DRN-4673676

The complaint

Mrs M complains that M&G Securities Limited (‘*M&G*’) took an unfair decision to close a fund that she was invested in, which will consequentially cause her a capital gains tax ('*CGT*') liability. Mrs M is represented in this complaint by her husband, Mr M. Mr M says that M&G has ignored any responsibility it has to its customers to treat them fairly. He therefore feels it ought to offer compensation to mitigate Mrs M’s enforced tax liability.

What happened

Mrs M held a general investment account within an open ended investment company (‘*OEIC*’), investing in M&G’s European Index Tracker Fund (hereafter, ‘the fund’). Mr M also held the same investment. Mr M says the holdings passed back and forth between them over the years, in order to manage dividends and for CGT purposes.

On 28 April 2023, M&G sent a letter to affected investors with holdings within the fund, explaining it intended to close the fund. It set out how the fund had, for some time, been too small to be commercially viable and M&G didn’t expect its assets to grow in the foreseeable future. It included an information booklet highlighting in greater detail the reasons for the closure, the alternatives it had considered to mitigate or avoid the closure (though none of these were feasible) and the options open to investors moving forward.

In Mrs M’s case (for investments held outside an ISA wrapper), she was given the option of switching her investment to an alternative fund from M&G’s OEIC range. Alternatively, she could sell her holding. She was asked to confirm her choice by 29 June 2023. Should M&G not receive a reply, the default position was that the shares would be sold. M&G told Mrs M that both options would be deemed a disposal of her shares in the fund for CGT purposes, which may give rise to a CGT liability.

The following day, Mr M sent a secure message to M&G noting he wanted to make a complaint from himself and Mrs M. He said they were disgusted with M&G because they felt that a business of M&G’s standing ought to give its customers an option that does not incur a CGT liability.

M&G rejected the complaint on 12 May 2023. It said it had made some changes to the fund’s fees to improve value and appeal for investors in recent years. Sadly, the changes didn’t result in a significant increase in investment and the fund remained commercially unviable. It had also considered merging the fund with another, both internally (for which there was only one potential option) and externally – but it could not approve a suitable candidate with its depositary business or with appropriate regulatory and legal consent.

Finally, it told Mrs M that it appreciated that it was disappointing news, however its decision to close the fund for the reasons it had outlined remained, and it did not propose to change this decision or the timing of when the fund would close. M&G recommended that Mr and Mrs M seek advice on tax, if appropriate.

Mr M didn’t agree and sent some further comments to M&G. He said that despite he and Mrs M apportioning their gains to mitigate Mr M’s higher tax band, they would still likely incur a

£5,000 CGT liability. He felt M&G ought to therefore pay this sum on an ex-gratia basis.

M&G thereafter issued a further complaint response on 23 May 2023. It explained how it had hoped that by giving notice at the beginning of a tax year this would enable most customers to be able to put their tax affairs in order before any payment of CGT was required. It had also allowed beyond the 60-day industry standard notice period. The fund's last day of trading was 30 June 2023.

Mr M brought the complaint to this service. A second complaint was then set up for his own investment. In respect of both complaints, Mr M set out a chronology of the circumstances. He also made further written submissions. In summary, Mr M said:

- he and Mrs M had started making some sales in their holdings within their CGT allowance in April, at the start of the 2023/2024 tax year;
- this meant the announcement from M&G came as a bombshell to them;
- he and Mrs M feel that M&G has made no reasonable attempt to address the issues that the small percentage of customers with CGT liabilities have;
- if M&G was able to reduce its own costs by closing an underperforming fund, it ought to be able to provide appropriate compensation for the limited number of customers that have been negatively affected by its decision.

An investigator reviewed the complaint, but she didn't think it should succeed. She noted that the decision was a commercial matter for M&G, providing it had complied with regulatory rules when closing the fund – which it had. She also didn't believe that it was appropriate to hold M&G accountable for Mrs M's CGT liability in the circumstances.

Mr M said he and Mrs M didn't agree – he said that he felt M&G hadn't complied with rule COLL 6.6A.2 under the relevant Financial Conduct Authority ('*FCA*') rules. That rule required an authorised fund manager of an undertaking for collective investment in transferable securities to both ensure that the unitholders of any such scheme it manages are treated fairly, and refrain from placing the interests of one group of customers above the interests of any other group of customers.

Since M&G had repeatedly said that only a small number of investors were financially disadvantaged by the closure of the fund, this must indicate – in Mr M's view – that some investors have had their interests preferentially considered over others.

Our investigator explained that in order for her to say M&G placed the interest of some unitholders above others, it would have needed to do so in a demonstrable way – such as, by closing the fund for all unitholders but allowing certain investors and not others to invest in a largely similar fund or by giving tax efficient investors more notice of closure than non-tax efficient investors, for example. She therefore still didn't think M&G had acted unfairly.

Mr M remained of the view that M&G had not behaved reasonably, and he asked for Mrs M's complaint to be referred to an ombudsman. The complaint has now been passed to me.

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.

Mr M and his wife have brought complaints to this service about their individual investments, as they were both affected by the closure of M&G's fund. Though the two decisions will include much of the same wording, this decision is specific to Mrs M's complaint.

From my review of this complaint, I appreciate the depth of feeling Mr and Mrs M have about this matter and I realise my decision won't be what they have hoped for. However, I'm unable to agree that Mrs M's complaint should succeed. I'll summarise my reasons for reaching that conclusion below.

I thank Mr M for the submissions he has made on his and Mrs M's behalf regarding the complaint, both to M&G and to this service. I have considered everything both parties have had to say about the complaint, but this doesn't mean I will be addressing every individual argument put forward.

This service's role is to investigate disputes and resolve complaints informally, whilst taking into account relevant laws, regulations and best practice. In reaching my decision, I'll focus on the issues I believe to be central to the complaint to decide what I think is fair and reasonable in all of the circumstances. We are not a court; and though there are rules I may rely on in respect of complaint handling procedures, I am not required to comment on each point or make specific determinations on every submission put forward by the parties.

It's also important for me to point out that we do not act in the capacity of a regulator. That means our decisions don't ordinarily interfere in how a business may conduct its operations or exercise what may be commercial judgment on the provision of a particular service. That remit falls to the FCA.

I say that noting that it is not my role to instruct M&G to make an alternative business decision in respect of closing the fund or direct it to act differently in certain circumstances. Importantly, the closure was undertaken with oversight and approval from the FCA.

What I must consider is whether M&G has acted fairly and reasonably in the circumstances of closing the fund – in respect of the complaint being made by Mrs M.

The FCA has specific rules set out in the Collective Investment Schemes Sourcebook ('*COLL*') that M&G was required to comply with when closing the fund. The Sourcebook explains how the rules have the statutory objective of protecting customers, by providing a cost effective and fair means of winding up authorised funds and terminating sub-funds of specified investment schemes.

Specifically COLL 7.3.1 gives the following guidance:

> "*COLL 7.3.1 G*
>
> *Explanation of COLL 7.3*
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> *(1) The winding up of an ICVC may be carried out under this section instead of by the court provided the ICVC is solvent and the steps required under regulation 21 the OEIC Regulations (The Authority's approval for certain changes in respect of a company) are fulfilled. This section lays down the procedures to be followed and the obligations of the ACD and any other directors of the ICVC.*
> *(2) The termination of a sub-fund may be carried out under this section, instead of by the court, provided the sub-fund is solvent and the steps required under regulation 21 of the OEIC Regulations are complied with. Termination can only commence once the proposed alterations to the ICVC's instrument of incorporation and prospectus have been notified to the FCA and permitted to take effect. On termination, the assets of the sub-fund will normally be realised, and the unitholders in the sub-fund will receive their respective share of the proceeds net of liabilities and the expenses of the termination.*
> *(3) A sub-fund or ICVC may also be terminated or wound up in connection with a*

scheme of arrangement. unitholders will become entitled to receive units in another regulated collective investment scheme in exchange for their units.
(4) COLL 7.3.3 G gives an overview of the main steps in winding up a solvent ICVC or terminating a sub-fund under FCA rules, assuming FCA approval."

I haven't set out the further rules given at COLL 7.3.4R and COLL 7.3.5R as they're known to both parties already. However, those rules explicitly require the business to take defined appropriate steps expanding on the summary guidance above, including issuing notice to the FCA for approval – which M&G did.

Overall, I have not seen any persuasive evidence that M&G has acted unfairly in relation to its regulatory requirements or contrary to the terms and conditions which apply to Mrs M's investment account. Though the COLL rules do not give a timescale for the winding up of a fund, there is guidance in COLL 4 regarding significant or notable changes to collective investment schemes which requires there to be a minimum period of 60 days' notice; and M&G provided sufficient notice to affected investors, including Mr and Mrs M.

I recognise that customers like Mr and Mrs M may have been impacted adversely, insofar as they may incur a possible CGT liability in the 2023/2024 tax year. That notwithstanding, I cannot agree that the rules given at COLL 6.6A.2 have been breached by M&G, as alleged. In principle, chapter 6 relates to the day to day operation of the fund - whereas the circumstances here concern M&G's decision to close the fund.

That notwithstanding, I don't agree M&G has placed one group over another when making its decision. The update issued to all affected customers gave information and options as to the impact. That the vast proportion of investors had holdings wrapped in an ISA or on a bed and transfer basis, does not automatically determine that those holding only general investment accounts have been treated less favourably. Rather, Mr and Mrs M - and other customers in their position - would have been aware that at some point, gains in excess of their relevant annual allowance may be liable to CGT tax upon disposal of their assets.

I know that the timing of the announcement was upsetting for both Mr M and Mrs M. And Mr M has explained how they are mindful of mitigating liability to CGT, including offsetting losses. However, M&G could not have been specifically aware that they'd have taken taxation mitigation steps within the first few weeks of the new tax year. After reviewing (and discounting) options to avoid closure of the fund and obtaining regulatory approval, M&G took the decision as early as possible in the tax year, in order to provide sufficient notice for all affected investors. I am satisfied that in doing so, it met its statutory objective of protecting investors, by providing a fair and reasonable means of winding up the fund.

It follows that I cannot agree with Mr M that M&G ought to be liable for the approximate £5,000 CGT liability that he believes Mrs M may incur for the tax year, notably where disposal including sale of the shares would inevitably give rise to a CGT liability in any event.

My final decision

Though I recognise both Mr and Mrs M are understandably frustrated, I am unable to uphold Mrs M's complaint for the reasons set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 15 April 2024.

Jo Storey
Ombudsman