DRN-3270202

Financial Ombudsman Service

The complaint

Mr M complains that Pensionhelp Limited ("Pensionhelp") made an error when it sold investments in his self-invested personal pension ("SIPP") prematurely and contrary to his instructions. He says that the error led to him suffering a financial loss of about £30,000 and considerable distress.

What happened

Mr M had a SIPP which was valued at about £700,000 and invested in several underlying funds across different asset classes including cash, gilts, property and equities. He also had preserved benefits in two defined benefits pension schemes and was interested in transferring the value of these to his SIPP. Mr M was an existing client of another financial advisory business which I shall call "Firm P".

Firm P introduced Mr M to Pensionhelp to provide pension transfer advice. In June 2020, Mr M signed Pensionhelp's client agreement. This confirmed that it would provide *"Advice on suitability of transfer of deferred pension rights under two existing occupational defined benefits schemes…".*

In September 2020, Pensionhelp issued a suitability report to Mr M recommending that he transfer the value of his preserved benefits in one of the defined benefits pension schemes to his SIPP. The transfer value was about £1m. Pensionhelp's adviser recommended that once the transfer had been completed the entire value of the SIPP, which was expected to be about £1.7m, be invested in the *'RSM Model Portfolio 5'* to align with Mr M's risk profile. He accepted the recommendation in October 2020. Pensionhelp were registered as Mr M's servicing agent with the SIPP provider and so had authority to make fund switches on his behalf.

While waiting for the transfer process to be completed, Mr M became concerned about potential volatility in the investment markets. He wanted to mitigate the risk of investment loss in the short-term by holding in cash the transfer value received from the defined benefits pension scheme with a view to drip feeding that money into the market over several months. So, on 2 November 2020, he sent an email to the Pensionhelp adviser who provided the recommendation to transfer and stated:

> *"I am writing in respect of my* [SIPP] *and the initial asset allocation, as compared to the current holdings.*
>
> *I wish this initial allocation to vary from the original thoughts discussed* [full and immediate investment in the RSM Model Portfolio 5], *due to the relatively extreme events around the US Election, immediate Brexit uncertainty and all made much worse by the sudden economic shock of the new lockdown due to CoVid-19 virus. This exceptional time is why I need to make the change below.*
>
> *Therefore, once the* [defined benefits pension scheme] *funds arrive, I have decided it is preferable to have additional downside risk protection and so to drip-feed funds equally over the coming 6 months. This drip-feeding would start only in mid-*

December or thereabouts, into the agreed version of RSMR Model Portfolio 5. Having said this, I do wish the equivalent of the current SIPP value from my workplace pension portfolio mix to be fully invested as a start-point.

Hence, once my CETV arrives at [SIPP provider]*, please modify the actual total asset mix from that currently to be as follows:*

- [SIPP provider] *Cash 60.14%*
- *RSMR MP5 39.86%*

I understand that [Firm P] *are supplying you with the unit allocations for the RSMR MP5 mix.*

I also confirm that I have made this decision myself and I fully understand the possible adverse consequences of this gradual monthly investment strategy."

On 3 November 2020 at 10:15 am, Firm P emailed Pensionhelp. Attached to the email was a revised asset allocation titled, *"MODEL PORTFOLIO 5 with 60.14% Cash".* Firm P's email essentially confirmed that Mr M's SIPP should be invested in line with his instructions in his email of 2 November 2020. Pensionhelp subsequently disinvested the entire unit holding of Mr M's SIPP. The proceeds were held in the SIPP cash facility.

On 3 November 2020 at 10:57 am, Pensionhelp emailed the SIPP provider and stated, *"We require your assistance with this one, as the client* [Mr M] *has since changed their mind about the investments chosen at the application stage. The* [defined benefits pension scheme transfer value] *is due to arrive with yourselves in the next 5-10 working days, but when this arrives, can you ensure that the funds are now instead kept in cash until we manually invest them afterwards? I have disinvested all of the existing funds today too ready for when the transfer funds arrive as per the client's instructions, and we will rebalance the whole portfolio as one. Please let me know if you need anything else from me in order to ensure the transfer funds stay in cash, and sorry for any inconvenience caused".*

On 3 November 2020 at 11:07 am, Pensionhelp emailed Firm P in response to its email sent on the same day at 10:15 am and stated it had, *"placed the disinvestments for the existing funds ready for their arrival, and contacted* [SIPP provider] *to ensure they do not invest the transferred funds until we manually do so. We then invest the entire portfolio based on the attached, and we will of course keep you in the loop throughout this process".*

On 5 November 2020, Pensionhelp wrote to Mr M in response to his email of 2 November 2020. In that letter, Pensionhelp's adviser stated, *"Further to my report of 23 September 2020 where I recommended your funds be invested the RSM Model Portfolio 5, you have asked me to hold your funds in cash due to extreme world events".* The adviser's letter continued, "*Having explained the Pensionhelp position, you still want to initially invest in cash. As such you need to be aware that the responsibility for facilitating the eventual investment into the recommended fund will be conducted by the introducing adviser,* [Firm P]".

Mr M became aware that on 3 November 2020 the entire value of his SIPP had been disinvested, contrary to his instructions. He raised this with Firm P and Pensionhelp.

On 9 November 2020, Firm P emailed a revised asset allocation to Pensionhelp for investment in the '*RSM Model Portfolio 5'.* Later that same day, Pensionhelp re-invested the value of Mr M's SIPP in accordance with that revised asset allocation – this was intended to match the 39.86% investment and 60.14% cash split set out in Mr M's email 2 November 2020.

On 23 December 2020, the SIPP provider received the transfer value of £1,043,883 from the defined benefits pension scheme. This was held in the cash facility.

This complaint

Mr M complained to Pensionhelp. He said that the disinvestment into cash on 3 November 2020, the day of the US Presidential election, was contrary to his wishes and instructions of 2 November 2020 which had resulted in him suffering a substantial financial loss and considerable distress. He said he couldn't understand why Pensionhelp had taken that action, particularly on such a significant day in global politics, which exposed him to the risk of being out of the market. He said that by the time the value of his SIPP had been re-invested on 9 November 2020, global stock markets had risen by over 5% since 3 November 2020. He said that he had missed out on investment growth of about £30,000 between 3 and 9 November 2020. To put things right, he requested that Pensionhelp pay him compensation.

Pensionhelp didn't uphold this complaint. In summary, it said that Mr M didn't provide explicit instructions and that *"it is not our place as Independent Financial Advisers to overlay any thoughts or wishes other than your own".* It also said it couldn't see how it could be held responsible for the alleged financial loss since it had simply acted on the instructions given and it wasn't its place to provide investment advice given that Firm P was Mr M's investment adviser.

Our investigator recommended that this complaint should be upheld. In summary, she said that, in his email of 2 November 2020, Mr M had provided clear information to Pensionhelp about how his SIPP should be invested and that it had disinvested prematurely and contrary to his instructions. She said that if Pensionhelp wasn't sure about the instructions or wanted further clarification then it should've contacted Mr M before selling any investments in his SIPP. To put things right, she recommended that Pensionhelp pay compensation based on what the current value of Mr M's SIPP would be had the instructions in his email of 2 November 2020 been followed correctly. She also recommended that Pensionhelp pay Mr M £250 for the distress caused by its error.

While Mr M accepted our investigator's recommendation, Pensionhelp didn't. It repeated some of its previous comments. It also said that it would only accept such instructions from a client's investment adviser. And that once it received such instructions it had a duty to execute it in a timely manner. It said that Mr M wanted to be out of the market and was happy with this until it rose on 6 November 2020 and then complained.

Our investigator considered Pensionhelp's additional comments but wasn't persuaded to change her opinion. Since agreement couldn't be reached, this complaint has been referred to me for review.

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.

When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 and the Dispute Resolution section in the FCA's handbook, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

I'd like to clarify that the purpose of this final decision isn't to repeat or address every single point raised by Mr M and Pensionhelp. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. I've considered all the available evidence afresh including Mr M's and Pensionhelp's comments in response to our investigator's assessment. Having done so, I've reached the same conclusion as our investigator for the following reasons:

- It's my view that in his email of 2 November 2020 Mr M provided clear instructions to Pensionhelp. He stated that changes to the underlying asset allocation on his SIPP should only be made once the transfer value from the defined benefits pension scheme had been received. He continued that once the transfer value had been received the overall asset mix should be 39.86% invested in the '*RSM Model Portfolio 5'* and 60.14% held initially in the SIPP cash facility which he then intended to drip feed into the market over several months.

- Mr M's instruction was further confirmed by Firm P when it emailed Pensionhelp on 3 November 2020 at 10:15 am. In that email, Firm P provided a revised asset allocation titled, *"MODEL PORTFOLIO 5 with 60.14% Cash",* which mirrored Mr M's email of 2 November 2020.

- However, despite the instructions received, Pensionhelp inexplicably arranged on 3 November 2020 to immediately disinvest the entire unit holding of Mr M's SIPP and to hold the proceeds in the cash facility. This action was taken before the transfer value was received from the defined benefits pension scheme on 23 December 2020. So it's clear that Pensionhelp didn't follow the instructions it had been given.

- Prior to the disinvestment, Mr M's SIPP was invested in several underlying funds across different asset classes including cash, gilts, property and equities and therefore exposed to the markets. Pensionhelp's actions led to the value of Mr M's SIPP being out of the market until the re-investment on 9 November 2020. In my view, if Pensionhelp wasn't sure about the instructions received or wanted further clarification then it should've contacted Mr M or Firm P before taking any action.

- Mr M said that Pensionhelp ignored his instructions. I think it would be more accurate to say that Pensionhelp misunderstood the instructions it received from Mr M and Firm P. I say this because of what Pensionhelp stated in its communications with the SIPP provider and Mr M. In its email to the SIPP provider on 3 November 2020 at 10:57 am, Pensionhelp stated that it had, "…*disinvested* ***all of the existing funds today*** *too ready for when the transfer funds arrive as per the client's instructions and we will rebalance the whole portfolio as one* [my emphasis added]*".* But immediate and full disinvestment of the existing unit holding isn't what Mr M or Firm P had instructed. And then in its letter of 5 November 2020 to Mr M, Pensionhelp stated, *"…you have asked me to* ***hold your funds in cash*** *due to extreme world events"* and, "…*Having explained the Pensionhelp position, you still want to initially invest in cash…*[my emphasis added]*".* Again, immediate and full disinvestment of the existing unit holding isn't what Mr M or Firm P had instructed. So I think it's fair to say that Pensionhelp misunderstood the instructions because I cannot find any other reason why else it arranged to immediately disinvest the entire unit holding of Mr M's SIPP on 3 November 2020.

- In responding to this complaint Pensionhelp said it wasn't its role to overlay client instructions to its investment recommendations. It also said Mr M didn't provide explicit instructions. But, in my view, Mr M *did* provide clear instructions in his email of 2 November 2020 that no changes were to be made to the asset allocation of his SIPP until the transfer value from the defined benefits pension scheme had been received. Furthermore, if Pensionhelp's position is that it wasn't its role to implement client instructions then I find it odd that it didn't reply to his email to inform him of this and instead carried out the disinvestment on 3 November 2020.

- Pensionhelp also said that once it receives an investment instruction it has a duty to execute it in a timely manner. The problem here though is that Pensionhelp misunderstood the instruction. So while it executed the instruction promptly, it implemented it prematurely and incorrectly.

- Pensionhelp said that Mr M wanted to be out of the market and was happy with this until the market rise on 6 November 2020 and then complained. But the evidence simply doesn't support this. The evidence clearly shows that Mr M told Pensionhelp not to make any changes to the asset allocation of his SIPP until the transfer value from the defined benefits pension scheme was received.

In conclusion, it's my opinion that Pensionhelp misunderstood the investment instructions received from Mr M and Firm P. This led to it incorrectly disinvesting the entire unit holding of Mr M's SIPP on 3 November 2020. This meant that the value of his SIPP was out of the market until it was re-invested on 9 November 2020. So, given that Pensionhelp was at fault, I think it's fair and reasonable in the circumstances that it pay compensation to Mr M if he's suffered a financial loss because of its error.

Putting things right

Pensionhelp must pay Mr M £250 to compensate him for the trouble and upset caused by its error.

In addition, Pensionhelp must carry out a loss assessment to determine if its error led to Mr M suffering a financial loss. My aim in awarding fair compensation is to put Mr M back into the position he would likely have been in had Pensionhelp followed his instructions in his email of 2 November 2020. Pensionhelp must carry out a loss assessment on the following basis:

- Obtain from the SIPP provider the notional fund value of Mr M's SIPP as at the date of this final decision had his instructions of 2 November 2020 been followed. This is "A". This would've meant the asset allocation of his SIPP remained invested as it was immediately before the disinvestment until the transfer value was received from the defined benefits pension scheme on 23 December 2020.

- Obtain from the SIPP provider the value of Mr M's SIPP as the date of this final decision. This is "B".

- Subtract "B" from "A" to determine "C".

If "C" is a positive figure, this is the financial loss that Mr M has suffered. If "C" is a negative figure, then there's no financial loss and Pensionhelp don't have to pay any compensation for financial loss.

If there’s a loss, Pensionhelp should pay the compensation direct to Mr M rather than to his SIPP. This is because he has Fixed Protection 2016 (“FP16”). Payment of any contribution or compensation to Mr M’s SIPP (or any other registered pension arrangement) will lead to the loss of FP16 resulting in adverse tax consequences for him. But had it been possible to pay compensation to the SIPP, it would’ve provided a taxable income. Therefore, the total amount payable to Mr M should be reduced to notionally allow for any income tax that would otherwise have been paid.

The notional allowance should be calculated using Mr M’s actual or expected marginal rate of tax at his selected retirement age which I’ve decided is likely to be 20%. However, if Mr M would’ve been able to take a 25% tax-free lump sum and so the reduction should be applied to 75% of the compensation.

If settlement isn’t made within 30 days of Mr M accepting this final decision, Pensionhelp should pay interest on the loss calculated from the date of my final decision to the date of payment at 8% per year simple. Income tax may be due on this interest. If Pensionhelp deducts tax it should provide Mr M with a tax certificate. If Pensionhelp considers that it’s required by HM Revenue & Customs (“HMRC”) to deduct income tax, it should tell Mr M how much has been taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if appropriate.

Pensionhelp must also provide details of its calculations to Mr M in a clear format.

My final decision

I uphold this complaint. Pensionhelp Limited must redress Mr M as I’ve set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M to accept or reject my decision before 20 September 2022.
Clint Penfold
Ombudsman