

The complaint

Mrs B complains about aspects of Prism Financial Advice Limited's (Prism) service, and the suitability of some of the investment advice it gave her.

What happened

Around late 2018, Mrs B sought financial advice from Prism as she was intending to take early retirement around February/March 2019. She was around age 56 at the time.

Mrs B was a member of her employer, G's, occupational pension scheme and had accrued benefits in both a defined benefit (DB) and a defined contribution (DC - contracted out money purchase – COMP) fund.

Prism noted that Mrs B had already decided to access her DB benefits (although Mrs B has indicated that Prism helped her fill in some paperwork to release the funds). She'd also completed a "*preferred benefits form*" in relation to the COMP indicating that she wanted to transfer her benefits to another provider. Included within a retirement pack sent by G was other information about accessing the benefits, including through an income drawdown arrangement. Prism noted that Mrs B was looking for advice about how to invest the tax-free lump sum from the DB pension and that she wanted a review of her existing investments.

It noted various details about Mrs B. Her main investment aim was to be able to maintain a good standard of living in retirement by making the most of the savings she'd accumulated. She also wanted to hold funds that would support her lifestyle "*now and in the future*" and which would provide capital reserves to help her top up her income and capital "*as and when required*". Mrs B expected to receive a lump sum of about £88,000 from the DB pension and a net income of around £1,075 a month. Having completed an income and expenditure assessment, Prism noted that the monthly income wasn't enough for Mrs B to meet her expected expenditure of around £1,600 a month.

Prism completed an analysis of Mrs B's existing investments and prepared investment and financial planning reports. Noting Mrs B's cautious – moderate attitude to risk Prism made a number of investment recommendations. Those included:

- Holding about £101,000 on deposit (including premium bonds already held and a cash ISA).
- Shares worth £89,000 held with G - Prism suggested that Mrs B retain these and use the money to supplement her income. And whilst it felt that holding these presented more of a risk than Mrs B's attitude to risk generally allowed, as they were only part of her portfolio, it didn't think there would be a great impact on her overall financial well-being if she held onto them. However, it then said that whilst it wasn't critical for Mrs B to sell the shares, "*it does make sense and is your choice*".

Mrs B later signed various authorisation forms, which enabled Prism to progress

things on her behalf. Prism sent an investment surrender instruction to H, one of Mrs B's existing investment providers. It also sent a 'change of agency' (COA) letter to another provider, A. As A wasn't able to accept the COA, apparently at A's suggestion, Prism said Mrs B would need to arrange to surrender the funds and once cleared, she'd need to write a cheque for the full amount (payable to A) which Prism would send to A.

Mrs B later complained to Prism about a number of different issues. She was particularly concerned that:

- Prism told her to leave the COMP invested. As far as Mrs B was concerned, the funds would have been better invested elsewhere.
- Prism ignored her request to take a regular income from her non-pension investments.
- Prism recommended she held onto the shares in G and use them to supplement her income. Mrs B said that if she sold the shares now, she'd have to pay tax, when that wouldn't otherwise have been the case.
- Prism suggested she should use her dividend income to top up her income. She said she'd previously taken this income as additional shares to avoid any tax implications. On Prism's say so, this was changed to be taken as income on the basis that it wouldn't incur tax. However, this advice wasn't correct.

In addition, she raised concerns about administrative issues such as:

- A form being sent for the wrong tax year.
- An error concerning the account number used on one of the surrender forms to an existing provider.
- Prism failed to set up ISAs for Mrs B's grandchildren despite agreeing to do so.

In its response Prism acknowledged there had been some administrative issues. However, it didn't agree with other points that Mrs B made. It said:

- A decision was taken not to transfer the COMP as that would attract an additional transfer cost of 2.5% of the overall value. Prism didn't think that was cost effective at the time. But it said the position could have been revisited if necessary.
- Even though it wasn't critical for Mrs B to sell the shares (and the report suggested retaining them), the adviser felt it would make sense for her to do so. Ultimately it was Mrs B's choice.
- It didn't agree that Mrs B wouldn't have incurred tax if she'd sold the shares previously given that all share sales are subject to capital gains tax (CGT) on any profit made.
- Provider H incorrectly assumed that the entire portfolio was being surrendered when that wasn't the case. However, the matter was resolved before any problems materialised.
- Mrs B hadn't started to take an income from dividends when Prism advised her. So, it wasn't possible to say what income would have been earned or whether it would have been above the dividend allowance. So, Prism didn't think the adviser could feasibly have anticipated whether Mrs B would incur a tax liability or not, and whether she'd then be required to complete a self-assessment form.
- Due to a system error on provider A's part, it wasn't able to action a COA. A had suggested a workaround requiring Mrs B to surrender the full fund value before reinvesting. Prism was satisfied that what happened was due to an error on A's part and was outside of its control.

- There would have been enough time to arrange ISAs for Mrs B's grandchildren, even though that was separate from the main advice and Prism had agreed to cover it as part of the agreed advice fee.
- Prism strenuously denied making a decision that went against Mrs B's wishes as far as taking a regular income from her investments was concerned. It said it had no reason to deny her wishes on that front. And it felt that had Mrs B asked it to set up a regular income payment once various transfers were complete, it would have arranged this from the most tax efficient investments.

Mrs B wasn't happy with Prism's response, so she complained to our Service. One of our investigators looked into the complaint but he didn't feel that Prism needed to take any further action. He set out his detailed reasoning for reaching that conclusion. He also acknowledged Mrs B's opinion that action should be taken against Prism. But he explained that's not the role of our Service.

Mrs B didn't agree with the investigator's assessment. She was adamant, in particular, that Prism prevented her from taking an income from her non-pension investments, even though she'd since been able to arrange this through another adviser.

There were several further exchanges between Mrs B and our investigator. Although the investigator considered the additional points that Mrs B made (and said there was a specific issue that we had no authority to consider), they didn't cause him to change his opinion overall. So, as agreement couldn't be reached, the matter was referred to an Ombudsman. It's been passed to me to decide.

My provisional decision

I sent Prism and Mrs B my provisional findings on 9 February 2023. I've included the relevant extracts below:

"Before I explain my provisional findings concerning the substance of Mrs B's complaint, I first need to address issues to do with our authority to deal with other aspects of the complaint.

Our jurisdiction over occupational pension schemes

As our investigator explained, complaints to do with occupational pension schemes, including whether or not to access the benefits from an occupational pension, don't generally fall within our Service's remit. We're only able to deal with complaints about those types of pensions in very limited circumstances.

Mrs B's suggested it was a requirement of her occupational pension scheme that she took regulated advice before accessing her pension benefits, including the COMP. She's also explained that she never intended to reinvest the COMP. So, whilst Prism's advice wasn't to reinvest, it did suggest leaving things as they were. Bearing in mind that Mrs B insists she wanted to access the funds, it might now explain why she was unhappy with Prism's advice to leave the COMP where it was. And whilst Mrs B did eventually access the benefits with the help of another adviser, she feels strongly that this is something that Prism could and should have arranged. She wants our Service to look into this matter.

Given the limited authority I alluded to earlier, I first had to decide whether this is a complaint we have the authority to consider.

Our Service only has jurisdiction over activities listed under section 2.3.1 of the Dispute Resolution section (DISP) of the Financial Conduct Authority's (FCA) handbook. For the

purposes of pensions that means 'regulated activities or any ancillary activities, including advice, carried out by the firm in connection with them'.

The Regulated Activities Order 2001 says that where specified activities in the order are carried out on specified investments in the order, they'll constitute a regulated activity.

Article 89 of the regulated activities order sets out the circumstances in which rights or interests in investments count as a specified investment. However, article 89(2) specifically states that interests under the trust of an occupational pension scheme are excluded under that definition. That's because pension schemes are typically written under a trust and this especially applies to occupational pension schemes. This means that the consumer doesn't actually own the underlying assets that the scheme is invested in. The assets are owned by the trustees of the scheme and are administered on the consumer's behalf. The consumer and their beneficiaries have a right to those assets, sometimes called a beneficial interest, when the trustees pay them out on retirement or death. So, whilst a beneficial interest in a personal pension is a specified investment, a beneficial interest in an occupational pension isn't.

I thought about what all of this means as far as Mrs B's complaint and our authority to consider it are concerned.

My provisional decision about our authority to consider Mrs B's complaint

Mrs B's complaint is largely about unsuitable investment advice and poor service. And that's something that falls within this Service's authority to consider. But if I'm able to comment on the suitability of Prism's advice and say whether it went about things in a fair and reasonable way, a key part of that will be commenting on its advice to do with the COMP.

Also, this Service's authority covers acts or omissions on the part of financial businesses. And Mrs B's complaint is effectively about Prism omitting to fully review her COMP despite it being part of the service she was expecting. Whilst Mrs B and Prism clearly recall there being some discussion about it, it's not clear to what extent Prism reviewed the COMP, or considered whether it was suitable for Mrs B to transfer it into another regulated product such as a personal pension or another investment product. Had the evidence shown that there was a robust review of this part of the pension and consideration given to investing it in another regulated product, it seems likely that this aspect of the complaint would fall within our jurisdiction in any event.

After careful consideration, I think this matter is ancillary to Mrs B's overarching complaint about unsuitable investment advice and I think DISP 2.3.1 allows me to look into it. So, it follows that I'm intending to reach a different position to our investigator. It's my provisional decision that our Service does have the authority to consider this aspect of the complaint.

I'll now address the merits of Mrs B's complaint.

I've considered all of the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mrs B's strength of feeling about Prism's handling of things is pretty clear. And whilst I can appreciate why she might perhaps think I should take Prism to task for things that might have gone wrong, as our investigator explained, that's not the role of this Service. Even if we find that mistakes or shortcomings have happened, we're not here to punish the

business involved. Instead, we'll consider things such as the impact of the mistake/shortcomings on the consumer and whether the business has already taken reasonable steps to put things right. Where I find that a business hasn't taken reasonable steps, I'll set out what it needs to do to put things right.

What was Prism required to do?

When asked to give Mrs B investment advice, Prism had a number of important responsibilities. Those are set out in the regulator's rulebook.

Specifically:

9A.2.1 of the Conduct of Business Sourcebook (COBS) says:

"When providing investment advice or portfolio management a firm must:

(1) obtain the necessary information regarding the client's:

(a) knowledge and experience in the investment field relevant to the specific type of financial instrument, insurance-based investment product or service;

(b) financial situation including his ability to bear losses; and

(c) investment objectives including his risk tolerance,

so as to comply with (2);

(2) only recommend investment services, financial instruments and insurance-based investment products, as applicable, or take decisions to trade, which are suitable for the client and, in particular, in accordance with the client's risk tolerance and ability to bear losses".

And 9A.2.2 says:

"Firms should undertake a suitability assessment not only when making a personal recommendation to buy a financial instrument or an insurance-based investment product but for all decisions whether to trade, including making any personal recommendations about whether or not to buy, hold or sell an investment".

In practical terms I think this meant that Prism needed to understand things such as Mrs B's goals and what she was looking to achieve by investing. Importantly, as any investment is subject to risk, it needed to understand that she had the means to absorb any losses – at least until such time as things recovered.

I note that Mrs B has said things such as she shouldn't have to give Prism a reason why she wanted to access her own money. And she clearly feels that Prism stood in the way of her doing that. I do have some sympathy with Mrs B's view. She'd clearly been saving for her future by investing in a pension and other investments. So, I can see why, when the time came that she felt she needed to access those investments, she'd be concerned at what she perceived to be Prism standing in her way.

However, it is important to explain that, despite what Mrs B might think, Prism wasn't there just to do what she wanted. It had a responsibility to make sure it understood Mrs B's investment and retirement aims. And that included, where appropriate to do so, probing and challenging. Mrs B is right to say that ultimately, Prism couldn't stop her accessing her own money. But it at least needed to make sure that she had all of the information she needed to make an informed decision and that she understood the

benefits and risks associated with any decisions she made.

So, that's the backdrop against which I've considered whether Prism acted fairly and reasonably when giving Mrs B investment advice.

Did Prism do what was expected?

In general terms as far as an advice process goes, I think it did. I'm satisfied that it carried out a fairly comprehensive analysis of Mrs B's investments and thought about where they might be better invested to achieve the longer-term goals she'd identified. But it also made recommendations aimed at Mrs B's short-term goals too. That said, as I'll explain in more detail when addressing the specific elements of Mrs B's complaint, at times I think Prism's record keeping lacked some of the detail I'd otherwise have expected to see, given some of the conversations that apparently took place. That made it quite difficult to say with any certainty what happened at various points.

Was Prism's advice suitable?

Mrs B's concerns about the suitability of the advice stem from a few key issues. So, they're the issues I've focussed on within this decision.

COMP

Mrs B's position is that she never intended to reinvest the COMP and she says that Prism knew that. That's despite her suggesting in other correspondence that Prism's advice should have been to reinvest the funds elsewhere. Of course, it's entirely possible that having resigned herself to Prism's advice being to leave things as they were, Mrs B's issue then became about where the funds were invested as opposed to whether they were invested.

In any event, given Mrs B's initial position, I've thought about whether the evidence shows that Mrs B's intention was always to access her funds. And if so, whether Prism ought to have known that and helped her to achieve her goal.

It's notable that, according to Prism's financial planning report, Mrs B had already arranged to access the benefits from her DB scheme. That may also have involved Mrs B taking professional advice first. But there's nothing to suggest that it was Prism who gave that advice, or that it was involved in the early stages.

That's relevant, because if Mrs B was always intent on accessing her COMP, I can't see why that couldn't have happened at the same time that she took advice, or if there was no advice, the point at which she engaged with the scheme trustees about accessing the DB part of the pension. The fact that Mrs B didn't do that – at least there's no evidence suggesting she did – could be indicative of the fact that this was something that Mrs B decided to do later on.

In any event, I've also seen a "preferred benefits form" that Mrs B signed on 7 December 2018 stating that she wanted to transfer her DC pension to a new provider. That was only a matter of weeks before Prism completed its financial planning report (and presumably close to the time that Mrs B discussed things with Prism). I appreciate that circumstances can and do change, but the fact that Mrs B filled in this form around the same time, or at least relatively soon after she'd apparently arranged access to her DB pension benefits, does, I think, add weight to the fact that she probably was looking to reinvest the COMP when she first approached Prism for advice. On balance, I'm persuaded that's more likely than not. And it seems to me that accessing her COMP was something that Mrs B

probably decided to do later on.

So, I've gone on to consider whether Prism's advice seemed suitable especially in light of Mrs B's additional point that it would have been better invested elsewhere.

Prism's position is that it wasn't cost effective for Mrs B to transfer the COMP and incur a large transfer fee in doing so. So, bearing that in mind, the kinds of things that Prism needed to think about here were the ratio of this investment compared to Mrs B's portfolio overall. And whether Mrs B was only likely to achieve the kinds of returns she was expecting in the longer term by moving the fund elsewhere.

I'm not persuaded this was necessary in order to achieve her aims. Prism had already made a number of recommendations with Mrs B's short and longer term goals in mind. And those recommendations were intended to be more in line with Mrs B's attitude to risk. So, whilst the COMP could also have been transferred as well, there was no guarantee that it would achieve greater returns than it was currently. And given that, I'm not persuaded it was a price worth paying for Mrs B to move her fund only to incur increased costs. I say that especially because on top of the transfer costs, there may well have been ongoing costs as well. That effectively meant Mrs B's fund would have needed to work even harder for her.

So, all things considered, I'm satisfied that this aspect of the advice seemed suitable, based on what Prism knew of Mrs B's circumstances at the time.

Prism's failure to arrange a regular income from Mrs B's investments

I think there's broad agreement between Mrs B and Prism to the extent that both parties acknowledge that Mrs B was looking to take an income from her investments. And Prism said as much in its financial planning report when it noted that Mrs B wanted "the ability to secure income from the proposed portfolio as required". Prism also accepted this position when it responded to Mrs B's complaint.

What's less clear though is what each of the parties understood this to mean in practice and who was responsible for taking things further.

Mrs B's account is that Prism knew she wanted a regular income (she hasn't specified how much she wanted to take) and she says she was expecting Prism to sort this out once the other transfers were complete. Whereas Prism has suggested that it was for Mrs B to get in touch to get the ball rolling as far as this aspect of her retirement planning was concerned. But as Mrs B didn't do that, it said things didn't progress any further.

Given that both parties agree this is something discussed at the outset, it's not clear why there isn't a more detailed note in the financial planning report. I'm also not persuaded by Prism's suggestion that it was intending to help Mrs B progress this need once the other transfers had been completed. I say that for a few different reasons.

First, if this was part and parcel of Mrs B's retirement planning, it doesn't strike me as being particularly efficient to deal with it as standalone advice. But I think the issue runs deeper than that. If Mrs B was intent on taking a regular income, I think that's quite a different investment strategy to topping up her income on an 'as and when' basis. And I think it's something that Prism needed to carefully consider alongside Mrs B's other objectives to determine how they could be best achieved. It's also entirely possible that depending on the amount of income Mrs B decided to take, Prism may have decided that other investment products were more suitable for Mrs B, so it might have altered its

recommendations entirely.

Whatever the reason that things didn't progress, I haven't seen enough persuasive evidence to agree that it was because Prism deliberately ignored Mrs B's request. I think a more plausible explanation is that Prism's piecemeal approach to advice caused crossed wires along the way. I think this could have been avoided had there been a more holistic approach to the advice process.

Retaining shares in G

Mrs B says it was unsuitable advice for Prism to recommend she retain her shares. That's because she now believes she'll have to pay tax if she were to sell them when that wouldn't otherwise have been the case.

I've looked at Prism's financial planning report and I don't think its advice was as clear cut as Mrs B seems to think. Whilst it did suggest that she retain the shares, it went on to say that although it wasn't critical for Mrs B to sell them, "it does make sense and is your choice".

I don't think this advice was particularly helpful. Mrs B was clearly looking to Prism for advice and I think she was entitled to expect that advice to be clear and unambiguous. And whilst I do appreciate that any recommendations Prism gave were no more than that, which meant that ultimately it was for Mrs B to decide what to do, I think it would have helped Mrs B had this recommendation been more definitive and clearly explained. This was also necessary to help Mrs B make an informed decision.

It's also not clear to me to what extent Mrs B and Prism discussed the question of tax. So, whilst I can't say for certain what Prism advised, it's difficult to see on what basis it could have said no tax would be payable. That's because, as far as I'm aware, CGT becomes due whenever a taxable asset is sold and the holder receives more for it than they paid. I haven't seen specific evidence to show that the profit Mrs B would have made (if she'd sold the shares sooner) would have been significantly less so as to mean that it wouldn't breach the threshold by which CGT becomes payable. And in all likelihood, it seems that unless Mrs B has made a loss on the shares, (she hasn't indicated that's the case) tax would probably have become due regardless of when the shares were sold. That's an HMRC rule, so I don't think that's something that Prism can be said to be responsible for.

In any event, I need to keep in mind that if Mrs B was concerned about her tax liability in light of Prism's advice, she could have contacted the share scheme or HMRC directly before taking any action.

Incorrect advice about taking dividend income

As I understand the position, rather than taking dividend income, Mrs B previously took additional shares to avoid any tax implications. She says that on Prism's advice and after first checking with Prism that she wouldn't incur any additional tax (whilst noting its financial planning report stated the tax-free limit was £2,000) she opted to take an income. She says she later established that its advice wasn't correct and that she may incur tax. Again, Prism seems to have a different view of what happened.

I can't be sure what conversations took place with Prism. But regardless of that, I think Prism's financial planning report does make it fairly clear that the tax-free limit on dividends was £2,000. So, I can't fairly say that Prism didn't set out when tax might become payable. And realistically, I'm not persuaded that Prism's advice could have been any more precise than that, unless it knew how much income Mrs B was intending

to take – and when - and how close or not that was to the income tax threshold. Especially when, as I understand things, Mrs B hadn't yet started to take an income at the point at which she sought Prism's advice. So, on balance, I don't think Prism did anything wrong here.

Turning now to the administrative issues that Mrs B has complained about.

Potential loss of ISA allowance

This issue arises from an incorrect instruction that was sent to H, one of Mrs B's existing investment providers. As I understand things, H was mistakenly of the opinion that Mrs B was intent on surrendering her whole investment account rather than a specific part of it.

Again, there's a difference of opinion between Mrs B and Prism about who or what caused the issue. Mrs B is adamant that Prism was responsible and has provided evidence to show that. Whereas Prism thinks the matter arose as a result of a misunderstanding on H's part. Based on the evidence I've seen, I'm not persuaded by Prism's position.

The form that Prism sent to H includes a reference number associated with the investment account as a whole, rather than a specific part of it. It's also worth noting that there was another form completed on which the general account number has been entered manually. Mrs B has signed the form, but I don't know if it was Mrs B or Prism who added the account number. It's possible that it had already been written on the form when Prism asked Mrs B to sign it. In any event, however it came about, I'm satisfied that the error wasn't H's and the events I've described likely account for why H mistakenly thought the whole account was to be surrendered.

Mrs B has described the efforts she then had to go to to sort the problem out – including some phone calls and trips to a local branch. Although I note that Prism also seems to be suggesting it had a hand in rectifying the error too.

I don't doubt Mrs B's account that this caused her inconvenience – and no doubt some worry too. Thankfully matters were resolved before there was any financial detriment to Mrs B. I'm not sure I'd agree with Mrs B's view though that her involvement amounted to her doing Prism's job for it. But I do accept that, had the mistake not happened, there would have been no need for her to be involved at all.

Issues to do with a change of agency in respect of Mrs B's investments with A.

Mrs B thinks it was poor practice for Prism to suggest that she surrender her investments with A only to reinvest them through Prism in order to allow a COA to take place. She's indicated that A didn't think it would have suggested such a course of action to Prism.

I've looked at the evidence surrounding this issue and I can see that Prism wrote to provider A in January 2019 asking it to implement a COA on Mrs B's account. As I understand the position, such an instruction allows a new financial firm to take over the administration of an investment without the need to sell or transfer funds first.

But it seems that things weren't straightforward and I can see that, having apparently had some contact from A, Prism wrote to Mrs B to tell her that the instruction couldn't be acted upon – not without Mrs B surrendering the full fund first. It also explained that

once Mrs B had done that, she'd need to wait for the funds to clear and then write a cheque payable directly to A, but sent to Prism, so that Prism could pass it on. As I've said, Mrs B doesn't think that was good practice and she doesn't seem entirely confident that this was an instruction that originated from A.

On balance, I'm more persuaded that it happened as a result of an issue on A's part - most likely a system error- rather than it being poor practice on Prism's part. As I can't see what Prism would stand to gain by asking Mrs B to transfer her fund before making a cheque payable to A, other than that being the only feasible way to change over the instructions on the account. And it seems unlikely, regardless of what A has suggested since, that the instruction would have come from anyone other than A. So, in the circumstances, I'm not persuaded that this amounted to poor practice on Prism's part.

Provision of incorrect ISA tax allowance forms

Prism accepts that it initially sent Mrs B forms for the wrong tax year. As far as I understand things this error was later corrected without there being any adverse consequences for Mrs B. Although I entirely appreciate that this would have added to any frustration or inconvenience Mrs B was already feeling, I don't think it's necessary for me to make further comments or suggest that Prism takes additional action.

Failure to arrange junior ISAs for Mrs B's grandchildren

Mrs B says that as part of the initial fee, Prism agreed to set up ISAs for her grandchildren. However, she later complained that didn't happen, so she had to arrange them for herself.

As far as I can tell, whilst separate to the initial investment advice that Prism agreed to give, it was nevertheless something that it agreed to do as part of the fee that was discussed upfront. But, regardless of how it came about, I think Mrs B had a reasonable expectation that Prism would progress things on her behalf.

In order for me to uphold this part of the complaint, I'd need to be persuaded that Prism didn't take reasonable steps to progress this matter for Mrs B. But I'm not. I've seen a letter that Prism sent Mrs B on 15 March 2019 following a telephone conversation that day. In it it said it had enclosed the relevant applications for the current and following financial year and explained where the funds would likely be held. It also explained that it had until 5 April 2019 to submit the forms on Mrs B's behalf. So, it asked her to return that year's form as soon as possible.

I don't know for sure what happened after that or why Mrs B chose to progress things herself. But, according to what Prism said, Mrs B was concerned there wouldn't be time for Prism to progress things, so she decided to take matters into her own hands. Mrs B was entitled to do that if she wished, but based on the evidence I've reviewed, I see no reason why Prism couldn't have done this for Mrs B in the time that was available. And I don't think the fact that Mrs B did decide to progress things herself is something that Prism can be held responsible for.

Summary

Mrs B believes that she's suffered a financial loss as a result of Prism's actions and she says that this has caused her some distress. As a result, she indicated she was expecting Prism to return the set-up fees she paid and to compensate her. Based on my review of the evidence concerning Mrs B's complaints, I haven't seen anything to suggest that she

suffered a financial loss as a result of Prism's actions. Neither do I think that any shortcomings on Prism's part were such that it would cause me to say it should now return the set-up fees paid. Not least because I'm satisfied that Prism did complete a fair amount of work when going through the advice process and in the steps it took thereafter.

But, as I also said earlier, there were times when Prism's service fell short of the standard that Mrs B was entitled to expect. And I'm satisfied that would have caused Mrs B some worry and inconvenience. To recognise the impact of that, I'm intending to direct Prism to make a compensation payment of £200 to Mrs B.

Responses to my provisional decision

Prism didn't respond.

Mrs B provided further comments for me to consider. Those included:

- She asked whether this Service had made a subject access request to Prism for its phone recordings. Mrs B is adamant they'd confirm that Prism gave her the wrong advice and refused to arrange a regular income on her behalf. She says the FCA requires firms to retain a client file along with its phone records.
- Given its extensive involvement with Mrs B's former employer, G, Mrs B says that Prism should be well aware of the nature of its share scheme, benefits and dividends payable.
- Having spoken to other ex-employees and the company that runs the shares scheme, Mrs B confirmed that there was a one-off opportunity to sell the "buy one get one free" shares tax free when an employee left the company.
- Whilst Mrs B accepts that "*nobody can predict the future*", as investments are based on past performance and predictions, she thought it was pretty clear (and produced evidence to this Service to support her position) that she'd likely be over the dividend limit.
- Mrs B remains adamant that she always wanted to encash the COMP – not reinvest.
- Concerning Prism's position that it never made a decision that went against Mrs B's wishes, this above everything else resulted in her approaching a new financial adviser.

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'm not proposing to address each and every comment Mrs B made, but I will address those that I believe go to the heart of her complaint. I can assure her though that I've given careful thought to everything she's said.

Mrs B asked whether we'd made a subject access request for Prism's phone records. As our investigator has since explained, it's not our role to make a subject access request for a consumer's information - that's for a consumer to do themselves. But as he also explained, our rules allow us to request information to enable us to investigate a complaint. I asked Prism for its phone recordings as part of my consideration of Mrs B's complaint. It told me it doesn't record phone calls, nor habitually transcribe phone calls made to or received from clients. As it also doesn't retain call logs, it said it couldn't confirm or deny whether Mrs B's log of calls was accurate or not.

I understand why Mrs B might be concerned about the lack of phone records, especially given her references to the FCA's requirement for financial businesses to retain records. However, it's not my role to penalise Prism for the fact it doesn't record calls. And whilst the absence of recordings/transcripts naturally makes it more difficult to say exactly what was discussed, I have to decide what I think is most likely to have happened based on the evidence I do have.

Mrs B insists that call recordings would have demonstrated Prism's incorrect advice and refusal to arrange a regular income for her. It's certainly possible that I'd have reached different findings had call recordings been available. But in the absence of any new evidence, on balance, there isn't enough to show that Prism deliberately *refused* to arrange for Mrs B to take a regular income from her investments. Rather, I remain of the opinion that Prism's piecemeal approach to the advice process probably meant that it wasn't clear who would take forward the discussions about a regular income. And that might explain why things didn't progress.

Mrs B again says that she never intended to reinvest the COMP and always wanted to encash it. Had that been the case, it's still not clear to me why Mrs B couldn't have arranged this directly with her employer when accessing her other benefits. I remain of the view therefore that it was something that was probably decided later on. And, in the absence of any new evidence, my position is as set out in my provisional decision - the advice probably was suitable based on Mrs B's objectives and wider circumstances. Also, as far as I can tell, despite the recommendation, Mrs B could still have contacted the employer (as she apparently did later on) if she didn't agree with what Prism said.

Mrs B maintains that Prism was wrong to say she'd likely incur tax regardless of when she sold the shares. She's since elaborated that the shares came with a one-off offer meaning that she wouldn't incur tax if she sold them when she left her employment with G. And she thinks Prism ought to have known that from its involvement with G. It's not clear that Prism was definitely aware the particular shares concerned wouldn't be subject to the usual level of tax if sold on leaving the employment - and as I've indicated, its complaint response suggested otherwise. In any event, notwithstanding Mrs B's comments, I can't say for certain that Prism was *definitely* wrong as far as the tax was concerned.

I also have to keep in mind that even if tax did become due at a certain point in time (even if that wouldn't have happened earlier) that doesn't in itself mean that Prism's advice wasn't suitable for Mrs B *overall*. As I said in my provisional decision, it's evident that when advising Mrs B, Prism looked at her wider financial circumstances and, generally, what would help her achieve her financial goals. And its recommendations were intended to meet both her short and long term goals taking account of her attitude to risk and capacity for loss.

That said, I remain of the opinion that Prism could have been clearer about its recommendations concerning the shares. It should have presented them in a clear and unambiguous manner so as to help Mrs B make an informed decision. Prism's recommendation was that Mrs B should not sell her shares, so that she could use those to top up her income in the future. That didn't seem unreasonable given her objectives and wider financial position at the time. But, having told her that she shouldn't sell her shares Prism then went on to say that whilst it wasn't critical for Mrs B to sell them, "*it does make sense and is your choice*". I think those comments added an unnecessary level of ambiguity to Prism's advice that sent out a mixed message. I don't think that was helpful. And I can understand that Mrs B might have found that confusing or misleading.

Turning to Mrs B's comments about dividend income. She says she shared all of her previous statements showing the dividends/trends and brought up the tax issue with Prism. So, as far as Mrs B seems to be concerned, it should have been clear to Prism that she was over the tax limit. Whilst I do take Mrs B's point that her previous income levels might have been indicative

of the income she'd take in future, I don't necessarily think it was guaranteed. In any event, I'm satisfied that Prism did make it clear enough in its financial planning report that the tax limit for dividend income was £2,000 regardless of what it may have said to Mrs B in person. And the very fact that Mrs B appears to have raised the issue and thought she'd be over the limit suggests she understood what the position concerning tax was.

In summing up, I'm still not persuaded that Prism's actions caused Mrs B to suffer a financial loss. But I remain of the opinion that its service at times fell below the standard that Mrs B was entitled to expect. And that's the matter that Prism needs to address now.

Putting things right

To recognise the worry and inconvenience its actions caused, Prism Financial Advice Limited needs to make a compensation payment of £200 to Mrs B.

My final decision

I partially uphold this complaint. Prism Financial Advice Limited needs to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 28 March 2023.

Amanda Scott
Ombudsman