DRN-2443143

Financial Ombudsman Service

The complaint

Mr B has complained about the service he's received from House Independent Financial Advisers Ltd (House IFA) in relation to the management and provision of advice concerning his investments in a personal pension. He's complained that no advice has been provided since 2014 and the value of his pension has decreased significantly in that time. He's also particularly unhappy with what he feels was the lack of advice to switch from the CF Woodford Equity Income Fund before it was frozen.

What happened

Mr B initially invested just over £23,000 in December 2014 into a personal pension. At this point in time the business his adviser was attached to was different to House IFA. In early 2015, Mr B's pension was moved onto a platform provided by a business I will refer to as Business A. A further two investments of around £30,000 were made shortly after the move to Business A's platform. In total his portfolio consisted of 15% of the funds being invested in the Standard Life UK Equity Unconstrained Platform 1 Accumulation fund and the remaining 85% of the funds being invested in the CF Woodford Equity Income Fund (WEIF).

The servicing of the pension was later transferred to a new firm, which at that point acted as the principal for House IFA. As of August 2017, Mr B's pension was worth just under £100,000.

In February 2018 House IFA became directly authorised by the industry regulator, the Financial Conduct Authority (FCA) in their own right, effective from 2 February 2018. And at this point House IFA began the process of transferring servicing and novating clients away from its previous principal. House IFA moved all clients on Business A's platform under its advisory stewardship in one tranche. The date of this transfer was 20 February 2018. House IFA has said the main reason for this was the need to take action for clients and provide a better service. House IFA explained it saw all of its clients to complete the reviews, but three couldn't be seen so the transfer wasn't completed for them. House IFA stopped the ongoing fees on one account and refunded the fees on another. House IFA has stated Mr B couldn't be contacted and even though his fees should still have been stopped, they weren't.

In June 2019 Mr B contacted House IFA about concerns over his investment in the WEIF. By then the value of his pension had fallen by around £30,000. Mr B said the issues involving the fund had caused a 50% drop in the value of his pension. House IFA asked him what he wanted them to do, but it apparently didn't receive a response. Mr B then raised this complaint and contacted this Service to ask us to investigate.

House IFA responded to the complaint on 27 July 2019 and accepted that it couldn't demonstrate it had done enough to contact Mr B about his pension since it became directly authorised. Because of this it said it should have stopped charging him the ongoing adviser fee, so to resolve the matter it refunded the fees collected from Mr B's pension and added 5% to recognise a potential loss of investment return on these funds. It also offered to work with him on a "no-fee" basis with a view to restoring his pension to a positive position. However, House IFA also explained they couldn't be held accountable for his investment losses if they couldn't contact him to discuss and agree a switch of investments.

Mr B didn't accept the offer as he said he felt the compensation wasn't fully representative of what had occurred and the effects on him. He also added that the monies invested in the WEIF fund could no longer be accessed as the fund was now frozen with no indication, at that point in time, of when those monies will become accessible. He explained his pension is now in a worse financial position than it was originally, and he feels this was unethical.

At that point in time following the suspension of the WEIF his pension was worth around £60,000 and between £3,000 and £4,000 remained frozen in the WEIF.

The complaint was assessed by one of our investigators who felt it should be upheld. He was of the view that House IFA hadn't fairly compensated Mr B for the shortcomings in the service it had provided to him. He didn't think House IFA had made all reasonable attempts to contact Mr B and therefore hadn't provided him with the service he was paying for. He accepted House IFA had refunded some of the fees but felt it hadn't refunded all that were due. So he suggested a further amount in fees be refunded along with the 5% interest House IFA had chosen to apply to the initial refund.

He was also persuaded that Mr B would have moved out of the WEIF had House IFA contacted him as it should have done in 2018. So he felt House IFA should compensate Mr B for the loss suffered as a result of not moving from the WEIF.

He also suggested that because Mr B's monies were frozen in WEIF due to its suspension, Mr B may not eventually receive the value placed on his investment in the fund at the end date, and in the meantime couldn't sell his investment and invest the proceeds elsewhere. So he set out how House IFA should address this, as below:

- House IFA should use the value placed on Mr B's remaining investment in the WEIF at the end date when determining the total actual value of his investment.

- Pay Mr B a return that would likely be generated by the size of this investment in a two-year period. They should calculate this by using the average annual return from our appropriate benchmark over the past 20 years. House IFA may appropriately deduct any proceeds Mr B received from the liquidation since the end date and prior to the date of their calculation

The investigator also felt the effect of this error on the part of House IFA should be recognised with a payment of £250.

House IFA didn't agree with the assessment. It responded, this time in conjunction with its Professional Indemnity (PI) insurer. It explained it felt it had documentary evidence to show it had tried to contact Mr B and that he didn't do anything to mitigate his own loss. It explained Mr B hadn't updated House IFA with new contact details for himself and then went to Europe for eight months. House IFA also felt there was nothing to suggest that Mr B would have moved his funds from WEIF even if it had contacted him as he was a speculative investor and in its view there wasn't a suitable portfolio containing a similar level of risk. However regardless of this it offered £11,000 in full and financial settlement as a way to resolve the matter amicably.

Mr B didn't accept the offer. And the investigator wasn't persuaded to change his initial outcome.

As no agreement could be reached the complaint has been passed to me to decide.

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.

Having done so I think the complaint should be upheld.

Firstly, it's important to make clear that while Mr B is unhappy with matters that took place before House IFA became a directly authorised firm, House IFA can only be held responsible for what happened after this point, 2 February 2018. Anything Mr B is unhappy with that took place before this time needs to be addressed to House IFA's principal.

From the response we have received from House IFA it isn't disputed that Mr B wasn't contacted by House IFA as he should have been after it had become directly authorised.

But what I need to consider is whether failure to contact him was the sole responsibility of House IFA and if so what do I think, based on the evidence in front of me, would Mr B have done with his pension funds had he been contacted and what the effect is of House IFA's failure to contact him.

House IFA feels that it wasn't solely its responsibility to contact Mr B and that if he was so unhappy with his fund performance, he should have contacted them himself. It also feels it made all reasonable attempts to contact him. However, I can't ignore that when House IFA first addressed the complaint before involving the PI insurers it categorically accepted that it couldn't demonstrate it had *robustly* made all attempts to contact Mr B. In fact in its first answer to the complaint House IFA initially stated it:

cannot demonstrate attempts to contact him so of course we must uphold the complaint and repay the fees. This should have happened at the time of not being able to contact so we have also added 5% to this refund to allow for loss of return on this fee deduction.

This is very persuasive in my view so to receive a response with a slightly different tone when the PI insurers became involved is a surprise for me to see. Nevertheless, taking account of the arguments in both responses I am not satisfied that House IFA did all it could to contact Mr B.

The records House IFA provided to show how it attempted to contact Mr B state the following:

- *5/4 – Called to find work number – cannot fund, ask in gym if anyone seen him.*
- *10/4/18 – Speak* [anonymised name] *and* [anonymised name]*, not seen* [my amendment].
- *10/4/18 – Find* [anonymised name] *no, not correct* [my amendment].
- *22/5 – Ask* [anonymised name] *to drop note at his address* [my amendment].
- *09/07/2018 – Check account with Business A, no idea on where* [Mr B] *is – produce report* [my amendment].
- *1/11/2018 – Review due, write.*

While I can see there was intent to contact Mr B I am not satisfied from this record (which is all I have been provided with) that House IFA made *all* reasonable efforts to contact him. Indeed there's no record here of an attempted call, or an email or even something to indicate House IFA wrote or intended to write to Mr B directly. While it's apparent he wasn't contactable through more informal methods, in my view House IFA still had an obligation to attempt to contact him through more formal channels.

I appreciate House IFA has said that Mr B had moved address and employer and had failed

to provide updated contact details. But in my view it's only reasonable to say a business can't be at fault for failing to contact a client in this situation provided the business can demonstrate it attempted to in the first place. And I can't see this has been reasonably demonstrated in this case.

Furthermore, Mr B said in an email he was only away in Europe for eight months from June 2019. This doesn't cover the period during which House IFA was advising clients to transfer away from Business A's platform, in February 2018. There's also no indication that all his contact details – his phone number or physical address for example – changed during this time. So, I don't think this was to blame for contact not being made with Mr B.

I also don't think the point House IFA has made about it being Mr B's responsibility to call his adviser to move his funds if he was worried about them is relevant. The issue here is not whether Mr B was worried about his investment, but rather should he have been contacted by House IFA when it contacted its other clients and what would he have done had that happened.

I therefore think it's reasonable that House IFA refund the fees its charged Mr B when he wasn't actually receiving a service from it.

As already mentioned, House IFA has already refunded £1173.21, plus interest at 5% to reflect any loss of investment growth on these funds. Had these adviser charges not been taken, the funds would have remained invested where the rest of Mr B's pension fund was invested. These funds combined didn't achieve a 5% return over the period of time these charges were taken, so House IFA's offer on this is generous.

However, the charging records from Business A on Mr B's account show that in total, £1,218.13 was deducted in fees covering the period from when House IFA became directly authorised to when it was removed from his account. House IFA's records show it only received £1,117.35. It appears two adviser charges taken on 14 March 2018 of £56.30 and £44.48 have caused the difference though it's not clear why House IFA never received these. As no adviser charges should have been taken at this time, these two charges have been taken incorrectly in my view and so should also be refunded.

I have next considered what effect House IFA's lack of contact had on Mr B's pension value and potential actions and what would Mr B have done had he been contacted.

House IFA has argued that Mr B wouldn't have moved out of WEIF because he was a speculative investor. I however disagree. The suitability of the investment advice to Mr B and his risk tolerance is outside the scope of this decision, but I don't think this bears any relevance to what he would have done but for the error of House IFA. Speculative doesn't mean an investor is happy to sit back and accept significant losses. Also the risk posed by the WEIF wasn't high; given it was an equity fund I would say it held a risk level more around a moderate level. So I don't accept that Mr B wouldn't have moved out of the investment or moved to a speculative risk investment.

Furthermore, the advice House IFA was giving their clients at the time was to move from actively managed investment funds held on online platforms, to risk managed portfolio funds on a new platform. Consequently, its other clients invested in the WEIF moved to new investments although not as a result of any direct advice focussed on the WEIF.

House IFA has said it recommended this because it would benefit its clients through improved administration and provision of clearer information. The examples of this advice I've seen from House IFA alongside their reports that all their clients moved to the new platform persuades me that Mr B would have switched as well. House IFA said it took

around six months to advise the majority of its clients to switch. So it therefore follows that its likely Mr B's pension would have been switched during this time had reasonable efforts been made to contact him. Consequently, Mr B wouldn't have remained invested in either the Standard Life UK Equity Unconstrained Platform 1 Accumulation fund or the WEIF. Instead he would have been invested in a managed portfolio fund suitable for his attitude to risk from the end of August 2018 at the latest.

Overall therefore, in my view had House IFA successfully contacted Mr B in 2018 when it should have done it's very likely he would have transferred away from WEIF. The fund was struggling performance wise at that point in time and given this was Mr B's pension, it's not unreasonable that he would have wanted to minimise losses as much as possible. However, as Mr B didn't move away as he wasn't contacted, he remained in the fund which totalled a significant 85% of his overall portfolio, and as a result of the suspension of the fund his monies then were frozen.

Obviously, no one could have foreseen the suspension of the WEIF but nevertheless, I am satisfied that but for House IFA's error Mr B wouldn't have found himself in this position. He would have transferred his monies into a different fund.

Given what has happened to the fund after suspension its fortunate that Mr B has had a large amount of his WEIF investment returned to him. However, there is still an amount frozen and untouchable and this needs to be recognised by House IFA.

Overall, therefore given everything I have seen in deciding this complaint, I am of the view that House IFA didn't do all it could have to ensure contact with Mr B was made in February 2018. As a result of this Mr B continued to be charged for services from House IFA that it actually wasn't providing. Mr B also lost out on the opportunity to move his funds away from the WEIF, which I think it is likely he would have done, and as a result of this some of his monies remain inaccessible due to the fund now being suspended.

Putting things right

Fair compensation

My aim is that Mr B should be put as closely as possible into the position he would probably be in now if he had been given suitable advice.

I take the view that Mr B would have invested differently. It's not possible to say *precisely* what he would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given Mr B's circumstances and objectives when he invested.

What should House IFA do?

To compensate Mr B fairly, House IFA must:

- Compare the performance of Mr B's investment with that of the benchmark shown below. If the *fair value* is greater than the *actual value* there is a loss and compensation is payable. If the *actual value* is greater than the *fair value*, no compensation is payable.

- Pay to Mr B £250. This situation has caused Mr B significant worry mainly due to this being his pension. Given the significant size of his investment and the position of the WEIF, it has understandably caused him distress and could have been avoided.

- Repay the portion of adviser's fees not already refunded by House IFA. House IFA

added 5% to these charges to reflect the loss of investment growth on these funds and this appears more generous than the approach our service would take here. Therefore, House IFA can proceed to follow its own approach here as it won't put Mr B in a worse position than he should otherwise be in. If the above comparison shows that no compensation is payable, the difference between the *actual value* and the *fair value* can be offset against the fees with interest.

investment name	status	benchmark	from ("start date")	to ("end date")
Personal Pension (15% - Standard Life UK Equity Unconstrained Platform 1 Accumulation fund, 85% - CF Woodford Equity Income Fund.)	transferred	FTSE UK Private Investors Income Total Return Index	30 August 2018	Date Mr B transferred away from House IFA

Actual value

This means the actual amount paid from the investment at the end date.

At the end date, part of Mr B's investment remained frozen in the WEIF, so it wasn't payable at that time. It would be unfair to House IFA for this investment to be considered to have no value, as Mr B has already received some of the investment value back from the liquidators and he'll likely receive further disbursements until the liquidation is concluded.

However, Mr B *may not* eventually receive the value placed on his investment in the fund at the end date. In the meantime, he also won't be able to sell his investment and invest the proceeds elsewhere.

To fairly address this, House IFA should:

- Use the value placed on Mr B's remaining investment in the Woodford Equity Income fund at the end date when determining the total actual value of his investment.

- Pay Mr B a return that would likely be generated by the size of this investment in a two-year period. They should calculate this by using the average annual return from the benchmark above over the past 20 years. House IFA may appropriately deduct any proceeds Mr B received from the liquidation since the end date and prior to the date of their calculation

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mr B was unable to mitigate his losses from the Woodford Equity Income fund after he complained as the fund had been frozen. Although after removing House IFA as

his adviser, they can't be held accountable for any losses he suffered on investments outside of the Woodford Equity Income fund.

- Mr B wanted capital growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a
- higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr B's circumstances and risk attitude.
- The average annual return from this benchmark from the past 20 years gives a fair indication of the likely return Mr B's funds would achieve if they weren't invested in a frozen fund.
- The rate at which the liquidators have liquidated the Woodford Equity Income fund to date suggests the entire fund will likely be completely liquidated within a two-year period.

The compensation amounts apart from that for the distress and inconvenience caused should, if possible, be paid into Mr B's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr B as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

I understand Mr B hasn't yet taken any tax-free cash from his plan, so 25% of the compensation amounts would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this.

The payment for distress and inconvenience should be paid to Mr B directly.

My final decision

My final decision is that I uphold this complaint. I direct House Independent Financial Advisers Ltd to pay Mr B the amount calculated as set out above.

House Independent Financial Advisers Ltd should provide details of its calculation to Mr B in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 27 April 2021.
Ayshea Khan
Ombudsman