DRN-4546262

The complaint

Mr F complained that an offer of £500 compensation from Evelyn Partners Financial Planning Limited ('EP') was inadequate to reflect delays it was responsible for during the process of transferring various investments to another financial services business (whom I'll call 'B' to keep things simpler.)

To put things right, Mr F would like additional compensation to cover losses he attributes to EP's '…*contributory incompetence in transferring my assets within the estimated timescale*.'

What happened

Mr F held the following investments with EP:

- an Individual Savings Account (ISA)
- a Self-Invested Personal Pension (SIPP)
- a personal General Investment Account (GIA).

Mr F wanted to transfer these assets, which were mostly invested, to B. Mr F had given instructions for the transfers to be made 'in specie' – in other words, Mr F's existing holdings were to be transferred to B (as opposed to being sold and the cash transferred). So, apart from investments that B couldn't accept and/or Mr F subsequently decided to sell, he mostly remained invested throughout.

When Mr F complained to EP about how long transfers were taking to complete, it partly upheld his complaint and acknowledged that it was responsible for some of the delays Mr F had experienced. EP said it didn't feel that its errors had resulted in any quantifiable financial loss but, in recognition of the significant inconvenience he'd been caused, EP offered to pay Mr F £500 by way of an apology.

Mr F didn't feel this went far enough to resolve things and so he brought his complaint to us and one of our investigators looked into what happened. Our investigator agreed with EP. She didn't identify any investment loss or other financial loss and felt that the redress offered by EP was fair and reasonable.

Mr F disagreed with our investigator, in particular, about the extent of EP's culpability for delays during the transfer process and on the issue of investment loss.

The complaint came to me to decide. I initially felt that EP had done enough to put things right and issued a provisional decision to this effect but, on further reflection, I revised that opinion. I issued a second provisional decision explaining my view that EP needed to do more. Here are some of the main things I said.

'After reflecting on everything I've now seen and been told, I think it is more likely than not, on balance, that EP's (admitted) part in the unreasonable delays was one of the key reasons Mr F was not able to invest as quickly as he likely would have done, had the transfer completed sooner. It follows that in these circumstances, EP is responsible for paying

redress for any investment loss that he suffered as a result of service failings it was responsible for.

I also now think that I previously attached too much weight to EP's assertion that it didn't receive the relevant transfer paperwork that was sent on 23 February 2022. When a third party business provides evidence that a communication was correctly addressed and sent, this service generally would accept that position. In this case, B has said it checked the position and its records show the address Mr F provided for EP was used on the form and it was sent to the same address – and this was the address also used when the paperwork was re-sent. On balance, I now think it's more likely than not that EP would have received the original transfer paperwork – because there's no particular good reason why it wouldn't have done and B hasn't said its letter was returned through the post. It follows that EP should take some responsibility for the initial delay when it didn't start the transfer process at its end as quickly as should have happened. I also think however that B arguably could and should have chased things up sooner after posting the transfer paperwork when it didn't hear back.

I don't need to say more about this as I'm already upholding the complaint for other reasons, but I mention this here as it further supports my overall view that both EP and B were responsible for missing opportunities to deal effectively with the transfer, so it follows that it's fair and reasonable to apportion responsibility for paying redress (which I will say more about later.) I'll explain how I've reached my findings.

I previously said that if Mr F had wanted to prioritise being able to trade, he could have postponed the transfer to a new provider and transferred to cash, with the possibility of reinvesting whilst still with his ceding provider. So I didn't think EP could fairly be held accountable for any investment loss. But I am now persuaded that it would be fairer to give more weight to the fact that Mr F expected things to be completed in a reasonable timescale. He himself has acknowledged that he doesn't want compensating for the first two months of the transfer. He'd made his in specie choice knowing it might take a month or two to complete and says he intended to amend his holdings after that.

It's understandable that Mr F would've weighed up his options and I can see how he could reasonably have concluded that being in funds he wasn't keen to hold onto was still better than being disinvested and out of the market completely. On balance, I don't now think it's fair to suggest that it would have been reasonable for him to have done the transfer in a different way when, at the time, Mr F was entitled to hold a reasonable expectation that an in specie transfer shouldn't take more than a couple of months.

I've also kept in mind that:

- Mr F has clearly and consistently explained why he wanted to move to a new provider and what his investment plans were
- he explained he wasn't happy with the performance of his funds and wanted to take control of the investment decisions himself (where EP had been managing his portfolio) and he needed to transfer to do that
- Mr F says he intended to gradually move his holdings into a more consolidated strategy of tracker style passive funds
- I find that Mr F instructed this transfer in large part to allow him to change his investment holdings
- I've no reason to doubt what Mr F has said about his investment intentions and find that what he's said is plausible. In support of this, I have noted that he put his stated plans into action just as soon as he was actually in a position to do so and trading conditions were right for him

 I now consider all this amounts to persuasive evidence that supports me making a finding that it's likely Mr F would have invested earlier, had the transfer completed sooner, which would have happened but for the unreasonable delay which EP was at least partly responsible for causing.

All in all, this leads me to conclude that Mr F is now in a different position, compared to the position he'd be in had the transfer gone through quicker, which didn't happen, in part at least, because of EP's service failings. So, it follows that EP should share responsibility for putting things right if what happened has resulted in any investment loss.

I've thought carefully about the best way to approach the issue of financial loss here, given that it's uncertain what exactly Mr F would've done had the transfer completed sooner and within a reasonable timescale. I accept that what I'm proposing is imperfect but what I'm suggesting is a broad brush approach to finding a fair and reasonable outcome here that reflects the respective interests of all parties concerned.

I've thought about what Mr F did in fact do after the transfer completed and whether it would be a fair proxy to put him in the position he'd be if he'd 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 Mr F would've traded the same way – and I don't know if that's likely. He told us his decisions were very '…*in the moment*' and based on market conditions at the relevant time, and he sold down the funds after the transfer over a few months, not all at once. So realistically, he might well have invested quite differently had the transfer completed sooner – and it's impossible to know what those investment decisions would likely have been.

As I can't be certain what exact funds Mr F would've sold and bought, I am suggesting what I think is the fairest way to restore Mr F fairly to the position he'd be in, but for EP's poor service on this occasion.

I'm persuaded his overall intention was to put his money in tracker funds and other generally medium risk '*lifestyle*' funds (as he describes them).

Given Mr F's plans for his money and his investment objectives, 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 he'd have made. 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 Mr F would've got with some similar risk to his money in the sort of investment he favoured. So EP should compare that to his 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.

I've alluded to the fact that 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.

There was admitted culpability on both sides – each had a duty to handle their side of the transfer with due expedition and it's clear (from what I've said above) that didn't happen. I don't think this calculation is susceptible to a strictly mathematical formula – there are simply too many unknowns. Splitting any investment loss in relation to the ISA and GIA equally between the parties is a rough and ready approach, but in the spirit of reaching a broadly fair outcome here, I think it's probably reasonable.

Thinking about the SIPP, I find that EP was responsible for around three weeks delay after 2 March when EP didn't supply missing information to the SIPP administrators until 22 March 2022. There were some other delays involving fund managers, but this delay by EP inevitably held up the SIPP transfer from the outset, so I think it's fair to require EP to pay redress for this. EP was first contacted by the SIPP administrators on 24 February. The bulk of the conversions were completed on 9 May 2022 and were transferred in June. But for EP's delay, it follows that I think those transfers could have completed three weeks earlier than happened. There was a particular problem with one last asset but the matter was in the hands of the fund manager and EP wasn't directly responsible for the delay in the transfer of the final asset. I have identified no significant delay attributable to B in relation to the SIPP transfer so I think it's fair and reasonable for EP to pay the full amount of any loss that arose from the three week delay in the SIPP transferring.

In terms of compensation for non-financial loss, EP has already offered a payment in respect of this, which seems fair to me. Mr F has objected to this amount, saying '…*the offer of £500 compensation is derisory in the transfer of approximately £5m of funds*' and to put things into perspective, he mentioned that EP's own annual fees (excluding the individual funds' fees) before he left were approximately £32,250. So I appreciate this amount falls a long way short of the amount Mr F feels is appropriate.

I don't know how EP's fees compare to those that would have been charged by the acquiring provider over the same period. But I agree that as I have found that the transfer ought to have completed by 11 April 2022, its fair and reasonable to require EP to pay Mr F any difference if EP's fees were substantially higher as Mr F has suggested, because he'd have lost money and be out of pocket as a result.

Otherwise, I consider EP's offer is in line with the level of award this service would make for distress and inconvenience in similar cases and I consider it fairly reflects the extent and impact on Mr F of the delays and shortcomings in the service EP provided to him on this occasion. And of course this payment will be in addition to any investment or other financial loss. There's more information on our website about the ombudsman approach to redress.'

What the parties said in response to my provisional decision

Mr F agreed with what I'd set out in my revised provisional decision.

EP accepted parts of my decision but disagreed with the way I apportioned loss, mainly saying that I had placed too much responsibility for the transfer delays with EP and it maintained that the majority of delays were caused by the actions of B.

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 thank both parties for all the information that has been provided about this matter and responding to my provisional decision.

I've taken carefully into account everything that's been said in response to my provisional decision.

In relation to Mr F's GIA, EP accepts responsibility for any losses caused after 27 May 2022 when it received the sales instruction, but said it doesn't believe it was responsible for any delay prior to this. In relation to Mr F's ISA, EP says the transfer instruction was received on 7 March 2022 and completed within a reasonable time frame as set out by HMRC so it should not be included in a loss assessment.

I am not persuaded that using 11 April 2022 as the start date for the purpose of calculating loss in relation to the ISA and GIA is unreasonable. EP has said that B appears to have initially used an incorrect address not used for transfer instructions, that EP wasn't responsible for providing an incorrect address to B and EP's preferred method of receiving instructions was via ALTUS, an electronic system which B had used in the past for other transfers.

I must look at all the available information and decide what I think is most likely on a balance of probabilities. This means making some reasonable assumptions where there's only limited information.

It's unfortunate that B didn't address the transfer request to the correct part of EP's business in the first place, or use email initially or ALTUS. But B had no reason to think the address it was using was incorrect (I understand Mr F had taken this from EP's own paperwork). And B wasn't obliged to use email or ALTUS, even if EP would have preferred this. So I still think that in the absence of any clear explanation about what happened to the initial transfer request, which I've no reason to think wasn't likely to have been received in some part of EP's business, using the date I've suggested as the basis for calculating redress is broadly fair. It reasonably reflects the date the transfer ought to have completed had things happened as they should have done.

I would also mention here that included in the bundle of documents B sent to EP on 23 February 2022 was another transfer request that EP also said it didn't have a record of receiving. But other information suggested that probably wasn't correct as EP had taken steps to deal with that transfer before B had re-sent the 'missing' transfer document. So it's reasonable to conclude, as I do, that the weight of evidence is against EP on this point. I still find, on balance, that EP should take some responsibility for the initial delay when it didn't start the transfer process for Mr F's ISA and personal GIA at its end as quickly as should have happened and that using 11 April 2022 as the start date for the purpose of calculating loss is reasonable.

EP has said it couldn't progress the transfer of Mr F's personal GIA between 14 March and 11 May when it was awaiting B's acceptance before it could proceed, and missing re-registration details weren't received until 27 May – so it can't be held responsible for any delay in this transfer prior to Mr F providing sales instructions on 27 May. But EP could have chased things up with B and I think it ought to have been more proactive here, keeping in mind the recommended 30 day timescale for this sort of transaction, especially since EP was aware there had been a hold up at the start (even if it didn't accept responsbility for that).

EP admits this is also the account where it caused the biggest delay because of the short position created when assets were sold. Looking in the round at everything that happened, and the approach I've taken to redress generally, I don't consider that the additional information EP has provided in relation to the course of events concerning its handling of the transfer of Mr F's personal GIA makes any significant overall difference to the outcome.

So far as the SIPP is concerned, EP doesn't dispute my assessment that it caused a three week delay and accepts the proposed resolution for this account.

Finally, EP has said it charged no fees on Mr F's account from March 2022 onwards, so there will be no loss arising from any potential double charge over this period if he was also paying fees to B.

Otherwise, neither EP nor Mr F has provided me with any new information that substantially changes what I think about this case. I'd already considered all the main points mentioned when thinking about my provisional decision and addressed all the points which have a bearing on the outcome.

I still think the conclusions I reached and the redress I have proposed is a broadly fair way overall to settle this complaint, for the reasons I explained more fully in my provisional decision.

Putting things right

To compensate Mr F fairly, EP must do the following:

For the ISA and GIA

 Compare the performance of Mr 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

Income tax may be payable on any interest awarded.

Actual value - This means the actual the investment was worth at the end date.

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

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 Mr F.

For clarity, I confirm that this redress applies only to assets transferred after 11 April 2022 – no redress is due in respect of assets transferred on or prior to 11 April 2022.

For the SIPP

Neither EP nor Mr F has commented on any of the assumptions I made when setting out the SIPP redress proposals in my provisional decision so:

 I consider that save for the final asset the other assets transferred would have transferred three weeks earlier than happened. So for those assets (not including the final asset), EP should compare the value that would have been achieved on a sale three weeks sooner than happened (I'll call this the 'fair' value) with the value actually achieved on sale (I'll call this the 'actual' value). If the fair value exceeds the actual value, then EP should pay Mr F the difference – plus 8% simple per year from the date the respective transfers completed. If the actual value is greater than the fair value, no compensation is payable.

 If there is a loss, EP should pay into Mr F's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

 If EP is unable to pay the compensation into Mr F's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr F won't be able to reclaim any of the reduction after compensation is paid.

 The notional allowance should be calculated using Mr F's actual or expected marginal rate of tax at his selected retirement age.

 It's reasonable to assume that Mr F is likely to be a higher rate taxpayer at the selected retirement age, so the reduction would equal 40%. However, if Mr F would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 30%.

Re fees

EP has said no fees were charged to Mr F so I am not expecting that Mr 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 Mr F provides EP with evidence of the fees he paid in respect of the assets transferred, 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 Mr F paid in respect of this period with the fees he would have paid to his acquiring provider during the same period, and pay him any difference, if he's out of pocket as a result of what happened.

EP should also pay Mr 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 he had unfairly been deprived the use of, after the date the transfer ought to have completed).

Non-financial loss

Additionally, EP should pay Mr F £500 compensation in respect of distress and inconvenience, as it has already offered to do.

My final decision

I uphold this complaint and direct Evelyn Partners Financial Planning Limited to take the steps I've set out above to put things right for Mr F.

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

Susan Webb
Ombudsman