DRN-3132004

The complaint

Ms K complains Dendro Private Wealth Limited delayed acting on her instructions to cash in her pension policy and didn't warn her the value could change, causing her a financial loss.

Dendro Private Wealth Limited is an appointed representative of Quilter Financial Services Limited which is responsible for answering the complaint.

What happened

Mr W ('the adviser') had been Ms K's financial adviser since 2013 when he advised on investing her divorce settlement. He moved to Dendro in 2018 and in 2019 advised Ms K to transfer two pension plans to her existing Self-Invested Personal Pension ('SIPP') held on provider A's platform. The monies were invested in a balanced multi-index fund I'll call 'L', made up of a range of UK, US, European and global equities, sterling and overseas corporate bonds and gilts, in line with Ms K's attitude to risk. Ms K also had a significant investment portfolio held with provider 'C' from which she draws annual income of around £96,000.

In February 2020 Ms K had read an article suggesting the entitlement to 25% tax-free cash from a pension might be withdrawn in the future. So on 10 February 2020 she asked the adviser what the process for taking it would be. The adviser thought the entitlement was unlikely to be withdrawn and in any event, advised Ms K against taking funds from the tax-efficient pension environment if she didn't have an immediate need for the money. The value of her pension at that time was £541,814 and Ms K said she needed £20,000 for necessary home improvements. So the adviser suggested it would be more tax efficient to withdraw funds from her ISAs and general investment account ('GIA') held with C. But Ms K says she suspected the adviser tried to dissuade her from withdrawing funds from her pension to ensure they remained with Dendro as this would have benefitted him in some way.

Markets were volatile around this time due to uncertainty related to the Covid-19 pandemic and many investors withdrew funds to try and mitigate their losses, adding to the negative sentiment. Ms K and the adviser exchanged emails in which Ms K expressed her concerns about falling markets. But the adviser recommended that Ms K should do nothing and wait for markets to recover.

On Friday, 13 March 2020 in one of these email exchanges the adviser told Ms K that as of 3pm the previous day her fund had made a *"paper loss"* of 8.86%, but if she'd been invested in the FTSE the loss would be around 29%. Ms K decided to crystallise her loss, which she'd assumed would be around £48,000 calculated as 8.86% of the 10 February valuation, because she was concerned it would worsen.
So that afternoon she gave telephone instructions to the adviser to disinvest her pension fund. When the transaction completed the following working day Monday 16 March 2020, Ms K received £447,350 which was far less than she expected. Ms K complained saying Quilter should make up her loss of £46,460.

Quilter didn't uphold the complaint. It said Ms K had been fully aware investments can rise and fall on a daily basis as set out in the key facts documents she'd initially received and drew her attention to the risk warnings in the suitability report from 2019. It said Ms K had repeatedly been advised against disinvesting her pension which should be viewed as a long-term investment, so they didn't feel compensation was due. But to resolve the complaint Quilter said if Ms K gave instructions by 2pm on 18 March 2020 it would buy back into the fund with no charge. If the unit price had fallen below the sale price of £0.6703 she could buy more units or buy the same number of units for a lower cost and keep the balance. And if the unit price had risen Quilter would make up the difference. It also instructed A to reduce the ongoing fees from 0.75% to zero.

Ms K rejected Quilter's offer. She said this didn't make up for the loss she'd suffered. She referred her complaint to this service where it was considered by one of our investigators, who initially didn't uphold it as he felt the offer to buy back into the fund was fair. Ms K then provided further information which changed the investigator's mind. The adviser had told Ms K the L fund had a dealing point of 3pm so instructions given by 2.30pm would be processed using the valuation as at the previous day. Ms K had subsequently contacted A and discovered it has two dealing windows at 11am and 4pm but an instruction given on Friday 13 March 2020 wouldn't be processed until the next working day (Monday) and it was over this period the fund fell significantly. Ms K said if she'd known about the time lag she wouldn't have given Quilter the instructions to sell, and instead would've raised the funds she needed by selling other shares or a short-term loan. The investigator accepted Ms K had been given misleading information so he said Quilter should pay compensation of £300. But he didn't think they were responsible for the loss Ms K made as she'd acted against Quilter's recommendation.

Both Quilter and Ms K disagreed with the outcome – Quilter thought they hadn't done anything wrong and Ms K still thinks Quilter should make up her loss. So it's been passed to me to issue 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.

The basis of Ms K's complaint is that she wanted to disinvest her pension since early February 2020, but the adviser spent too long trying to dissuade her from doing that in which time the value had fallen. And when she finally gave the instructions on 13 March 2020 it was on the understanding she'd make a loss of around £48,000, and the sale would go through that day. She says had she been given the correct information she wouldn't have sold. But having looked at the exchanges between the adviser and Ms K, I'm not persuaded by this. I'll explain why.

Ms K's initial communications with the adviser in February 2020 were about the possibility the entitlement to 25% tax-free cash might be withdrawn. The adviser thought that was unlikely, but if she needed funds for essential home improvements he recommended she withdraw from her other investments with C rather than access her pension. Quilter hasn't been able to provide the call recordings, but the contact note of a call on 26 February 2020 says the adviser suggested Ms K take the £20,000 from her ISA as the allowance would be replaced in the new tax year. Ms K said she'd give that some thought and come back to him by 6 March 2020.

Ms K questioned the adviser's motives for advising her to withdraw from her investments with C as he'd suggested in 2019 she switch those funds which she didn't wish to do. But I think the advice he was giving to her was suitable as he was explaining the important tax advantages for maintaining her pension savings. This is confirmed by email exchanges with the adviser. On 26 February 2020 the adviser said to Ms K:

> "*For the record, I think it's the wrong thing to do but respect your wishes. Do you want me to contact* [A] *with a view to putting the money in the same investment fund within a General Investment Account so you end up with the same investment profile but with 25% outside of the pension?"*

The adviser went on to say that:

> "…*you're better off taking the sum you need from the* [C] *Portfolio as the pension grows completely free of tax whereas the* [C] *portfolio is subject to Income Tax on Dividends and Capital Gains Tax, and IHT at some point in the future. It is also far more expensive. Are you absolutely positive about taking money from the pension as it can't be reversed?"*

Therefore, I'm persuaded that it was more likely than not that the adviser advised Ms K as he did, because, in his opinion for the reasons outlined above, it was the most suitable course of action for her to take. I've seen no evidence that it was for any other reason.

Ms K's concerns then focussed on the impact of the pandemic on investment markets. An email from 27 February 2020 read:

> "*With the markets in apparent free fall just wondering about my investments! Should I sell?"*

The adviser replied

> *"No, because the money is for the rest of your life and markets have made a knee-jerk reaction to an unknown quantity. Your portfolio has less than 60% allocation to equities so 40% defensive assets which will have acted as a drag-anchor and turned positive as a result ie bonds. But I'm keeping a watching brief!"*

On Friday 6 March 2020 Ms K emailed the adviser to say that she was very worried about falling stock markets and whether she should remain invested. The adviser said he would send her some information after the weekend about the benefit of staying in the market and advised Ms K to "*wait for the recovery which will happen, it always does, we just need the panic to subside*".

On the morning of Monday 9 March 2020, Ms K emailed the adviser as she'd heard the FTSE was predicted to open 6% down. The adviser tried to reassure her that her portfolio is actively managed and that while the 52% held in equities might fall this would be offset by the bond element which would rise, and said: "*There is no trigger point to sell everything in this fund or any other".*

Ms K wanted to know who would make the decision to sell to which the adviser replied: "*If your circumstances remain unchanged and you don't need to encash your portfolio….. you should remain invested*". The email continued "*It's uncomfortable for all seeing the market react this way but, unless you are a forced seller, you should ride out the storm. History tells us the market will recover but it might take time and no one knows when things will turn. If you're out of the market and miss the recovery, you will never catch up".*

Ms K found the uncertainty around the pandemic very stressful, and she unfortunately became ill herself. Like many people, she wanted to take action to minimise her loss, although until crystallised any loss was only on paper. Such concerns are understandable at such a worrying time, and the high number of investors needing to encash their funds made the decline worse. But the adviser gave Ms K his advice and explained his reasons. This is what he was employed to do.

A note of another call at 3pm on 12 March 2020 suggested Ms K was worried she'd left it too late to sell. But by the end of the call the adviser noted it seemed Ms K had changed her mind and had been reassured to hear that the adviser's own pension remained fully invested.

But Ms K phoned again in the afternoon of Friday 13 March 2020 and it's recorded that she was struggling emotionally with the current volatility. The adviser stressed the importance of her pension being "*the last piece of wealth she will spend*" and mentioned her monthly withdrawals of £8,000 from C to fund her living expenses. He told her that if she's right in thinking the pandemic will cause markets to tumble again she'll be a "*forced seller"* each month to generate the necessary income. So he said it would be better to cash in "£467K" with C which would provide her with 58 months' worth of income, rather than her use her pension.

Despite what the adviser was telling Ms K, she still wanted to proceed so ultimately he took her instructions at 2.37pm to sell so that she didn't worry over the weekend. Ms K was told once she sold her funds they'd be held in cash, but there's no mention in the note that she was warned the value could fall further before the sale was processed.

I've seen the email in which Mr W told Ms K about the L fund's cut off time, understanding that if he received instructions from her by 2.30pm they'd be processed the same day. Ms K discovered by contacting A herself that regardless of L's deadlines, A would process an instruction the next business day, and the fund switch statement from A shows the instructions were received on 13 March 2020 and processed on Monday 16 March 2020.

This is set out in Dendro's terms of business document which reads "*Best Execution policy – for the majority of collective investments they will be bought or sold at the next Valuation Point (typically 12.00 Midday) the next business day, after the instruction has been received by the platform".*

So, I'm satisfied the adviser didn't explain to Ms K, and perhaps wasn't aware himself, that her instructions wouldn't be processed until the following working day. However, if I were to uphold this complaint, I'd need to be satisfied that the adviser was the *cause* of the loss. And I don't think he was in this case. From the outset Ms K made it clear she wanted to sell her units. She went against the clear, fair and not misleading advice of the adviser. I think on balance, even if Ms K had been told the correct processing time by the adviser, she still would have issued instructions to sell her units. As she was focussed on her concern about the impact of the pandemic on her pension as a whole rather than raising just the necessary amount for her home repairs.

Ms K says she wanted the transaction processed on 13 March 2020 as that was a positive trading day for the FTSE and Dow. If that's right I think it would only be known for sure with hindsight. The evidence shows Ms K had been thinking about cashing in her pension since early February 2020 even when she was advised not to do so.

I can also see that despite Ms K acting against its advice, Quilter has made Ms K a reasonable offer to try to resolve things amicably. Ms K sold 667,388 units in L at a unit price of £0.6073 and received just over £447,350. Quilter proposed to either buy the same number of units at the prevailing cost of £0.6646 leaving just over £3,804 in cash. Or it could reinvest the full £447,350 buying as many units as possible with that sum. I will leave it to Ms K to decide whether she wishes to accept this offer from Quilter if it is still available to her.

However, I do feel the adviser should have warned Ms K the valuation he'd given her wasn't guaranteed and the unit price would be determined at the dealing point as the figure he had access to is likely to have been at close the previous day. And he should've been aware from Dendro's own terms of business that instructions wouldn't be implemented until the next business day. So, whilst I don't hold Quilter responsible for Ms K's decision to cash in her pension at a significant loss, I do think the sum of £300 fairly reflects the distress and inconvenience it caused by providing incorrect information to her.

For all these reasons, I partially uphold this complaint. I know both parties will be disappointed by this outcome, but I think it is fair and reasonable in all the circumstances.

My final decision

I uphold this complaint in part. Quilter Financial Services Limited should pay Ms K £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 18 March 2022.

Sarah Milne
Ombudsman