DRN-4586552

The complaint

Mr G complains Evelyn Partners Financial Planning Limited trading as Smith & Williamson caused unreasonable delays when switching his stocks and shares Individual Savings Account (ISA) and his self-invested personal pension (SIPP), resulting in a financial loss.

What happened

Prior to June 2020 Mr G had been a discretionary fund management ("DFM") client of Smith & Williamson ("S&W"), where his investment manager was Mr S. But he then moved his SIPP to BNY Mellon Pershing ("Pershing"), with Tilney as DFM. He'd also moved his ISA to Hargreaves Lansdown ("HL") which he managed himself on an execution-only basis.

Tilney and S&W subsequently merged to form Evelyn Partners Financial Planning Limited ("Evelyn"), continuing to trade under the S&W brand. So Mr G decided to consolidate his investments, and switch both his ISA and SIPP to Evelyn, to be managed on a DFM basis by Mr S. The proposal was discussed during a conference call on 22 March 2022. The pension switch required Mr G to receive regulated financial advice, so Mr G was introduced to Mr H, one of Evelyn's financial planners specialising in pension transfers, who would provide the necessary advice at a discounted fee. As his existing SIPP didn't offer a discretionary option, Mr G needed a new SIPP provider, and Evelyn recommended James Hay as it offered lower dealing charges.

Although he was warned a cash transfer would be quicker, Mr G wanted the switches to be carried out "*in specie*", meaning he'd remain invested throughout. But the process took longer than Mr G expected, and while it was in progress, the investments weren't being managed by Evelyn, or by Mr G himself. The funds started moving across in April 2022, Mr G returned the signed DFM mandate to Evelyn on 9 May, and the DFM arrangement was in place from 30 May 2022. The switch of the ISA was mostly completed by then, although a few US assets were switched in June.

But although the new SIPP had been opened, the switch of funds from Pershing hadn't completed. So Mr G complained about how long things were taking. He thought progress had been delayed by Evelyn's insistence on an "*unnecessary*" meeting, and by it mistakenly assuming Mr G wished to continue managing his ISA himself, which made no sense if he was paying for a DFM service. When he chased progress, Mr G was frustrated to receive "*out of office*" messages from Mr S and Mr H, and nobody appeared to be covering for them. Mr G says the lack of personal attention was unacceptable, he'd expected a "*full time client manager*" focussed on making the best of his savings, and the lack of active oversight of his investments during a falling market led to a financial loss of around £10,000. He also says he was prevented from releasing funds to reduce his mortgage, an intention he says Evelyn was aware of.

Evelyn responded to the complaint in June 2022. In relation to the ISA it said the paperwork to move Mr G from execution-only to its DFM service had been sent out on 21 March, but Mr G hadn't returned the signed DFM mandate until 9 May 2022. Mr G had been warned a cash switch would be quicker, but to avoid being out of the market he'd preferred to switch in specie. And completion was delayed until June as HL had attempted to settle some US stocks on a US public holiday. Regulated advice was required before the SIPP could be switched, and in a meeting on 17 May 2022 Mr H had recommended switching to a James Hay SIPP on a part-cash, part in-specie basis. Mr H offered to waive his discounted advice fee of £695 plus VAT, by way of a rebate of investment management fees. And it had been made clear to Mr G that a review of his portfolio would take place once the holdings were all received, with changes taking place on a phased basis, with an investment strategy looking towards the medium to long term. Evelyn didn't agree staff absence had a significant impact on the switch timescale. Mr H had taken a week off on compassionate grounds, but still had access to emails, and Mr S had taken a week of annual leave in the period. Nevertheless it offered £100 in recognition of the frustration Mr G experienced.

Mr G remained dissatisfied, saying that it was unprofessional not to provide cover if an investment manager needed to take time off, even on compassionate grounds. So he referred his complaint to this service in July 2022, and around the same time he instructed Evelyn to move his SIPP to AJ Bell, and that Mr S be replaced as his adviser.
One of our investigators reviewed the complaint but didn't uphold it, so Mr G requested an ombudsman's decision.

Provisional findings

I issued a provisional decision on this case in November 2023, in order to set out my initial thoughts and to address some points made by Mr G in response to the investigator's view. He was unhappy with Evelyn's service overall and felt the lack of personal attention meant the move of both his ISA and SIPP had taken too long, during which his funds weren't being managed, exposing him to market volatility.

I thought some of Mr G's dissatisfaction arose from misunderstandings which might have been avoided. For example, despite Mr G having previously been a client of Mr S and S&W, he was still subject to the same fact-finding or advice process as a new client. And although he'd been made aware cash transfers are usually quicker and more straightforward, Mr G had opted to transfer *in specie* to avoid being "*out of the market*". I understood Mr G's concern about the impact of the Ukraine war on global stock markets during this period, and that he was anxious for Evelyn to take proactive control of managing his investments as soon as possible.

The timeline for the ISA switch showed it was mostly completed in two months and fully completed in three. A small amount of time had been lost due to confusion about whether Mr G's ISA was to remain execution-only, but although the transfer team had Mr G's ISA form on 21 March, he hadn't returned the completed DFM mandate until 9 May. Evelyn took discretionary control on 30 May and completion was delayed until14 June when the US stock trades finally settled. I said HL attempting to settle on a US holiday was outside Evelyn's control.

Cash transfers can be quicker but may be more expensive if there are exit penalties and dealing fees, and involve being out of the market, which Mr G wished to avoid. A straightforward in specie transfer between providers should take 30 calendar days for holdings listed on the UK stock exchange, but can be more complex, and take longer if overseas assets or other factors are involved, as in this case, but I didn't think Evelyn caused any unreasonable delays.

Mr G needed to move his SIPP to a new provider as his existing Pershing SIPP didn't offer a discretionary option. But I didn't think Mr G had appreciated the additional regulatory requirements in place since 2009 around switching pensions, which meant a suitably qualified adviser (Mr H) had to review the proposal and make a positive recommendation to justify the switch. These obligations are set out in Principle 6 of the FCA's Principles for Business rules which requires firms to "*have due regard for the interest of its customers and treat them fairly*". COBS 2.1.1R requires firms to act honestly, fairly and in the best interests of its retail clients. Obligations under COBS 9.2 specifically relate to assessing suitability and require an adviser to make a personal recommendation which is suitable and in line with the client's financial situation and investment objectives.

I hadn't seen a copy of the advice, and I explained the decision wouldn't consider the suitability of the switch to James Hay, as Mr G hasn't complained about that. But its professional obligations meant Evelyn couldn't simply implement Mr G's instructions. Mr H was obliged to obtain sufficient information about Mr G's circumstances and investment objectives on which to base a recommendation. Although Mr S had previously been Mr G's investment manager, Mr H couldn't rely on his personal recollections, or information S&W may have previously obtained, as it was likely to be insufficient and out of date. I understood Mr G considered the 17 May 2022 meeting to be unnecessary duplication, but I was satisfied it was necessary to ensure Evelyn's advice was compliant. And it was only after Mr G accepted the advice that the switch of assets from Pershing to James Hay could commence. So although moving to Evelyn was discussed in March, the process couldn't start until mid-May. At various points, Evelyn reassured Mr G the transfer was in progress, but would require some patience, as an *in-specie* change of SIPP provider can take six to eight weeks from the forms being submitted, depending on the complexity.

I explained that industry guidance from 2006 expects that a switch will take around ten working days and should be carried out by electronic means where possible. And in 2016 the ABI set out industry best practice for each step of a switch process to take no more than 48 hours, but it also recognised there are usually ten steps in the transfer and re-registration process of a switch between personal pensions or ISAs. And most involve counterparties (such as HL or Pershing) whose actions are beyond the principal firm's control. For example on 24 June 2022 the administrators of the Pershing SIPP advised Evelyn that they'd received all the required documentation from James Hay, but Mr G still needed to sign their own transfer form. I'd seen Mr H had apologised for the number of forms Mr G needed to complete, but this form was essential, otherwise his SIPP would remain on its current advisory service rather than allow Evelyn to manage it on a discretionary basis.

I understood Mr G's concern that the switches were in progress during a period of market volatility, and neither Evelyn, or Mr G himself were actively managing his investments to minimise his losses. But I thought Evelyn had made clear that once the DFM arrangement was in place, there wouldn't necessarily be immediate or wholesale changes, as Mr G's portfolio would be reviewed on a phased basis, based on investing for the medium term, and retaining some of his existing holdings. I thought it wasn't always wise to make changes during a falling market, and it seemed there'd subsequently been a significant recovery.

Mr G had provided email responses he'd received from Evelyn showing that at various times two of his key contacts had been unavailable. Mr H was unexpectedly away for a week's compassionate leave in April 2022 near the start of the process, but he'd retained email access throughout and contacted Mr G on 3 May, the day after he returned to the UK. And Mr S had taken a week's annual leave in early June 2022, while the SIPP switch was in progress and was being monitored by colleagues. I was satisfied they hadn't been unavailable quite as much as Mr G suggested, and he'd been given alternative named contacts in their absence, who had assisted him with various elements of the process, such as electronically signing forms and accessing the welcome documents.

Mr G subsequently chose to move his SIPP to AJ Bell, and when asked about their switching timescales they advised that cash transfers usually take two to four weeks, but up to eight weeks for in specie, and as long as twelve weeks if international stocks are involved. The transfer of Mr G's ISA was almost complete in nine weeks, and was fully complete within around twelve, the additional time being due to the settlement of some US stocks, which seemed reasonable. The SIPP took longer than that overall but was within that timescale if the starting point is taken from the date Mr G accepted the financial advice. So while I appreciated it had taken much longer than Mr G anticipated, I didn't think Evelyn caused unreasonable delays.

Mr G says as well as Evelyn failing to take action to reduce his losses, he was also unable to sell some of his holdings in order to reduce his mortgage. I hadn't seen any specific instructions in this regard, although I'd seen a message on 4 May in which Mr G said he needed £10,000 to make up the shortfall on the purchase of a fixed term annuity, (and in August he'd changed his mind about this). I'd seen that Mr G mentioned a withdrawal to his new adviser Mr K, and in response on 9 June Mr H suggested the funds should come from his ISA while the SIPP was being set up, and asked Mr G to confirm the amount he needed. In response Mr G queried why his SIPP was with James Hay rather than AJ Bell. So I'd seen no evidence Evelyn had failed to carry out any instructions in this regard, I thought it likely Mr G was used to having the freedom to arrange such transactions himself.

My provisional decision was not to uphold the complaint, as while I appreciated the overall process took far longer than Mr G expected, and perhaps Evelyn could have managed his expectations about the likely timescale from the outset, I didn't think they caused any significant delays, and I wasn't persuaded the brief periods of staff absence were a factor. The fall in the value of Mr G's portfolio was reflective of global markets and would have been subject to the same recovery, so I didn't think Mr G had made an actual financial loss. And I thought the £100 Evelyn had offered for the inconvenience was fair.

Responses to the provisional decision

<u>Evelyn's response</u>

Evelyn agreed with the provisional decision. But they pointed out Mr G had raised a separate complaint with them about the management of his investments since he switched his HL ISA and Pershing SIPP to their management. So they wanted to ensure this complaint was limited to the issues Mr G had raised in May 2022, and not the performance issues raised in June 2023.

<u>Mr G's response</u>

Mr G responded at length, submitting a bundle of over 300 pages of correspondence including email exchanges he'd had with Evelyn, many of which had already been received, and quite a few Mr G had marked as "*irrelevant".*

Some I consider key are listed below:

- An email he'd received from Mr S on 1 June explaining he'd be away the following week but would be checking his email intermittently and that his colleagues Ms C would set up the investment account and Mr H would instruct the transfer of assets and cash. Mr G then provided the *"out of office*" message he received when he emailed Mr S during the week he was away.
  He commented that he felt the *"frequent*" absences were a major factor in how long things were taking;
- An email from Mr S of Evelyn on 30 May 2022 confirming the ISA funds had been received (valued at £298,602) and that he could "*make a start on the reorganisation*", to which Mr G replied, reiterating his dissatisfaction that the DFM arrangement hadn't been in place sooner;

- An email on 30 June 2022 from Mr H at Evelyn, explaining that Pershing required Mr G's electronic signature on page 3 of a form, in order to transfer it from the advisory to a discretionary service

- Mr G also provided a "witness statement" which restated his complaint, including the following points:

    - As S&W and Tilney had merged in 2020 Mr G had assumed the transfer process to Evelyn would've been straightforward, because information Tilney already held could be shared with Evelyn. He described it as a transfer from "*one pocket of the same suit to another".*
    - When he previously transferred to Pershing he didn't need a report or to sign so many forms.
    - He wasn't offered a choice of SIPP wrapper and understands Evelyn had acquired James Hay, hence the SIPP recommendation.
    - Had Evelyn handled things more efficiently he wouldn't have been "*out of the market"* for so long, as the transfer would have occurred a month earlier.
    - He didn't benefit from having a DFM at a time when it was most needed.
    - "*This was an egregiously unprofessional conduct of [Mr G's] transfers, with missteps, misspeaks, conflicting information and absences, [Mr G] cannot understand why the ombudsman cannot see it in that light"*

- Mr G said he had never received the "*short written report"* Evelyn said was necessary to confirm the suitability of the switch of his SIPP to James Hay. The only report he ever received was an "*Investment Review"* written by Mr B at Evelyn, dated August 2022. This confirmed a review of Mr G's portfolio had taken place, noted a £20,000 withdrawal from his SIPP to repay his mortgage, and regular monthly withdrawals thereafter, (although Mr G disputes the amounts which were agreed). His risk tolerance was assessed as "low", and it recommended he invest in the "*Evelyn Balanced Portfolio"*

- Mr G also included a newspaper cutting critical of our service

So I'm now in a position to issue the 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.

Firstly I'm grateful to Mr G for his comprehensive response to the provisional decision, and the trouble he's gone to. But while I have read everything, I hope he won't take it as a discourtesy that I haven't set out every document or point he's made. Much of it reiterated points previously made or were duplicates of information we already had. So in line with my responsibility to resolve disputes with minimal formality, I've focussed on material I consider to be key to the complaint.
I've not mentioned Mr G's professional background, and while I understand he thinks it's important, nor will I include the reason he gave for the delayed response to the investigator's view. I don't think these points are material to my consideration of the complaint, and as our decisions are published with the consumer's details anonymised, I'm concerned that the inclusion of such information risks Mr G being identified.

I wasn't aware Mr G had made a separate complaint to Evelyn about the performance of his portfolio after it took discretionary control on 30 May 2022. It's not clear if Evelyn has issued a separate final response letter with referral rights to this service for that complaint. But this decision will focus on the issues Evelyn responded to in its first final response letter dated 16 June 2022, being the delay to the switching process of Mr G's ISA and SIPP.

Having reviewed everything again, I remain of the view that the complaint shouldn't be upheld. Evelyn perhaps could've better explained the process, and the likely timescales to move the portfolio in its entirety, particularly with regard to the requirement for regulated financial advice for the SIPP switch. Mr G didn't sign and return the DFM mandate until 9 May, and Evelyn took discretionary control on 30 May 2022. Even if this could've happened a week or two earlier, it was made clear to Mr G the review of his portfolio wouldn't take place until the switches were complete, which wasn't until June. Mr G refers to being "*out of the market"* longer than he should've been, when in fact he remained invested throughout. I think he means active steps weren't being taken to minimise his risk of losses. But the agreed strategy was to carry out a phased review, rather than make wholesale changes straight away, and there's no certainty that a fall in value could've been prevented at a time of market volatility.

Mr G may have expected to have access to a named investment manager at all times, but I don't think the periods Mr S or Mr H were absent was unreasonable, or that this significantly delayed matters. I can't agree with Mr G no cover was in place, as I'm satisfied Evelyn ensured he had access to a named contact to assist him, even if they weren't of the same seniority. Whereas compassionate leave is by its nature unexpected, I'd seen that Mr S had let Mr G know of his holiday in advance. I can't say Evelyn is responsible if Mr G chose to email Mr S rather than the named contact he'd been given. And even if they'd both been available throughout, I've explained why I don't think the review of his portfolio would've happened much sooner.

The requirement for regulated financial advice was the main reason the SIPP switch took longer than Mr G expected. While it seems there was a practical reason for the switch of SIPP provider, as Pershing didn't offer a discretionary option, Evelyn was still required to provide a recommendation to ensure the switch to James Hay was in Mr G's best interests, which it did by explaining their charges were lower. Evelyn's usual pension transfer advice fee is a percentage of the portfolio, but Mr H offered to accept a reduced fee of £695 plus VAT. But in fact the reduced fee was waived completely by way of a refund of management charges, which I think was more than fair, as Mr G essentially received the service free of charge.

And although Mr G says he didn't receive the expected advice report, other than the review document in August 2022, I think this was the formal summary of the recommendation which had been verbally delivered in the meeting on 17 May 2022. The evidence shows this meeting was arranged to accommodate Mr G's holiday plans and dental appointments, so while I haven't seen a meeting note, I think it most likely did take place. And it's not unusual for the recommendation letter to be dated after the meeting, as a formal summary of the advice.

I understand Mr G found the process frustrating, and that the number of steps and various documents to be signed felt disjointed and confusing. But I don't find Evelyn to have acted unprofessionally, or that their failings were the reason the switches took as long as they did. I've explained I'm not going to comment on the subsequent management of Mr G's portfolio as that appears to be subject to a separate complaint.

So while things may not have happened as smoothly as Mr G expected, I don't uphold the complaint, in the sense that the £100 Evelyn offered is sufficient for the inconvenience he experienced.

my final decision

I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr G to accept or reject my decision before 26 February 2024.

Sarah Milne
Ombudsman