DRN-5144241

The complaint

Mr and Mrs B complain, in essence, that Vintage Wealth Management Limited ("Vintage") was at fault in what it said or didn't say about how long their investments might be in cash, out of the market, during investment changes recommended by Vintage.

Background

I set out what happened in this case in my provisional decision in the following terms:

What happened

Mr and Mrs B's portfolio was worth around £950,000. It comprised pension, ISA and non-ISA accounts for Mr and Mrs B and their children. The mix of investments held by each account was designed to match a 'model portfolio' suited to the risk attitude wanted for that account. In this process, known as a *"managed portfolio service"*, a discretionary investment manager would make changes to the account assets, and model portfolio mix, on an ongoing basis.

Mr and Mrs B wanted to reduce the fees deducted from their portfolio. Mr B on 26 May 2023 said: *"We need to get them down to the 1.3% so we can then move forward and I can forget transfer options."* Ultimately a 1.4% total for platform, fund and adviser fees was agreed.

Vintage's suggestion was to move from the managed portfolio service, discontinuing the discretionary management and its associated fees. Instead the portfolio would invest in a *"bespoke investment strategy"* which meant accounts would be invested in a mix of two investment funds selected by Vintage. The funds varied slightly for different accounts, but the selection would achieve the reduced charging level agreed with Mr and Mrs B.

A report dated 1 June 2023 set out recommendations, saying: *"You wish for your investment strategy to be reviewed as you have been unhappy with the performance of the… portfolios… and felt that the cost of the discretionary management service was too high."* It said of the new arrangements: *"You will reduce the overall charges on your portfolio. This has the benefit of ensuring less of the funds within your portfolios are eroded, providing additional potential for higher fund values."*

The report said there would be no initial charges for the advice or for implementation of the recommended changes.

A report section headed *"Please Be Aware Of The Following Disadvantages"* listed points but didn't include time out of the market as one of them. But an appendix to the report – *"Appendix C – Risk Warnings & Cancellation Notice"* - listed risks including this one:

"While your funds are transferring there will be a period of time when they are out of the market. During this time, they will not benefit from any uplift in market values. Conversely, they will not be affected by any decline in values."

A period followed in which Vintage was awaiting Mr and Mrs B's authority to proceed. They remained invested in the markets during this period. On 6 July 2023 Vintage issued an *"addendum"* or correction to its report, largely to cover off the capital gains tax position and to confirm a reduced ongoing advice charge, reduced from 0.6% to 0.5%, negotiated with Mr and Mrs B. It set out what this would mean for the charges overall on the accounts after the move from the existing arrangements to the new ones. The addendum concluded:

"These are the only changes to my original advice. All recommendations detailed within the Investment Report dated 01 June 2023 remain unchanged. All of the relevant risk warnings remain relevant."

On 9 July 2023 Mr and Mrs B signed paperwork and asked Vintage for *"confirmation we have now been moved to the new schemes".* There was a cash transfer between accounts to carry out first and on 10 July Vintage said it would *"action the rebalances into the bespoke investment strategy for you…"* after that. In the meantime Vintage would request the fees for the discretionary manager be stopped.

On 13 July Vintage said the internal transfer was complete and so it had *"now submitted the ten rebalances to place your accounts into the bespoke investment strategy. All fund trades will need to complete and settle. You will receive notification… once the transactions are complete. I will continue to monitor these until completion for you."*

I've seen a switch confirmation dated Thursday 13 July 2023 from the investment platform provider. This sets out the funds to be sold and how the proceeds were to be split between new funds. I gather this was based on instructions given by Vintage on 13 July, and what followed then was done automatically by the third-party platform to implement the instruction.

In brief, this was sell (or 'switch-out') orders entered on 14 July 2023 for all funds except one; a sell order for this last fund on 17 July; settlement of a small number of orders on 18 July with most settling on 19 or 20 July (around half on each date); buy (or 'switch in') orders for new funds for half the accounts on 24 July and the other half (and largest account) on 25 July.

During all this on 20 July 2023 Mr B accessed the accounts and said to Vintage:

"…what wasn't explained to me is that all my money would be held in cash? I had quite a shock… Please can you confirm how many days this has been the case and the market movement over this time?" He continued: *"From your email I assumed (clearly wrongly) that this process would be simultaneous. It looks like I have lost out significantly… with the positive market moves?"*

Vintage replied: *"I have checked [the platform] and the transactions I processed are still in progress at the moment. As you are having a brand new investment strategy, all of your previous funds had to be sold down to cash to be able to purchase the two new funds…* "

On 21 July 2023 Mr B repeated concern about missing "*all gains over the last few days",* adding: *"I do not understand why this has not been done piecemeal to minimise loss?"* He added: *"Please confirm that I have not lost out on the 2.5% gain on the Dow and 3.5% on the FTSE this week?"*

Vintage's adviser replied that *"we don't do fund switches piece meal"* and *"It could just as easily moved the other way…."*

Mr B replied: *"…at no point was this risk explained… I estimate I have lost £15k… there is no suggestion it would take any period of time and certainly not more than a week to settle any accounts nor that you wouldn't simply have invested in the new funds as we went to fully mitigate this…You have been holding my money in cash against my wish."*

Vintage's admin department also replied: *"All of your switches were submitted correctly once we had received your signed instruction. I have had a look at [the platform] to see why the process is actioned the way it is… From what I can see, your portfolio was a mixture of daily traded and non-daily traded assets. Any daily traded assets did complete settlement however as there were non-daily traded assets within your portfolio no buys could be initiated until all trades had settled."*

Mr B replied: *"At no point was this explained to me nor the risk involved. It would have been easy to highlight this to me and I could have then made a decision when to make the switch. I certainly would not have allowed us to do this over the period that the inflation update was coming out…"*

On 24 July 2023 Vintage said the sales had completed and the purchases were in progress. Mr and Mrs B replied reiterating their concerns and saying they had assumed the changes would be *"done back to back to mitigate this risk…"* They noted that to answer their queries Vintage had (on 21 July) *"looked up on the [provider's] website to find out… the process…"* which they said showed Vintage was *"also unaware of this risk"* which was a *"fundamental flaw"* in the change process and the advice to change. They said they would not have progressed on this basis if this risk had been explained. As regards the possibility the market could've fallen instead of risen, they said it was not for Vintage to gamble with their funds in this way and the gamble had lost a significant sum.

Mr and Mrs B reiterated these points on 30 August 2023, adding that Vintage's CEO told them he would in future advise that changes like this be phased to materially mitigate the risk. They noted the risk warning in Appendix C relating to time spent out of the market but said they had been *"led to expect this to be a maximum of a few days, not 15 work days"* and Vintage itself had been surprised by the time it took and had with hindsight "*suggested it would be better to phase given the length of time."*

Vintage has calculated that if Mr and Mrs B hadn't changed their portfolio at all, it would've grown £21,493 more from 13 July to 1 August 2023. This is because the riskier part of the portfolio would've grown by 2.68% instead of 0.43% - making up about £20,000 of the difference – and the less risky part would've grown by 1.26% instead of 0.15%.

Vintage's adviser has said he doesn't think Vintage did anything wrong. He says he *"was not aware of the time / process it would take [the provider] to trade…"* But he doesn't agree that he ought to have advised making the changes in tranches.

Vintage's CEO hasn't accepted that he told Mr B the changes ought to have been done in tranches. He says it was Mr B who said he'd have discussed doing the changes in four or five tranches to reduce market risk had he known how long the changes would take.

Our investigator considered Mr and Mrs B's complaint and didn't think it ought to be upheld. In brief, he considered that the time taken to complete the changes wasn't unreasonable and was within set service standards, so there was no delay for which to award redress.

In reply, Mr B said the complaint "*was, and remains, that I was told, and have clear evidence that the transfer was expected by the entire Vintage team to be back-to-back. This is what I was promised and had the transfer occurred as promised I would have not lost the money I did… the fact is that I was promised it would be completed immediately and certainly in less than 3 days!"*

Mr B also said: *"Fundamentally had I been told by the Vintage team that it would take 3 weeks I would not have gone ahead with the transaction or as a minimum done it in a* *phased manner as the CEO of Vintage has said he will offer going forward. I was lied to [to] keep my business and you have decided willingly or unwillingly to completely ignore this…"*

Mr and Mrs B have pointed out that Vintage, when challenged, didn't cite a prior discussion of agreed timescales. Instead it investigated the platform's switch process. They say Vintage had no idea the changes would take as long they did, and so no idea of the resulting financial risk Mr and Mrs B would be taking. They say Vintage never explained this and the delay directly caused avoidable loss. They say that fundamentally it was incompetence or a lack of knowledge that caused loss which Vintage should now repay.

Provisional decision text ends.

My provisional decision set out my provisional findings in the following terms:

<u>*My provisional findings*</u>

From what Mr and Mrs B have said, the portfolio was in cash on 20 July 2023. Sales settled (cash received) on 18, 19 and 20 July. Settlement is usually two or three trading days after the trade. So sales settled on 19 July - the first large group – were likely sold on Friday 14 or Monday 17 July. So a large part of the portfolio was out of the market from those dates. The rest of the portfolio – sales settled on 20 July – was likely sold on 17 or 18 July.

The cash was reinvested on Monday 24 July 2023 and concluded 25 July. The process was that the platform would send buy orders to the fund managers and the fund managers would then act on these and issue contract notes to confirm the purchases to the platform. This may explain why purchases didn't start straightaway after 20 July – so on Friday 21 July - but on 24 July. This was a process carried out by the platform rather than Vintage.

What is apparent is that the platform didn't start to buy new funds until all the cash from the sales of the old funds had been received. The result, compared to reinvesting piecemeal, was that cash received on 19 July 2023 had to wait for all the 20 July cash to arrive, so remained out of the market for one or two days longer than it otherwise would.

Waiting for all the cash to be available and not trading piecemeal, also meant the platform didn't use its facility to place a buy order as soon as a fund manager confirmed a linked sale, rather than at the end of the two or three day settlement period for that sale. This could have reduced the time out of the market by a day or so, depending on how long the settlement periods were and how quickly the fund managers sent the sale confirmations to the platform.

So making the changes piecemeal would've led to something like two to four fewer days out of the market for about half of the money in the portfolio (the 19 July money) and one or two days fewer out of the market for the other half (the 20 July money). I give this range as the exact timing would depend on other factors such as when during the day the platform sent the orders, whether this was in time for each fund manager's daily cut-off point and how quickly the fund managers and platform reacted to one another at each stage. The platform aimed to send instructions within particular timescales but didn't guarantee this.

Vintage explains the fact that trades weren't processed piecemeal by saying some funds weren't daily traded. It is true that for such funds, buys couldn't be made until the trades settled. But I've seen no evidence any of the funds weren't daily traded or that this is what held things up. The last fund to settle… settled no later than 20 July 2023, according to the list Vintage has sent us.

So I'm not persuaded the changes were held up due to some funds being traded less than daily. Had that been the case, I would have expected a bigger difference in the settlement dates when in fact the bulk of these happened over consecutive days, which is in line with the fact that some funds may settle after two and some after three days – rather than anything to do with funds being weekly rather than daily traded.

Instead I think the funds weren't traded piecemeal because Vintage didn't give instructions that asked the platform to do the changes piecemeal. Vintage says it wouldn't have given instructions to make the changes in that way. From what I've seen, the fund changes for each of the ten accounts were given in a single instruction for that account - and said that for each of the existing funds 100% should be sold and also said the proceeds were to be split between the new funds in specific percentages set in the instruction. So the platform waited for all the proceeds before applying the relevant percentages to the total.

Vintage denies agreeing in a call with Mr and Mrs B that the changes ought to have been done piecemeal. It says Mr and Mrs B suggested that idea during that call. The earliest suggestion I've seen of the idea was made by Mr and Mrs B on 21 July 2023, before the call at issue. So I'm not persuaded Vintage admitted fault in that call like Mr and Mrs B say it did.

I've considered whether Vintage ought to have organised the changes piecemeal or offered Mr and Mrs B the option to have them done that way. It seems to me a piecemeal approach could've been taken by submitting an instruction for each fund holding in each account, specifying that the proceeds for the sale be split between the new funds in certain percentages. The ten accounts each held around twenty funds, so this would've involved 200 instructions rather than the ten Vintage gave. As far as I'm aware, this wouldn't have affected the cost of making the changes. Market moves during the process would've meant the fund split for each account wouldn't be bound to match exactly the recommended fund split at the point the changes finished (the split would of course carry on changing afterwards too, unless all the funds rose or fell in exactly the same way).

I note this wasn't Vintage's usual method, and it would've involved giving more complex instructions, increasing the work involved and perhaps increasing the risk of error. Also how long might be spent out of the market under both approaches wasn't something Vintage could tell in advance. So when it came to the potential benefits of taking a piecemeal approach, Vintage couldn't have said how much time out of the market this would save. The time taken would depend on the processes and timings of each of the 30 or so funds the accounts held, and the interaction with the processes of the platform. Given this interaction I don't think enquiring of all of the funds would've given a clear answer to how long would be spent out of the market.

Mr and Mrs B have said Vintage's uncertainty on timescales showed it lacked knowledge or competence. But in my view, this wasn't something Vintage could know or estimate with any degree of confidence in advance – how long it would take exactly was genuinely uncertain.

Mr and Mrs B wanted to lower costs. They weren't unwilling to leave the market for a period – it seems they were willing to end their arrangements with Vintage if it couldn't reduce costs satisfactorily. They knew the changes involved selling holdings and buying new ones, so they knew there would be time spent out of the market. They've said they understood this might be a "few days". Time spent out of the market wasn't bound to be negative for the portfolio – as markets could move down as well as up. Also Mr and Mrs B didn't specify any particular market event or period that they wanted to be sure to remain invested for.

Vintage's approach wasn't bound to be disadvantageous for Mr and Mrs B. But in hindsight, knowing what Mr and Mrs B expected, it would've been better for Vintage to have discussed how the changes would be made and said more about the issue of time out of the market. But, on balance and with all I've said above in mind, I don't find that not doing so made Vintage's advice or standard of service faulty. On balance I don't think it would be fair and reasonable to say that Vintage was at fault for not exploring doing the changes piecemeal.

Mr and Mrs B say they understood the accounts wouldn't spend significant time outside the market - whether because the changes would be back-to-back or immediate or within three days or some other period. I've not seen anything to suggest Vintage was aware that this is what Mr and Mrs B expected. Had Vintage been aware of this, I think it would've been obliged to say more to correct the potential misunderstanding.

Vintage's advice report did say "*there will be a period of time… out of the market*" – and pointed out that during that time market gains or falls wouldn't affect the portfolio value. So it did give a warning in its letter that there would be some time spent out of the market during which market moves would be missed. I don't overlook that this was given in an appendix. But this appendix was the main list of risks in the report, so it is where I would expect this to be listed. It could've been put in the earlier list of 'disadvantages' instead, although it would only be a disadvantage if markets rose. I don't see that Vintage was wrong to list it where it did. Also I don't think Vintage was unreasonable to not include in the warning an estimate of how long this period out of the market might be, for the reasons I've already given.

Mr and Mrs B's initial testimony was that the length of time spent out of the market wasn't discussed and they made assumptions about it. So from what I've seen, their expectations were inferred in the absence of a specific information, rather than based on something Vintage told them. Mr and Mrs B have said too that Vintage told them it would take a few days, but I've found nothing else to support this idea. I'm not persuaded Vintage estimated a timescale. Its risk warning didn't do so. Nor did it suggest the period would be short or insignificant. Indeed including the point in its list of risks indicated it could be significant. The changes made shaved fractions of percentages off costs – reducing fund costs by around 0.4%. With such small fractions, a short period outside the market with only modest market moves could still result in moves outweighing the cost savings in the short run.

I'd add that if Vintage had emphasised in its risk warning that the time out of the market might exceed a few days, the evidence I have doesn't conclusively point to how this might have changed the result for Mr and Mrs B. They have speculated that they wouldn't have made the changes at all. But they have also suggested they might have agreed to them but had them made at a different time. They have also suggested they might have made them but in tranches. I note these are all different outcomes and any view as to which would be most likely needs to be reached without hindsight. A further possibility is that Mr and Mrs B would've proceeded with the changes in the same way, which I don't think can be ruled out. That said, I need not reach a concluded view on this point, given my conclusions above.

If Vintage is right that piecemeal reinvestment wasn't permissible due to the frequency with which some of the funds traded, this wouldn't change the conclusion I've reached above. But at present I'm not persuaded that what Vintage said about this is right.

So I think Vintage's explanation to Mr and Mrs B of the position, when they raised concerns, wasn't accurate and its service fell short in that regard. Mr and Mrs B's disappointment and distress for the most part arose when they found they had unexpectedly missed positive market moves while their portfolio was being changed. I've not found Vintage at fault for that. But Vintage's later failure to accurately explain what had happened, in my view likely added to Mr and Mrs B's concern. I consider £350 is an appropriate sum for Vintage to pay them for this additional concern.

Provisional decision text ends.

Vintage didn't reply to my provisional decision with anything new. Mr and Mrs B did reply to raise a few final points. In brief summary:

- Mr and Mrs B were brought up on the belief you should be able to trust what you are told by advisors and the ombudsman is there to protect consumers when this is not the case. The ombudsman has concluded Mr and Mrs B weren't told of the risk in question at all (which they weren't) and that it was hidden at the very back of the report (which it was). To prevent Vintage concluding it is more beneficial not to highlight relevant risks, please take the final step and fairly value the loss Mr and Mrs B suffered.

- The ombudsman says there is no evidence Vintage expected the trade to complete faster/immediately – but what Vintage's representative said clearly shows Vintage was surprised by how long the settlement was taking - otherwise the reply would've been that this was normal or expected rather than that she would need to look into it immediately.

- It is untrue to say Vintage's CEO didn't refer to offering tranche payments in future. The ombudsman must be able to ask Vintage whether it has offered this to customers since, like Vintage's CEO said it would. This would retrospectively evidence what the CEO said.

- The ombudsman agrees the new purchases could have been made piecemeal. Please get Vintage to value what this would have meant for the loss Mr and Mrs B incurred. As a minimum it should be this that is the settlement.

- The sum proposed for Vintage to suffer works out at 0.00035% of the funds under management and to less than minimum wage for the time the complaint has taken up.

As the complaint remains unresolved, it has been passed back to me to decide.

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.

Having done so - and having carefully considered in particular the further comments kindly sent in by Mr and Mrs B - I've arrived at the same conclusion as in my provisional decision and for broadly the same reasons. But I'd like to thank Mr and Mrs B for their further points and also for the prompt and courteous manner in which they provided them. I've given my thoughts on these points briefly below, to explain why my conclusion remains as it is.

Vintage's report said "*there will be a period of time… out of the market"*. This was at the back in an appendix, but it was the main list of risks in the report. So Vintage did give a warning there would be some time out of the market during which market moves would be missed. I acknowledge that when asked about progress, Vintage's reply included: "*I have had a look… to see why the process is actioned the way it is…"* But I don't think this shows that Vintage had expected the process to be quicker. In my view it shows Vintage didn't have a clear idea of how long things would take. I've explained my view that how long things would take was genuinely uncertain and not something Vintage could estimate with confidence.

I don't agree that by not giving an estimate, Vintage implied the period would be short or not of significance, and I'm not persuaded Vintage suggested this explicitly either. In my view including the point in its list of risks indicated it could be significant. So on balance I remain of the view that Vintage wasn't at fault in not saying more about this than it did. I say this bearing in mind that I've not seen anything to suggest to me that Vintage was aware that Mr and Mrs B understood there wouldn't be significant time spent outside the market. Had it been aware of this, it would've been obliged to correct the potential misunderstanding. So, knowing this now, in hindsight it would've been better had Vintage said more about this and discussed how the changes would be made. But I'm not judging with hindsight.

Had the changes been done piecemeal, it can now be said, broadly, that about half the money would've spent around two to four fewer days out of the market and half would've spent around one or two days fewer. But this isn't something that could've been said with any degree of certainty in advance.

I bear in mind time that spent out of the market wasn't bound to be negative as markets move down as well as up. More importantly, Mr and Mrs B knew the changes involved selling holdings and buying new ones, so from Vintage's point of view Mr and Mrs B knew there would be time spent out of the market and didn't raise objections, concerns or conditions with Vintage concerning this. They didn't specify any particular market event or period they wanted to be sure to remain invested for, for example, or ask how long the time out of the market might be. From Vintage's point of view Mr and Mrs B were content with what was proposed, which inevitably involved some time out of the market.

Vintage didn't usually arrange for changes to be made piecemeal, which would've involved more complex instructions, more work and more risk of error. On balance, with all I've said above in mind, I remain of the view that it wouldn't be fair and reasonable to say Vintage was at fault for not exploring with Mr and Mrs B the possibility of making the changes in this way.

I said Vintage denies agreeing with Mr and Mrs B that the changes ought to have been done piecemeal. In doing so, I was reporting what Vintage had told us. As Vintage isn't admitting fault to us in the way Mr and Mrs B say it did to them, my view on whether it is at fault is reached in the absence of an admission of that kind. I accept I could ask whether Vintage has since changed its approach to implementing changes like this, as Mr and Mrs B say it told them it would. But if it has, this doesn't in my view show that it was wrong to take the approach it took at the time in this case. So I've not taken up the idea of asking more on this.

I acknowledge that Mr and Mrs B consider the minimum settlement should be based on the position had they made new purchases piecemeal. But as I've not found Vintage at fault for not proposing this option, I don't find Vintage ought to calculate redress on that basis.

Likewise I've not found Vintage at fault for the disappointment and distress that arose when Mr and Mrs B found they had unexpectedly missed positive market moves while the changes were being made to their portfolios. My proposed award was for the additional concern they were caused on top of this by Vintage's later failure to accurately explain what had occurred. I acknowledge £350 won't compensate Mr and Mrs B for the time spent on this complaint, but that isn't the purpose of my award. I've found Vintage's explanation to Mr and Mrs B when they raised concerns, wasn't accurate and its service fell short in that regard.

So, with all I've said above in mind, I've decided to uphold the complaint in part.

In closing, I acknowledge what Mr and Mrs B for have said about their deep frustration with our process and with my conclusions. I'm grateful for the prompt assistance they have given our investigation from the outset and I thank them for their patience and courtesy throughout.

Putting things right

I uphold the complaint in part and order Vintage Wealth Management Limited to pay £350 to Mr and Mrs B - as redress for distress the failing I've identified above caused them.

My final decision

I uphold the complaint. Vintage Wealth Management Limited should put things right by paying the sum I've set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr and Mrs B to accept or reject my decision before 13 December 2024.

Richard Sheridan
Ombudsman