DRN-4041447

The complaint

A company, "G", has complained that Sage Financial Management Limited moved its funds out of more volatile assets and into cash in March 2020 without discussing it properly with the directors first. The directors question the timing of the switch and why, once in cash, the funds were not reinvested into the market sooner – as they were left out of the market for too long.

They also compare this situation with what happened to their personal investments such as pensions, which were not switched by the adviser – and wonder, as an alternative, whether those should have been switched into cash at any point as well.

After the advisory relationship broke down, the directors say Sage stopped advising the directors on their company and personal investments, but continued to collect fees.

What happened

My understanding is that the directors had an existing relationship with their adviser at Sage for about 20 years. I'm providing the following information for background only, as it's not part of the complaint I'm considering (until I later note otherwise):

In May 2017 the adviser had recommended £200,000 of G's funds (from £500,000 in bank accounts) be transferred into a General Investment Account with Aviva, to be invested in open-ended investment companies (OEICs). Sage's suitability report said that G wished to invest for a minimum five year term but *"wanted the freedom to call upon this money should the company require it."* One-third of the funds was invested into each of: the Baillie Gifford Managed fund (a fund with about 80% shares), Legal & General Property and Legal & General Multi Index 4 (a fund rated at 4 on a scale from 1-10).

The company's attitude to risk was stated to be 7 ("highest medium") on a scale from 1 to 10. This was defined as *"You probably concentrate on getting higher returns on your investments. However, you are still probably concerned about too many rises and falls and, as a result, the possibility of losing money."*

G's finances were revisited in February 2018. There was now £770,000 in G's bank accounts, so another £500,000 was moved onto the Aviva platform, again with one-third in each of: HSBC Global Strategy Dynamic Portfolio (a fund with up to 80% shares), Legal & General Property and BMO Universal MAP Balanced Fund (a fund with nearer 50% shares). I've used the current asset allocation of all the funds mentioned above as a guide.

In December 2019 the adviser commented on the possibility of achieving higher returns by investing in "greater risk" funds including Witan Trust. In response, the directors asked *"…we trust you will invest a proportionate amount of funds and monitor these regularly and act on any adversities to minimise potential losses with the objective of significantly bettering the returns."* Sage subsequently said it would move 30% of the funds equally into the Witan & Legal & General Multi Asset 7 funds *"for a more aggressive approach."* It appears that the former switch may not have taken place (for G's funds) but the latter did.

From December 2019 onwards there's evidence of G's directors asking to reduce the overall fees they were paying (Sage and Aviva's). One of the plans was already on a special deal with Aviva of a 0.18% annual management charge (AMC). Aviva confirmed in a message, *"Based on both clients topping up their ISA's we can reduce all plans down to 0.14% AMC",* and the adviser was then successful in getting a slight further reduction to 0.13%.

However the directors weren't happy with this reduction and asked if Sage would reduce its own 0.5%pa fee. Sage said this was a significant discount from the 1% it normally charged for ongoing service and was already in view of the directors being "close friends". However I've seen evidence that it did then agree to reduce this fee to 0.38%.

In late February 2020, global stock markets begin a sharp decline and prompted the events occurring to G's investments which I'm considering in this complaint. The directors note that G's investments were worth £791,000 and held on the same platform as personal investments (such as pensions). In a phone call with one of the directors on 9 March 2020 the adviser appears to have booked a meeting for 13 March. His note of the call reads:

> *"The impact of the covid pandemic was also discussed with the clients and it was mutually agreed the ISA and Pensions would remain invested as these are considered long term investments.*
>
> *The company investment would be switched to cash as a result as this was a medium term investments* [sic] *and it is unclear how the market will react to the ongoing concerns regarding the covid pandemic."*

The sale to cash of G's investments took place over 9-10 March, and the directors disagree that they were consulted on or authorised this. They say the adviser announced the switch had already been made in the 13 March meeting and that it had been done to protect the company's money from the falls in the stock market due to the Covid pandemic.

Sage hasn't produced any notes of the 13 March meeting, however it has produced a letter dated that day during the course of the complaint. I'll return to the directors' concerns about the authenticity of this letter later in my decision. It reads:

> *"With the downturn in the market following the covid pandemic and your concerns about the fall in the value of investments it was agreed to switch your company money in cash…*
>
> *You should note that, whilst the transactions are pending or held in cash, there could be movements within the stock-market; that is to say that the stock-market could rise or fall in value. If the market rises in value whilst the funds are held in you could be financially disadvantaged insofar* [sic]. *Conversely, if the market continues to fall amidst the covid pandemic, you could be financially advantaged insofar as the cost of holding your money in cash.*
>
> *It is impossible to forecast the market and know when it is best to reinvest the money held in cash. We will monitor the markets to establish a suitable period to gradually drip feed the cash into the market."*

The letter also explains the different approach being taken for the directors' personal investments in pensions and ISAs: *"The ISA and pension investments are long term investments and to be held until retirement. Whereas the company money is a medium-term investments* [sic] *and with the continued volatility of the stock market this investment has been placed in cash."*

The directors say they protested verbally at the action Sage had already taken at the 13 March meeting and continued to do so, but as it had already been taken they went with the adviser's plan of reinvesting. There does appear to be evidence of ongoing discussions, albeit not quite of the character that the directors suggest (albeit in writing) . Later that month Sage reminded them, *"We discussed then investing the company's parked cash back into the market as it recovers and drip feeding this to balance out the risk and getting the monies*

working for us again".

By late March 2020 there had been an upward correction in the markets which (whilst remaining volatile) continued on a slow upward trend in the following months. By 14 May, one of the directors had become concerned at why Sage had still not reinvested G's cash back into the recovering market. They've noted that the adviser must have been aware of this, because the following day he noted one of the directors' pension contributions made in April (and invested into the markets, contrary to what happened with G's funds) did well.

On 29 May Sage sought the directors' agreement to drip feed G's cash. They responded: *"Yes, please start to drip feed company money back in the market and we can talk to you about anything else thereafter."* The amounts Sage switched – for which the directors say they weren't consulted on fund choices – were:

29 May 2020	£250,000 moved back into market
21 June 2020	£100,000 " "
18 July 2020	£100,000 " "

The directors met Sage on 16 July. Following this on 29 July it emailed them mentioning a possible second wave of Covid. The value of G's investments was noted as £749,810 which the adviser thought was a positive increase when measured over the last 12 months.

The directors asked for more details of the charges. On 12 August the adviser gave them a breakdown of all charges in percentages which he hoped would suffice. The directors weren't happy and sought a breakdown of all monetary charges from Sage and Aviva. The documents produced by Aviva don't distinguish the adviser, product and fund charges in the most helpful way for the purpose G needed them. On 12 September 2020 the value of the company's investments was noted as £758,000; £275,000 of which remained in cash.

On 14 September the adviser emailed the directors referring back to the 16 July meeting (this is the earliest comment I've seen about the July meeting). He summarised: *"When making the decision to move some of the money to cash a broad approach was taken considering your whole investment portfolio as opposed to one plan in isolation".*

The adviser reiterated that the directors and G had seen overall growth in their investments since commencement. He also addressed the dispute about charges, saying that Sage applied no initial charges and he didn't feel the directors had appreciated the discounted ongoing fee. He decided the relationship had broken down and decided to break the ongoing agreement on 14 September, saying:

> *"Please find attached our formal letter of disengagement. I suggest you seek advice from another Independent Financial Adviser with immediate effect. …(Regional Manager) at Aviva will assist you in the interim; his email address is …*
> *I will also write to Aviva separately informing them we will no longer be acting as your advisers and to stop all ongoing adviser charges immediately."*

The directors thought this was an overreaction as they were only asking for an explanation, but Sage was unwilling to act further now that this letter had already been sent. They subsequently sought to deal with Aviva directly, and then complained to Sage in April 2021.

The complaint I'm dealing with here about G's investments – which I've summarised above – highlights that the adviser sold G's funds to cash after the markets had already fallen by about 20%, and then delayed beginning the reinvestment until markets had risen again by about 20%; meaning they lost out both times. They feel the adviser has acted in the manner of a 'novice investor'. They think his monitoring of the markets was absent, and the extent of

these falls or rises wasn't communicated to them before action was taken. In addition to highlighting the contrast with their pensions and ISAs remaining invested, the directors also question why safer funds (e.g. bonds or gilts) weren't chosen in preference to cash.

Sage appointed a compliance expert from another firm to respond to all the issues on 15 June 2021. The points relevant to the complaint I'm considering here were:

- The directors had previously self-invested before Sage advised them and weren't novice investors. They had suffered losses and preferred Sage to take on the management of their funds.
- They clearly had input into the investment funds that were to be used and could have overridden Sage's advice if they had strongly opposing views.
- Sage's file notes record that the situation with G's funds was discussed at a meeting on 16 March 2020 [sic], and the directors agreed to put the G's funds into cash.
- This was a different decision to their other investments, because the company may need the funds in five years.
- Although the Covid pandemic was an unprecedented situation, Sage's adviser attempted as best he could to drip feed funds back into the market when there looked to be an improvement, and to act in G's best interests. However, he required their consent each time to move funds.
- Sage was well within its rights to terminate the ongoing advice arrangement where the relationship had broken down, or as here where the directors were seeking more intensive support at lower fees, which was a basis Sage couldn't accept.
- Sage also gave notice of its intention to terminate in line with the client agreement, and was entitled to collect charges and only complete pending transactions.
- However, it would refund a sum of £200 for the 16 days Sage held agency on the Aviva platform but was not acting for them.

When the complaint reached one of our investigators, G's directors alleged on 5 August 2022 that the switching into cash amounted to the disposal of company assets, could attract a Capital Gains tax liability and may not comply with Companies House regulations. They expected that they were going to incur further costs completing G's tax returns.

Our investigator didn't uphold the complaint, placing some weight on the 13 March 2020 letter which had not been produced or referred to in Sage's final response. G's directors didn't agree with the investigator and were upset that they hadn't been given an opportunity to comment on this letter, which they consider is a fabrication. They added:

- The director who likely took the call *"does not understand financial information".* In any event, the directors would have been expected to confer afterwards and refer to documents before making such a vital decision, and provide signed consent to Sage.
- The letter's reference to drip feeding back into the market was agreed at the time, but only because they had no other option.
- They had never decided G's investments were medium term. The adviser was aware that only one director planned to retire in January 2022, making some of his personal investments of an even shorter term.
- Other advisers have told them that switching to cash should have been considered as a last rather than a first resort.

My Provisional Decision of 2 March 2023

I commented on the nature of the terms of business between Sage and G:

- Sage's standard charges were a 3% initial charge on lump sum investments (which it didn't take in this case) and 1%pa for ongoing review services. The latter was described as being to "*review your financial situation annually"* and broken down into providing annual statements, ongoing access to adviser's expertise, and an annual review of objectives, risk profile, and asset allocation.
- Sage agreed to reduce the ongoing charge to 0.5%pa from outset, but nothing was documented to suggest it would provide any greater level of service to include pro-actively switching G's funds.
- There is an expectation that the client will be able to tolerate the ups and downs of the stock market in the funds selected for G – and there doesn't seem to be any dispute that with a "highest medium" attitude to risk and a willingness to invest for at least five years, G was in a position to accommodate this.
- Each time a switch was proposed, Sage was obliged under the regulator's rules to recommend that switch to G and obtain its agreement – as it didn't have the regulator's permission to carry out the separate activity of 'managing investments'.
- To review a portfolio more regularly than this would typically involve a higher charge and is usually delegated to a discretionary fund manager (who can make switches without advising on them first and having to give individual reasons).
- Within reason annual reviews may take place more or less frequently – such as if changes might be needed in reaction to global events. That doesn't mean that funds will always be changed if they're delivering satisfactory performance.

It had been necessary for me to refer to earlier events in order to set the scene for Sage's actions in March 2020. In particular, I noted the conversation in December 2019 when Sage proposed increasing the risk in 30% of the portfolio, because it was at this point that G told Sage it had assumed in return that Sage would 'monitor these regularly' and take action to reduce losses should they occur. I didn't think Sage could practically agree that, given it wasn't acting as a discretionary manager – and this illustrates well the difference in expectations between G and Sage.

Regarding the events of March 2020, I found in my provisional decision there was enough evidence to demonstrate that there should be significant doubt about the veracity of Sage's 13 March 2020 letter. I don't say this lightly, but for the compliance expert (and I'm using the word expert here for a reason) not to refer to the most relevant piece of evidence seems to me to be more than just an oversight. She was left to rely on the weaker argument of G not noticing the fund switches had taken place on Aviva's statements, which I can't see she would have chosen to do otherwise.

All of this strongly indicates that Sage didn't provide her with the 13 March letter. And I would have to question why it didn't do that if its intention was for a third party to carry out an independent review of the complaint, which I'm entitled to accept at face value was its intention. I'm satisfied Sage most likely didn't provide that letter to the compliance expert because it hadn't kept a record of it. And I would need to be satisfied there were adequate records of it, to find that it was posted to G.

There is no requirement for a firm to send letters by recorded delivery, but I've noticed (as G has) that Sage sent other letters to the directors by attaching them to emails. Why not this letter? I said that if Sage can provide evidence of other occasions it has written to G by post I would be prepared to consider them. But I suspect that won't change the outcome as this isn't the only problem here. There are also points to consider about the timing of the letter.

A different date is given for the meeting in the final response letter, and Sage hasn't evidenced how the compliance expert obtained this date (16 March) from a file note. However, there isn't any dispute that a meeting took place (or that a phone call took place, at least to arrange that meeting). So I'm prepared to accept that the final response

was likely confused about the date of the meeting itself. But that's not the key point, which is that the adviser had *already* made the fund switches (on 9 and 10 March), and the earliest date given for the meeting is 13 March.

No evidence has been produced that these discussions were triggered by the directors instructing Sage to make a switch. I take the point that they had some investment experience, and have seen evidence that they shared their views about investments they or G should make with Sage at other times. No recording has been provided of the phone call. I've taken into account G's view (which Sage has not disputed) that the call would most likely have been with the director who doesn't have investment experience, and was to schedule the meeting. In the absence of G initiating a request to switch in that call, which I'm not satisfied it did, the terms of Sage's engagement required it to advise G on that first.

It's harder to accept that the potentially significant financial consequences of switching could have been adequately addressed in a phone call, when a meeting was shortly due to take place. All of the options open to the directors should have been discussed and documented in full - and in my view there is neither a note of that meeting or a letter that does that adequately enough to protect the adviser in this case. The directors' agreement to switch (if they wanted to) also wasn't sought in writing.

Sage's terms of business say, *"We prefer our clients to give us instructions in writing, to aid clarification and avoid future misunderstanding. We will, however, accept oral instructions provided they are confirmed in writing."* So, I think it has to count against Sage that it was prepared to take about £700,000 out of the market without being able to show that it sought that written confirmation.

I'm not considering the pension and ISA aspects in this complaint, but I think it would be difficult for the directors to argue that these policies *should* have been switched to cash, for precisely the reasons that I don't think Sage should have advised G to switch its own funds. As Sage itself said (but puzzlingly after switching G's funds to cash), *"It is impossible to forecast the market"*. What happened here was largely inevitable: if a market has already dropped before an adviser decides to recommend switching out, then some of the initial rises are also likely to be missed. I've kept in mind that G wasn't the only client Sage had to assist, and it can't have possessed greater skill than fund managers themselves, who take a longer-term view - knowing the risks of attempting to time the markets in this way.

Preparing to access funds for a known future event (such as retiring or spending) should ideally happen gradually and not on a single day. In effect this is the reverse situation of phased switching back into the markets which Sage began to carry out soon afterwards. If it was thought to be less risky to spread the reinvestment into the markets, then by extension it should have been considered too risky to sell everything to cash at once. The options that should have been discussed included staying invested, switching only some of the funds out to cash, switching to lower-risk funds, or only unwinding any switch into more aggressive funds that had recently taken place.

All of these came with risks, but in unpredictable market situations – and Covid-19 was no different – the risk can easily be increased by making a knee-jerk reaction. It wasn't in my view possible for the adviser to expect lower risk assets such as bonds to be immune from short-term volatility either, because the economic effects of Covid were expected to be significant. But the most drastic option of switching everything out to cash carried the greatest risk of these market timing issues.

The adviser's notes of the initial phone call say that it was 'mutually' agreed that the switch to cash was made – which implies he would recommend it. However the same note states that G's money was a medium-term investment, which does not reconcile with advice to

switch to cash. The 13 March meeting (according to what the letter says) indicates more that the directors' concerns about the markets were driving the switch. But this is insufficient in my view to show that the adviser strongly encouraged them not to exit the market unless they absolutely had to, which I think was the suitable advice to give.

It is of course possible that the client then overrides the adviser's advice, but Sage in this case hasn't shown that it properly advised and then awaited G's reaction. It was the adviser's role to give suitable advice in all circumstances as that is what he is paid to do. I can't fairly say that the particular nature of the pandemic changed any of this. Where evidence is incomplete or contradictory, I must consider what is most likely to have happened in light of the wider circumstances. And here, given that the switch had already been made before the adviser met the directors, I prefer their evidence that they became upset and confused at what the adviser had done – and that the agreement to drip feed funds back into the market was an attempt to mitigate that disagreement.

I've taken into account that the directors had some investment expertise, and they didn't formally criticise the switch in writing for some considerable time. However the adviser had to issue further explanations (in late March and September 2020) for the switch. That suggests to me that the directors had been questioning the move as early as it had happened.

I might have ordinarily expected them to take more steps to mitigate their loss if, as they say, they fundamentally disagreed with what the adviser had done without their consent. However what changes this ordinary expectation is that there was already a strategy to make back that loss by trying to time reinvestment into the markets, and the adviser was involved in that strategy.

It was only later that the directors began to question whether this had made the problem worse. The fact that they seem to have been friends with the adviser is an understandable consideration in how long it took them to formally raise concerns. But I don't think that detracts from their complaint and this is perhaps best summarised by the compliance expert's own comment: *"I believe there are learning points for the firm in their dealings with their clients especially where the client is also a friend/neighbour and one may feel that less formality is acceptable when clearly it is not as demonstrated here."*

It's relevant to note here that Sage remained G's adviser until 14 September 2020 when it disengaged. The final response letter refers to a notice period to end the agreement and as that is seven days, I consider it fair to say that Sage is actually responsible for the advice it gave G up to and including 21 September 2020.

In my decision of 2 March 2023, I was provisionally minded to say what should have happened is that the adviser recommended the directors remain invested in G's portfolio on 9/10 March 2020, if they possibly could. I hadn't been provided with enough evidence to demonstrate that the directors wouldn't have agreed to this advice, if it had been given to them.

I thought two things mainly caused the breakdown in G's relationship with Sage. One was the adviser's actions in taking G's funds out of the market without a fully advised discussion on the options. And the other was that, for some time, the directors had been seeking to lower Sage's charges. The latter point is not something that Sage was bound to agree to. So, I didn't think I could fairly hold Sage responsible for the performance of G's funds after 21 September 2020.

Responses to my Provisional Decision

One of G's director's (who I'll refer to as Mr H) provided a 16-page response which covered many of the previous points he had made about the events from March 2020 onwards. It also questioned the advice given on both the directors' company and personal investments from the outset of the relationship with Sage. As I've said I won't be considering any wider issues as part of this decision, I will provide a shorter summary of the relevant points here.

In terms of the outcome I reached, Mr H reiterated his position (which I should point out, I've already accepted on the balance of probabilities) that they *did* criticise the sale to cash from the moment the adviser told them he'd made it, but from his actions they equally became confused at whether they would lose a large value of their investments (including personal investments which *hadn't* been switched to cash). They only relented on asking for it to be unwound as the adviser reassured them he would drip feed back into the markets. Mr H also made the following comments:

- No terms of business were handed out separately for G's investments. But even the terms Mr H received for his own investment referred to ongoing advice and support with no limitations mentioned.
- The adviser should have consulted earlier to consider the many options, rather than unilaterally panic and disinvest after the markets had already declined. Other advisers say the crash at the beginning of February 2020 was 'both foreseeable and avoidable' and made contingency plans with their clients to mitigate its impact.
- He wasn't given the opportunity to research and invest into better performing funds, rather than the poorly performing prior funds – which is what they had been asking the adviser to do throughout his tenure including emails of March and December 2019. They had also expected him to do this with the drip-feeding exercise.
- *"The period after the pandemic crash presented bargain investment fund opportunities where good funds had been artificially devalued and could be bought at a discount. They were likely to do well as optimism returned. This would have been an ideal opportunity to select these funds…"*
- The adviser should have reviewed and increased their attitude to risk (beyond 'highest medium') after the switch to cash in order to reflect their appetite to take advantage of low prices.
- The situation created by the adviser required active intervention to rectify, irrespective of any terms and conditions – and even if it involved him breaching his permissions that prevented him carrying out discretionary management. How else could the drip feeding have been achieved?

On the fees G was paying which led to the termination of the relationship, Mr H also said:

- The adviser never told them he objected to reducing his fees until after the complaint. They would have respected this otherwise. They had only discussed lowering fees before the pandemic – in later requests they were simply asking what the fees were, to put what looked to be underperformance of the funds into perspective.
- It does however now seem that as soon as the adviser was required to do more work (reinvest into the market), to rectify a problem he'd created, it was too burdensome for him and that was why he disengaged.
- Paying lower fees should not excuse the adviser from delivering a quality service. In fact, as they were friends he should probably have tried even harder to achieve this.
- Sage should have ensured the £275,000 remaining uninvested was put back into the market before disengaging.
- The adviser should have known that Aviva wouldn't deal with the directors as 'orphaned clients', and he should have outlined a comprehensive handover. The Aviva contact he gave them didn't respond or engage with them.
- The adviser should not 'be allowed to get away' with fabricating a letter dated 13 March 2020. It amounts to an 'extraordinary effort' to deny them justice and any

compensation due.
- There has been 'professional sabotage' by Sage in the arrogant approach taken to its management of G's investments.

Mr H separately had concerns about the proposals I'd made to put things right. I wanted to put G back in the position it would have been in if *no action* had taken by Sage in March 2020. But in his view, the directors' objective had been to *enhance* the performance of all their investments throughout its tenure. Further, he said:

- Firstly the starting position for calculating compensation is wrong because (as a result of wider concerns he has about Sage's dealings throughout) G shouldn't have been invested in the funds before the switch in March 2020 in the first place.
- In the 6-7 months after March G's original funds would have increased in value rather than declined further. *"Compensation is only paid if the original invested funds lose value between the two dates."* So he wasn't sure this would result in compensation.
- Some of the property funds were suspended/frozen during the pandemic and that might adversely affect the compensation payable.
- I should award compensation for loss of investment potential based on newly chosen and potentially better performing funds, rather than the previous funds.
- The adviser's emails from August and September 2020 referred to different charges than those outlined in the Provisional Decision.
- The lowered Aviva charge of 0.13% seems not to have been applied at all, and he doubts whether Sage lowered its ongoing fee to 0.38%pa or took no initial 3% charge on further transactions. Any costs for disinvesting and reinvesting G's funds also needed to be refunded, as well as the impact of £275,000 never being reinvested.
- Aviva has said the adviser held agency on the platform until 28 September 2020. How does this factor into the provisional decision using a date of 21 September?
- The £200 Sage has offered wouldn't begin to reflect the lack of handover and the mess Sage left them in, and it didn't in any event give the 7-day notice.
- I should be taking into account the human impact on he and his wife as directors. Sage's actions represent the devaluing of a lifetime of hard work and have led to Mr H being unable to retire at age 55. I should also make allowance for the time taken out of work to make submissions on the complaint.
- A capital gain is unlikely to have occurred. However, G had to incur extra costs (£100+VAT) to investigate the impact of the disinvestment on Corporation Tax.

Sage made the following comments:

- During its tenure as B's (and the directors' personal) adviser, they made a profit in excess of £150,000 which they haven't acknowledged.
- It resigned as their adviser because it was unwilling to do the work required for virtually nothing, and the complaint had only arisen because of this.
- The directors had been managing the investments with Hargreaves Lansdown themselves before the switch to Aviva, and even now invest in Enterprise Investment Schemes (EIS) and Venture Capital Trusts (VCTs). So they had a high level of knowledge of investment markets.
- There was no incentive or motive for Sage to move funds without the client's consent. Everything was discussed before any switch took place. In any event, Aviva would have sent a confirmation letter out after every switch as well as it appearing on quarterly reports sent to the client.
- It's significant that the directors didn't raise a query immediately when the switch had happened. *"This isn't the type of client that quietly stands by when not in agreement."*
- The rationale for differing advice on the pension and ISA was sound. Irrespective of Mr H's aspirations to retire at age 55, his pension had actually been written to age 65

and was considered a long-term investment. G's funds had been invested for five years in 2017 and so could potentially be needed in 2022.

- *"The complainant knew that I was selecting funds and was not a discretionary fund manager…It is impossible to predict the market and the decision to move the money to cash was to safeguard this against further falls."*
- Verbal instructions can be accepted to move funds, and those were given in the conversation of 9 March 2020 (for which it's unable to provide a recording).
- Its emails from August and September 2020 referring to its management fee being lowered to 0.35% look to be a 'typo', as only the 0.38% fee was ever agreed to.

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.

Where this complaint sits in relation to other complaints

I want to reiterate that I'm not investigating all of the products and funds Sage ever sold to G within this decision. For one thing, that wasn't what the investigator has already looked at: his investigation was focused on the well-defined issue of what prompted the switch in March 2020. And it simply isn't achievable for one complaint to span 'everything Sage has ever done or allegedly failed to do': particularly as the directors' complaints cover personal investments as well as G's. But I will also refer to Mr H's concerns about the fee reductions in this decision, as they will impact how redress is calculated for the switch to cash.

As I've said previously, this service can separately consider any other complaints G or the directors personally may have, but only providing Sage has had an opportunity to comment on them beforehand. So, I'm attaching a list of the issues Mr H has mentioned in his response to the Provisional Decision, which I won't be commenting on further here. A brief summary is that the whole Aviva platform was too expensive for their investments and they were inappropriately diversified; or alternatively – as the adviser could never proactively review those investments in 'real time' (but never told them this) – he should have appointed a discretionary manager instead.

I think Mr H's emphasis on these other issues might have been prompted by a misunderstanding of how the loss calculation I set out in my Provisional Decision works. He says that G's original funds would (ultimately) have recovered their value rather than declined further. If correct, that would mean they'll have outperformed cash – so the formula I've set out would produce a loss for which G should be compensated.

I'm satisfied that I can continue looking at the complaint in front of me because the allegation that Sage took the wrong 'knee-jerk' reaction to the market movements in March 2020 is a well-defined issue both in subject matter and time. G's investments were in particular funds on the Aviva platform and that is the starting point for what I'm considering here; notwithstanding that Mr H may now be wondering whether another provider or funds might have been better. In the event that G has another complaint about how it was invested up to March 2020, and that complaint is upheld, it would obviously be fair and reasonable for any compensation Sage pays as a result of this decision to be taken into account.

So, this may not necessarily mean further compensation is payable to G. I cannot second-guess the outcome of other complaints, but I should make G's directors aware that this service won't be able to put a complainant in a financial position as if they (or, say, a discretionary manager) had been able to successfully time the markets in such a way that they benefited from falling and rising fund prices. That's because when we award compensation where we *don't* know where the complainant would have invested, we use a

benchmark for investment growth – such as the FTSE Private Investors index I used for the period after September 2020 in my Provisional Decision.

The benchmarks we use are based on money being continually invested and not taken into and out of the markets in the way Mr H would like. It is only from a position of hindsight that it can be seen when would have been the most opportune point to time the markets in this way. So, taking all of this into account, and in the event G's wider concerns are prompted by a misunderstanding that it won't receive any compensation from this decision, I think it should wait to see what redress it obtains before proceeding blindly with other complaints about the company's investments.

The outcome of the fund switch complaint

In reply to my Provisional Decision, I would have expected Sage to comment on the 13 March 2020 letter, which G believes was fabricated and I too have said I have concerns about. But it has said nothing in response. I can only stand by what I said in the Provisional Decision on this point. I make my decisions on the balance of probabilities. If the veracity of a major piece of evidence is called into doubt, that has significant consequences for whether I can reasonably be expected to accept Sage's version of events over G's.

I understand Sage's comment that there was no incentive or motive for it to move funds without the client's consent, but this is complicated by the overfamiliar nature of the relationship between the adviser and the client in this particular case. I think it's plausible that the adviser acted on impulse without going through the proper advice process because he thought it would produce a better outcome in the long run for G. In my view that was a mistake. It has exposed Sage to this complaint, and means Sage doesn't have the expected and corroborated level of contemporaneous level of evidence to defend itself from the complaint.

Verbal instructions can indeed be accepted to move funds, but in this day and age it would not be too difficult to keep a recording of such instructions or (as the terms of business specifically say) ask for immediate confirmation in writing. That wasn't done in this case, so again Sage has left itself in an exposed position of its own making.

I've already said that G's directors have provided a plausible explanation for why their initial concern at what had happened was overtaken by a commitment from Sage to reinvest them into the market in a way that they would continue to benefit. My opinion on this hasn't been changed by the responses to the Provisional Decision – in fact Mr H has reiterated much the same explanation, which I find more persuasive than Sage's account of events.

I think the fact that G was not the type of client that (in Sage's words) 'quietly stands by' has been borne out in this complaint – but I don't think that precludes that G was at first (and perhaps reluctantly) persuaded to see out Sage's drip-feeding strategy before doing so. I can however see that this was quickly unravelled by later events, which include Sage investing one director's pension contributions fully into the market in April 2020 – when it had not begun drip feeding *any* of G's funds.

So, I continue to prefer G's explanation that the switch to cash was carried out with inadequate explanation in the first instance, and indeed contrary to Sage's terms of business and regulatory permissions which required it to advise and gain G's agreement to the switch. I've already agreed with G that Sage should have considered all the options – and the regulator would expect its advice to be suitable for G's circumstances and objectives. I think Sage is relying too heavily on what the *originally* intended term for the company investment was (five years), when that's unlikely to have been set in stone, and before updating its fact-finding on the company's objectives for this money.

It's evident from the way it's argued the complaint (even suggesting an increase in risk) that G didn't need all this money to be in cash for an immediate purpose. Had Sage asked it at the time, I think that would have been the answer. Sage is also arguing that Mr H's pension was written to age 65 – more than ten years later – so it doesn't seem it expected Mr H to retire from the business soon either. If funds needed to be made available from the business, then it should have established over what timeframe and made sensible proposals to phase funds out of the market. Doing it all at once at a point where the funds had already dropped by about 20% wasn't in my view sensible advice.

As Sage has again said in response to the Provisional Decision, "*It is impossible to predict the market and the decision to move the money to cash was to safeguard this against further falls."* That statement contains an inherent contradiction, as whilst switching to cash might stem the immediate problem of a market that was likely to fall further, there was no way Sage could guarantee to get the timing right for when G's funds should go back into the market. Moving them all out at once just created a bigger problem of when to reinvest into a market that was 'impossible to predict'.

As I've already said, Sage was less likely to be criticised for advising G to remain invested due to this inherent unpredictability of how the markets would react to Covid. It is of course possible that G might still have complained that the funds had gone down, but that would be a complaint Sage could more easily have defended.

The reason I think Sage could have more easily defended that alternative complaint is that G had a misunderstanding that Sage's role was, in effect, a discretionary manager. I don't doubt what G says about only one copy of Sage's terms of business being handed out. But I can't see it had any basis for believing Sage's advice to B was governed by any other terms, as this was a standard document. The emphasis on reviews being carried out annually (or thereabouts) is in my view clear.

I agree that Sage may have allowed a different impression to develop as a result of what its compliance expert referred to as '*less formality'* in the advice process (as the adviser was friends with the directors). In addition I've already said that Sage should have explained to G's directors in December 2019 that their expectation that it would monitor funds regularly and take action to reduce losses should they occur, couldn't be met.

However, even though some market turbulence was expected due to Covid, I also don't agree with Mr H's comment that a financial adviser could reasonably have exited all their clients portfolios precisely when they were at the top of the market and then reinvested them precisely at the bottom. This is fraught with danger, and particularly when an adviser has multiple clients' portfolios to go through an advice process on, significant periods of positive performance are likely to be missed.

So, when it came to the events of March 2020, Sage shouldn't have put itself in the position of attempting to time the markets on G's portfolio. But the remedy of that mistake isn't to place G in the position where Sage did successfully manage to time the markets – something which I've already said wouldn't have been feasible.

Sage wasn't prevented from drip feeding funds into the markets if it advised and obtained the director's agreement for each tranche invested (or even for a whole schedule of reinvestments, reflecting the fact that it was very difficult to predict the best timing). I've seen insufficient evidence that this is what it did. However, that's secondary to the point that I think the most suitable advice – given it was difficult to avoid a 20% fall in the markets in the first place – was that G was better off remaining invested without an immediate short-term need for the funds.

To address another point Mr H has made, I also think G would have been ill advised to increase its attitude to risk above the medium-high level already assessed, in an attempt to make back that 20% fall, precisely when the markets were likely to be more volatile. That increased the risk of losses being suffered beyond its capacity to accept.

I'm persuaded on balance that if Sage had given this suitable advice, the directors would have accepted it. I've considered Mr H's point that he might have wanted to time the markets himself, but it seems to me that was why he had decided to move away from Hargreaves Lansdown originally. He may believe with hindsight he could have done so, but I find that even less likely whilst also continuing to work through a pandemic.

The impact of agreements to lower fees on the redress I'm proposing

I agree that an agreed level of lower fees should not excuse the adviser from delivering the same service that was already set out in the terms of business. What I don't agree with is that G should have received a different service to other clients, simply because its directors were friends with the adviser. I would expect all Sage's clients to be treated fairly.

Sage had never agreed to, did not have regulatory permission for, and wasn't making a commensurate charge for, carrying out discretionary management on G's funds. I've set out above the service, including advice, that I think Sage should have provided to G in March 2020 for the fees it was taking, and I explain in the next section how Sage should establish whether this has caused G to suffer a loss.

Mr H highlighted that Sage referred to a different figure of 0.35% in its emails of August and September 2020. Sage thinks that was a 'typo', and I've only seen an email in January 2020 when it referred to 0.38%. Going back through all the submissions G has made, I haven't found reference to an expectation, in January 2020, that it would be paying 0.35%. So, I'm satisfied 0.38% is the correct figure.

I find it hard to accept that G wasn't aware of Sage's reluctance to reduce fees to 0.38%. Before doing so, Sage had re-justified why the 50% discount was enough, even considering they were already friends. If Sage's agreement to go lower in part led to a later regret and its termination of the relationship, it's not possible for me to completely unwind this.

Clearly, both parties have now moved on so it's unrealistic to expect G to be put back into the position as if this had never happened. In my view Mr H's expectations (and indeed demands) for Sage to perform the role of a discretionary manager at the amount it was charging were unrealistic, so notwithstanding the errors it made I think Sage was entitled to come to the same realisation and take the view that it wouldn't be able to work productively with G moving forwards.

I also can't reasonably say that Sage could have achieved a reinvestment of the remaining cash in G's portfolio when the relationship had already broken down, as it would need to advise where it should be reinvested, and obtain G's agreement. In my view the notice period was intended to cover investments that were in the process of being effected – not advice that hadn't yet been given. Even if Sage had been able to advise, there wouldn't have been much opportunity for that sum to perform differently than cash before the loss crystallised on 21 September 2020, so this becomes somewhat academic.

Putting things right

What I've set out below would in my view provide fair and reasonable compensation for the inappropriate advice and service Sage Financial Management Limited gave G from March

2020 onwards:

1. Sage must obtain a *notional* value of G's portfolio from Aviva for 21 September 2020, assuming it had remained invested in the existing funds beyond 9/10 March 2020, and compare this with the *actual* value on 21 September 2020. If the notional value is greater than the actual value, the difference is G's loss.

   G will need to provide a letter of authority for Sage to obtain this information from Aviva. The notional value should take into account the agreed product charge between Sage and Aviva (0.13% - evidence of Sage's instruction to Aviva attached) and Sage's agreed ongoing fee of 0.38%. So, in the event that Aviva hasn't implemented either of these charges for some reason – and I have nothing concrete to say it hasn't – Sage should address that with Aviva itself first.

   I'm also not aware that there were buying and selling costs (or initial charges) for switching into and out of cash, but to the extent there were these will automatically be taken into account in the comparison with the position where G had remained invested with no such transactions occurring.

   There are a few points I'd like to clarify on using this end date, and why I'm going to refer to the funds G was already invested in, rather than the "better" funds Mr H thinks should have been selected:

   - Firstly, these funds had been reviewed as recently as December 2019, so I don't think (other than almost all funds suffering falls due to Covid) there was enough to say the funds were no longer appropriate for long-term investment.
   - In fact it would make more sense to continue with funds that had already sustained losses, because they now held onto assets at depressed prices and to switch out of them at that point would risk foregoing the recovery in the very same assets.
   - The same logic applies to property funds – a recovery would reasonably be expected in the longer term and in my view the long-term value of those funds would be reflected in their unit price at the date losses crystallise on 21 September 2020 – whether or not dealing in those funds became suspended for some of that time.
   - It's only with hindsight that Mr H can now say which funds would have made better choices at this time. Sage cannot have been expected to have equal foresight.
   - Mr H is correct to note that Sage held agency on the Aviva platform until 28 September, but that was in effect because G hadn't yet chosen a new adviser after Sage said it was no longer willing to act. It isn't possible for one adviser to block the appointment of another of the client's choice.
   - I've allowed for seven days from 14 to 21 September 2020 because the adviser didn't give the required notice. It's been part of G's case that it had been dissatisfied with Sage's actions for a period of some months. It hadn't been prevented from looking for a different adviser or giving its own instructions directly to Aviva prior to that date.
   - It's irrelevant if G and/or its directors have made a £150,000 absolute gain overall under Sage's advice - it's the relative gain they may have experienced if they had remained invested in the markets beyond March 2020 that I'm interested in here.

2. If Aviva isn't able to calculate a notional value for G's portfolio on the basis I've set out above, it will suffice for Sage to quantify any loss by reference to the change in unit prices of the funds G was invested in between 9/10 March and 21 September 2020 - and making an adjustment for the actual product and ongoing fees agreed.

3. Any loss identified above should be updated from 21 September 2020 to the date of this Final Decision by applying a benchmark of investment growth that's consistent with the original risk approach adopted for G's portfolio. In my view the FTSE UK Private Investor

Income index (on a total return basis) would provide a comparable ratio of shares to other asset classes, to the funds G was originally invested in.

4. Sage must pay the updated amount to G as a cash sum, plus interest at the rate of 8% per year simple from the date of this final decision to the date of settlement, if it doesn't settle the complaint within 28 days of receipt of G's acceptance of the final decision.

Regarding the upset Sage has caused, I said in my Provisional Decision that as a company isn't a natural person I can't consider G to have experienced the distress that its directors have experienced. I also said that as Sage was entitled to end the advisory relationship it wasn't appropriate for me to make an award for the inconvenience of having to seek other financial advice. Indeed it seems from the comments Mr H has made that this process may have been made harder for him by Aviva, which is a matter for him to address with that firm.

I also referred to the inquisitorial role service has - and which I have used - to get to the bottom of a complaint without requiring lengthy and detailed submissions, or expert assistance. Complaining is by its very nature inconvenient, and this has not been a straightforward complaint to decide. I haven't been able to accept some of G's arguments, some of which have been contradictory, even though I ultimately didn't accept Sage's position on why it effected the switches in March 2020 and this has led to me upholding the complaint in part. I don't think it's appropriate for me to make an award in respect of the time Mr H has spent formulating arguments, some of which I haven't found persuasive.

I said in the Provisional Decision that it may be necessary for G to bring any specific concerns it has about a Capital Gains tax liability to Sage separately, as this hadn't been quantified. I note it now agrees there is no liability as such, but it says it incurred costs of £100+VAT for this to be investigated. I've seen G's invoice for this charge and it is stated to be for submitting a Corporation Tax return, which would be required each year in any event. I don't think it is possible to identify a specific (and likely negligible) portion of this charge that relates to declaring G had made no capital gain on the 2020 encashment.

I would have said that the offer of £200 Sage made in respect of two weeks of ongoing fees it collected from the Aviva platform from 14 September 2020 onwards would represent fair compensation for its failure to give the required notice period. Sage has confirmed that this offer covers both the company and personal investments. I think it's reasonable that as part of settling this complaint Sage also pays that sum. Although Mr H regards this a payment for the inconvenience of having to change adviser, I didn't say that it was.

My final decision

I uphold B's complaint in part, and require Sage Financial Management Limited to pay it redress as calculated above. Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 28 April 2023.

Gideon Moore
Ombudsman