

The complaint

Mr F is the owner and director of a business that I'll refer to as F, a limited company which held a corporate General Investment Account (GIA).

F complains that an offer of £500 compensation from Evelyn Partners Financial Planning Limited ('EP') is inadequate to reflect delays it admitted responsibility for when transferring the GIA (along with various other personal investments belonging to Mr F that are not the subject of this complaint) to another financial services business (whom I'll call 'B' to keep things simpler.)

To put things right, F would like significantly more compensation to cover financial loss arising from EP's '*contributory incompetence*' during the transfer process and to reflect other costs associated with the complaint.

What happened

Alongside other assets Mr F held with EP, F wanted to transfer a corporate GIA to B. F complained that, whilst B was responsible for some delay, EP's negligence had resulted in an unreasonably extended transfer period for the corporate account.

When F complained to EP, it said its errors hadn't resulted in any quantifiable financial loss it could identify. EP acknowledged that it was responsible for some of the delays there had been during the overall transfer process involving this corporate GIA and other non-corporate investments and offered to pay £500 overall by way of an apology for the inconvenience caused in relation to this (and the other) transfers.

F referred the complaint to us. Our investigator didn't identify any investment loss or other financial loss arising out of delays during the transfer of the corporate GIA. She mainly said that as most of the funds were transferred 'in-specie' (in other words, as investments rather than cash), F had remained invested in the market throughout and there was no crystallised loss. She explained that this service is unable to award compensation for distress and inconvenience to a business. So she didn't recommend that EP needed to take any further action.

F disagreed with our investigator, mainly saying that both EP and B shared blame for the transfer having taken so long to complete and that redress was due for this. The complaint came to me to decide. I issued a provisional decision.

What I said in my provisional decision

Here are some of the main things I said.

'I have set out detailed reasons elsewhere, which have been communicated to the parties, which explain how I've reached the conclusion, on balance, that unreasonable delays on EP's part during a transfer process that included this corporate GIA alongside other investments were a key reason why F was not able to reinvest as quickly as would've likely

happened, had the transfer completed sooner. This raises the question of fair redress and I'm focusing on the corporate GIA in this decision.

EP would be responsible for paying redress for any investment loss caused to F due to service failings EP was responsible for in connection with the transfer of this corporate GIA. So I've looked carefully at what happened during the transfer of this particular asset.

The following timeline briefly shows some key dates:

11 February 2022 - transfer instruction signed.
23 February 2022 – B posted transfer instruction to EP
2 March 2022 – B chased EP in the absence of any response to the transfer instruction sent
7 March 2022 - EP says it received transfer instruction
10 March 2022 – B says it re-sent the transfer instruction
11 March 2022 – B received asset valuation from EP
18 March 2022 - B received account verification from EP
31 March 2022 – following an exchange, EP received acceptance from B confirming the assets to be transferred along with several conversion requests.

Most of conversions were completed in early April, although there was a delay with one fund.

18 May 2022 – final fund was converted
20 May 2022 – EP initiated the transfer, completing the process for this account.

EP said that upon receipt of the transfer paperwork on 7 March 2022, it became responsible for carrying out its part of the transfer process which mainly involved liaising with the third party which held the underlying investments for the account.

It's unclear to me why the initial transfer instruction for this asset wouldn't have been received by EP in the normal course of the post. The transfer authority appears to have been correctly addressed and B confirmed its records show it was sent to EP. And given that B told us it didn't re-send the transfer authority until 10 March, it follows that the form that EP actioned on 7 March was most likely the one that B sent originally.

I find on balance that EP did receive the initial form and so it should have been able to start the transfer process sooner than actually happened. This meant that, so far as F was concerned, there was a delay right from the start. B was slow to send the transfer and EP delayed acting on it as quickly as ought to have happened. Bearing in mind the recommended transfer time for this sort of asset is 30 calendar days, a substantial portion of that time was already lost.

In reality, I think it's fair to say that in-specie transfers can often take longer where there are 'unsupported' assets which can't simply transfer to the new provider. That's what happened here. But even so, I think F's expectation that this transfer would be completed within a couple of months was reasonable. Had EP begun its part of the transfer process sooner, as I think it ought to have been able to do, then I think it's likely the transfer process would've completed sooner.

As far as I can see, EP dealt reasonably with most of the conversions - some assets were transferred and settled on 6, 11 and 25 April 2022 but B said most converted assets were still outstanding when it chased EP on 25 April and 4 May 2022.

EP responded the same day advising B that it was still awaiting the conversion of two assets and on 5 May 2022, EP sent B a cash balance of £24,144.42.

There was still a delay with the other fund which wasn't converted until 18 May 2022 and the transfer initiated two days later.

EP was not responsible for the way the third party (or the acquiring party B) conducted business. I've allowed for the fact that the time it took to receive an acceptance from B confirming the assets to be transferred was outside EP's control and EP was reliant on the third party dealing with the conversions. But I'm mindful that this transfer took longer to complete than it should have done due, in part at least, to EP not actioning the transfer instruction with due expedition at the start.

I think given this, there was an onus on EP to be as proactive as possible to minimise further delays.

The Financial Conduct Authority ('FCA') has set out Conduct of Business Rules which require EP as the ceding platform provider to take all reasonable steps to give effect to Mr F's transfer instructions (COBS 6.1H), including cooperating with and promptly providing B with information as necessary. I consider that EP could and should have chased up with the third party and communicated better with B about outstanding assets – keeping in mind that by 23 April, EP had been actively involved for two months already and B was still chasing for information.

In response to the complaint about this transfer and the others, EP said it was '*...sorry for the delays you have experienced, for which Evelyn Partners must accept some of the responsibility. Although, I believe other parties, including (B), were also partially at fault for the delays caused.*'

Taking all this into account, I uphold F's complaint that EP was responsible, at least in part, for unreasonable delay during the process of transferring F's corporate account. I am satisfied in these circumstances that it's fair and reasonable to require EP to contribute to redress if the delay resulted in investment loss to F.

I've thought carefully about the best way to approach the issue of financial loss here, given that it's uncertain what exactly F would've done had the transfer completed sooner and within a reasonable timescale.

I've thought about what F did in fact do after the transfer completed and whether it would be a fair proxy to put F in the position the business would be in if it had made all the same sales and purchases, but sooner. I don't however think that is the best way to approach fair redress as it supposes that F would've traded the same way – and I don't know if that's likely.

I can't be certain what exact funds F would've sold and bought so I am suggesting what I think is the fairest way to restore F's position fairly.

From what Mr F has said, I consider that the usual FTSE UK Private Investors Income total return index (known prior to 2017 as the FTSE WMA Income Index benchmark) is a reasonable basis of comparison for the purposes of working out the likely investment return F would have made had the company been able to invest sooner. This index is a set of calculations that demonstrates performance of various asset classes. It is diverse, transparent, used industry-wide and adjusted quarterly. I'm using this to reflect the fact that this is the sort of return F would've got with some similar risk to its money in the sort of investment Mr F favoured. So EP should compare that to actual investment performance from 11 April 2022 to when the transfer completed and work out if this shows any investment loss.

I've chosen this date, some two months after Mr F initiated the transfer process, because, like Mr F, I think this would've been a more than reasonable timescale for how long the transfer should have taken. So, had there been no delays, I think this is the point at which Mr F would have likely had his investments with the new provider.

EP wasn't exclusively responsible for all the delays here – part of the reason the transfer took so long was due to the way the acquiring provider handled its end of the process. That's the subject of a separate complaint so I don't need to say much more here. But I do need to decide how to apportion responsibility for any investment loss that is identified.

I don't think it's realistic to expect to be able to identify specific losses attributable to particular delays here, and I accept that what I'm proposing is imperfect. I have found unreasonable delay by EP and B (which they admit responsibility for) contributed to the overall length of time taken for the transfer to complete. So what I'm suggesting is a broad brush approach to finding a fair and reasonable outcome here that, overall, is fair and reasonable to all parties concerned.

Sharing responsibility for any investment loss equally between EP and B is a rough and ready approach, but in the spirit of reaching a broadly fair outcome here, I think it's probably reasonable.

If F incurred additional fees as a result of not moving to B sooner (because EP's fees were more than the fees B would've charged F over the same period) then it's fair and reasonable to expect EP to refund the money F lost as a result. I've set out directions below.

I appreciate that Mr F would like me to award further redress. But fair redress here can't include making any award to reflect the hourly rate chargeable by him as the business owner as there's no evidence of any loss accruing to F. And whilst this service can sometimes award a payment in respect of distress and inconvenience to affected individuals, F is a legal entity in its own right. So F can bring this complaint, but a business is not a person capable of suffering distress and inconvenience. And Mr F isn't entitled to receive compensation in his personal capacity as the representative bringing the complaint on behalf of F. This means that I couldn't award compensation for distress and inconvenience in this situation.

Several different complaint points have been mentioned on behalf of F over the course of this matter. If I have not referred to each point raised it's because I have nothing further I can usefully add to what our investigator has said already. I have concentrated on what I consider to be the main points that affect the outcome of this complaint.'

What the parties said in response to my provisional decision

F made no further comment.

EP disagreed with me, largely on the basis that it said it is unrealistic to assume EP received the posted transfer documentation in late February, when it looks to have been sent to an incorrect address not used for transfer instructions. EP also said it wasn't responsible for providing an incorrect address to B and '*most importantly*' EP's preferred method of receiving instructions was via ALTUS, which B had used in the past for other transfers, so there was no logical explanation for B having sent F's transfer instructions by post.

EP said it couldn't ultimately start the transfer until it received B's acceptance on 31 March 2022 and that since some assets required conversion into different fund classes that B was able to hold, this unavoidably extended the time taken to complete the transfer. EP said it completed its part of that process and most of the assets were converted in a timely manner, but it wasn't responsible for the completion of this task and reliant on relevant

fund managers to carry out these conversions. It said once the final conversion completed on 18 May 2022 the transfer was initiated two days later. On that basis, EP didn't accept it was responsible for any delays with this transfer.

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'd like to assure EP that whilst I have highlighted above only what seem to me to be the main points of concern raised I've thought carefully about everything again before coming to my final decision.

EP hasn't provided me with any new information that changes what I think about this case. I'd already considered all the main points mentioned above when thinking about my provisional decision. I have addressed in my provisional decision all the points which have a bearing on the outcome. And I have explained elsewhere why I am satisfied, on balance, that EP probably did receive (somewhere in its business) the bundle of transfer forms, including this one, which B posted on 23 February 2022. I have found that EP's failure to action the transfer sooner than happened was most likely due to EP failing to manage post internally in an effective way – and this was a key reason why the transfer was delayed.

I accept that not all the delay was solely EP's fault. But given its poor handling of the transfer request at the outset, I think there was an onus on EP to do more to minimise any further delays – bearing in mind that EP was aware that this was one of a number of related transfers underway at the same time all subject to delays. So EP could, for instance, have engaged more with B and taken the initiative to chase things up – as I think it ought to have done. And had it done so, this might well have advanced matters more quickly. I think this is an important consideration as EP was aware that some parts of the process would be beyond its control, so it ought fairly and reasonably to have done more in these circumstances to try and get the transfer back on track, as far as that was achievable.

This leads me to conclude that it is fair to uphold this complaint and award the proposed redress for the reasons I explained more fully in my provisional decision.

Putting things right

EP should:

Compare the performance of F's transferred investments with that of the benchmark shown below and pay half the difference between the fair value and the actual value of the transferred investments. If the actual value is greater than the fair value, no compensation is payable.

EP should also pay interest as set out below.

Benchmark	From ("start date")	To ("end date")	Additional interest
FTSE UK Private Investors Income Total Return Index	11 April 2022	Date the respective transfers completed	8% simple per year on any loss from the end date to the date of settlement

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Note that there may be tax payable on any interest awarded.

EP may wish to liaise with B when carrying out the above calculation as it will be responsible for working out its half share of the redress owing to F.

Re any fees paid in respect of the corporate account

It's my understanding from what EP has said that no fees were charged so I am not expecting that F will need to take advantage of this part of my decision. But I include here the directions I set out previously in case the situation should change or further information comes to light.

If F provides EP with evidence of the fees it incurred in respect of the assets transferred in relation to the corporate account, between 11 April 2022 (when the transfer ought to have completed) and the respective date(s) of actual transfer, then EP should compare the fees F actually paid in respect of this period with the fees F would've paid to B during the same period, and if F is worse off financially as a result of what happened, EP should pay F the difference.

EP should also pay F 8% simple per year on any loss due to having overpaid in respect of fees, from 11 April 2022 to the date of settlement (since this would be money F had unfairly been deprived the use of, after the date the transfer ought to have completed).

My final decision

I uphold this complaint about the transfer of F's corporate GIA and Evelyn Partners Financial Planning Limited should take the steps set out above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision before 6 March 2024.

Susan Webb
Ombudsman