

The complaint

The estate of Mrs H complains that Rathbones Investment Management Limited ('Rathbones') provided them with incorrect information about actions they could take with Mrs H's portfolio after her death. This led to the portfolio remaining in risk bearing investments when it could have been liquidated and the loss in value it suffered towards the end avoided.

Mr H is the executor of Mrs H's estate and has complained on behalf of it.

What happened

Mrs H held an investment account with Rathbones and Mr H, as her Power of Attorney, was the main correspondent about this. Mr H was in contact with Rathbones in January 2021, and he informed it of Mrs H's ill health and asked about what would happen to the account on her death. Rathbones say it informed Mr H that the account would be '*..effectively frozen until probate is granted..*'. Rathbones said it also informed Mr H that investments could be sold to pay for any inheritance tax (IHT) liability.

Mrs H died in June 2022. Rathbones sent the estate its '*Information Procedures following notification of the death of a client holding an investment portfolio*' information document. This document explained what would happen next. It does say that the portfolio could be 'de-risked'. That is riskier investments could be sold and replaced. It says about this:

'If we are asked to ... liquidate some or all of the Portfolio to mitigate market risk prior to the grant of probate, before so doing, we will request ... a simple letter of indemnity.'

A day after this Mr H and the representative from Rathbones met at a social gathering. Mr H says he was informed by the representative that the estate would only be able to sell investments to pay any IHT liability. And that the portfolio could not be actively managed during the period between Ms H's death and probate. The representative has confirmed that he gave Mr H this information and that he understood it to be correct.

Later on, in June 2022, Mr H was provided with a probate pack and another copy of the information document I've mentioned above. And in an email in July 2022 Rathbones said:

'... also if you do need to raise capital from the portfolio to help settle inheritance tax liability please let me know and I'll email you the Letter of Indemnity we require to be able to do this.'

Mr H has said that the oral information he has been given left him with the impression that the investments would be 'locked up' on the death of Mrs H until probate was granted. And he could only sell the investments to settle any IHT bill or pay for funeral expenses and so on.

Further contact between the parties took place in September 2022 after probate had been granted. Mr H asked Rathbones to sell some investments to pay the IHT bill. And once these

arrangements were made Mr H informed Rathbones that they were concerned about the market volatility and wanted to liquidate the portfolio. This was arranged shortly afterwards.

In completing the documentation to do this Mr H said he became aware that the estate could have de-risked the portfolio earlier and complained about this. He became aware of this as information about it is contained in one of the documents he needed to do this.

Mr H has complained on the basis that if the estate had been given correct oral information about the ability to de-risk the portfolio they would have done this much earlier and avoided the falls in value the portfolio suffered near the end of it. Mr H says he relied on the oral advice they were given by Rathbones that they couldn't change the portfolio in this way. And whilst they had earlier indicated that they were worried about volatility they didn't think there was anything they could do about it.

Rathbones has gone on to consider Mr H and the estate's complaint. The Rathbones representative who gave Mr H the incorrect information has apologised for not informing him about being able to de-risk the portfolio earlier. He has said this was due to a lack of knowledge on his part. He says he believed the information he gave to be correct at the time.

But Rathbones has also said that it is standard procedure to provide the information document I've referred to above. This informed Mr H that the portfolio could be de-risked. So, Rathbones thinks Mrs H's estate was in a fully informed position. And whilst it acknowledged that its representative may have provided incorrect information, it said it wasn't certain that the estate would have acted earlier if Mr H had been given better information.

Mr H brought this complaint to the Financial Ombudsman Service.

In its cover letter to the Financial Ombudsman Service Rathbones said that Mr H had been provided with the information document but had failed to read it. It was unfair of them to rely on casual conversations and its representative shouldn't have been expected to provide all the information orally that was given in the information document.

One of our Investigators considered the complaint and thought that it should be upheld. He said that:

- Rathbones gave Mr H incorrect information orally in 2022 and in writing in 2021 when it informed him that the account would be 'frozen' on Mrs H's death. The representative has acknowledged making this error.
- It was reasonable for Mr H to have relied on this oral information, even though correct information was provided in written form.
- He believed that Mr H, and the estate, would have moved the portfolio into cash earlier as they had demonstrated a concern with stock market volatility.
- Encashment would have taken place on 11 July 2022 if the estate had been given correct information.

Rathbones didn't agree and said:

- Its procedures were fair, and it has treated its customers fairly. It met the regulations of the time.
- Mr H, and the estate, were provided with correct written information by June 2022. The option to de-risk the portfolio is clearly in the documents it gave to them.

- Mr H and the estate didn't fully read the information they were given, and Mr H did not request further information from Rathbones as he was invited to do.
- It questioned whether de-risking the portfolio was discussed at the social gathering and whether Mr H was misled at this event.
- It disagreed that verbal guidance was provided.

Mr H raised no further issues.

As no agreement has been reached the complaint has been passed to me to issue a final decision.

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 think it's been established that Mr H, on behalf of Mrs H's estate, was misled. This was firstly by email in 2021 when the Rathbones representative incorrectly informed them that the estate wouldn't be able to change the investments in the portfolio between the time of Mrs H's death and when probate was granted. And this information was repeated orally later. Rathbones' representative has confirmed he gave this information as he understood it to be correct and this was due to a 'lack of knowledge' on his part. And he has apologised for this.

Rathbones seems to suggest that because the representative informed Mr H about some of the situations where a portfolio could be changed, then he and the estate was not misled. As the information provided was correct. But it's still misleading not to provide further information, which relates directly to a situation that Mr H and the estate were concerned about. The information that I can see the representative has given Mr H and the estate orally, and what he said he would have told them, would have led them to think the estate could not be de-risked. Whether this is by providing wrong information, or incomplete information, the outcome for the estate is that they were misled either way.

I think it's clear that Mr H discussed what the estate could do with the portfolio at the social gathering. And I don't think it's material that this was a social event. All the parties agree that information was given at the event and that it may not have been correct.

And, whilst I'm not party to all of the conversations and communications that took place, the Rathbones representative has said that he has misunderstood this issue. And he has consistently given Mr H wrong information about it. So whatever conversations took place about this issue he would probably have misinformed Mr H, and the estate. Even if Mr H or the estate had asked for further information or clarification.

Mr H and the estate were provided with a document that did explain that the portfolio could be managed while probate was being sought. This document does indicate that the portfolio could be liquidated prior to probate being granted (with an appropriate letter of indemnity).

At the heart of this complaint is whether it was reasonable for Mr H to have relied on the incorrect information the representative supplied to him on behalf of the estate. Or whether they should have realised they could change the portfolio earlier as it says they could do in the written information they were provided.

There is a lot of information in this document and much of it refers to what happens after probate is granted. And I don't think the sentence that mentions 'de-risking' is especially prominent. And it would have been a busy time for Mr H and the estate and they would be dealing with a lot of information. And it's reasonable for them to have sought advice and

information from Rathbones at this time. And for them to expect the advice and information they were given was correct.

I don't think it's fair to say that Mr H and the estate were fully informed because they were provided with some correct information in the document above. This would be a difficult time for them, and they shouldn't have to pick through the conflicting information Rathbones had provided and decide which was correct.

So, I don't think the correct information in the document mitigates the incorrect information they were provided orally. Overall, I think it was reasonable for Mr H and the estate to have relied on the oral information they were given.

And I think it's clear that Mr H and the estate did rely on the incorrect information they had been provided. Mr H had previously expressed concerns about the volatility of the portfolio as Mrs H became ill. And when the estate was able to move the fund away from risk bearing investments it did so relatively quickly. I think the incorrect and/or incomplete information they were given by the Rathbones representative led to them not doing this earlier.

So, I think it's reasonable to say that Mr H and the estate would have liquidated the fund as soon as they were able to on Mrs H's death. If they had been given correct information.

Putting things right

Our Investigator detailed the likely timeline of this surrender, and no party has disagreed with this. I also think this is a reasonable way to calculate any compensation that may be due.

Briefly, Rathbones was notified of Mrs H's death on 21 June 2022 and the death certificate was provided on 24 June 2022. Once the estate became aware it could encash the portfolio it took 17 days for it to provide complete instructions to do this. So, it would have been able to do this on 11 July 2022.

So, Rathbones should:

- Determine the value Mrs H's portfolio would have provided on 11 July 2022 if it was surrendered on this date.
- Compare this with the value it did provide when it was surrendered between the 10 and 13 October 2023.
- If this shows that the estate would have received a higher amount, then Rathbones should pay the difference.
- Interest should be added for late payment of any loss from the date the portfolio should have been liquidated to the date of payment. This should be at the rate of 8% simple per year.

My final decision

For the reasons I've explained, I uphold the estate of Mrs H's complaint.

Rathbones Investment Management Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs H to accept or reject my decision before 14 March 2024.

Andy Burlinson

Ombudsman