

The complaint

Mr M complains about the investment advisory service he received from Bradbury Hamilton Limited between 2017 and when he moved to a new adviser.

What happened

Mr M had been a client of Bradbury Hamilton since 2013. He signed up to its Portfolio Service, which involved Bradbury Hamilton providing Mr M with advice and recommendations in line with his objectives, attitude to risk and financial circumstances.

In 2019 Mr M complained. In short, he complained that following an annual review in 2017, Bradbury Hamilton recommended that he sell certain investments worth £49,000 in order to fund his pension and utilise his ISA allowance. The remainder was to be invested in a model portfolio within Mr M's general investment account.

However, Mr M said that the recommendations weren't followed, and the gains crystallised exceeded his annual Capital Gains Tax (CGT) allowance. As a result he was forced to pay over £1,500 in CGT which he had not been told about. Furthermore, he said that the money was never invested in his ISA or the model portfolio. He said that no money was transferred to his pension. Mr M also complained that recommendations which were made following a review of his portfolio in 2018 were not made – for example utilising his ISA allowance that year and his CGT allowance. He said that as the investment which was supposed to be sold was not, he missed out on using his CGT allowance for that year.

Finally, Mr M complained about the fees he had paid in 2017 and 2018 which he felt should be refunded given the poor service he said he received. Bradbury Hamilton didn't think it had done anything wrong, so Mr M brought his complaint to this service.

I issued a provisional decision in October 2022. In it I said:

'Mr M has complained about a number of areas where he feels Bradbury Hamilton did not deliver the service he'd agreed to receive and was paying for.'

The first of the issues is to do with the crystallisation of gains which exceeded his CGT allowance in the 2017/2018 tax year, and what Bradbury Hamilton ended up doing with the cash that was released.

In terms of the complaint about the CGT allowance, I'm not persuaded there's much that's gone wrong. I can see that the recommendation to sell down £49,000 was not in fact based on a consideration of CGT – the report from June 2017 says that the recommendation was being made to allow Mr M to 'use this money to continue [his] Pension contributions, make the recommended NISA contribution and invest the balance into the Bradbury Hamilton Model Portfolio'. What the report said was that the advisor had calculated that he had 'sufficient CGT allowance to facilitate the sell down'. The report encouraged Mr M to seek tax advice if he had any doubts. The report also says that by the time the recommendations are implemented, the values of the investments will have fluctuated and therefore the resultant tax liability could also be different.

In the end, Mr M was required to pay just over £1,500 in CGT for this transaction – my understanding is that this was in part due to some potentially erroneous figures from the platform where the investment was held. I should say that I don't agree with Bradbury Hamilton or the investigator that what was said in the report was akin to tax advice or that this is what Mr M was seeking. In my view a clear statement was made about CGT – if the advisor was not confident in that position or making such a statement, then he simply shouldn't have made it. If he was reliant on figures provided by the platform, he ought to have ensured those were accurate – or refrained from giving his opinion on the CGT position. From the moment he expressed that opinion Mr M was entitled to rely on it. In addition, I don't agree that calculating potential CGT necessarily requires specialist tax advice – particularly in circumstances where a caveat has already been given to the consumer about disclosing other crystallised gains (which Mr M has said he did not have). Clearly if Mr M incurred a CGT liability as a result of gains made elsewhere which he didn't disclose, Bradbury Hamilton would not have had a case to answer.

All that being said, I can't see that the ability to encash an investment CGT free was something that was critical to Mr M accepting the recommendation that was being made. I say this because Mr M didn't query this again when he accepted the recommendation over a month later – and yet clearly at this point the investments could've fluctuated such that the report was no longer accurate when it talked about the likely CGT. In my view if Mr M's objective was to only encash up to his CGT allowance, he would've ensured that he made this clear when he emailed Bradbury Hamilton to accept the recommendation – but he didn't. Instead, he focused on the reasons Bradbury Hamilton had recommended he encash £49,000, namely to use this money to continue making Pension contributions, add to his existing ISA and invest the rest.

For these reasons, I'm not persuaded that the relatively small amount of tax which Mr M ended up paying requires Bradbury Hamilton to pay compensation – in my view the investment was encashed primarily for other reasons, and the possibility of a small amount of tax to pay was outweighed by those considerations. I'd also add that by contributing to his pensions, as it did, there was also a tax benefit that was realised.

There's some dispute between Mr M and Bradbury Hamilton, however, about whether it did end up enacting the recommendations it made.

The report from June 2018 shows that £20,000 was added to Mr M's ISA in the preceding year and a further £20,000 was also added to his pension. So I'm satisfied that those recommendations were adhered to. However, the remaining cash was not invested – and it is here I'm currently minded to agree with Mr M.

I've read the reasons Bradbury Hamilton has given for why it did not invest this money in the model portfolio despite its recommendation, but I'm not persuaded by its submissions. In its final response letter it said that the £9,800 'provided you with a bit of emergency fund' but this was not one of the recommendations, nor one of the reasons to encash £49,000. This was never agreed by Mr M – he had specifically agreed for this amount to be invested in the model portfolio. In my view, the fact that Mr M didn't query this when he received his next report isn't relevant – given the size of his portfolio, I'm satisfied that his assumption would've been that Bradbury Hamilton had given effect to the recommendation it had made and he had accepted. I'm not persuaded he ought to be criticised for not identifying there was around £10,000 additional cash in his account which should've been invested. Ultimately, it was for Bradbury Hamilton to give effect to Mr M's instructions and it failed to do so.

Therefore I agree with him that he has lost out on potential growth, and for that he should be

compensated.

Mr M also complains that in subsequent years the portfolio wasn't sold down in such a way as to make use of his CGT allowance. He says this wasn't in line with what was agreed, namely to manage his portfolio in as tax efficient a way as possible. On this complaint point, I'm not persuaded Bradbury Hamilton has done anything wrong.

Firstly, I agree with Bradbury Hamilton that whilst tax efficiencies are likely to be a consideration, they're not inherently the most important consideration even if a portfolio carries gains. There will be circumstances where encashing an investment isn't the right thing to do – and the time horizon is also important. The longer a consumer has to mitigate CGT (not just by utilising any annual allowances, but also by offsetting other losses), the more weight other considerations are bound to have.

In Mr M's case, the review that was carried out in 2018 showed that a lot had changed in Mr M's circumstances – he had been made redundant from his job and was looking to spend 6 months abroad. Plans were put in place to stop his pension contributions – but Mr M also had plans to rent his home in order to generate an income. Under 'suggested solutions' I can see that Mr M and his adviser agreed to stop his regular pension contributions and to move a recently opened ISA to the same platform as his other investments – which Bradbury Hamilton did. I can also see that Mr M and his advisor discussed what to do in the event that on return from abroad, Mr M did not return to work. They agreed that Mr M should consider 'taking income from his pension up to the personal allowance and possibly crystallising further gains from his [...] portfolio to use up the CGT nil rate band and the 10% CGT rate for gains within the basic rate'.

But crystallising further gains was dependent on decisions which Mr M would make during the course of the year – and I've seen insufficient evidence that on return from being abroad, Mr M spoke to Bradbury Hamilton to ask for advice and explain what he was intending to do. Unlike an ISA allowance, which simply needs to be used every year via cash subscription, utilising a CGT allowance requires other considerations which go to the heart of what a consumer wants from their investments. Mr M has made reference to his agreement that the portfolio should be managed in as tax efficient a way as possible, but I don't agree that this all boils down to making use of the CGT allowance every year – facilitating his pension contributions and ensuring he maximised his ISA allowances were also part of this service.

However, whilst I'm not persuaded Mr M was ultimately caused a loss in this instance, I am satisfied that Bradbury Hamilton's report from 2018 shows there was an intention to sell down 7% from two of Mr M's funds in order to be able to fund his annual NISA contribution. Whilst Bradbury Hamilton has explained that this turned out not to be necessary, because of the amount of cash Mr M had, this does not appear to have been communicated to Mr M nor was he asked for his instructions. I think this issue was made worse by Bradbury Hamilton failing to invest the previously released £9,800 – and so one error has been compounded by another. In any event, whilst I can understand Bradbury Hamilton's reasons for not encashing in 2018, in my view it ought to have reverted back to Mr M and asked for his instructions. I don't agree it was good enough to have made this decision without advising him or making him aware of what had happened. This wasn't an acceptable service and I agree that Mr M wasn't treated fairly here.

Finally, Mr M has also asked for a refund of fees – both in relation to the period above, during which he feels he didn't receive an acceptable service, and the fees he paid from when he moved to his new financial adviser. In terms of the above, I don't agree it would be fair to deduct the fees he paid. Overall Bradbury Hamilton clearly spent time, care and effort in producing annual reports and commentary for Mr M, and giving him detailed advice. It wouldn't be fair for it not to be remunerated for that. However, where a failure in service has

caused financial loss, I've made a recommendation below. Where it has caused Mr M upset or inconvenience, I've also awarded some compensation.

In relation to the fees levied by Bradbury Hamilton after he moved to a new adviser, I'm persuaded by its explanations. It explained that Mr M's new adviser didn't have access to the same platform that Bradbury Hamilton used, and it would've been for Mr M's new adviser to initiate the transfer. I've also seen the annual review from 2020 where it is clearly set-out that Mr M had 'retained [his] General Investment Account with Nucleus where [he] had retained Bradbury Hamilton as [his] adviser'. Later the report also says that Mr M might 'wish to transfer' his General Investment Account to his new financial adviser 'rather than retaining Bradbury Hamilton'. I can't see that Mr M raised any queries in relation to this – and whilst I acknowledge he's said he didn't read or access the reports, I'm satisfied Bradbury Hamilton was still carrying out the work it was contracted to at the time. So I'm satisfied that Bradbury Hamilton didn't do anything wrong in relation to this, and I agree with it that whilst it remained Mr M's adviser for the purposes of his General Investment Account, it continued to be bound, as was Mr M, to the terms of the agreement they had with him. This means it was also entitled to be remunerated.'

I provisionally awarded the return on the £9,800 that wasn't invested and £750 compensation for the trouble and upset the matter had caused him.

Mr M agreed but Bradbury Hamilton did not. It said that 'Mr M had a minimal cash sum of £268 within his Nucleus General Investment Account at the time we carried out the in-specie funds sell of £49,000'. It said a 'cash sum was required to cover the charges/fees on his investments'. It acknowledged that he was advised to 'invest £9,800 in Bradbury Hamilton model portfolio' and it 'did not do so'. But Bradbury Hamilton said that if it had 'invested the £9,800 at the time, further in-specie funds would have to be sold to cover the cost of charges/fees'.

It provided some charts which showed the performance of Mr M's various investments, and concluded that 'Mr M would have utilised the £9,800 held in cash by 2 June 2019 for charges'. It said this means that is the date that ought to be used for the calculation – and he would've made a gain of £940.63. However, it said I ought to take into account the fact that as this sum wasn't invested, some of his other investments weren't sold down during that period – and based on the performance of his other investments, it concluded that Mr M's losses were 'limited to circa £331'. Finally, it disagreed with my award for trouble and upset on the basis that Mr M wasn't caused any. Bradbury Hamilton said that this complaint was encouraged by Mr M's new adviser who sought to 'ingratiate' himself with his new client and 'discredit Bradbury Hamilton in order to prove their competence'.

Before reaching my final decision, I agreed to amend my award for compensation to take into account the fees which Mr M would always have needed to pay during that period. As he would've had a limited amount of cash in his account had the £9,800 been invested, I agreed that I should take into account the effect of paying fees on the return he would've received on this sum. I wrote to both parties explaining that I would treat each payment towards the fees as a 'withdrawal' for the purposes of the calculation of what return the £9,800 would've achieved had it been invested in the model portfolio. I asked Mr M and Bradbury Hamilton to comment.

Mr M did not reply. Bradbury Hamilton did. In short, it said that it had already said that Mr M did not incur a loss due to the cash remaining uninvested, because it was used to pay for fees which would otherwise have been paid by disinvesting other investments which performed better than the model portfolio. It attached some charts to demonstrate this.

It also continued to disagree with my award for trouble and upset – it said that the complaint was generated by Mr M's new adviser who was seeking to 'create a problem with Bradbury

Hamilton' when there wasn't any. It queried why the ombudsman was looking to 'penalise' Bradbury Hamilton, when its actions 'actually benefitted Mr M in terms of his fund growth and return'.

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.

Bradbury Hamilton's comments focus primarily on my findings on how to put things right. For the avoidance of doubt, I therefore confirm my provisional findings on the substance of Mr M's complaint (set out in *italics* above) as final.

I've considered Bradbury Hamilton's comments very carefully. Whilst I understand the point it has made about the actual loss to Mr M, I don't agree its proposal for what should be taken into account when calculating that loss is fair. The starting point is that Bradbury Hamilton recommended that money be invested, and Mr M accepted that recommendation. There was no reason given by Bradbury Hamilton at the time for not enacting the recommendations it had made to Mr M – and I'm not persuaded Bradbury Hamilton failed to enact this recommendation in order to benefit Mr M. It simply omitted to execute a clear instruction it receive from its client.

I do accept that Mr M was always liable to pay for ongoing charges during this time, and I agree its fair and reasonable to take that into account when calculating what loss was caused to Mr M by Bradbury Hamilton's omission.

However, Bradbury Hamilton's comments ignore the fact that fees were being paid regularly and not all in one go – this means that in between fees being incurred, the £9,800 was neither earning interest nor potentially growing in value, even though it should've been. So Bradbury Hamilton's comparison with Mr M's other investments isn't relevant. What Bradbury Hamilton ought to do is assume that deductions would've been made from the investment in the model portfolio – and calculate what return, if any, would've been generated during the period in question.

So in my view, the fair way to take this into account is to treat the payments of fees during this period as 'withdrawals' from the investment that ought to have been made with the £9,800. In other words, each time Bradbury Hamilton deducted money from the cash in Mr M's account to pay the ongoing charges, it should treat that as withdrawal from whatever the £9,800 would've been worth at the time when the fees were paid.

I'm also not persuaded by Bradbury Hamilton's comments about the trouble and upset Mr M has been caused by its failing. I don't agree its helpful to speculate on why Mr M has brought his complaint, other than to acknowledge that he wasn't satisfied with certain aspects of the service he was provided – and I've agreed in part with his complaint.

And I'm satisfied finding out much later that a recommendation he had accepted had not in fact being implemented, despite the very significant fees he was paying for the service, would've been upsetting and worrying.

Given the sums involved, and the lack of any acknowledgement of this error when Mr M raised the issue, I'm satisfied that my award of £750 is fair and reasonable.

Putting things right

I should make clear that in putting things right, my objective has not been to penalise Bradbury Hamilton – that isn't my role. But for the reasons I've given above, I'm satisfied that Mr M was let down by its service.

And so in putting things right, my aim is to put Mr M in the position he would've been in had Bradbury Hamilton invested the original £9,800 in line with the model portfolio it recommended. However, I have also taken into account that during this time some cash would have needed to be released in order to pay Bradbury Hamilton's ongoing charges.

In my view, the fair way to take this into account is to treat the payments of fees during this period as 'withdrawals'. In other words, each time Bradbury Hamilton deducted money from the cash in Mr M's account to pay the ongoing charges, it should treat that as withdrawal from the £9,800 that would've been invested in the model portfolio.

Therefore, Bradbury Hamilton must:

- Calculate how the Model 6 portfolio performed between 18 July 2017 (that is, the day after Mr M confirmed via email that he was happy with the recommendations) and when Mr M's General Investment Account was moved to his new adviser. For the avoidance of doubt this means when Bradbury Hamilton was no longer an adviser on the platform and no longer had oversight of his investments.
- Calculate how much Mr M's £9,800 would've been worth at the point he moved to his new adviser if it had been invested in the Model 6 portfolio in line with the bullet point above. Bradbury Hamilton may deduct from the calculation those payments towards the ongoing annual management charge as and when they were paid out.

Pay Mr M any loss.

In addition, I award Mr M £750 for the trouble and upset the matter has caused him.

I've considered what Bradbury Hamilton has said about this award, but for the reasons I've given above I'm not persuaded to change it. As I've said, Bradbury Hamilton did fail in delivering the service which Mr M was paying for, and I think it wasn't upfront about the areas of its service which I've identified above weren't to the standard Mr M was entitled to expect.

I can understand that having found recommendations he had accepted but were not implemented would've caused Mr M understandable upset – especially given that he was paying Bradbury Hamilton very significant sums for this service.

For these reasons, I'm satisfied that this award is fair and reasonable compensation for the trouble and upset he was caused by Bradbury Hamilton's actions.

My final decision

My final decision is that I uphold Mr M's complaint. Bradbury Hamilton Limited must pay the compensation I've outlined above within 28 days of when we tell it Mr M has accepted this

final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 6 January 2023.

Alessandro Pulzone
Ombudsman