DRN-4888025

The complaint

Mrs B complains about Abacus Money Management Ltd's ("Abacus") handling of a transfer of her investments and the sale of a unit trust.

What happened

Mrs B is represented by her husband, Mr B, in bringing this complaint. Mr B raised a separate complaint about his investments; this decision considers Mrs B's complaint only. Mr B also represented Mrs B in some of her dealings with Abacus and so I will at times refer to him in this decision.

Mrs B and Mr B were clients of Copperfield Financial Management, an appointed representative of Abacus. I'll refer to Copperfield as 'the IFA'.

At a meeting with the IFA on 22 March 2021, Mrs B and Mr B were advised to transfer their investments to a different third-party platform, from Standard Life to Aviva. It is common ground that they were not advised in the meeting that the process could result in their investments being removed from the market for a period of time.

The transfer of Mrs B's ISA and SIPP took place in March 2021 with completion by May 2021. During the process some funds were out of the market for a period of weeks as the transfer was made by cash, which meant that returns were missed. Further, Mrs B encashed a unit trust to crystallise the gains she had made. This resulted in a capital gains tax (CGT) charge that was greater than Mrs B had anticipated and her funds being out of the market for a period of weeks.

The IFA accepted that some mistakes were made and offered £2,215.87 to compensate Mrs B for the value she would have achieved if her ISA had remained invested, less £563.27 which was the loss of value Mrs B would have sustained if the SIPP had remained invested. The IFA excluded £968.40 compensation from Mrs B's ISA stating that this loss was down to delays caused by Standard Life. The IFA maintained that they did nothing wrong in acting on the instruction to sell the unit trust.

Our investigator considered the complaint. He thought Mrs B wasn't aware that her investments would be removed from the market in order to facilitate a transfer, as a suitability report (*"Review and Switch Recommendation report"*) which highlighted this risk wasn't received until after the transfers had commenced. Further, our investigator placed weight upon a response from Standard Life, the platform Mrs B was moving from, which highlighted that the investments could have remained invested and transferred in specie. He also relied upon the IFA's concession that an in specie transfer should have taken place.

Our investigator concluded that whilst some funds were rejected due to a corporate action that wasn't something Standard Life could have foreseen. Overall, our investigator thought that had Mrs B been in possession of the full facts, it was likely that she would have selected to transfer her investments in specie rather than in cash. To put matters right our investigator recommended that the IFA compensate Mrs B by calculating the full extent of any gains on the ISA and SIPP as if they had remained invested over the period the funds were out of the

market. As to the sale of the unit trust, our investigator concluded that the IFA did nothing wrong in actioning the instruction to sell the unit trust, which triggered the capital gain.

Abacus accepted our investigator's findings, but Mrs B disagreed with the outcome in relation to the sale of the unit trust. She said that she wanted to sell investments in the tax year to crystallise the gain as it seemed to make sense. However, she says she was not advised about the potential size of the capital gain and that she could not invest the proceeds for a period and until after the tax year end.

As the parties do not agree, the case has come to me for a 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.

I have concentrated my findings on what I consider to be the key factors in reaching a fair and reasonable outcome to this complaint. I should make clear that our service has no regulatory or disciplinary powers, which means we can't direct a business how to operate and we can't impose any penalties. We consider each case on its own facts and where things have gone wrong, we look to put them right on a fair and reasonable basis.

SIPP and ISA

It is common ground that the IFA failed to advise Mrs B to complete the transfer of her SIPP and ISA in specie. A clear concession was made by the IFA in a letter of 4 August 2021:

> *"On reflection we should have transferred the money in specie . . .It was my fault that I chose to process the transfers in cash and so I carry the blame for not duly considering this…This should have been made clear to you."*

It is also accepted by the IFA that the suitability report should have been sent before Mrs B accepted a recommendation and transfer, but "*given the rush in getting some of the work done before the end of the year*," it was sent after the event.

On balance, I am satisfied that the IFA fell short here. Mrs B has been clear that had she been aware of this option, it is more likely than not that she would have elected to transfer her ISA and SIPP in specie. I consider it is fair and reasonable to uphold this aspect of the complaint. Having reviewed the timeline, I'm not persuaded that any delays in the transfer process were due to the third-party, the corporate action was a matter outside their control.

Unit trust

When Mr B (on Mrs B's behalf) brought this complaint to our service he said:

> *"Part of these investment changes involved selling some of my wife's investments before the end of the tax year which we knew would result in a large capital gain as we thought there was no material investment risks as our IFA had not conveyed any. We would not have crystallised these gains if we knew the potential risks. I am not seeking compensation over and above the missed returns."*

It is common ground that Mr B and the IFA discussed selling Mrs B's unit trust. In an email to the IFA on 22 March 2021, Mr B said they had agreed in their meeting that day to sell Mrs B's savings (excluding her ISA) to crystalise the gain in the 2020/21 tax year.
The suitability report said one of Mr and Mrs B's aims and objectives was to crystallise the

capital gains accrued within Mrs B's general investment account. Although that report wasn't sent until after the unit trust had been sold, I think it was most likely an accurate record of Mr and Mrs B's objectives.

By the time the suitability report was completed, the unit trust had been sold. One of Mrs B's complaint points is that the IFA didn't make her aware in advance of the size of the capital gain. I can't be sure whether there was any discussion of the likely size of the capital gain at the meeting between Mr B and the IFA on 22 March 2021, or subsequently. There is no reference to it in any of the paperwork I have seen from the time, prior to the suitability report.

I note however that in bringing this complaint Mr and Mrs B said they were aware there would be *"a large capital gain"*. From the evidence I've seen I think Mr and Mrs B had a reasonably good knowledge and understanding of their investments and, on balance, I agree with our investigator that Mr and Mrs B should have known broadly what the gains would have been or queried this with the IFA if they were uncertain.

Mrs B has also said that she would not have agreed to sell the unit trust if she had known she could not reinvest the proceeds immediately. I've not seen any evidence that the IFA explained in advance of the sale that Mrs B would be unable to reinvest the funds for a period of weeks. However, even if that had been explained to Mrs B, I'm not persuaded that she would have decided not to go ahead with the sale of the unit trust.

With hindsight, and seeing how the markets moved, Mrs B may have acted differently. But I'm not looking at this complaint with the benefit of hindsight. As I've already noted, Mr and Mrs B had made clear that one of their objectives was to crystallise the gains within Mrs B's account. And on balance, I think it is more likely than not that Mrs B would have prioritised that objective and gone ahead with the sale of the unit trust, even if the IFA had provided her with more information. Overall, I don't think it would be fair and reasonable to say that the IFA was wrong to act on a clear instruction from Mrs B to sell the unit trust.

I appreciate this will be a disappointing decision for Mrs B, but I won't be upholding this part of her complaint.

Putting things right

In order to put Mrs B back in the position she ought to have been in, I consider that the IFA should calculate what the value of Mrs B's SIPP and ISA would be now had the transfers taken place in specie. The IFA should compensate Mrs B for the differences in value between those figures and the current values of the SIPP and ISA. That represents the full amount she has lost out on as a result of the IFA's actions, and I think it is fair and reasonable in the circumstances of this case.

SIPP

Any loss Mrs B has suffered should be determined by obtaining the notional value of the pension now had she remained invested when the transfer took place (taking account of subsequent contributions made by Mrs B) and subtracting the current value of the pension from this notional value. If the answer is negative, the IFA's actions have resulted in a gain and no redress is payable.

The compensation amount should if possible be paid into Mrs B's pension plan.
The payment should allow for the effect of charges and any available tax relief.
The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mrs B as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid. If Mrs B has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to her likely income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss would adequately reflect this.

ISA

Any loss Mrs B has suffered should be determined by obtaining the notional value of the ISA now had she remained invested when the transfer took place (taking account of subsequent contributions Mrs B has made to her ISA) and subtracting the current value of the ISA from this notional value. If the answer is negative, there's a gain and no redress is payable.

If the answer is positive, Abacus should also compensate Mrs B for the loss of tax protection on that amount. On the assumption that Mrs B will be able to reinvest the funds in her ISA in 2024/25, Abacus should compensate her for the loss of tax protection up to that point.

If payment of compensation is not made within 28 days of Abacus receiving Mrs B's acceptance of my final decision, interest should be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.
Income tax may be payable on any interest paid. If Abacus deducts income tax from the interest, it should tell Mrs B how much has been taken off. Abacus should give Mrs B a tax deduction certificate in respect of interest if Mrs B asks for one, so she can reclaim the tax on interest from HMRC if appropriate.

My final decision

For the reasons I've explained, my final decision is that I uphold in part Mrs B's complaint against Abacus Money Management Ltd.

Abacus Money Management Ltd should compensate Mrs B as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 31 July 2024.

Matthew Young
Ombudsman