DRN-4612869

The complaint

Miss H complains about advice provided by 2 Plan Wealth Management Limited ("2 Plan") and the subsequent failure of the adviser to explain that her funds had remained in cash.

What happened

In or around March 2021 Miss H approached an adviser at 2 Plan about her outstanding funds of £75,457 in a general investment account and £826 in an ISA. At this point Miss H says she was unsure whether she required ongoing advice. After a review, the adviser recommended transferring all funds to an OMNIS Managed Portfolio Service ("OMPS").

On 2 December 2021 Miss H gave instructions that she no longer wished to receive financial advice from 2 Plan and cancelled the advisory agreement.

Miss H raised the following concerns:

1. The funds should not have been placed with an advisor led platform
2. No funds were transferred from the investment account to her ISA in 2021/22
3. A charge will now be incurred for another advisor to give advice and move her funds and 2 Plan should have explained this to her
4. Funds are held in cash, with charges continuing to be taken and this is not something she agreed to
5. An account with another provider remained open
6. Length of transfer time which took from March to October/November 2021

2 Plan say that the recommendation was in line with Miss H's cautious attitude to risk where the investment was to be spread across nineteen different funds and an extra level of fund management was in place, with rebalancing of funds to maintain the portfolio in line with Miss H's risk appetite. There was nothing on file from the time to show that Miss H did not want an adviser led platform and the paperwork signed by Miss H indicated she had understood and accepted the recommendation. Further, Miss H signed a Discretionary Investment Management Agreement and Client Declaration, in which she agreed to investing into the 2 Plan OMPS fund and confirmed she would like the products to be managed by Openwork Wealth Services Limited on a discretionary basis. Miss H also signed a Personal Client Agreement, in which she agreed to pay an ongoing adviser charge of 0.6%

As to any transfer delay, 2 Plan noted that Miss H did not sign the transfer authority form until 25 October 2021 and the transfer took place on 25 November 2021. After further investigation 2 Plan conceded that the adviser likely made an error in the application process that caused delay and led Miss H to sign an additional transfer form late.

The original provider sold Miss H's investments and transferred them as cash. At the time Miss H cancelled the agreement with 2 Plan her funds were still in cash with the new

provider. Usually, an adviser would utilise a client's ISA allowance once a transfer had completed but as Miss H ended the relationship with 2 Plan, the adviser did not have a chance to action this.

2 Plan noted that as Miss H had a new adviser it was likely a fee would be charged by them. 2 Plan confirmed that no adviser charges were taken after the transfer completed.

2 Plan initially conceded that the funds ought to have been invested rather than have remained in cash. Calculations for the period 10 April 2021 to 7 September 2022, showed that the OMPS-Cautious model portfolio had a return of -8.10%. Miss H was therefore advantaged by remaining in cash and so no losses were sustained. 2 Plan later clarified with the adviser that Miss H had asked for funds to remain in cash on transfer as she intended to use some. The records showed that Miss H did make a cash withdrawal of £7000.

2 Plan also confirmed that Miss H did not maximise the 2020/2021 ISA allowance because she purchased a property around year end 2020, exhausting funds in the ISA.

2 Plan offered £250 to compensate for the distress and inconvenience caused by errors on their part.

Our investigator considered the complaint. He thought that there was no evidence 2 Plan were made aware that Miss H was unsure about receiving ongoing advice at the time of recommendation. Miss H signed paperwork confirming her acceptance and understanding of the recommendation. Our investigator concluded that 2 Plan did nothing wrong in making this recommendation.

Our investigator concluded the adviser only provided Miss H with a cash transfer authority form in October 2021, which likely caused delay in the transfer process. He noted that 2 Plan had apologised for this mistake, but concluded whilst the ISA had been held in cash, the funds in the general investment account (GIA) ought to have been sold and funds transferred and reinvested sooner.

As to customer service, our investigator considered that the adviser should have got in touch to discuss Miss H's request to terminate the advisory relationship and to explain the ramifications of terminating the relationship mid-way through the transfer process. Had this occurred, he concluded that Miss H would then have been equipped with information to make an informed decision.

As to failing to advise about maximising the ISA allowance, our investigator concluded that 2 Plan's explanation was fair and reasonable. He considered it was reasonable for the adviser to focus on the transfer process and to provide a separate recommendation for a customer to use their allowance at a later date. But for termination of the advisory relationship, it was more likely than not that the adviser would have provided a recommendation to utilise the ISA allowance before the end of the tax year on 5 April 2022. Our investigator noted that Miss H contacted the adviser in May and June 2022 about utilising her ISA allowance. This was after the termination of the advisory relationship, so 2 Plan wasn't responsible for missed ISA subscriptions. However, our investigator thought the adviser ought to have responded to say he could not assist following termination of the advisory relationship and concluded that customer service could have been improved.

As our investigator considered that the recommendation to transfer to new platform was reasonable, he didn't think it would be reasonable to hold 2 Plan responsible for additional advice charges that might arise if Miss H moved provider.

To put matters right, our investigator concluded that £500 should be paid for inconvenience caused by the transfer delay and for poor customer service. Any adviser fees paid after 2 December 2021 should be refunded. Miss H should be refunded the difference between actual value of funds as date of assessment and value of funds had they been invested in OMPS Cautious portfolio from 20 April 2021 to 31 January 2022 and thereafter invested as per a 50/50 benchmark to date of assessment.

2 Plan did not agree with the outcome and method of redress. They maintained that no loss was caused by the transfer delay. During the period 14 April 2021 to 11 November 2021, where funds remained invested with the third party the ISA lost £3.74 but the OMPS gained £4,682.34. Whereas had Miss H been invested in the OMPS Cautious fund she would have suffered a loss as the fund underperformed.

I issued a provisional decision on 4 January 2024, in which I provisionally decided not to uphold the complaint, I thought:

Recommendation

Miss H said it wasn't appropriate for her to have an advisor led investment and maintained that from the outset she was unsure whether she wanted an advisory service. Despite reference to email correspondence, I hadn't seen anything to show that Miss H raised this as a concern and there were no contemporaneous notes from the adviser from the time to support this.

On balance, I was persuaded that it was more likely than not that Miss H understood and accepted the recommendation to transfer her GIA and ISA to one discretionary managed portfolio aligned to her risk profile. The suitability letter was clear and Mss H signed to say she accepted and understood the recommendation. Further, I has seen a Discretionary Investment Management Agreement and Client declaration, signed by Miss H in April 2021 confirming she understood the arrangements between the firms and wished to give instructions to proceeds with the portfolio investment. The agreement provided details about the relationship between 2plan, Miss H and the portfolio provider. It expressly stated that 2 plan was the adviser and the portfolio provider (Openwork Wealth Services Limited) provided discretionary managed portfolio services, whereby 2 plan would act as Miss H's agent when dealing with Openwork. On balance, I was satisfied that Miss H knew or ought reasonably to have known that she was agreeing to a discretionary managed service. Further, in my view, the information provided to Miss H below made it clear that this was an adviser led service.

I hadn't seen anything to show that recommending an adviser led service to Miss H was unsuitable. I was satisfied that she had limited investment experience and the recommendation was in line with her attitude to risk. I considered, for the reasons given above, that Miss H made an informed decision to proceed on this basis. If Miss H had any concerns, I would have expected her to have raised them at the time. I noted that it might be that Miss H now wished she had not proceeded with an advisor led service, but I could not fairly make an assessment with the benefit of hindsight.

Termination of Advisory Agreement

I reviewed the Discretionary Investment Management Agreement and Client declaration. Under the section headed cancellation/termination rights, it stated that notice could be given to 2 plan if the investor no longer wished to invest in the portfolios. In this instance Mrs H gave notice on 2 December 2021.

The Agreement stated 2 plan's *expectations*, namely, that they would expect an adviser to switch an investor's assets out of the portfolio into cash or a new portfolio structure and that the adviser, *"would be able to set out the investment options open to you at that point"*. In this instance Miss H was already in cash. Whilst it might arguably have been better customer service to have told Miss H about the impact of her decision, I was not persuaded that there was a requirement on the adviser to do so and this wording plainly did not set an express obligation to do so. It was also relevant that Miss H had already received information that her funds had been transferred in cash. I'd seen copies of letters sent to Miss H, on 15, 19, 29 November and 1 December from the original provider confirming the cash balance had transferred to the new provider.

Miss H said she assumed the transfer and re-investment had completed but it appeared no steps were taken to check the status of her funds after terminating the advisory agreement. In response to questions by our investigator, 2 Plan stated that Miss H told the adviser she wanted to leave funds in cash initially as she intended to use some it. Whilst I hadn't seen any notes to support this, I could see that Miss H did make a cash withdrawal of £7,000 in August 2022. On balance, I thought it was more likely than not that Miss H knew her funds had transferred in cash and once she ended the advisory relationship it was for her to take steps to ascertain the status of her funds.

Ultimately, in choosing to end the advisory relationship, it fell to Miss H to make investment decisions and her instructions were clear that she no longer wanted advice. In my view, the adviser did nothing wrong in acting on Miss H's instruction to end the relationship and there was no requirement for him to "set out the pros and cons of not having advice."

Indeed, it appeared that even when Miss H became aware that her funds were in cash she take no steps to move to a different platform. There was nothing to show that she made attempts to mitigate her position. I did not agree with our investigator that losses should be calculated to date of assessment. Once Miss H decided to cancel the advisory agreement, it became her responsibility to manage her funds and make investment decisions.

I couldn't fairly say what different steps, if any, Miss H would have taken if the adviser had spoken to her and I was mindful that it was equally open to her to ask what her options would have been before she made a decision to end the relationship. And even if Miss H could show that she would have invested in the OMPS Cautious fund rather than have remained in cash, I was satisfied from the information provided below that she hadn't sustained a loss.

Transfer delay

Having reviewed the contemporaneous correspondence, I'd seen that the platform provider contacted 2 Plan in June 2021 and it wasn't until the 28 October 2021 that the adviser contacted Miss H to ask for additional forms to be signed. On balance, I considered that it is more likely than not that an error was made by the adviser that caused delay in the transfer process and this wasn't disputed.

I agreed with our investigator that the funds ought to have transferred from 14 April 2021 but didn't get transferred until November 2021, around a month after the transfer forms were signed. So, I agreed things went wrong here and Miss H was entitled to any loss in value.

2 Plan apologised for this shortcoming and sought calculations from the platform provider to ascertain if Miss H sustained a loss looking at the period from which transfer ought to have taken place to date of their response. These calculations showed that the platform unperformed by -8.10%. So, Miss H fared better by keeping funds in cash and I was not pursued Miss H had shown that she sustained any losses.

From the information provided, it also now appeared that the third-party account had closed.

ISA

As to ISA contributions during the 2021/22 tax year, I considered it was more likely than not that the adviser would have approached Miss H about using her allowance by the end of the financial year, namely, 5 April 2022. Miss H terminated the advisory relationship before this step was taken and from that point there was no obligation on the adviser to contact Miss H to discuss these matters. Likewise, as to emails sent from Miss H to the adviser in May and June 2022, there was no longer an advisory agreement in place and thus no requirement on the advisor to provide information or advice about the ISA subscription. I agreed that it would have been courteous for a response to have been sent but there was no requirement to do so and Miss H was fully aware that the advisory agreement at an end as she had terminated it. By this point, it was for Miss H to take steps to meet her ISA subscription if she wished to do so.

Fees

It was plain that the adviser fees were set out on the face of the agreements signed by Miss H. There was nothing to show that fees were taken after 2 December 2021. Further, once Miss H chose to terminate the advisory service any fees incurred by going to a new adviser or platform were down to the choices she made, I couldn't fairly say any such charges fell to 2 Plan.

Customer service

I agreed that 2 Plan fell short in keeping Miss H informed about the transfer process and in making errors in that process. It was plain that the delay caused Miss H inconvenience and distress. Taking that into account, I thought £350 was a fair compensation.

Both parties have confirmed receipt of the provisional decision. Miss H has nothing further to add and 2 Plan have agreed to pay the recommended award for distress and inconvenience.

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 reconsidered all the information provided by both parties in this complaint. There being no new information, I'm not persuaded to change my findings. It follows that for the same reasons as set out above I uphold this complaint in part.

My final decision

For the reasons given I am upholding this complaint in part. I direct 2 Plan to pay Miss H £350 in compensation for distress and inconvenience.

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

Sarah Tozzi
Ombudsman