DRN-4049754

The complaint

The estate of Mrs B complains that Furnley House Limited (FH) failed to provide information about the option to switch the late Mrs B's investments to cash.

What happened

FH provided financial advice to the late Mrs B. Investments were held in an ISA and onshore bond with one provider and in a portfolio with another provider. When Mrs B passed away, her executors notified FH of her passing on 24 January 2022, a copy of the death certificate was provided on 1 February 2022. It is common ground that FH continued to provide an advisory service to the estate and this was confirmed by FH to each provider at the end of January 2022.

The executors say that FH failed to advise or inform them of the options available. They were misled into believing that funds had to remain invested until receipt of the Grant of Probate. By remaining invested, the funds were subject to market volatility, which meant the estate sustained a loss, for which compensation is sought.

FH say it was very easy for the executors to say after the event that they would have transferred to cash and maintain this would not have been the advice given at the time. These were long term investments and the estate would have been advised to remain invested, especially as markets were fluctuating. Initially, FH said they were misled by a platform provider but that point has now been conceded. There was initial confusion as to whether the assets could be sold before Grant of Probate, but both providers have confirmed that a sale could have been facilitated if the instruction came from the adviser rather than direct from the executors.

Our investigator considered the complaint and decided to uphold it. On balance, he concluded that FH ought to have been aware of the option to switch to cash during the bereavement process and this should have been communicated to the executors. The executors were relying on FH as the financial adviser and as no information was provided the executors were unaware of this option or of the requirement to produce the will. Our investigator placed weight upon the executors' confirmation that the will would have been executed imminently and concluded that had the option to sell been presented, it was likely this would have been excercised.

Our investigator noted FH believed correct advice had been given as the investments were long term commitments but thought FH ought to have reviewed the situation given the change in circumstances and the likelihood that the assets would need to be liquidated to execute the will. Our investigator concluded that FH had failed to treat the estate fairly, due regard had not been paid to information needs and information was not provided in way that was fair, clear and not misleading.

Our investigator recommended that FH pay the difference between the value as of 1 February 2022 when the death certificate was provided concluding this would have been the likely date of sale and the actual date of sale in June 2022, a total of £30,229.50. To reflect that the fact that the estate had been deprived of these funds, our investigator recommended

the addition of 8% simple interest per year from 15 February 2022 (allowing time for the funds to settle) to date of payment.

The estate has accepted this outcome but FH disagrees. FH say that even if the estate had been given the option to switch to cash, the advice from FH would have been to remain invested so the executors would have had to contact the providers directly and no action would have been taken until probate was granted. Further, FH say that even if funds had been paid in February, they would have been transferred to a solicitor's client account, so the amount of interest recommended was too high.

As the parties do not agree the matter has come to me for a final decision.

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've considered the timeline of events. The executors informed FH that Mrs B had passed away on 24 January and asked what would happen to the investments and would they be frozen? The adviser replied asking for a death certificate and explaining that no further activity would take place on the account, "like its frozen," but the value would fluctuate in line with market movements.

On 1 February a copy of the death certificate was provided. On 8 February, the executor asked again whether the funds would continue to be invested until withdrawn when probate was granted, the adviser replied that the investments would continue to go up and down until encashed.

On 22 March, the executor raised concern about the drop in value of the investments by £8000 and stated they knew the risks at the time of investment but wanted to hear the advisers view now as he had more financial knowledge. No response was received.

In June 2022, I've seen that the adviser urged waiting before encashing because the market was poor but the instruction was given to proceed with encashment by the executors as the money was required, they said "we just want it done now." This supports my view that the executors would have proceeded to encash earlier if they had been aware of the option. The contemporaneous evidence shows concerns were being raised about volatility and when the option to sell was available it was taken, even though the adviser recommended delaying. I'm not persuaded that the adviser would have refused to act on the instructions of the executors to sell if this had been given earlier.

Further, I've noted it was FH's default position to advise consumers to remain invested when markets fall in value when invested for the longer term, but I've considered the change in circumstances. On balance, I am persuaded that it was the executors' intention to distribute the funds after probate, which was imminent. This meant the investment timeframe was shorter and so there was less time to ride out low market performance. As the executors have clearly stated there was a change in circumstances and the risk profile had changed.

It's accepted that FH remained the adviser for the investments after Mrs B passed away and this was confirmed in an email to the providers on 28 January 2022, FH therefore had an ongoing duty to the estate. There's nothing to show that consideration was given to the particular change in circumstances set out above by the adviser at the time. From the detailed investigation by our investigator, I've seen that both providers would have accepted instructions from the adviser to sell prior to the receipt of Grant of Probate. I think this is something the adviser ought reasonably to have been aware of, given they were continuing

to act for the estate in a professional capacity. In my view, there was a failure to give clear information to the executors about the options available once Mrs B had passed away.

I think it is more likely that not that the executors would have elected for the certainty of crystallising the value of the investment by selling rather than remaining invested at a time when they knew the market was volatile. I think that's supported by the fact that the executors did instruct sale after the adviser urged that they stay invested. They've given a consistent account about this over time that it was always their intention to pay out the funds from the estate as soon as possible in accordance with Mrs B's wishes. So, I'm persuaded that it is more likely than not that they would have selected to sell the assets if this option had been presented to them. I reject the suggestion by FH that this assertion is only made with the benefit of hindsight.

Had the option to sell been taken, which I consider is likely, it is plain that the value of the investments would have crystallised earlier and I find it is likely that losses could have been avoided. In this particular case, I think it is fair and reasonable to compensate for the difference in value**.**

Putting things right

I agree with the method of calculation set out by our investigator. Had the option to sell been given at the time when the executor notified FH of the death of Mrs B, the instruction to sell could have been given when the death certificate was received, which was on 1 February 2022.

Date	Valuation/surrender value			Total
	Transact ISA	Transact Onshore Bond	Embark	
01 February 2022	£120,608.95	£204,349.07	£130,361.08	£455,319.10
23 June 2022			£120,143.32	
28 June 2022	£112,920.90	£191,362.46		
4 October 2022		£662.92		£425,089.60
Difference	-£7,688.05	-£12,323.69	-£10,217.76	-£30,229.50

I have considered interest; this is awarded to compensate consumers for being deprived of access and use of their funds. In this instance, had the sale taken place around 1 February 2022, time would still have been required for funds to settle and these funds could not have been accessed by the estate until probate was granted. So, in a small departure from the view of our investigator, I consider it is appropriate for interest to be applied on the loss sustained from the date the funds could have been distributed, namely from date of Grant of Probate, 18 March 2022, to date of settlement. I consider that it is fair and reasonable to apply 8% simple interest over this period to compensate for the estate for being deprived of access to the funds.

My final decision

I direct Furnley House Limited to pay the estate of Mrs B £30,229.50 plus interest as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs B to accept or reject my decision before 8 March 2024.

Sarah Tozzi
Ombudsman