

The complaint

Mr W complains about the transfer of his investments by Cheetham Jackson Ltd, referred to as “Cheetham” or “the business”.

In summary, he says:

- More should’ve been done by the business to mitigate his loss.
- He’s unhappy about the way his fund has been managed.
- He’s suffered financial loss because of the actions of the business.

Mr W is being assisted by his wife, Mrs W.

What happened

Your text here

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.

In February 2020, Mr W and Mrs W met with the business to discuss retirement planning. They had separate investments so were assessed and advised individually. I’m aware Mrs W says they always discussed things together and the advice was to them both. She also clarified that the meeting was in relation to Mr W’s early retirement not hers.

They were both advised to transfer their funds – from their existing respective providers (“the transferor”) to a new provider (“the transferee”) – generally in the hope of better (and more tax efficient) returns, lower fees, and heading towards Mr W’s plans for retirement.

In summary, Mr W was advised to transfer his GIA and ISA (with the transferor), whilst Mrs W was advised to transfer her investment bond, ISA and GIA with two different transferors. A total of £206.887 was in due course transferred.

I’m aware that there’s an extensive chronology, but I don’t think it is necessary for me to repeat it in my decision. In summary, I note Cheetham started the process on 19 February 2020. I understand the transferee received instructions the next day and contacted the transferor upon receipt the very same day.

Based on the chronology, it seems that on 23 March 2020, the transferor received a letter from Cheetham – enquiring about the transfer – after the government lockdown was announced. I note Mrs W is unhappy that, despite their instructions, Cheetham hadn’t reviewed their portfolio in that time.

It seems that in due course, on 26 March 2020, Mrs W was informed by the transferor that the investments had been cashed. I note soon after she requested the GIA money be held in cash until the market stabilised.

I note on 27 March 2020, Cheetham chased the transferor for an update as the process was taking longer than usual. I note Cheetham was told that due to extreme market activity (caused by the pandemic) the process was taking two to three weeks longer than usual.

I understand the transfer was subsequently completed except for Mr W's ISA. It seems that Cheetham missed that request and the money remained in Mr W's GIA and so wasn't transferred into the ISA. Based on what Mrs W says it seems Mr W didn't know this until sometime later, probably in late August 2020.

I'm aware that there's been much correspondence between Cheetham and Mr W and Mrs W relating to the transfer process and the timing of it. As I mentioned earlier, I don't need to address the correspondence individually in order to reach a decision in this case.

Unhappy with matters, I note that in June 2020, Mr W and Mrs W formally complained, and in August/September 2020, they ended their relationship with the business.

The business didn't uphold the main complaint. In short it said it wasn't responsible for the losses claimed and that it had completed the transaction reasonably. However, it did accept responsibility in relation to some missing correspondence and charges and offered compensation in respect of that.

One of our investigators considered the complaint and thought it should be partly upheld. In summary, he said:

- Initially, a number of complaint points were raised – around administration and communication – that were highlighted/dealt with in Cheetham's final response letter.
- Many of the issues were resolved before the complaint was referred to our service, so there's no need to mention them here.
- Cheetham has already offered to pay Mr W (and Mrs W) £150 compensation for postal issues and a refund of £197.22 for overcharging on fees.
- In terms of the advice, he can't say that Cheetham did anything wrong, because:
 - Mr W wanted better capital growth and believed transferring his funds gave him a better chance for this.
 - Mr W had capacity for loss, therefore was in a position to take a risk to achieve better returns on his capital.
 - The new portfolio also offered a better charging structure which allowed Mr W to combine his fees with Mrs W's, thereby reducing the impact of the fees.
- In terms of the transfer, he can't say that Cheetham did anything wrong. They acted in line with Mr W's instructions and were in regular contact with the transferee. Once it had made the initial request on 19 February 2020, matters were largely out of its hands. It responded to any requests from third parties in good time.
- Whilst the transferor and transferee have accepted responsibility for their respective wrongdoing, he can't say that Cheetham has done anything wrong.
- Despite what Mrs W says, there's nothing to say that the recommendation to move to a new provider was wrong. Information provided would suggest that it was the best way forward.
- A quick comparison with what he received, with what he would've got had he stayed with the transferor, suggests that the move was beneficial.
- The error made was in relation to Mr W's ISA. The money remained invested in the GIA, despite Mr W asking for it to be transferred into his ISA. This meant Mr W missed out on his yearly tax allowance as the money wasn't transferred. Consequently, Mr W is liable to pay Capital Gains Tax (CGT) that he would otherwise not have paid.

- The put things right Cheetham should do the following:
 - Apply to HMRC to correct the error made and rectify any error with regards to Mr W's tax status.
 - Refund the CGT Mr W's paid or is liable to pay, as a result of this error.
 - Pay an additional £150 compensation (on top of any amount offered) for the distress and inconvenience caused.

Cheetham agreed with the investigator's view but Mr W didn't. Mrs W, on behalf of Mr W, asked for an ombudsman's view and made the following points on his behalf:

- In short, their new IFA said:
 - Cheetham was asked to cover any liability for the GIA to ISA transfer only, but there may not be a liability if the transfer is within Mr W's allowance.
 - However, this wouldn't cover the capital gain for the fund switches that it's making within the GIA. A quick assessment of the capital gains within the GIA, suggests that it'll have to be split over two years, regardless of the GIA to ISA transfer, because of the total gain on the account.
 - To avoid delay and going back and forth with Cheetham, and avoid muddying the waters, it's best to continue with the advice it set out and continue dealing with the CGT on its end, over two years, with the aim of avoiding CGT liability and still making use of the ISA allowance for this tax year and 2022/23.
- Considering the above, they've decided to let their new IFA deal with the CGT issue as they trust them.
- The don't believe that Cheetham has acted in their best interest from the start in 2018, but particularly dealing with the transfer of their assets
- If Cheetham had re-registered the investments, the transferee would've had more control over the movement of funds and wouldn't have been out of the market during these volatile times and wouldn't have incurred a loss of £19,200. The actions of their new providers prove this point.

The investigator having considered the additional points wasn't persuaded to change his mind.

As no agreement has been reached, the matter has been passed to me for review.

Putting things right

Having done so, I agree with the investigator's conclusion for much the same reasons. I'm going to uphold this complaint.

Mrs W and Cheetham have provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope they 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. I'm aware of the extensive background to this complaint.

The purpose of my decision isn't to address every single point or question raised under a separate subject heading, it's not what I'm required to do in order to reach a decision in this case. I appreciate this can be frustrating, but it doesn't mean I'm not considering the pertinent points.

My role is to consider the evidence presented by Mrs W and Cheetham, and reach what I think is an independent, fair and reasonable decision based on the facts of the case, rather than take any sides. I'm not here to put in place recommendations so that the same thing

doesn't happen to other customers or decide if the business could've done things differently. I'm considering whether (or not) it made an error.

In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice, but perhaps 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

On the face of the evidence, and on balance, despite what the parties say, I don't think Cheetham behaved reasonably by leaving Mr W's money in the GIA rather than transferring it into his ISA as instructed.

Cheetham doesn't dispute this point. I note it accepts that the transfer ought to have happened automatically. However, due to a human error a box that should've been ticked was missed. And despite a meeting in September, this wasn't done because Mr W and Mrs W had terminated their relationship with the business.

In the circumstances I think the redress recommended by the investigator is broadly suitable. Notwithstanding what Mrs W says in response to the investigator's view in respect of her latest discussions with her IFA, in terms of redress, I think Cheetham should still be prepared, if required, to do the following:

- Contact HMRC, in order to correct the error with regards to Mr W's tax status for that year.
- Refund the CGT, if Mr W isn't able to mitigate the loss through his new IFA over two years.
- Pay Mr W an additional £150 compensation for the distress and inconvenience caused in terms of this issue with HMRC and having to chase the business to try and rectify the error through a new IFA.

I appreciate that Cheetham has offered to assist with the CGT, but Mr W and Mrs W have lost faith in its ability to deal with their investments. In the circumstances I still think it's fair that they should deal with any potential CGT issue that might arise from this complaint.

Given that the proposed redress is in line with the redress recommended by the investigator and accepted by Cheetham, I don't think it's necessary for me to issue a provisional decision just because it's now contingent on Mr W being successfully able to mitigate the CGT liability (through his new IFA).

Nevertheless, I think Cheetham Jackson Ltd should also pay what it has already offered, unless it has already done so:

- £197.22 refund for overcharging fees.
- £150 compensation in relation to the missing correspondence issue.

There's a separate (similar) complaint against Cheetham from Mrs W that I've also considered but I haven't upheld. In this instance, I'm only considering the actions of Cheetham in respect of Mr W.

The above notwithstanding, I think given Mr W's objective for capital growth, in line with his early retirement planning, I can't say that the advice to transfer at the time was wrong. Based on what Mrs W says, it seems they were unhappy with the state of play of their investments at the time.

Despite what Mrs W says, I also don't think the business was wrong not to cancel the transaction of its own volition, or carry out a further review of the portfolio, without timely valid instructions from her and/or Mr W to do so.

I note Mrs W says she thought the business might've erred on the side of caution and waited for the market to recover, but I don't think Cheetham was obliged to do so in this instance, because that's not what it was asked to do. If that's what she and/or Mr W wanted they ought to have made that clear to the business.

Without the benefit of hindsight, in theory, it's possible that the markets might have dropped, whilst Cheetham was reviewing the portfolio (of its own volition) potentially causing a significant financial loss to Mr W and leaving him with little or no option but to sell later. So, on the face of the evidence and on balance, despite what he/Mrs W says, I'm unable to agree that the business has done anything wrong by not stopping/cancelling the transfer. Even if the business was able to transfer in-specie it means that Mr W's holdings would've been far more exposed to adverse market movements.

Despite what Mrs W says, I'm conscious that no guarantees were given about the level of returns/growth Mr W might receive, that was always dependent on the financial markets. In the circumstances, the business isn't responsible for any change in the investment value. I acknowledge the value is dependent on the stockmarket, and it's not something that the business could predict or control. So, whilst the business may have given Mr W an idea of what he might receive upon encashment, and the hope was that he'd make money, I'm not persuaded that it provided any guarantees.

I note in correspondence dated 27 March 2020, Cheetham explained it suspects the transferor was 'dragging its feet' as it will have received a lot of instructions to cash. It also explained that the markets are volatile and that if the transferor sold down when high then it would have still dropped at its end in line with the market dropped.

I'm mindful Mrs W is unhappy about the time it took Cheetham to chase the transferor and that it only did so when the market was on a downturn. Based on conversations with the investigator I note she says that she/they didn't ask the business or the transferor to stop because she was looking after unwell family members. So, in the circumstances, in the absence of instructions from Mrs W and/or Mr W, I don't think the business was wrong not to have stopped the transfer of its own volition. However, given the state of the markets at the time, on balance, I think it's unlikely that Mr W would've have done things differently.

Despite what Mrs W says, on balance I'm satisfied that the recommendation was made by Cheetham in good faith. In other words, despite what she says I've seen nothing to suggest that the business didn't have Mr W's interest at heart.

In any case, given Mr W's objective, and the potential benefits of the move – such as capital growth and lower fees – it seems the recommendation was suitable. Based on correspondence between Cheetham and the investigator dated July 2021, it seems that Mr W and Mrs W are better off having transferred their assets. But even if it came to light, with the benefit of hindsight, the move wasn't beneficial, on balance I can't say that it was the business' fault or that Mr W would've done thing differently.

In other words, notwithstanding the points made by Mrs W, given that it was at the start of a global pandemic and subsequent government lockdown, I think Mr W was more likely (than not) to have chosen to transfer his holdings. I'm aware there was a lot of unpredictability in the markets, and a lot of movement by investors trying to do the right thing with their investments.

In the circumstances, and on balance, subject to the ISA/GIA issue, I can't say that the business has done anything wrong in terms of the transfer or is responsible for the delays – for which I'm aware the transferee and transferor have respectively accepted some liability.

I'm mindful the investigator says that once the instructions were given the matter was largely out of Cheetham's hands, therefore any losses arising from when the investments were sold and bought would also be out of its hands. Whilst I'm aware that Mrs W disagrees with this conclusion, in this instance I don't think it's unreasonable. In the circumstances I don't think the business could've known in advance how long the transferee and/or transferor(s) would take.

I appreciate Mr W will be thoroughly unhappy that I've reached the same conclusion as the investigator. Whilst I appreciate his frustration, I can't ask the business to do anything other than pay redress as set out below.

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

My final decision

For the reasons set out above, I uphold this complaint.

To put things right, Cheetham Jackson Ltd should, if required, do the following:

- Contact HMRC, in order to correct the error with regards to Mr W's tax status for that year.
- Refund the CGT, if Mr W isn't able to mitigate the loss (through his new IFA or otherwise) over two years.
- Pay Mr W an additional £150 compensation for the distress and inconvenience caused in addition to the compensation already offered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 8 June 2022.

Dara Islam
Ombudsman