DRN-3545746

The complaint

Mrs S complains about TenetConnect Limited (TC) following her instruction to disinvest £100,000 from her investment portfolio.

What happened

TC was Mrs S's independent financial adviser (IFA). Mrs S held an investment portfolio with a third-party provider, from which she made regular withdrawals. On 28 February 2020, Mrs S made a request through TC to withdraw £100,000 from the portfolio. TC made the request to the third-party provider on 2 March 2020 and selected a payment date of 16 March 2020.

Mrs S became aware that her request had not completed on 16 March 2020. It's common ground that the transaction was cancelled by the third-party because an automatic disinvestment instruction had been placed around the same time, to trigger the sale of assets to pay TC's adviser charges. Mrs S says she didn't receive the funds until 30 March 2020 and she lost out as a result of the delays actioning her instruction, as the value of the investment reduced over time.

TC say the third-party provider gave unclear information about its processes and failed to promptly notify TC that the transaction had been cancelled. TC say they were unaware of the auto-disinvest feature and didn't know it would block the larger disinvesting instruction. In contrast, the third-party provider says the delays were down to the payment date selected by TC and their user error.

The third-party provider highlights that the payment date was selected by TC and they should have known that it was unlikely to succeed because of another transaction, namely, the auto-disinvestment instruction which paid TC's charges. It was a feature of the account that auto-disinvestment would be triggered when cash funds were too low to meet the adviser charges. At the time of the request for the £100,000 disinvestment, an auto-disinvestment was already in place as the funds in the account were insufficient to meet the adviser's charges. As the platform could not action two sell trades for the same asset, the later instruction (for disinvestment of £100,000) was cancelled. It is said that this process was known or should have been known to TC. Usually, a withdrawal failure would be notified within seven days, but in this instance, Mrs S was aware of the failure on 16 March 2020.

Our investigator considered the complaint. He thought TC made a mistake as to the completion time for the disinvestment instruction and ought to have selected an earlier payment date. Further, TC ought to have known that the balance in Mrs S's wrap cash account was low and that regular auto-disinvestment was taking place every month to meet TC's adviser charges. Given the resources and training available to TC, our investigator also considered that TC ought to have known that an instruction that clashed with an auto-disinvestment might be cancelled.

Our investigator concluded that had an earlier payment date been selected the instruction would likely have proceeded. Further, as TC was acting as Mrs S's adviser, they ought to have kept her updated when she raised concerns.

He recommended putting Mrs S back in the position she would have been in if her units had been sold on 3 March 2020 as opposed to 24 March 2020. The number of units that would have needed to have been sold to generate £100,000 were around 134,571.390 and 168,123.739 respectively. Our investigator confirmed that the third-party provider would be able to assist with up to date calculations for valuations of this difference. Further, our investigator considered that it was fair and reasonable to compensate Mrs S for the stress and inconvenience caused by the initial error and the subsequent delays by TC and recommended £300 as a fair award.

TC maintain that the third-party's guidance was unclear and users of the platform were unaware that an issue would arise in these circumstances. They maintain that an early date was selected.

As the parties do not agree, the matter has come to me for 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.

I think it's helpful to explain that we provide an informal, dispute resolution service. We have no regulatory or disciplinary powers, which means we can't tell a business how to operate or impose any penalty. That's the role of the regulator.

TC was acting for Mrs S as her adviser and they gave instructions to the third-party to disinvest £100,000. Whereas, the third-party provided an execution only service and acted upon the instructions given. In my view, it was for TC to implement the instruction and understand the process it was following on behalf of Mrs S.

Mrs S gave the instruction to TC on 28 February. I agree with our investigator that Mrs S wanted it to be processed as soon as possible. Yet TC gave the instruction to disinvest £100,000 on 2 March and selected a payment date of 16 March. TC say they selected this date as they believed it would take ten working days to complete the instruction.

Having reviewed the information available to TC on the provider's website, it's my view that this was an internal payment from an investment to a wrap cash account, which meant the completion time was six days. TC therefore made a mistake as to the timeline for completion. This timeline was relevant because selecting the later payment date of 16 March, meant that the assets were due to be sold around the same time as an auto-disinvest instruction, which triggered to pay TC's adviser charges. As two sales for the same asset could not proceed at the same time on the platform, the larger disinvestment instruction was cancelled. The third-party provider has said this was its usual process, so I've considered whether TC knew or ought to have known about this process and whether they subsequently had knowledge that it had been cancelled.

I'm satisfied that it is more likely than not that TC was provided information about the auto-disinvestment feature. I've seen the content of a presentation from 2013 to advisers about the feature and the terms and conditions for the platform confirmed that a "wrap cash account" was automatically opened and could be used to pay adviser charges. It's agreed that TC received regular statements for both the portfolio and cash account, in which twice monthly auto-disinvestments could be seen to provide funds in the account for the adviser charges. The adviser charges were then paid between 6th -9th of each month. It appears there was some confusion on the part of TC's administrator who used the third-party platform, but as I've said above, it was for TC to take steps to understand the process it was following on Mrs S's behalf. TC had access to an online facility to manage cash balances in

the account and the guidance for the investment and wrap account. Further, it is not disputed that TC had direct access to platform consultants and a dedicated account manager at the third-party provider, so in my view they were in a position to clarify timelines, if they were unsure.

I've also seen the information provided on the third-party provider's website that explained, *"If your client has an existing standing sell and you are changing the investment strategy please cancel this prior to setting up a new standing sell instruction."* As the assets were regularly sold to meet the adviser charges, shown by the activity on Mrs S's statements, I think TC ought to have been aware that these steps were required. Taking everything into account, I think it more likely than not that TC knew or ought to have known when the auto-disinvestment was taking place, especially as the process was solely to pay their charges. As this process required assets to be sold, TC knew or should have known that this would trigger a sale and that two instructions could not be completed at the same time.

The third-party provider also say that it was for TC, acting on Mrs S's behalf, to check whether any pending sales were in progress before giving the withdrawal instruction. I don't think that's unreasonable given that the provider offered an execution only service. There's nothing to show that any check was made by TC. On balance, had the check been made, I think it's more likely than not that the sale under the auto-disinvestment would have been identified.

The third-party provider has confirmed that it was open to TC to select an earlier date for funds to be paid into Mrs S's account. Under the guidance for withdrawals, available to TC, it was explained that internal payments from an investment to the wrap cash account take six working days, where five days are required to process the sale of assets and one day for funds to settle. So, it would have been open to them to have selected an earlier payment date. On this occasion had TC selected an earlier date, such as 10 March, the conflict with the auto-disinvest instruction could have been avoided.

TC say that the provider ought to have notified them earlier that the transaction had been cancelled. First, I've noted that there's nothing to show TC checked whether the instruction had completed. Second, I've considered it was the third-party provider's usual process to generate a "work demand" if a withdrawal request failed, which would be actioned within a week, with the adviser being informed about the failure. I don't think that's an unreasonable timeframe. But in this instance, Mrs S made TC aware on 16 March that the transaction had cancelled. And TC have conceded that the timeline wouldn't have made a difference to Mrs S's losses. So, whilst I've seen that the third-party provider didn't notify TC about the withdrawal cancellation because a second request was made, I don't think it made a material difference as TC already knew of that cancellation.

TC went on to request two separate withdrawals on Mrs S's behalf on different, whereas they could have given an instruction to process one larger sum. In my view, this likely caused further delay.

Taking everything into account, it is my view that errors were made by TC. I think it is fair and reasonable to uphold this complaint. So, TC needs to put Mrs S in the position as if things hadn't gone wrong.

I've also considered Mrs S's concerns about the poor service provided by TC. Mrs S believed she had sustained losses and TC, acting as her adviser, gave reassurance that they would address the matter with the third-party provider. It isn't disputed that information wasn't shared promptly and Mrs S was left in the dark for several months. I think it's more likely than not that these delays contributed to Mrs S's distress at a time when she was already worried about having sustained losses. On balance, I think it's fair and reasonable

for TC to compensate Mrs S for the upset and inconvenience she's suffered.

Putting things right

On balance, I'm persuaded that but for the errors made by TC, they would likely have made an earlier payment request because Mrs S had given an immediate instruction and such a request would have avoided the clash with the auto-disinvestment. The third-party provider has confirmed that an earlier preferred payment date could have been selected for 10 March, which would have triggered a sale of units around 3 March.

The third-party provider has confirmed that more units were sold on 24 March to achieve £100,000 than would have been required to be sold on 3 March to achieve £100,000. I think it's fair and reasonable to compensate Mrs S for the difference in the number of units sold to achieve £100,000 at these two dates. As Mrs S no longer holds an account with the third-party, I consider that it is fair and reasonable for TC to pay her the value of the difference in the number of units, to be assessed at the date of settlement.

Mrs S has been clear that the lack of information from TC and poor communication added to her distress. Overall, I consider that £300 is fair to compensate for this.

My final decision

For the reasons given, I am upholding this complaint. I direct TenetConnect Limited to:

1. Pay Mrs S the difference in the units, the value to be assessed as at the date of settlement;

2. £300 for trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 10 August 2022.

Sarah Tozzi
Ombudsman