

The complaint

Mr W complains about the advice/service provided by Lincolnshire Independent Financial Advisers Ltd, referred to as “the business”.

In summary, he says:

- He’s concerned about the advice to invest in the Transact and Nucleus portfolios.
- He was misled about the charges and how much he’d receive when he requested the encashment of these investments.
- He’s also concerned about previous errors in relation to the Nucleus portfolio
- Mr W is claiming substantial financial loss.

What happened

In early April 2022, I issued my provisional decision, a copy of which is stated below and forms part of my final decision. In the decision I said:

“...provisionally, I’m going to partially uphold this complaint.

One the face of the evidence, I think the business failed to explain to Mr W the concept of ‘forward pricing’, therefore, I think it should pay him £350 compensation for the trouble and upset caused. However, I don’t think this entitles Mr W to the losses claimed.

Before I explain further why this is the case, I think it’s important for me to note I very much recognise Mr W’s strength of feeling about this matter. He has provided submissions to support the complaint, which I’ve read and considered carefully. However, I hope he won’t take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn’t to address every single point raised under a separate subject heading, it’s not what I’m required to do in order to reach a decision in this case. My role is to consider the evidence presented by Mr W and the business, and reach what I think is an independent, fair and reasonable decision based on the facts of the case.

In deciding what’s fair and reasonable, I must consider the relevant law, regulation and best industry practice, but unlike a court or tribunal I’m not bound by this. It’s for me to decide, based on the information I’ve been given, what’s more likely than not to have happened.

Like the investigator, I’m unable to safely say that the recommendation to invest several hundred thousand pounds in the Transact and Nucleus platforms was unsuitable. On balance I’m satisfied that the recommendation met Mr W’s objective for growth.

I note that having recently divorced and sold his property, Mr W had access to a substantial sum of money, even after investing, and had reasonable capacity for loss. I note Mr W planned to rent long term rather than buy another property and spend his time between the UK and abroad. The investment didn’t affect his quality of life.

I'm aware that Mr W had put aside a large sum of cash for expenditure so didn't need access to his investment. It was also noted that he might work in future, as he was bored, so he could top up his money if need be.

Overall, I'm satisfied that he was in a reasonably good position to invest a large sum of money for a period of five years and take a risk.

I've seen nothing to suggest that Mr W was risk averse and didn't want to take a risk with this money. I'm mindful that he had 20 or so years of previous investment experience, so knew, or ought reasonably to have known, the risks involved.

I note it was finally agreed, considering his capacity for loss, that he had a "moderately adventurous" attitude to risk, which I can't say was unsuitable given his plans and objectives.

I note the adviser said that he and Mr W had many discussions about risk, volatility and the short, and long term, performance returns. And at no point did Mr W demonstrate a lack of understanding, and regularly challenged what he wasn't sure of.

I also note the adviser says that he had four meetings with Mr W in the days leading up to him signing the application forms, and that Mr W was provided with illustrations and terms and conditions. I've no reason to doubt that this was the case. I note Mr W wasn't happy with previous portfolios so was keen to invest for his future.

Based on what he says, the thrust of Mr W's complaint is about the encashment of the Transact portfolio and the value he received compared to what he thought he'd receive.

I note the adviser was on his way into the office at or around 10.15am on 6 March 2020, when Mr W called his mobile phone to provide instructions. The instructions were subsequently conveyed to the provider at or around 10.45am from the adviser's office and it was made clear that it was an urgent matter. I understand that the system generated a confirmation of trade which the adviser forwarded at or around 10.48am and Mr W confirmed receipt. In the circumstances, I can't say that the adviser behaved unreasonably immediately in response to Mr W's instructions.

Based on what the provider says it seems that by this time some of the dealing points – for some of Mr W's holdings within his portfolio – had already passed, so his portfolio was sold at the next available dealing point, in this case on Monday 9 March 2020. Whilst I appreciate Mr W's anguish, 'the process' isn't something that I can hold the business responsible for, and neither is the amount that Mr W eventually received upon settlement.

I understand that the encashment value will have been unknown until the encashment had completed so the value wasn't guaranteed. In other words, the money Mr W received upon encashment wasn't as a result of something the business did wrong, it was the money that he was entitled to.

I also acknowledge that without the benefit of hindsight, the business couldn't have been able to control or predict that end figure, neither could it have been able to predict or control the impact of a global pandemic, for which it isn't responsible, which also probably had an impact on the value of Mr W's investments.

The above notwithstanding, I don't think the process of 'forward pricing' was explained to Mr W to manage his expectations with regards to what he might receive upon encashment and why. The value Mr W saw on the adviser's computer was from the previous day, because the Transact portfolio operates on a 'forward pricing' basis as explained above – but this wasn't fully explained to Mr W. Instead, I think he was probably led to believe that's the sort

of figure he'd receive. In the circumstances I don't think this oversight should go unmarked.

In my opinion the adviser failing to explain 'forward pricing' is what's at the centre of Mr W's distress and anguish, and probably why he feels he's been defrauded by the business. So, in the circumstances I think the business should pay him £350 compensation for the distress and inconvenience caused.

If the process had been explained and he'd known the price for the next day – although I don't think the latter was possible – on the face of the evidence, and on balance, despite what Mr W says, I don't think he would've done things differently, and that's why I don't think the business is responsible for paying any losses claimed.

I appreciate what Mr W says about the investigator not knowing him, or not knowing what he would've done if he'd been told that the price on the screen on Friday 6 March 2020 wasn't guaranteed due to 'forward pricing'. I accept that without the benefit of hindsight it's impossible to know for sure what Mr W would've done, however as I said above on a balance of probabilities I think it's more likely than not that Mr W would've gone ahead with the encashment.

Even though the value wasn't guaranteed, there was nothing to say that Mr W would (definitely) incur losses either. I'm also not persuaded that Mr W decided to encash his portfolios based solely on the values he saw. I'm mindful that the matter was urgent, and he was desperate to sell that day. With the power of hindsight, I'm aware that the markets continued to drop for some time. Understandably, Mr W was concerned about the value of his investment at the time and was unlikely to want to incur any further losses on his investment.

It seems the adviser previously complained on behalf of Mr W in relation to Nucleus, following Mr W's instructions to encash on 6 March 2020. I note the adviser had spotted a problem with its on-screen valuations across a number of accounts which the adviser thought had adversely affected Mr W's position. I note Nucleus upheld that complaint and Mr W was paid compensation.

Whilst I'm unable to comment upon the actions of Nucleus, and whether (or not) the compensation was paid directly out of the adviser's own account, this previous incident isn't evidence that the business made the same mistake with the Transact instructions. From what I've seen the issues aren't the same and so I can't say the business is responsible in this instance.

I appreciate what Mr W says about the charges, but I've seen nothing to persuade me that he was being charged "6.23%", or an amount that the business wasn't entitled to charge, regardless of percentage. On the face of the evidence, and on balance, despite what Mr W says, I've also seen nothing to suggest that a charge of "1.25%" was agreed with the business. I've seen no evidence to support either of these assertions.

A business is – in the reasonable exercise of its legitimate commercial judgement – entitled to set its own fees. It's not for us to tell a business how to run its affairs, providing the fees have been made reasonably clear to its customers.

In this instance, and on balance, I'm satisfied that the key documentation provided made reasonably clear the charges that applied. I also think it's likely that Mr W agreed to these charges before going ahead with the investment. But, if Mr W didn't read the key documentation, it's not something I can blame the business for. I note the adviser refers to 'heated discussions' with Mr W about fees, in which the adviser again explained what the fees were.

I'm also aware that that adviser initially said that his fees were 1% of all funds invested, but Mr W disagreed with this, so it was agreed that he'd pay a flat fee of £3,000 for all transactions – I've no reason to think that this is inaccurate or incorrect. I understand this sum was taken out of the investment rather than being paid by Mr W separately.

I note £3,000 equates to 0.75% of Mr W's initial investment, and 0.6% of his total investment. I note that no subsequent initial fees were charged or paid. I'm mindful that a fee of even 6% would equate to around £24,000 which isn't what Mr W paid. I note the adviser has made clear that he's received no payments directly from Mr W or any of Mr W's investments other than what was agreed and stated on the application forms.

I'm mindful of Mr W's latest comments. I understand that he's had meetings with the police and fraud department and intends to pursue this matter with their cooperation through the courts, naming our organisation as party to fraud. Mr W is free to do as he pleases, and this isn't something that I can comment upon. However, I can safely say that our service hasn't been a part of any fraud.

I appreciate Mr W will be thoroughly unhappy that I've reached a different conclusion to the investigator. Furthermore, I realise my decision isn't what he wants to hear. Whilst I appreciate his frustration, I'm not persuaded to require the business to do anything other than pay £350 compensation for the distress and inconvenience caused.

In other words, on the face of the available evidence, and on balance, I'm unable to uphold this complaint and give Mr W what he wants."

I gave the parties an opportunity to respond to my provisional decision and provide any further submissions they wished me to consider.

Mr W responded but didn't accept my provisional decision. In summary, he said I had ignored the fact that he had a letter signed letter confirming he'd receive what was on the screen and therefore our service is complicit in the fraud.

The business also responded but had no further points to add.

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, notwithstanding the latest submissions, my decision to uphold this complaint remains the same, for the same reasons as set out in my provisional decision.

In other words, I'm satisfied that no new material points have been made that persuade me to change my decision. In this instance I'm still satisfied that the key points remain the same, and have been considered by me, in my provisional decision.

I'm sorry Mr W doesn't agree with my decision, but for the reasons explained I don't think he's entitled to the losses claimed.

Notwithstanding the letter referred to by Mr W, any suggestion that he was entitled to what was on the screen – displaying figures from the previous day – is incorrect. And any suggestion that he would've done things differently – had he been aware – is not something I'm persuaded by. And given how the process works, on balance I'm satisfied that Mr W received the money he was entitled to.

I still don't think the process of 'forward pricing' was explained to Mr W to manage his expectations with regards to what he might receive upon encashment and why. Instead, I think he was probably led to believe that the figure on screen was the sort of figure he'd receive. And that's why I said I don't think this oversight should go unmarked.

I appreciate Mr W will be thoroughly unhappy that I've maintained my decision. Whilst I appreciate his frustration, I'm only going to ask the business to pay him £350 compensation for the distress and inconvenience caused.

On the face of the available evidence, and on balance, I'm unable to uphold this complaint *and* give Mr W what he wants.

Putting things right

Lincolnshire Independent Financial Advisers Ltd should pay Mr W £350 compensation.

My final decision

For the reasons set out above, and in my provisional decision, I uphold this complaint.

Lincolnshire Independent Financial Advisers Ltd should pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 24 May 2022.

Dara Islam
Ombudsman