DRN-4765644

## The complaint

Mrs M's complaint relates to the advice she took from Mackay Hall Financial Services Limited ('Mackay') in 2017 to transfer her Defined Benefits Pension ('DBP') into a Self-Invested Personal Pension ('SIPP'), and to its ongoing advice service thereafter.

In September 2023 she was informed that her servicing account, for the SIPP, had been sold by and moved from Mackay to a new firm. Some time after that she was told the new firm, Chase de Vere ('Chase'), could not continue the service because it does not have permissions to do so for a non-UK resident client, as is Mrs M.

She says she has been a non-UK resident for over four years; that Mackay knew, in 2017, about her plans to move abroad; that it should not have taken her on as a client, because she has now learnt that it too did not and does not have permissions to advise a non-UK resident client and because it has now left her with the task and expense of finding a new adviser; and that it unreasonably delayed in clarifying to her, in 2023, that Chase could not continue the service.

## What happened

One of our investigators looked into the complaint and partly upheld it. She mainly said –

- Mrs M paid Mackay's £11,625 initial advice fee in 2017, then its ongoing advice service fee of 1% has applied since the transfer. It provided the ongoing service until September 2023, when the account was acquired by Chase.

- Mackay contacted her on 14 and 19 September to inform her about the acquisition. Then on 23 October Chase informed her about its inability to continue the service. Her account then remained with Mackay in order to execute a fund switch (to cash) within the SIPP. This was confirmed to her on 31 October.

- She wants a refund of the initial advice fee she paid in 2017. She is unhappy about the delayed notice in 2023 and that her SIPP was left in cash after the fund switch.

- The initial advice fee was paid for the 2017 transfer advice, not for the ongoing advice service. She received the ongoing advice service that she paid for up to September 2023, when Mackay discovered it should not have provided that service to her after she moved abroad. Payment for the service then stopped.

- Neither firm in the case has permissions to advise a non-UK resident, so it would always have been the case that Mrs M would need to find a new adviser (with fees charged by the new adviser), and Mackay is not responsible for the fees payable to a new adviser. She wanted advice on reinvesting the cash liquidated in the fund switch, but she could have approached a new firm in October to get that advice when she knew neither firm could help her. Alternatively, she could have instructed the SIPP provider directly.

- Mackay should have informed Mrs M about Chase's inability to continue the service

sooner than it did. That would have given her more time to make her plans and it would have helped her avoid the trouble and inconvenience she faced in trying to achieve the fund switch. Mackay has offered her £200 for this. That is not enough. It should pay her £400.

Mackay accepted this outcome, but Mrs M did not.

She mainly said – the fee she paid in 2017 was not for Mackay's initial advice, she did not need it; she predetermined the pension transfer because she considered a SIPP to be better for her plan to move abroad (permanently); she paid the fee for the total package, execution of the transfer and, importantly, ongoing advice afterwards (especially after her move abroad); Mackay's suitability report shows it knew about her plan to move abroad; it knew when she did that a couple of years afterwards; had she known Mackay did not have the permissions necessary to advise her after the move and that the events of 2023 would happen, she would not have appointed it; and, it initially misinformed her about the fund switch (saying she had more time than she did), before it was completed at the last minute.

Mrs M says the main issue is the refund of the initial advice fee, but that it is also the case she would have had more time to get advice on the fund switch and reinvestment of the cash proceeds if she had earlier notice of the account sale and termination of the ongoing advice service.

The matter was referred to an Ombudsman.

**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.

*Initial advice and the initial advice fee*

I understand Mrs M's point that she predetermined the pension transfer, and the reason she has given. However, as the investigator explained in correspondence with her, Mackay had a regulatory duty to advise on suitability of the transfer.

DBPs are commonly regarded as valuable pensions, given the benefits within them and given that the pension holder gets to receive those benefits without exposure to investment risks. The regulator considers it important to ensure that DBP holders are not unsuitably advised to transfer away from them (and lose the benefits), and that they do not pursue a transfer without regulated advice that highlights the benefits to be lost and that advises on the merits (or otherwise) of a transfer.

I appreciate that Mrs M decided she wanted the transfer before meeting Mackay, and that nothing in her complaint is about suitability of the transfer. However, Mackay still had to conduct work on assessing that suitability. I have considered its 2017 suitability report. It is a reasonably detailed document (29 pages long) in which it sets out a comprehensive assessment of the suitability of the transfer – including the assessment of Mrs M's objectives and circumstances, pension comparisons (including benefits and projections), risk notices and investment advice.

This initial advice (on suitability) came at a cost, which the report disclosed to her and distinguished from the separate cost of the ongoing advice service. Even if Mrs M felt that the pension transfer was her idea and that she did not need advice for it, the report informed her that Mackay had been appointed to and had delivered the distinct service of advising on its suitability. The report also showed it had conducted considerable work in doing so and, I

repeat, that she was to be charged separately for that.

In other words, Mrs M agreed and paid £11,625 for the isolated initial advice in 2017. That payment had, and has, nothing to do with the ongoing advice that followed (up to September 2023).

She says she would not have appointed Mackay if she knew it did not have permissions to advise her as a non-UK resident, and if she knew the 2023 events would happen.

In 2017 she was still a UK resident, and she appears to have remained so for a couple of years thereafter. Mackay had permissions to advise her as a UK resident at the time, and the initial advice fee has nothing to do with the period, years afterwards, in which she received ongoing advice as a non-UK resident. For these reasons, I do not accept that her residence would have made any difference to the initial advice she received from Mackay in 2017.

I have not seen any evidence that Mackay planned, anticipated of foresaw, in 2017, a sale of its servicing accounts six years later in 2023, or a sale in 2023 to a firm without permissions to advise non-UK resident clients. Mrs M does not appear to claim that it did, and given the facts it does not strike me as plausible. The conclusion that follows is that it probably had no plan or idea in 2017 that it would be selling its servicing account in 2023 or that it would be doing so to such a buyer. Therefore, it could not reasonably have been expected to warn her about something it did not know.

As I explained above, the 2017 initial advice is isolated, so it might be said that foresight, at the time, of a future sale of the servicing accounts is irrelevant to the initial advice fee issue. However, it is Mrs M's claim that she would not have appointed Mackay for *any* service had such foresight been shared with her. That is possible, but as I have found above, Mackay probably did not have that foresight, so it could not reasonably have been expected to share it with her.

For the reasons given above, I do not uphold Mrs M's claim for a refund of the initial advice fee.

*Ongoing advice and the ongoing advice fee*

Mackay concedes that it did not have the permissions to advise Mrs M once she became a non-UK resident client. It has explained that this was an oversight on the adviser's part and that he did not realise it until around the time of the sale to Chase in 2023.

Mackay's accountability to the regulator in this respect is a matter that it is expected to address directly with the regulator. If Mrs M has concerns about that accountability, she can consider doing the same.

In terms of the complaint referred to us, the undisputed fact is that, despite not having the permissions to do so, Mackay provided the full ongoing advisory service to Mrs M up to September 2023. That is what she paid the ongoing service fee for. No service shortfall, between the pension transfer and September 2023, has been alleged by her, and I have not seen evidence to show any such shortfall. A refund of the paid ongoing fees is also not part of her pursuit. There is evidence that refers to the ongoing service fee paid for the month of October 2023 having been refunded to her, after it became clear that Chase could not continue that service.

For the above reasons, there is no call to make a finding on the delivery of Mackay's ongoing advice service to Mrs M and her SIPP, or on the fees paid for that service.

I return to her comment that she would not have appointed Mackay had she known that it did not have the permissions to advise her after she moved abroad. She says that would have mismatched her plan. On balance, I agree. When she appointed Mackay to deliver the ongoing service she had already planned to move permanently abroad soon thereafter. The suitability report refers to this. In that context, she is unlikely to have wanted a service that could not match that plan.

However, other than the regulatory issue that I addressed above, the fact remains that she received the full ongoing service throughout and until the sale to Chase. Even though, with awareness of the lack of permissions, she is unlikely to have appointed Mackay at the outset, she has nevertheless received the ongoing service she paid for.

If her argument is that, but for its appointment she would not have been in the position she found herself in during September and October 2023 – whereby her account had been sold to Chase, it could not continue the service and she faced the task and expense of appointing a new adviser.

On balance, I disagree. If Mackay had the required permissions in 2017, the sale to Chase in September 2023 would have still happened. Chase would still have been a firm without permissions to advise her, due to her non-UK resident status, so she would have found herself in the same position in October 2023. In the alternative, if Mackay had disclosed, in 2017, that it did not have permissions to advise her after her move, I accept that she would have probably appointed another firm. However, it is impossible for me to know, on the balance of probabilities, what her experience with another firm would have been and whether (or not) she would have changed firms before or by 2023.

*The events in September and October 2023*

Mrs M says Mackay sent her a text message on 14 September, telling her about the sale to Chase, and that nothing else will change; on 19 September it emailed her notice of the sale; up to around 29 September she was led to believe Chase will be continuing the service; she needed advice on the fund switch, it was a live matter at the time due to an impending downwards value adjustment in the existing fund holding; between 29 September and 5 October she learnt from Mackay that Chase might not be able to continue the service, but was told she had ample time for the fund switch; it knew that from the end of October she would not be contactable for months; on 23 October it was confirmed that Chase would not be continuing the service and that she needed a new adviser to conduct the fund switch; and the fund liquidation was Mackay's last minute, execution only, task to mitigate the matter and avoid the reduction of value in the fund holding.

Even though the loss of value was avoided, Mrs M says her plan would ordinarily have been to reinvest the liquidation proceeds, but because she was left without an adviser to assist her in doing so, the cash had to be left as it was. She considers there has been a loss of investment opportunity. Her argument is that Mackay's initial notice of the sale should have confirmed that Chase could not continue the service, and that would have given her around six weeks to arrange a new adviser to help with a complete fund switch (including reinvestment).

I understand this argument, but Mrs M accepts that she had an earlier indication that Chase might not be able to continue the service, during telephone calls with Mackay on 29 September and 5 October. Her complaint email to Mackay (dated 23 October 2023) states this. This means she had most of the month of October, or that entire month, after 29 September, to start looking into alternative assistance. It is also noteworthy that on 26 September she complained about her named adviser at the time and was allocated a

replacement. Therefore, news, shortly afterwards, that Chase might not continue the service and awareness that Mackay could not do so, should have prompted steps on her part to mitigate during October.

In an email to Chase towards the end of October she confirmed that liquidation of the fund holding and doing so in November had already been pre-planned with Mackay, that the urgency in October was caused by an indication that the value adjustment was to happen sooner, and that she would look into reinvestment of the cash in January 2024 after returning from her planned absence.

This supports the finding that Mrs M should have had an incentive to look into alternative assistance after the indications she received on 29 September and 5 October. It appears she already had a plan in place with Mackay, at the time, to conduct the liquidation in November. Awareness that Mackay could no longer advise her (on the planned November liquidation and any subsequent reinvestment) and that Chase might not be able to, should have created that incentive. Like the investigator said, she could have then approached a new firm in October.

Mackay should have told Mrs M, on 14 September, that Chase could not continue the ongoing service. It should have confirmed Chase's position on that before contacting her to tell her about the sale, thereby putting itself in a position to deliver complete and meaningful notice to her. Informing her, at the time, about the sale and about Mackay's termination of the service, but not giving her accurate confirmation on whether (or not) the service would resume with Chase was somewhat meaningless. The matter should not have been left unaddressed until the confirmation on 23 October, around six weeks later. However, as I mentioned above, she had indications of this confirmation between 29 September and 5 October.

The delay certainly caused her trouble and distress. She was told about Mackay's service termination but left in a state of uncertainty about whether (or not) Chase would resume the service. As she has said, she was initially led to believe Chase would do so, only to later learn the opposite. However, my consideration of the balance between the six weeks delay and the indications she received around halfway through that delay leads me to agree with the investigator's £400 award for trouble and distress. It is a reasonable amount to compensate for the trouble and distress she was caused, in the context of this balance.

## Putting things right

In order to put things right for Mrs M, Mackay must pay her £400 for the trouble and distress caused to her by its delayed confirmation of Chase's inability to continue the ongoing advice service.

## My final decision

For the reasons given above, I uphold Mrs M's complaint in part, and I order Mackay Hall Financial Services Limited to pay her £400.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 2 August 2024.

Roy Kuku
**Ombudsman**