

The complaint

Ms B complains that JC Roxburgh (Financial Services) Limited mishandled her pension when they mistakenly sold all of her investments, rather than a proportion of them. She thinks she may have suffered a financial loss as a result of the error.

What happened

Ms B had a pension portfolio valued at around £1,100,000. Roxburgh were her financial advisers and helped manage her funds.

Generally speaking, Ms B's portfolio was split in half between two discretionary fund managers (DFMs). She had 50% of her funds invested in a Brewin Dolphin portfolio and 50% invested in a Roxsure 7 portfolio.

Roxburgh say that in February 2020, as part of a regular review of her funds, Ms B agreed to move those invested in the Roxsure 7 portfolio into the Roxsure Select portfolio as this offered more regular rebalancing.

Roxburgh say their intention was to sell the funds held in Roxsure 7 in order to move that part of Ms B's portfolio into Roxsure Select.

However, on 21 February 2020 Roxburgh erroneously sold Ms B's entire portfolio, including the funds invested with Brewin Dolphin. They then used all of the funds to purchase shares in the Roxsure Select portfolio. So as a result, 100% of Ms B's funds were invested in Roxsure Select instead of just 50% of her funds with the remainder not being held with Brewin Dolphin as expected.

Ms B noticed Roxburgh's error and informed them of it.

Roxburgh say that they initially agreed to keep the funds where they were while they looked into assessing any losses their error caused. They say they had a conversation with Ms B on 6 March 2020 during which it was agreed they'd rebalance her funds by putting 50% of the value of her pension back into Brewin Dolphin.

Roxburgh say 50% of Ms B's funds were sold on 6 March 2020. And on 9 March 2020 those funds were used to repurchase the Brewin Dolphin portfolio.

Ms B says Roxburgh encouraged her to make a formal complaint about the error during their meeting on 6 March 2020. So, Roxburgh raised a complaint on her behalf with their complaints handler.

On 17 March 2020 Ms B spoke to Roxburgh's complaint handler and followed this up with an email. In summary she said she was disappointed Roxburgh made the error and didn't spot it themselves. She said it was agreed Roxburgh would immediately rebalance the portfolio but when they did it on 6 March, it left the portfolio unbalanced. Ms B didn't think Roxburgh's analysis of any losses was accurate or followed the data she could see on her SIPP provider's portal. And she said Roxburgh had encouraged her to make a complaint but that

had delayed things and made communication more difficult. Ms B also said this was the second time an error of a similar nature had been made.

In response Roxburgh said they didn't dispute the error was made or that it was Ms B who made them aware of it. But they said Ms B had initially agreed to keep the funds where they were before agreeing to rebalancing them on 6 March. They said the imbalance came about because there was a significant drop in the market resulting in the 50% of funds that were sold being protected from the drop and the 50% that remained invested suffering a fall in value. So, when the Brewin Dolphin funds were purchased, they were able to buy a larger amount.

Roxburgh said their analysis had shown their error had resulted in a £35,690.57 gain for Ms B. And the data they'd used was more accurate than the information available to Ms B through her SIPP portal. Roxburgh said as Ms B was clearly unhappy, directing her towards making a complaint was the right thing to do.

Ms B remained unhappy with Roxburgh's response and so brought her complaint to our Service. Our investigator wasn't satisfied with Roxburgh's calculations and said to put things right Roxburgh should complete a calculation that compared the notional value of what Ms B's fund would have been had the error not occurred with the current position of the funds.

Roxburgh felt their calculation had already shown Ms B hadn't suffered a loss. They have since sent several explanations which they say demonstrate this. However, they've recently revised their estimate and now believe that Ms B had actually gained by £55,501.57 from their error.

Roxburgh also acknowledge that the same issue occurred in 2019, but at that time they'd completed an analysis which showed no loss. They said Ms B never complained about that issue, but they completed a buy/sell analysis which showed Ms B to have been £10,887.69 better off as a result of their error in 2019.

While trying to resolve the complaint informally Roxburgh apologised for their errors and offered Ms B £500 for the trouble and upset they'd caused.

Ms B remained unhappy with Roxburgh's calculations and explanations. So, this complaint has been passed to me for a decision.

My provisional decision

In my provisional decision I said;

There's no dispute that Roxburgh made an error in February 2020 when they sold Ms B's entire portfolio and moved it all into the Roxsure Select portfolio. So, the issue I must determine in relation to that aspect of the complaint is whether Roxburgh did enough to put things right once the error was identified.

I appreciate Ms B found it upsetting that Roxburgh made a significant error by selling all her investments. And that it was her, and not Roxburgh that identified the error. But my role isn't to punish a business for their mistakes. My role is to look at what the business did to put things right and say whether that left Ms B in a worse position than had the error not occurred.

Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – that is, what is considered most likely to have happened given the

evidence that is available to me, and the wider surrounding circumstances.

Once Roxburgh's error was pointed out to them by Ms B, they made a reasonable effort to sort things out and get Ms B's funds re-invested in the correct way. But the issue here is that the error wasn't easily reversible, and I think it's likely Ms B was always going to find herself in a different position to where she would have been had the error not been made.

However, Roxburgh needed to ensure that the position Ms B was in due to their error hadn't caused her a financial loss. And it's the loss calculation that Roxburgh have since completed which is now in dispute.

Considering the full circumstances of the complaint, I don't think Roxburgh's calculations followed a fair approach in assessing any potential losses. I'll explain why.

The calculations I've seen so far don't appear to take into account the value of the Roxsure Select portfolio Ms B would have had, if the transaction had been processed correctly on 21 February 2020.

Roxburgh say the calculation should focus on the Brewin Dolphin funds as it was only those that were sold erroneously. And they say the Roxsure 7 funds were correctly sold. It appears from Roxburgh's calculations that the Brewin Dolphin side of Ms B's portfolio benefited from the error made and the time the funds were out of the market. But I disagree that the calculation needed to only focus on the Brewin Dolphin side of the portfolio. I say that because I think Roxburgh's error also affected the number of shares Ms B would have held in the Roxsure Select funds. And overall that may well have an impact.

When trying to correct the error Roxburgh sold 50% of the value of Ms B's pension on 6 March. And while I don't dispute that was what was agreed as the best way forward between Ms B and Roxburgh, that didn't necessarily leave Ms B in the same position (in terms of her Roxsure Select holdings) that she would have been in if Roxburgh hadn't made an error at all. So, any calculation that's looking at whether Roxburgh's error left Ms B better or worse off, needs to include the position of the Roxsure Select portfolio as well as the Brewin Dolphin portfolio.

When Roxburgh sold 50% of the value of Ms B's pension it meant that more than 50% of the shares she held in the Roxsure portfolio were sold – that's evidenced in the contract notes Roxburgh provided. And so, any calculation omitting this half of Ms B's portfolio doesn't take into account whether she would have had more, or less, units in those funds than she ended up with.

Roxburgh says the Roxsure and Brewin funds that Ms B was invested in were managed portfolio's so the number of units in each fund can't be used for a comparative calculation. But I disagree. Roxburgh have sent in the buy and sell contract notes over this period. And I haven't seen any persuasive evidence that the number of units held in each fund would have changed over the period in question between 21 February and 9 March. So, I think a calculation based on the number of units that should have been held in each of the DFMs portfolios on 21 February comparative to their notional value on 9 March is a fair and reasonable basis for a calculation to be made.

If everything had gone to plan on 21 February Roxburgh say that the funds Ms B already held with Brewin Dolphin would have remained untouched. So, in my view, Ms B would have held the same number of units in each of the Brewin funds on 9 March as she did on 21 February. Roxburgh say it was always their intention to sell all the Roxsure 7 funds – which were valued at £572,540.89 on 21 February 2020 – and use the proceeds of the sale to purchase Roxsure Select funds.

Given that, I think its most likely that Ms B would have held £572,540.89 worth of Roxsure Select funds on 21 February 2020, not the £1,121,698.93 that she ended up with. And she would have kept the same number of units she already held in all of her Brewin Dolphin funds on 21 February 2020. Therefore, this is the basis on which I think Roxburgh need to do their loss calculation in order to give a fair and reasonable view on whether their error caused Ms B a loss.

Ms B's funds on 9 March ended with a larger imbalance than when she started. And I can see that added to her upset and frustrations. But I don't think the imbalance was avoidable when Roxburgh were trying to put things right. It was a large drop in the market between 6 March and 9 March 2020 that caused the imbalance to occur. And Roxburgh had no way of knowing that there would be such a drop in the market that would leave Ms B's funds unbalanced. However, I've considered how this added to Ms B's upset and frustration when thinking about the award I'm minded to make for the upset that Roxburgh's error caused.

I can also see Ms B feels that Roxburgh's handling of her complaint was poor and didn't follow their documented process. Ms B was concerned that Roxburgh's complaint handler didn't share with her the extent of the complaint he was looking into before reaching his findings. And then didn't provide her with details of the loss calculations when answering her complaint.

Complaint handling in itself isn't something our service can consider as it's not an activity that's regulated in the same way Roxburgh's other activities are. So, I won't comment on that specifically in this decision. But what is clear is that Roxburgh's complaint didn't initially answer all of Ms B's complaint points.

I say that because in her email to the complaint handler on 17 March 2020 when Ms B sought to clarify her complaint she said;

'7. At our meeting on 6th March, we all also noted that this is the second time the same error has been made ie incorrectly selling our Brewin Dolphin holdings. This happened on 30th August 2019 and was corrected on 5th September 2019. No analysis was provided at that time to assess whether this had any negative impact on our funds.'

In their final response to Ms B, Roxburgh didn't address this point saying it didn't form part of the current complaint. However, I disagree. Roxburgh's complaint handler had given Ms B a chance to express her dissatisfaction with the services she'd received from Roxburgh and this earlier incident formed part of that.

Roxburgh said that Ms B hadn't previously complained about the same error in 2019 as she'd been happy with their explanation at the time. But that didn't prevent her from complaining later - like she did in March 2020. So, Roxburgh ought to have answered her complaint in their final response letter.

Roxburgh have since sent a brief loss assessment for the 2019 error and deemed there to be no loss to Ms B. But again, I don't think the loss calculation goes far enough, neither does it demonstrate in a clear and simple format that Ms B didn't suffer a loss. So, I think Roxburgh should complete another calculation for the error in 2019 following the same principles as I've already explained.

The loss calculation will need to first of all assess what the notional position of Ms B's funds would have been on 28 August 2019 had the correct funds in the correct proportions been sold. Roxburgh will then need to compare what those funds would have notionally been valued at on 4 September 2019 when they attempted to correct the error.

Ms B also asked for Roxburgh to consider refunding the fees she'd paid them for their ongoing advice during the period when the error was made. I can appreciate why Ms B feels that she shouldn't have to pay Roxburgh fees for the period in question. However, our approach is to, as closely as possible, put Ms B in the position she would have been in if the error hadn't happened, and everything had gone to plan.

Ms B had an agreement with Roxburgh that meant she was paying for their ongoing advice. And the movement of funds and changes to her portfolio (had they been done correctly) formed part of the on-going fees that she was paying for. So, Roxburgh's on-going fees were always something Ms B was going to pay. It wasn't an expense that would have been avoided had the error not occurred.

My direction below will look to ensure Roxburgh have accurately calculated whether Ms B suffered a loss as a result of their actions. And it will compensate her if she did suffer a loss. But it wouldn't be fair or reasonable to separately direct Roxburgh to refund their fees during the period in question.

However, as I'll go on to explain, I think Roxburgh's error caused significant upset and inconvenience for Ms B. So, I'm minded to say Roxburgh need to compensate Ms B for the upset and inconvenience their actions caused.

The responses to my provisional decision

Roxburgh responded to my provisional decision, making several points. In summary they said;

- They've acted transparently throughout and have always provided data to support their calculations.
- The units held in a model portfolio such as Ms B's can move dramatically even over short periods of time.
- The benchmark used in the calculations didn't accurately reflect the global equity investments in Ms B's portfolio.
- They would need mandated access from Ms B to her pension provider to get the required information to complete their calculations.

Roxburgh also supplied a new calculation they'd completed to try and assess whether Ms B had suffered a loss in 2020.

Ms B seems to broadly accept my decision and didn't provide any new evidence for me to consider. She did, however, raise concerns about the amount of time it may take Roxburgh to do the calculations. She also said that while she is willing to provide authority for Roxburgh to contact her pension provider, this must be on the condition that she first agrees what information is required from her provider and have agreement that she's included on any correspondence and information between the parties.

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've also reconsidered the findings I made in my provisional decision.

As I said in my provisional decision, this isn't a complaint where there's a perfect solution and despite Roxburgh's best efforts, Ms B will always end up in a different position to where she would have been had the error not occurred. However, while I think Roxburgh have tried to be as helpful as they can be, I still remain unsatisfied that the calculations accurately demonstrate the position Ms B would have been in but for Roxburgh's error.

The role of our informal service is to provide answers on the basis of what is fair and reasonable in considering the full circumstances of the complaint. So, I've considered what I think to be the fairest and simplest way to calculate whether or not Ms B has suffered a loss as a result of Roxburgh's error. I set that out in this decision.

Roxburgh still maintain that the units in a model portfolio '*can and will move dramatically, even across short periods of time*'. But in this case, I've seen no evidence that the portfolios were adjusted on a daily basis. The purchase and sale contract notes don't demonstrate units being bought and sold daily. And Information I've seen on the Brewin Dolphin portfolio suggests it's rebalanced once a month. So, I think it's fair to calculate the loss on the basis that the number of units purchased on 21 February 2020 would have remained the same 19 days later on 9 March 2020.

I fully appreciate that, so far, none of Roxburgh's calculations or explanations have shown Ms B has suffered a loss. And, it may well be that the calculation I'm directing to be done demonstrates that Ms B gained from Roxburgh's error. But if nothing else it may give Ms B peace of mind that she hasn't suffered a loss.

Roxburgh have done a further calculation which has highlighted some area's of clarification I need to address. One fund in the Brewin Dolphin portfolio - JOHCM CntlEurp – wasn't repurchased after the error. I think a fair and reasonable assumption would be to add it's value of £11,174.66 back into the total value when calculating the notional Brewin Dolphin portfolio.

In Roxburgh's latest calculations they used a notional value of 50% of the units bought in Roxsure Select – which were valued at £560,849.47. Whereas in their previous submissions Roxburgh said they would have used the proceeds of the Roxsure 7 sale (£572,540.89) to purchase units in Roxsure Select.

If possible, Roxburgh should use the purchase figure of £572,540.89 to determine notionally how many units would have been purchased in each fund. Using the same proportions as they actually were. However, if Roxburgh are unable to accurately calculate exactly how many units they would have bought with the higher amount, I think it would be fair to assume the difference in the two figures (£11,691.42) left over would have remained in cash, so needs to be added on to the notional value of the Roxsure portfolio.

Roxburgh questioned the index used as a benchmark in my provisional decision as it may not have closely followed the actual returns Ms B's plan would have seen. I've considered Roxburgh's comments and I've amended the benchmark to be used to more closely reflect the actual returns Ms B's pension has seen should any losses be identified.

Roxburgh have also said they're unable to gain accurate information about Ms B's funds from the September 2019 error without Ms B's mandated access to her provider to retrieve the necessary information. This is fairly common when information is required from third parties, and I think it's a reasonable request Roxburgh have made.

So, in order for Roxburgh to complete the calculations, Ms B should allow them access to the information they require. Ms B would like Roxburgh to explain exactly what information they require and to see the information that's provided. I think that's a reasonable request, so long as no commercially sensitive information is included. Otherwise, Roxburgh should provide Ms B with the information it's used and the calculations it's conducted so that Ms B is able to get them checked if required.

In summary, I've seen no new information to change my mind on the findings that I've already reached in this decision. However, I've made some changes to the way in which Roxburgh need to put things right which I've already shared with both sides.

For the reasons I've explained in this and my provisional decision, I'm upholding Ms B's complaint and direct Roxburgh to calculate any losses as follows.

Putting things right

In awarding fair compensation for any potential losses Ms B has suffered my aim is to explain to Roxburgh how to calculate (as close as possible) the position she would have been in had Roxburgh not made an error. And then to compare that to the position she found herself in after Roxburgh attempted to put right their mistake.

If Roxburgh are unable to accurately complete the calculation themselves, they may wish to consider using an actuary or other suitably qualified person to carry out the loss assessment.

For the August 2019 error (Calculation 1)

Roxburgh should calculate compensation by comparing the notional value that Ms B's pension would have been on 4 September 2019 had Roxburgh done everything right on 28 August 2019 (Value A) with the actual value of Ms B's pension on the same date (Value B).

Calculating Value A

Value A should be calculated using the notional number of units Ms B would have had across her entire portfolio had Roxburgh correctly rebalanced her portfolio on 28 August 2019.

The number of units in each fund should then be revalued using the actual value of the units in each of the funds on 4 September 2019.

Value A should also include any notional cash reserves Ms B would have had taking into account any fees or charges that would have been paid.

Calculating Value B

Value B is the actual value of Ms B's entire portfolio (including any cash) on 4 September 2019 after Roxburgh had attempted to correct the error.

If Value A is higher than B, then the difference between A and B is the loss.

For the February 2020 error (Calculation 2).

Roxburgh should calculate compensation by comparing the notional value that Ms B's pension would have been on 9 March 2020 had Roxburgh done everything right on 21 February 2020 (Value C) with the actual value of Ms B's pension on the same date (Value D).

Calculating Value C

To calculate Value C Roxburgh must calculate the notional value of the Brewin Dolphin portfolio; the notional value of the Roxsure select portfolio; and any notional cash reserves as of 9 March 2020

Calculating the notional value of the Brewin Dolphin Portfolio

- Roxburgh must use the exact number of units Ms B already held on 21 February 2020 in each of the Brewin Dolphin funds before any units were sold.
- Roxburgh must then revalue the units using the actual price of the units of those funds on 9 March 2020.

Calculating the notional value of the Roxsure Select portfolio

- Roxburgh must calculate the number of units Ms B would have bought on 21 February 2020 in each of the Roxsure Select funds – in the same proportions as she actually bought them – had she just used the proceeds of the sale of her Roxsure 7 funds. So, £572,540.89.
- Roxburgh must then revalue the units using the actual price of the units of those funds on 9 March 2020

Add in any notional amount Ms B would have held in cash on 21 February 2020 taking into account any fees or charges that would have been paid.

Calculating Value D

Value D is the actual value of Ms B's entire portfolio (including any cash reserves) on 9 March 2020 after all the purchases of the Brewin Dolphin portfolio.

If Value C is higher than D, then the difference between C and D is the loss.

Loss of returns

If either Calculation 1 or Calculation 2 shows a loss, I also consider that Ms B will have lost out on investment returns on that amount between then and now. So, any losses need to be brought up to date as set out below.

To bring the loss up to date, the loss amount should be revalued in line using this benchmark: For half the investment Brewin Dolphin MPS Global Equity; for the other half Roxsure Select MPS. The index should be used on any losses from 4 September 2019 for Calculation 1 and from 9 March 2020 for Calculation 2 until the date of my final decision. I consider this benchmark fair as:

- Ms B was already invested in these two-model portfolio's at the time of the advice.
- It's likely any additional funds Ms B had would have been invested in line with her objective of having 50% invested in each model portfolio.

The compensation amount should if possible be paid into Ms B's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation

shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Ms B as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid. If Ms B hasn't yet taken any tax-free cash from her plan, 25% of the loss would typically be tax-free and 75% would have been taxed according to her likely income tax rate in retirement –presumed to be 20%. So, making a notional reduction of 15% overall from the loss adequately reflects this.

Details of the calculations should be provided to Ms B in a clear and simple format.

The compensation amount must where possible be paid to Ms B within 60 days of the date Roxburgh receives the required authority from Ms B. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 60 days, that it takes Roxburgh to pay Ms B.

Income tax may be payable on any interest paid. If Roxburgh considers it's required by HM Revenue & Customs to deduct income tax from the interest, it should tell Ms B how much it's taken off. It should also give Ms B a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Roxburgh's error clearly caused considerable upset and inconvenience to Ms B. It was the second time a similar error had occurred, and it took for Ms B to identify herself that the error had been made. There were considerable sums of money involved at a time where the market was fluctuating greatly. And Ms B was left in a different position to where she should have been, meaning her portfolio was more heavily weighted towards Brewin Dolphin than before.

While Roxburgh made efforts to demonstrate why they feel Ms B hasn't suffered a loss, I can appreciate why she hasn't been convinced by their calculations and wasn't reassured that their error hadn't caused her a loss. Considering the full circumstances of this complaint, Roxburgh should also pay Ms B £500 for the upset and inconvenience they caused.

My final decision

My final decision is that I uphold this complaint and require JC Roxburgh (Financial Services) Limited to pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 20 April 2023.

Timothy Wilkes
Ombudsman