

## The complaint

Mr P complains that Sovereign Money Matters Ltd didn't provide the advisory service that it should have and this resulted in him making a loss.

## What happened

Mr P had been a long-time client of SMM and was happy with the advice he received from his adviser, Ms C. However, in 2017 she went on maternity leave and subsequently decided to leave the firm and wrote to Mr P at the end of the year to inform him that the ongoing annual reviews of his investments would be carried out by Mr F.

Mr F wasn't employed directly by SMM but by another business, Sovereign Wealth Limited (SW) - an Appointed Representative of St James Place Wealth Management plc which could only advise on its products.

Mr P complained to SMM and in its response of 18 July 2019 it made an offer to settle his complaint on a full and final settlement basis by refunding the last 12 months of fees paid amounting to £2,495 and charging no fees for the following 12 months. Mr P didn't accept the offer and SMM then provided its final response to the complaint in which it made the following key points:

- Overall, the combined portfolio of the General Investment Account (GIA), ISA account and Pension account has achieved its potential for growth and has performed as expected compared to sector averages.
- There has been some drift away from the benchmark over the last three months which has prompted it to reconsider its investment philosophy.
- Mr P had accepted a degree of risk by investing in financial markets in line with his attitude to risk which was medium-high.
- His portfolio had achieved overall gains despite market volatility.
- It could not have foreseen the suspension of the WEIF and it isn't appropriate to single out this fund .
- It would not have recommended a change to the portfolio's composition at review by advising moving out of the WEIF unless there was a specific instruction from Mr P.

Mr P didn't accept the offer from SMM because he thought he should be compensated on the basis he would have come out of the WEIF if he had seen an adviser before the fund was suspended.

Mr P referred his complaint to us and one of our investigators considered it and concluded that SMM should repay the fees for the 12 months up to July 2019 and thereafter to when Mr P stopped using SMM's services in 2020. The investigator didn't think SMM should pay anything for Mr P remaining in the WEIF as he wasn't satisfied that if it had provided a better service this would have resulted in him coming out of the fund before it was suspended.

Mr P didn't agree with the investigator. In summary he made the following points:

- He wasn't made aware that the independent advisory firm he had a relationship with

- for many years was being integrated into another firm with links to SJP.
- He had no idea at the time he was passed on to Mr F that he could only sell investments offered by SJP.
  - The market concern and of the FCA about the performance of the WEIF had been regularly featured in the financial press in the months preceding the suspension of the fund.
  - Levels of withdrawals were rising and institutional investors such as pension funds were withdrawing from the fund which is when he became alarmed and wanted to switch out of the WEIF.
  - We have been given notes of discussion between him and Mr F but he had conversations on his mobile phone which are unlikely to have been recorded by the SMM record management system.
  - In one of those discussions Mr F confirmed he couldn't advise on the whole of the market so he couldn't have advised to switch an investment even if he felt this was necessary.
  - He had no way of selling his position in WEIF.
  - There was a period of around six weeks of failed interaction and lack of advice during which he was increasingly desperate to switch out of the WEIF.
  - SMM were unable to give advice when requested on a particular fund and as such failed to act as a financial adviser and failed in their duty of care to him as a client.
  - SMM didn't provide advice on WEIF when he wanted it as it didn't have a qualified adviser in place to provide him with advice.
  - During the period in spring 2019 when he wanted advice on the WEIF, SMM didn't suggest that it thought the fund would recover as they have now said.
  - He doesn't believe it had any visibility or management system in place to monitor what was happening with non-SJP assets under management.
  - He believes that various IFA firms were acquired by Sovereign to expand the client base with a view to migrating clients to SJP offerings but no account was taken of those clients who were recently invested in non-SJP products who couldn't be advised until suitable for cross or up sell to SJP products in a few years.
  - He could not get credible advice from Mr F who could only advise on SJP products with SJP having its own arrangement that meant it had a version of the WEIF which excluded the unlisted/small company element.

The investigator wasn't persuaded to change his opinion so the matter was referred to me for review. I issued a provisional decision upholding the complaint, the findings from which are set out below.

*"The investigator said that Mr P hadn't been provided with the level of service he should have been given from July 2018, when he wasn't provided with the annual review he should've had, and this doesn't appear to be in dispute. I agree with the investigator although I think the failure in service started before July 2018.*

*I say this because Mr P was a client of SMM and as such was entitled to expect he would have access to a financial adviser from SMM who could provide him with advice. However, that isn't what he got when Ms C went on maternity leave in early 2017. Instead, he was directed to Mr F, who was not employed by SMM but by SW, an AR of SJP as I have set out in the background to my decision.*

*According to SMM Mr F was unable to give advice and didn't do so. It has said his role was to feedback any required work to SMM arising from discussions with Mr P. It seems to me this quite clearly wasn't what the agreement between Mr P and SMM required from it.*

*I am not aware of any evidence that shows that Mr P was made aware that Mr F was not a*

replacement adviser for Ms C and unable to provide any advice and that he was simply a conduit for instructions between him and SMM.

Instead, when Ms C wrote to Mr P in December 2017 to tell him she wasn't returning to SMM she said that Mr F was a fully authorised financial adviser who would continue to carry out his annual reviews and was available to deal with any queries he had. In other words, Mr P was led to believe that Mr F would fulfil a similar function to the one she had provided when that wasn't the case. It seems to me Mr P was given the impression that Mr F would be able to provide advice – I can see little point in referring to him being an authorised financial adviser when he wasn't going to provide advice to Mr P. As such I think there was a failure to provide clear, fair, and not misleading information to him.

I understand that SMM were limited by the advisers it had available when Ms C went on maternity leave. From what it has said there was only one adviser, who had a full client load, and a trainee. But it seems to me this is something that should have been discussed with Mr P so that he was fully aware of the position and that SMM could no longer provide the service that he was expecting.

Even if it is argued that it was reasonable for Mr F to replace Ms C temporarily whilst she was on maternity leave, it seems to me that continuing that arrangement for over two years – from Ms C going on maternity leave in early 2017 to when Mr P was directed to Mr S at SMM at the end of April 2019 – wasn't.

Turning to the specific issue of whether Mr P should have been advised to switch out of the WEIF, Mr P is understandably upset that he has lost out through the suspension of the fund. I understand why he believes that SMM is responsible for this given he wanted advice from SMM about the fund in April 2019 because of his concerns about it.

However, whilst I acknowledge he did raise concerns about the WEIF in April 2019, I am not persuaded he is entitled to redress because he wasn't advised to switch out of the fund before it was suspended, for reasons I will explain.

I think it is what happened in April and May of 2019 that is relevant. In other words there is no persuasive evidence that suggests this is something that was contemplated by Mr P in 2018 or that there was any reason for SMM to advise him to switch funds at that time.

Mr P raised concerns with Mr F about the performance of his plans with specific reference to the WEIF in April 2019. As Mr F couldn't advise him he told Mr P he would arrange for an adviser from SMM to call him to discuss this and contacted SMM by email the same day.

However, it wasn't until 29 April 2019 that Mr P was contacted by Mr S from SMM -which followed Mr P chasing Mr F earlier that day having heard nothing further. But although Mr S was a financial adviser employed by SMM he couldn't review Mr P's investments and provide him with advice at the time. This was because he had only recently been employed by SMM and was awaiting authorisation from the FCA, as explained to Mr P.

Mr P chased for an update on 3 May 2019 and Mr S responded on 7 May 2019 informing him authorisation was still awaited. Mr S emailed Mr P on 16 May 2019 to confirm he was still awaiting authorisation. Mr S then wrote to Mr P on 21 May 2019 enclosing a fact find and ATR questionnaire for him to complete pending Mr S getting authorisation. Mr P raised his complaint with SMM on 30 May 2019 and the WEIF was suspended on 3 June 2019, before he had the opportunity of meeting with Mr S and discussing his investments.

I think there are two issues I need to consider in relation to what happened in April and May 2019. I think the first issue is the failure by SMM to provide an adviser for Mr P to replace Ms

*C before April 2019. In short, I think Mr P should have had an adviser that was known to him and who could have provided him with an annual review of his investments in 2018 and furthermore would have been able to discuss his concerns over the WEIF in April 2019 before the fund was suspended.*

*That brings me to the second issue, namely what the outcome of any such discussion would have been. Both parties have the benefit of looking at the position in hindsight, knowing that the fund was suspended in June 2019. To find that Mr P would have been advised to switch from the fund before it was suspended in June 2019 I have to be satisfied that it is more likely than not this would have been the outcome if he had received advice from SMM before the suspension of the fund - and I am not.*

*Mr P was obviously concerned about the WEIF, as he specifically referenced this when he spoke to Mr F in April 2019. He has referred to institutional investors coming out of the WEIF and said that this is when he became alarmed and wanted to switch out of the fund. But, whilst I acknowledge what he has said, institutional investors had been coming out of the fund before 2019 so this wasn't something that happened suddenly in the first part of 2019.*

*So, whilst I accept he was concerned about the WEIF I don't think there was some specific issue which led to him wanting to come out of the fund in April 2019. There was nothing to suggest that the fund was in imminent danger of being suspended at the time so this wouldn't have been something that would have had an impact on the advice he would have received. I am also mindful that the WEIF made up only a part of his portfolio and just because one fund was underperforming wouldn't necessarily have been a reason to switch out of it.*

*Mr P has said he had no way of selling his position in WEIF but from the information I have seen he didn't specifically say that is what he wanted to do, rather he wanted to discuss his concerns with SMM. In other words, I have seen no evidence that he told Mr F or Mr S that all he wanted to do was get out of the fund. In the circumstances I think it is more likely than not he would have relied on what he was advised to do rather than make that decision himself.*

*I accept it is possible that he would have been advised to switch out of the fund if he had seen an adviser in May 2019 - although SMM say this isn't what it would have advised – but I am unable to say that it is more likely than not this is what would have happened.*

*In summary, my findings are that SMM didn't provide the service it should have done from when Ms C went on maternity leave in 2017 and failed to provide clear, fair and not misleading information about not providing the same service going forwards after Ms C decided not to return to work. I have considered what redress SMM should pay for this.*

*I am mindful that it isn't the case that Mr P received no service at all during this period. He did meet with Mr F in June 2017 when a pending house sale was discussed and there was a discussion between Mr P and Mr F in July 2018. In both cases no action was required to be taken by SMM. I am mindful that Mr F wasn't able to provide advice and things might have been different if he had been able to give such advice. However, as Mr P had only invested in the latter part of 2016 I think it is unlikely he would have been advised to do anything different with those investments in the first couple of years in any event.*

*The award made by the investigator was along the lines offered by SMM when Mr P first complained - when it offered to repay 12 months of fees before July 2019 and charge nothing for the next 12 months.*

*I have said the failure in service started before July 2018, so was over a greater period than*

*allowed for by the investigator. I think some additional redress should be paid by SMM accordingly, but given it carried out some work I don't think a full refund of the fees is appropriate before July 2018.*

*I think SMM should repay half the fees for the 12 months up to July 2018 and then the full amount of fees from that point onwards. I have considered whether there should be a separate award for the distress and inconvenience caused but I am satisfied that the repayment in fees alone is fair and reasonable in the circumstances.*

*I appreciate Mr P is likely to be disappointed that I have found that SMM should have advised him before the WEIF was suspended but have not found that this would have resulted in him switching out of the fund.*

*However, my decision is made on a balance of probabilities and there is not enough persuasive evidence that points towards it being more likely than not Mr P would have ended up switching before June 2019 if he had seen an adviser in April/May 2019."*

I gave both parties the opportunity of responding to my provisional decision and providing any further relevant argument or information they wanted me to consider before making my final decision. SMM responded and said it had nothing further to add.

Mr P responded and said that so far as the WEIF was concerned he was reassured by Mr F during a telephone call that SJP were happy to advise clients to purchase the fund for a balanced portfolio but that he subsequently learnt the fund referred to wasn't the WEIF but a different fund with different assets. So, the advice he received about the WEIF from Mr F was totally misplaced.

Mr P also reiterated that although he wanted to exit the WEIF because of the negative public information about the fund nobody at SMM was available to assist him with this as he didn't have a real adviser at the time. Mr P said I had recognised that he hadn't been managed properly as a client and as such fees should be repaid to him but the other consequence of this lack of management was that he was unable to switch out of the WEIF when he needed to, which has led to financial loss.

Mr P also made written comments against the copy of the provisional decision sent to him. This includes comments on what I set out in the background of my decision about what SMM said in its final response to his complaint which he wants it to support with further evidence.

I summarise below what I consider to be the key points he has made about my findings:

- His persistent chasing in May 2019 was for no other reason than to exit the WEIF – what other reason would he be desperately chasing them for?
- He agrees that institutional investors had been exiting the WEIF before 2019 but in the last six weeks before suspension the withdrawals had accelerated and in the week prior to suspension the FT stated £560 million had been withdrawn in one week.
- He didn't want to stay in the fund given the bad press and would have insisted on withdrawal and switch to another asset.
- He wanted to sell his holding in WEIF and it was SMM's lack of agility that prevented this.
- It is conjecture to say he would have relied on what he was advised to do and this suggest he couldn't make decisions for himself as to whether he should exit a poorly performing fund.
- He was unable to carry out the transaction himself via a platform and was dependent on SMM doing this.

- I have referred to a meeting with Mr and Mrs F, who was this meeting between? Please check that there isn't confusion as to work carried out for his mother and who attended the meeting referred to.
- An opinion on the distress caused is subjective, and difficult to measure through email. He has been saddened to read and be reminded of what has transpired and the possible devastating consequences which could have been bestowed on other family members.
- He is not an educated man and is not computer literate so he hasn't kept records of what was discussed which SMM should have. He feels this has impacted on his ability to present his complaint but he can say wholeheartedly that his intention was to switch out of the WEIF.

### **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 have considered everything that Mr P has said in response to my provisional decision, but he has provided no new evidence that would lead me to change the findings I made.

I acknowledge Mr P may want SMM to provide further information about statements made in its final response as referred to in the background of my provisional decision. However, I am not satisfied that I need any further information to come to a fair and reasonable decision in this complaint.

Mr P has referred to the reference in my provisional findings to a discussion between Mr and Mrs F in July 2018 and queried who this was between. This was a typographical error on my part for which I apologise. I was referring to the discussion between Mr P and Mr F in July 2018. I have amended the reference in the provisional findings set out above accordingly.

I acknowledge Mr P feels very strongly about the way he was treated by SMM and is adamant he would have switched out of the WEIF if he had seen an adviser in April/May 2019. However, there is not enough persuasive evidence this would have been the outcome if he had met with an adviser, as I explained in my provisional decision.

I note what he has said about it being conjecture on my part to say he would have relied on what he was advised to do rather than make his own decision as to what he should do with the WEIF. Given the limited evidence, some element of conjecture is inevitable on my part when making my findings.

To find that he would have instructed the adviser to get out of the WEIF despite this not being what he would have been advised to do I would need to be satisfied it is more likely than not this is what would have happened. There just isn't enough persuasive evidence this would have been the outcome if he had met with the adviser.

Mr P has asked why else he would have been 'desperately' chasing for a meeting with an adviser if it wasn't to exit the WEIF. As I have already acknowledged, there is no question that he had concerns with the WEIF and wanted to discuss this with the adviser. But the fact that he was chasing for a meeting to discuss his concerns isn't evidence he would have come out of the fund regardless of the advice he was given.

I think the limited documentary evidence supports a finding that Mr P wanted advice on what he should do and there is no persuasive evidence he would have ignored that advice. I already set out the various communications between Mr P and SMM in April and May 2019, but I will comment briefly on these again.

The note of the discussion with Mr F on 15 April 2019 refers to his concern about exposure to the WEIF but doesn't say he wants to get out of the fund. Mr F said that he couldn't advise Mr P but would arrange for a SMM adviser to contact him.

This was followed by a discussion between Mr P and Mr S of SMM on 29 April 2019 who confirmed the same day that he would familiarise himself with the portfolio over the next couple of days and 'they could then have a more detailed chat'.

Mr P then emailed on 3 May 2019 asking if Mr S had any 'thoughts' on the funds, which I think again points to him wanting advice on what he should do as opposed to him having already decided he was going to exit the WEIF.

Mr S couldn't advise Mr P as he was still awaiting FCA authorisation, as he informed Mr P by email on 7 May 2019. Mr P chased again on 16 May 2019 asking how long before they could have a conversation. Mr S then emailed on 21 May 2019 saying he was still awaiting FCA authorisation.

The last communication before the WEIF was suspended was the email from Mr P of 30 May 2019 which refers to him not having heard from Mr S as to his (Mr P's) concerns over under performance of 'some funds' and complaining about the service overall.

I think the various communications I have set out above provide evidence that Mr P wanted to discuss his investments with an adviser, particularly the WEIF, and wanted advice about what he should do. They aren't persuasive evidence that he had already decided he was going to come out of the fund regardless of any advice he received.

So, whilst I accept that if Mr P had seen an adviser a possible outcome of such a meeting would have been him coming out of the fund, I can't say on the available evidence that it is more likely than not this is what would have happened.

I appreciate Mr P is likely to be disappointed that I have found that SMM should have met and discussed his investments with him before the WEIF was suspended but have not found that this would have resulted in him coming out of the fund. However, for the reasons I have explained I am unable to find it is more likely than not this would have been the outcome if he had met with an adviser.

### **Putting things right**

I think SMM should repay half the fees for the 12 months up to July 2018 and then the full amount of fees from that point onwards. It should also pay simple interest at 8% per annum on the fees paid by Mr P from the date each payment was made by him to the date of settlement.

If SMM considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr P how much it's taken off. It should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

I uphold this complaint for the reasons I have set out above. Sovereign Money Matters Ltd must calculate and pay the redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 7 April 2023.

Philip Gibbons  
**Ombudsman**