Financial Ombudsman Service

The complaint

Mrs W says Capital Professional Limited ('CPL') caused delays to the liquidation of assets in her late husband's Self-Invested Personal Pension ('SIPP') and to the transfer of proceeds into her SIPP, leading to a financial loss. CPL disagrees. It says its actions were reasonable and that delays were caused by other parties in the process.

Curtis Banks ('CB') was the SIPP provider. CPL managed Mrs W's husband's SIPP account/investments. Within the SIPP was an EFG Harris Allday fund (the 'EFG fund'), and EFG Harris Allday ('EFG') was the fund manager. The complaint referred to this service began as one against CB, then a separate complaint was set up with CPL as the respondent. This decision is about the complaint against CPL.

What happened

Mrs W's husband passed away in 2020. She was the beneficiary of his SIPP. CB was informed of his passing in October that year. By February 2021 CB had concluded formal verifications of his passing and of her beneficiary status, and by April 2021 a SIPP had been established for her in order to have the EFG fund reassigned to it. In the same month she says it became apparent that the reassignment was experiencing delays and that it would be quicker to liquidate the EFG fund and transfer the proceeds to her SIPP in cash. She instructed this and CB confirmed receipt of the instruction.

Her claim is that she had a plan to reinvest the cash in Rathbone and Bailie Gifford funds (the 'R&BG funds'), that execution of her instruction ought reasonably to have been completed before or by 27 May 2021 (when investment in the R&BG funds would probably have happened), and that instead she was not in a position to make the investments until 3 September 2021 (when they were made). She says more investment units could have been bought with the cash at the prices on 27 May than were bought on 3 September, and that she incurred a loss of almost £29,000 in this respect.

Mrs W, CB and CPL have set out their versions of the chronology of events in 2021.

In the main, Mrs W says – on 4 May CB confirmed her instruction had been received but it was still awaiting news on liquidation of the EFG fund; on 23 June she sent a draft complaint about the delay to CB, asking it to check its contents and to then forward the complaint to EFG; on 29 June CB confirmed that the cash had been received from EFG but it had to be matched to her husband's SIPP before being transferred to hers; on 9 July CB confirmed it had received the cash from EFG on 25 June; on 15 July she logged into her SIPP account and could see the transferred cash had been received; thereafter her engagements were with CB and with her financial adviser, with regards to investing in the R&BG funds; she was advised to invest directly through a Stocktrade account so she applied for this on 3 August and the account was set up by 26 August; the liquidated cash was transferred to the Stocktrade account on 27 August; and the investments were made on 3 September.

In the main, CB says – it received Mrs W's instruction on 19 April and raised the associated Origo transfer request two working days later; it chased CPL with regards to the request; CPL replied on 13 May and said it required various legal documents, including Mrs W's

husband's will, the death certificate and the Grant of Probate('GoP'), before the liquidation and closure (of the EFG portfolio) could proceed; it did not have the GoP but sent CPL the Trustee Record (which confirmed the death and Mrs W's beneficiary status) on 20 May; CPL then asked for the documents related to the Trustee Record, this appeared to be an unnecessary request but it shared the death certificate in order to facilitate the process; it did not receive the liquidated cash until 1 July; the receipt was then reconciled; on 7 July it was transferred to Mrs W's SIPP; and was credited to her SIPP on 9 July. CB has also summarised events thereafter, in relation to the reinvestment of the cash.

CPL mainly says – it received EFG's email of 30 April enclosing CB's portfolio closure request and seeking its instruction, no documentation on Mr W's husband's death was provided; it asked EFG for the closure form needed in the process and on 13 May EFG confirmed it did not have any of the said documentation; on the same date it put its request for the documentation to CB; it reminded CB of this request on 18 May; it received the Trustee Record from CB on 20 May, but nothing else; on 24 May it told CB it required the death certificate as a minimum; on 27 May it received the death certificate and on the same date it completed the EFG closure form; the form was sent to EFG on 1 June; it chased EFG on 3 and 7 June; on 8 June EFG said instructions from CPL were required; this was clarified on 9 June and on 10 June dealing instructions to liquidate were given to EFG; all liquidations were settled by 23 June, and on this date it chased EFG to resolve a small dividend amount and to confirm there were no outstanding fees/charges; it chased further on 24 June; and on 25 June it remitted the liquidated cash to CB.

Two of our investigators looked into the case and both concluded that it should be upheld. The second investigator revised some of the earlier findings on the parties' roles and on redress. In the main, she said:

- CB's Trustees of the SIPP legally owned the SIPP's assets. Mrs W had been confirmed, by the Trustees, as the sole beneficiary of those assets, and that had been done after verification of relevant documents (including her husband's beneficiary nomination, his will and the death certificate).

- CB asked EFG, directly, to liquidate the EFG fund on 28 April. CPL needed to instruct and act to achieve this (and to close the account), so EFG put that request to CPL on the following day. Around a week thereafter CPL asked EFG for the death related documentation, and three days after that it asked CB for the same. A week after that CB shared the Trustee Record. That ought to have been enough, given that the Trustees owned the fund and had verified Mrs W's husband's death. As such, it was unreasonable for CPL to delay the process until it received the death certificate. It is noteworthy that earlier, in January 2021, CB had notified CPL of his passing so it had the time, previously, to request any documentation it wanted.

- Having received notice of the requested liquidation on 29 April, CPL did not issue the required dealing instructions until 10 June. That was unduly delayed. It ought reasonably to have issued the instructions within five working days and by 7 May. Based on the actual time taken after 10 June to complete the liquidation and transfer, if the dealing instructions had been issued on 7 May the cash proceeds would have been received in Mrs W's SIPP around 24 May.

- CPL had no control over the subsequent events and it would not be fair to hold it responsible in those respects. However, if the cash had been paid to Mrs W's SIPP on 24 May, and using the actual timescale for the subsequent events, it could have been invested by 27 July.

- Redress to Mrs W should relate to the notional cash value that could have been achieved if the liquidation dealing instructions were given on 7 May, and to what the fair value of her SIPP would be had that cash value (minus the £1,000 she retained in cash) been invested in the R&BG funds on 27 July. In addition, CPL should also pay her £300 for the trouble and upset caused to her during the process and during a sensitive period for her (in the aftermath of her husband's passing).

CPL disagreed with this outcome. It objected to being held responsible for EFG's role in the process and said the outcome did not consider the delays by CB. The investigator said her findings had not done the former. She also noted that her findings had not held CPL responsible for the events after the cash was paid into Mrs W's SIPP. It also disputed the notice from CB in January 2021 that she had referred to, and said its records show the first documented note of Mrs W's husband's death was on 9 June. It argued that it was responsible for the withdrawing of monies so it required sight of the death certificate before proceeding.

The matter was referred to an Ombudsman.

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, I have reached the same conclusion as that expressed by both investigators. I uphold Mrs W's complaint, and I do so on broadly the same grounds as those set out by the second investigator.

The case, and my decision, is only about CPL and its role in the liquidation, transfer and reinvestment process. As the investigator said, the last part of the process – the reinvestment of cash, within Mrs W's SIPP, in the R&BG funds – was beyond CPL's involvement and control, so it would be unfair to hold it responsible in that respect. For this reason, and because the present complaint is not about CB, is not about Mrs W's financial adviser, and is not about Stocktrade – all of whom featured in the reinvestment part of the process – I make no finding about the time it took to reinvest the cash after it was received in the SIPP. Like the investigator, and for the purpose of my findings, I acknowledge the timescale during this period as it was.

The case, and my decision, is also not about EFG. CPL has stressed that EFG was/is independent and was not under its responsibility. I echo the investigator's approach in this respect too. Like her, and for the purpose of my findings, I accept the factual timescale during the period in which EFG executed the liquidation deals CPL had placed. I make no finding about the time taken during this specific period because it featured only EFG's role and I am not determining a complaint about EFG.

With regards to events before this period, I have noted CPL's disclaimer of responsibility for EFG and the suggestions in its chronology that it had to chase EFG on some occasions. EFG was the fund manager. CPL managed the investments in the SIPP and the requirement from Mrs W, through CB, was to liquidate the SIPP's investments and remit the proceeds to her SIPP. As such, primary responsibility rested with CPL to conduct the requisite liquidation dealing.

The task was delayed for two main reasons – the time used in waiting for documentation from CB that CPL insisted upon before proceeding, and the delay between 27 May when it received the death certificate and 10 June when it eventually placed the necessary deals. EFG had nothing to do with the first. In terms of the second, I am not satisfied that EFG

shares any responsibility for what appears to have been CPL's unawareness or uncertainty about having to directly place the deals. It seemingly expected EFG to conduct dealing upon CB's instructions, before realising that it (CPL) had to place the liquidation deals directly. On balance, given that it was the SIPP's investments' manager it ought reasonably to have known that, and to have known that it needed to directly instruct closure of the EFG portfolio. EFG asked for instructions at the outset. For these reasons, I consider that the delay between 27 May and 10 June was ultimately its responsibility.

The delay prior to 27 May was also CPL's responsibility, and it was avoidable.

On 29 April it knew about CB's correspondence with EFG on liquidating the EFG fund and closing the portfolio. EFG wrote to it on this date about the correspondence and in an early submission to this service CPL said it had previously and directly heard from CB on 21 April about liquidating the EFG fund and remitting the proceeds. Remittance of the proceeds was always due to CB, and on 25 June CPL sent it to CB. CB's Trustees legally owned the SIPP's assets, which CPL managed. These set relevant context.

I understand why CPL felt the need to seek an explanation from CB about the basis for the request. That was not unreasonable. However, it did not do this until around two weeks after 29 April (on 13 May). It was responsible for that delay. It ought reasonably to have sought the explanation either soon after the letter it received on 21 April or, at the latest, between 29 and 30 April. Had it done that, it is more likely (than not) that it would have received the Trustee Record (which confirmed CB's notice of the death and confirmed that it had settled Mrs W's beneficiary status) much earlier. That document should have been enough to meet its enquiry. In the context summarised above, I am not persuaded that it needed to duplicate checks and verifications that CB and its Trustees had already concluded, so I do not consider that its additional requests were reasonable.

But for CPL's delay in clarifying CB's request and its delay in placing the liquidation deals, those deals would have been placed earlier. On balance, I agree that they would, and ought reasonably to, have been placed by 7 May (around two weeks after the letter of 21 April and around a week after contact from EFG on 29 April).

The above analysis should show that CPL has been held responsible only for the delays it caused and that it is not being held responsible for action or inaction by a third party.

The deals placed on 10 June were completed between 23 and 24 June, and the liquidated cash was sent to CB on 25 June, before clearing thereafter. The investments in the R&BG funds were not made until 3 September. A Total of 12 weeks passed between 10 June and 3 September. But for CPL's delays, those 12 weeks would have run from 7 May and would have ended on 30 July. I acknowledge that the investigator's calculation ended with the slightly earlier date of 27 July, mine uses the same calculation basis but ends with the date of 30 July, so this will be the date I use in determining redress below. Nevertheless, we share the same basis and common ground in terms of calculating when the investments would have been made in the R&GB funds, in Mrs W's SIPP, if CPL had placed the liquidation deals by 7 May as it ought to have done.

On the above basis and analysis, I uphold Mrs W's complaint.

Putting things right

fair compensation

In deciding what is fair my aim is to put Mrs W close to the position she would probably now be in if CPL did not cause the aforementioned delays to the liquidation of the EFG fund and

transfer of the proceeds; and if deals for the former had been placed on 7 May and if the proceeds had been reinvested by 30 July.

There are three aspects to calculating compensation for Mrs W – first is consideration of the liquidation value that could have been achieved on 7 May, then consideration of the size of the reinvestments she could have made in the R&BG funds with that value on 30 July (compared to the size of the reinvestments made on 3 September), and then consideration of compensation for the trouble and upset she has been caused in the matter.

Available evidence is that 30% of the reinvestment was in the Rathbone Unit Trust Management Multi Asset Enhanced Growth Portfolio and 70% was in the Baillie Gifford & Co Managed B Nav fund. These investments, and their performance, serve as the natural benchmark for the redress comparison exercise between the start and end dates set out below. I assume, as did the investigator, that the investments have remained unchanged to date, and will remain the same up to the end date. If that is not the case, I will provide below for the redress calculation to reflect any changes.

For the sake of the calculations, the *start date* is 30 July and the *end date* is the date of settlement. I repeat, *the benchma*rk is defined as follows – for 30%, the Rathbone Unit Trust Management Multi Asset Enhanced Growth Portfolio and for 70%, the Baillie Gifford & Co Managed B Nav fund.

My orders to CPL are set out below. Mrs W is ordered to engage meaningfully and co-operatively with CPL to provide it with all information and documentation, relevant to its calculation of redress and needed to settle redress, that it does not already have.

what must CPL do?

To compensate Mrs W fairly, CPL must:

- Calculate the total value for which the EFG fund holding would have been sold if the liquation deals were placed on 7 May 2021. The result, minus the £1,000 cash that was retained, would have been available for reinvestment in Mrs W's SIPP. The net result (with the £1,000 cash holding already subtracted) is 'A'. A would have been reinvested on the start date.

- Calculate the total units in the R&BG funds that Mrs W's SIPP invested in on 3 September 2021; the result is 'B'; then calculate the total units, in the same funds and based on the same allocation split (as set out above), that her SIPP could have purchased with the cash value of A on the start date, and at the prices on this date. The result is 'C'.

- If B is the same or greater than C, no compensation is due.

- If C is greater than B, compensation is due to Mrs W. In this case, CPL must calculate the difference. Then it must calculate the *total monetary value* of the difference based on the relevant funds' units' prices on the start date. The result is 'D'.

- Calculate the performance of D from the start to end dates based on the performance of the benchmark, assuming Mrs W's investments in the R&BG funds have remained unchanged between both dates. If her investments have changed between both dates, reflect those changes as and when they happened (and associated performance) in the calculation.

- Pay Mrs W the monetary equivalent of D plus or minus the calculated performance – the result and payment value is 'E'.

- Make the payment to Mrs W within 28 days of receiving notice of her acceptance of this decision. If CPL does not make the payment to her within this period it must pay her E plus interest on E at the rate of 8% simple per year from the date of this decision up to the date the payment is settled/made to her. This is to compensate her for any undue settlement delay by CPL.

- Pay the compensation into Mrs W's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. The compensation should not be paid into her pension plan if it would conflict with any existing protection or allowance. If the compensation (and any interest) cannot be paid into her pension plan, pay it directly to her. Had it been possible to pay it into the plan, it would have provided a taxable income, so the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. The *notional* allowance should be calculated using her actual or expected marginal rate of tax at her selected retirement age. For example, if she is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. If she would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

- Provide the details of the calculations to Mrs W in a clear and simple format.

- Pay Mrs W £300 for the trouble and upset the matter has caused her, especially as it would have probably compounded her bereavement at the time. I consider this a fair award in the circumstances.

compensation limit

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £350,000, £355,000 or £375,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In Mrs W's case, the complaint event occurred after 1 April 2019 (it happened in 2021) and the complaint was referred to us after 1 April 2020, so the applicable compensation limit would be £355,000.

My final decision

For the reasons given above, I uphold Mrs W's complaint and I order Capital Professional Limited to calculate and pay her redress (and compensation for trouble and upset) as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs W to accept or reject my decision before 26 May 2023.

Roy Kuku
Ombudsman