DRN-2968062

The complaint

Mr M says Sovereign Pension Services (UK) Limited (Sovereign) was responsible for a delay in acting on his instruction to disinvest from the funds in his Self-invested Personal Pension (SIPP). He says this resulted in substantial financial detriment to him.

Mr M is represented by his financial adviser.

What happened

There is agreement between the parties that Mr M's instruction to end his discretionary fund management (DFM) arrangement with WH Ireland and to sell the assets within his Quilter International Isle of Man Limited (Quilter) SIPP, was received by Sovereign on 20 February 2020. It's also agreed this wasn't acted upon until 28 February 2020.

Mr M's representative said:

"Sovereign's job is to instruct Quilter, immediately, on sales and purchases of funds and assets, quilter then immediately instruct WH Ireland. Both instructions within 24 hours, very maximum each. Effectively 24 hours usually covers both instructions. As WH Ireland always holds only liquid assets such as [exchange traded funds] (index funds), the cash is virtually instant. All the above means it would have been expected that Mr M's funds would have been in cash by 24 February 2020…"

Mr M's representative says that in the week between his client's instruction being received by Sovereign and action being taken, stock markets had fallen by around 30%. It says had his pension assets been sold on 21 February 2020 or by 24 February at the latest, then the majority of this fall could've been avoided.

Mr M's representative says given the delay in effecting Mr M's instruction and the loss of value of his funds, he had no choice but to rescind the instruction to sell his pension assets. So he stayed invested and hoped for a future recovery.

Sovereign responded to Mr M's complaint on 15 June 2020. It accepted that it hadn't met the standard of service it would have expected and acknowledged what it said had been a short delay. It said:

"We have reviewed the position after taking into consideration the administration processing time for us to action the instruction to Quilter International Isle of Man Limited ("Quilter") to remove WH Ireland as DFM on the policy."

"The earliest the instruction we received in our office on 20th February could have been actioned was on 25th February 2020. The earliest WH Ireland could have actioned the trade instruction to sell the assets received from Quilter is 27th February 2020. The portfolio value on 27th February was £2,170,924.26."

"As it was, we actioned the instruction to remove WH Ireland on 28th February 2020.We received the instruction to cancel the transaction and WH Ireland would have actioned the original instruction on 3rd March 2020. The portfolio value on 3rd March was £2,168,416.73."

"We acknowledge that our service level did not meet the standard that we expect and that there was a short delay in the time it took us to process your request. Therefore, we uphold your complaint and agree to settle the above difference in value of £2,507.53 in order to return the value of the portfolio to the position as it was on 27th February. In addition, as a gesture of goodwill on our part, we will pay a sum of £500 compensation to your SIPP and we will not levy next-year's annual management fee of £500."

Mr M didn't accept Sovereign's offer. His representative asserts a potential loss to his client of over £500,000. And requests redress of £220,000. His complaint was referred to our Service.

The Investigator didn't uphold Mr M's case. He thought Sovereign had accepted its failing, apologised and its approach had been fair. Mr M's representative disagreed. It said:

"The initial loss of approximately £200k, on my clients investment, due to the belated instructions being carried out by Sovereign was hugely compounded by the fact that had the instruction been carried out my client, being then in cash, would have been able to timely reinvest into a much reduced (in value), stock market (circa -30%).

"The fact that, eventually, the stock markets (thus my client's portfolio with Sovereign) recovered, thereby camouflaging the actual loss by my client, is completely irrelevant."

As both parties couldn't agree with the Investigator's findings and conclusions, Mr M's complaint has been passed to me to review afresh and to provide a decision. This is the final stage of our process.

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.

Where there's conflicting information about the events complained about and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm not upholding Mr M's complaint. I'll explain why.

How does the regulatory framework inform the consideration of Mr M's case?

The first thing I've considered is the extensive regulation around transactions like those performed by Sovereign for Mr M. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.
- Principle 7, which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms like Sovereign. As such, I need to have regard to them in deciding Mr M's complaint.

My next step was to review the terms and conditions of Mr M's SIPP, which he agreed to in July 2017. Specifically with regard to how it would handle client instructions. At section 11.2 it says (bolding is my emphasis):

"The Member shall direct the manner in which assets within their SIPP are to be invested. Neither the Trustee nor Sovereign accepts any liability for any decisions relating to the purchase, retention, or sale of investments within the Fund. The Trustee will act on Sovereign's instructions and its only function is to hold the SIPP Investments and it will have no other involvement in the investment process…"

"Sovereign: ***will normally give effect to an investment instruction as soon as reasonably practicable*** *after the same is made; and will normally thereafter continue to give effect to the same until that investment instruction is countermanded by the Member or the Professional Adviser giving due notice to Sovereign…"*

*"…****but Sovereign shall be under no obligation to give effect to investment instructions and does not guarantee that any investment instruction will be acted upon in a timely manner and the Member accepts that there may be a reasonable delay between the instruction being given and that instruction being fulfilled. Neither the Trustee nor Sovereign will be liable for any actual or perceived loss during that period****."*

I'm mindful that this is the contract Mr M signed up to. On the other hand, its arguable it gives Sovereign some leeway to avoid liability if it gets things wrong. That might raise a question about whether certain of the terms would be deemed fair. However, I note Sovereign hasn't relied heavily on its terms and conditions in dealing with Mr M's case.

I give more weight in my consideration to the sector best practice issued by the Transfers and Re-registration Industry Group (TRIG); whose membership included several trade bodies. In 2018 it published an *Industry-wide framework for improving transfers and re-registrations.* It noted:

"When moving investments, assets and entitlements between institutions, people have a legitimate right to expect the industry to execute their instructions in a timely and efficient manner. Furthermore, customers' service expectations are increasing due to the relative simplicity of switching in other markets. Slow transfers can cause detriment to customers; and the actions of one party can reduce the efficiency of all parties in the chain."

In this publication TRIG established what it considered to be reasonable timeframes for firms to adhere to for transactions like those being performed for Mr M. While it noted the importance of using electronic means, it also acknowledged that certain elements of certain transactions would continue to require manual processes. And that often there were more than two firms involved in the process. These matters inevitably built more friction into the process.

At paragraphs 30-32 the best practice guide said:

"The TRIG believes that organisations should adopt a maximum standard of two full business days for completing each of their own steps in all transfer and re-registration processes within the scope of this Framework, with the exception of pension cash transfers…"

"This approach would enable each counterparty in a process to be equally accountable for ensuring that an efficient transfer and reregistration process is in place. Similarly,

organisations will not be accountable for the underperformance of counterparties that are outside of their control."

"This window would comprise two full business days, with a 'business day' defined as a day when the London Stock Exchange is open. Each firm would process its step by 2359 of the second business day following the day of receipt. This means that, in practice, some firms might have more than 48 hours to process their step, e.g. if they received an instruction at 0900 on day one, and did not complete their step until 2300 on day 3."

Both parties agree Mr M's instruction was received on Thursday 20 February 2020. Three firms were involved in the transaction to some extent - Sovereign, Quilter and WH Ireland. I also need to bear in mind TRIG's guidance, for a maximum standard of two full business days for completion by a firm for each of its own process steps.

I think the argument made by Sovereign, that if things had gone according to its normal operations, then Mr M's pension assets would've been sold on 27 February 2020, is reasonable. That's because it would've been broadly in line industry best practice. It follows that I find the proposal made by Sovereign to try to resolve its dispute with Mr M was fair in the circumstances.

Mr M's representative says that because of the delay in Sovereign executing his instruction, he decided to stay invested in his then funds in order to try to recoup some of the eroded value. It seems to suggest that by doing so, his funds were further eroded between March 2020 and June 2020.

The decision Mr M took to stay invested in his then current pensions funds was a matter for him. There was no guarantee about whether values would recover or erode further, nor over what timeframe. He could've moved into cash and then executed new investments at the moment of his choosing. But he chose to rescind his initial disinvestment instruction for reasons I can understand. It was a volatile market.

Neither party has provided any detail about the sequence of events building up to 20 February 2020, when both parties agree Sovereign received the disputed instruction. I have seen an instruction signed by Mr M dated 13 January 2020, which asks the recipient - which is unclear from the note - to cease his arrangement with WH Ireland immediately, ready for implementation of an adviser agreement together with his chosen funds going forward.

This earlier instruction is strongly suggestive Mr M's plan was to exit his DFM agreement and disinvest from his then SIPP funds and to use the proceeds to move straight into new funds.

I'd observe that a SIPP is a tax efficient vehicle for building up and holding pension provision. In this context, investment decisions are generally medium to long-term. That's quite different from speculating on short run market movements and anticipating the top or bottom, seeking to make gains in such a manner.

So, on balance and based on the evidence available to me, I don't think it would be reasonable for me to uphold this complaint against Sovereign Pension Services UK. And I don't require it to do anything further.

My final decision

For the reasons I've already set out, I'm not upholding Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 August 2022.
Kevin Williamson
Ombudsman