Conduct Authority's ('*FCA*') Consumer Duty, this service has allowed M&G to fail to put the needs of a vulnerable next of kin first;
- by disregarding the duties placed upon M&G to its customers, the estate of Mrs C now has to suffer increased financial cost due to M&G's actions.

Thereafter, the complaint was reassigned to a different investigator. Following this, Mr W made some further comments:

- the other complaint previously referred to this service in 2019 was identical to this one, and hadn't been considered;
- the question he feels ought to be considered is "*is it fair for the grieving family of this estate to be required to pay for the re-administration fees incurred because of M&G's lack of response in 2022?*";
- once the M&G complaint handler confirmed there was a firewall blocking issue, he was removed from the complaint;
- the third party has now received guidance from the FCA about treating customers fairly – which includes representatives - and this should have applied to M&G.

M&G had no further comments to make.

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.

I thank the parties for their patience whilst this matter has awaited an ombudsman's decision, and I appreciate Mr W has explained how upsetting this matter has been for Mrs C's next of kin. Though this will not be what Mrs C's family or their representatives have hoped for, I am not able to uphold the complaint. I shall set out my reasons below.

Mr W has supplied evidence of another complaint where an ombudsman issued a final decision in 2019. This complaint also concerned the actions of the third party as an estate search facility, where the particular business involved did not respond to an email. In that complaint, the ombudsman directed the financial business to make good the losses incurred by the estate.

However, I disagree that these complaints are identical; notably, the 2018 complaint Mr W refers to involves an email being sent that was also supplied in letter format on the same date. In any event, the estate of Mrs C's complaint is distinct and based on its own specific facts and chronology. Even with similar events, no two complaints will be factually identical, and I don't find that other upheld complaints create any precedent on this complaint before me. Each complaint at this service will be addressed on its own merits and circumstances.

My role is to determine this matter by reference to what is, in my opinion, fair and reasonable in all the circumstances of the complaint. In doing so I will take into account any regulatory rules, relevant law, guidance, standards and codes of practice as well as what may have been deemed good industry practice at the time - where I consider it appropriate. However, this service is not a court; instead we offer informal dispute resolution. So, my findings of fact are made on a balance of probabilities – what is more likely than not – and it is for me to decide how much weight to give to any evidence provided by the parties.

I note Mr W's reference to FCA Principles and the wider Consumer Duty. However, the Consumer Duty applies to open products and services from 31 July 2023, and to closed products and services from 31 July 2024. It doesn't apply to complaints about events that happened before that and therefore is not applicable in this complaint.

I am, however, mindful of the relevant FCA principles referred to by Mr W when treating customers fairly. Nonetheless, I don't find M&G to be at fault here, or to have treated the estate of Mrs C unreasonably in respect of the estate search made by Mr W on behalf of the third party in respect of the principles of treating customers fairly, or otherwise.

Mr W has explained how the third party operates as a profiling search facility, contacting the entire financial industry on behalf of (legal representatives of) the estates of deceased customers. It does so on a 'blind search' basis, with a view to uncovering evidence of any financial associations that the late customer may have had, in order to assist with the administration and settlement of their estate.

On this basis, the third party contacted 148 financial businesses on the same day, including M&G. It has explained how, from a data perspective, it has received professional regulatory advice to treat any lack of no response, as a 'no match', meaning the representatives of the estate can thereafter proceed to administer the estate with only matched businesses. Whilst I accept that, it is a matter for the third party and the representatives of the estate to decide.

My role is to determine if M&G has acted unfairly or unreasonably in some way, in connection with a regulated activity (which in this case would be the operation of the late Mrs C's investment ISA). And I cannot agree that because the two emails sent on 28 April 2022 were bounced back and rejected by M&G's server, that it is now responsible for the additional costs incurred by the estate of Mrs C.

In my view, to determine M&G's actions (or more accurately, its inactions) gave direct

causation to the expenses incurred, I'd have to be satisfied that it failed to act in light of the search request from the third party – and I am not persuaded on that point. I say that because M&G did not receive either email. It did not know until January 2023 that representatives were acting for the estate of Mrs C, or that she had passed away.

Mr W, for the third party, has since established that there was bulk email delivery system issue with M&G from January 2022 onwards, which was later rectified. He makes the argument that the central issue in the complaint is that the operation of M&G's systems was at fault; its servers could/would not accept emails from the bulk email provider that the third party used to send the request regarding Mrs C to all relevant financial businesses at once.

Though I appreciate Mr W's frustrations, I disagree with his argument. This service doesn't act in the capacity of regulator; that duty falls to the FCA. It is not my role to determine how a business may conduct its operations or exercise what may be commercial judgment on the provision of a particular service. As I highlighted earlier in my findings, it is my duty to decide if a business has acted unfairly or unreasonably based on the balance of probabilities.

I am suitably persuaded that (and I do not think either party disagrees with this) M&G did not receive either email in 2022. As to the accountability for that, I disagree that M&G is responsible for not acting on the content of the two emails regarding Mrs C's potential financial connections – whit it says was because of its system blocking certain bulk emails. Financial businesses may choose to use certain IT software or operations regarding emails, and that will generally be an operational decision for the relevant business.

If the third party – and by association, the legal representatives – decide to place reliance on the lack of reply to two bulk automated emails, that is of a course, a matter of their choosing. However, I don't agree that this alone was sufficient in the circumstances as a reasonable attempt to establish that Mrs C did not have any association with M&G, because M&G had no knowledge of either email in order to confirm whether any financial connection existed.

M&G has explained to the representatives for the estate of Mrs C that it had many other forms of communication which could have been utilised, including contacting it by telephone, fax or post. Whilst this may not have been the preferred option of the third party, that isn't the fault of M&G. I agree with M&G that in these particular circumstances, the responsibility of any emails - in this particular circumstance - bounced back from general bulk communications is a matter between the third party and its chosen transfer agent.

What M&G did was provide was a prompt valuation (within four business days) of the late Mrs C's investment ISA, once it had been notified she had passed away – by issuing a clear instruction to the representative as to the required certification it needed to release that information and confirmation that the late Mrs C was a customer. I therefore believe, on balance, that if M&G had received an email instruction in relation to an estate search, that it would have replied in the same manner as the telephone notification of January 2023.

It is unfortunate that issues with bulk email services prevented M&G's receipt of the April 2022 emails, and I understand that the representative for the estate of the late Mrs C placed reliance on the third party confirmation of a 'no match' in order to administer matters prematurely. Nonetheless, I don't agree there is sufficient causation between those two events to hold M&G accountable, as suggested.

The weight placed on a lack of response, and accordingly the third party's reliance that this meant 'no match' was, in my view, a matter for the third party and the representative. It was not caused by M&G. M&G did not receive either email at the time, so it hadn't given any confirmation as to whether it held a financial association with the late Mrs C or not.

I don’t believe it reasonable, on balance, to consider a business liable for correspondence it had never seen, based solely a third party’s procedure. Nor do I think that a lack of receipt in these circumstances ought fairly to produce a conclusion that the business had no relationship with the customer in question. That is not commensurate to a business failing to reply to a communication that we consider to be likely received, which would generally be an unreasonable action.

I don’t find that M&G acted unfairly or that it otherwise failed to act in a reasonable manner such that I could justly conclude it was the primary cause of the costs incurred by the estate now, as alleged. It follows that I am therefore unable to uphold this complaint.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask the representatives for the estate of Mrs C to accept or reject my decision before 4 April 2024.

Jo Storey
Ombudsman