

## **The complaint**

Mr and Mrs B complain Brown Shipley & Co Limited (BSCL) made a decision that required them to liquidate and reinvest their investment portfolio, causing them a financial loss. They are also unhappy with the risk level they were invested at and delays in transferring their ISA portfolios.

## **What happened**

In February 2018, Mr and Mrs B agreed for BSCL to manage their investment portfolio on a discretionary basis on an 'income' mandate.

In July 2022, BSCL contacted Mr and Mrs B to explain changes to the service it could provide them with. Essentially it provided them with the option to transfer their portfolio to BSCL's Managed Fund Service, or to transfer their investments either in cash or in-specie to a new adviser. Following this Mr and Mrs B sought clarification on the options and exchanged several communications with BSCL answering their queries – including those about costs and tax liabilities. Ultimately Mr and Mrs B decided to transfer their portfolio away from BSCL.

In January 2023, Mr and Mrs B raised a complaint with BSCL. They complained that the change of service BSCL had introduced had resulted in them suffering losses. They raised concerns about a change in risk mandate on the portfolio from the 'Income' level of risk to 'Balanced'. They were also unhappy with the communication provided by their adviser, and about delays in the completion of the transfer of their ISA investments.

BSCL responded to the complaint but didn't uphold it. In summary it said it gave clear and timely information about the change in service it would provide to Mr and Mrs B. It also said the investment mandate wasn't changed from the agreed 'income' mandate – and the discretionary advice service it provided was in line with this. And the adviser dealt with queries raised and communicated his responses in line with the questioned raised. It didn't agree it had delayed the ISA transfers.

As Mr and Mrs B remained unhappy with the response, they referred their complaint to this service for an independent review.

One of our investigator's looked into the complaint. She didn't think it should be upheld. In summary she said:

- She didn't find BSCL did anything wrong when it informed Mr and Mrs B it was ending the service, or with the options it presented them with as an alternative. The adviser was responsive to queries made by Mr and Mrs B about their options and BSCL gave the support they needed.
- She was satisfied BSCL did everything it should have done when transferring the portfolios.
- Whilst there were higher risk and lower risk funds within the portfolio, the overall composition of the portfolio was in line with the mandate.

Mr and Mrs B didn't accept the investigator's opinion. In summary they said:

- During the transfer of Mrs B's funds they had to make repeated enquiries both with the new manager and BSCL about progress, and they blamed each other. They noticed several of the discrepancies in the transfer of cash and funds, and had to be very proactive in getting these addressed, frequently being pushed from pillar to post, by each company. Mrs B is still experiencing problems with a payment received with the new manager that is causing an over subscription for the tax year.
- They do not accept that a medium risk mandate is achieved by investing in a mix of high-risk and low-risk funds. The high-risk investment leaves the investor open to the risk of a substantial market down-turn, which the low-risk funds cannot be expected to compensate for. BSCL chose to invest their money in funds with high management charges, on top of its own charges, rather than tracker funds. They do not think BSCL respected the mandate in the choice of investments, nor in the further management charges that they incurred.
- They emailed their adviser on 1 April 2022 expressing concern about the performance of their investments and requested a face-to-face meeting as phone conversations were unsatisfactory. But the next they heard from the adviser was a letter about ending the service more than three months later. The letter was sent immediately before the adviser took a three-week holiday. He could have delayed his letter until after his return from his holiday, so he was available to help them make their decision.
- They emailed BSCL on 25 September 2022, saying they would be moving their portfolio away. But on Mr B's account a further purchase of units was made on 29 September 2023, which were sold on 29 November 2022, at a loss of £477.16 due to charges. It is incomprehensible that such a purchase of funds should be made, when it was known they would have to be sold within a few weeks. At the very least this wholly avoidable cost should be refunded.

As no agreement could be reached, Mr and Mrs B requested an ombudsman makes a decision on the complaint.

### **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.

Firstly, I appreciate Mr and Mrs B's strength of feeling about the complaint. I also acknowledge their unhappiness with the service they've received from BSCL. But in order to uphold the complaint, I must find that failings by BSCL has resulted in the position they are in. Having reviewed the submission of the parties, I've reached the same outcome as the investigator, for largely the same reasons. I'll explain why.

#### *Review of service provision*

I've reviewed the July 2022 update that was sent to Mr and Mrs B explaining the position with regards to the service BSCL was providing to them. This explains why it is making changes and the options available to Mr and Mrs B going forward. I also note that Mr and Mrs B raised several queries, which were responded to, and the time for them to make a decision was also extended. So, I'm satisfied that BSCL supported them in making an informed decision about what they wanted to do. I'm also satisfied BSCL is entitled to make decisions about the service they provide to clients. I've looked at the options that were offered to Mr and Mrs B.

The first option was to transfer the portfolio to BSCL's Managed Fund Service (MFS). This option allowed them to keep their portfolio within the same investment mandate through the transfer to the MFS. There was also an advantage in terms of fees as these would reduce.

As part of the transfer, BSCL ensured no additional costs would be incurred. It was explained that during the transfer, the funds would be out of the market for a short period, but BSCL explained this time would be minimal and they expected it to be a day or less, so as to reduce any risk of market movements that might disadvantage them. It also suggested a strategy that would help Mrs B to mitigate a tax liability on capital gains she had made.

The other options involved Mr and Mrs B moving their portfolio away from BSCL - either by encashing their investments and moving the portfolio as cash or looking to transfer assets in-specie to a new advisory firm.

While Mr and Mrs B feel the change in service has caused them losses, I'm persuaded the option to transfer to the MFS allowed Mr and Mrs B to receive a service in line with the original advice they'd received to invest in the Income mandate (albeit their portfolio would be invested in different assets), without incurring costs, and with a small fee reduction too. They were entitled to reject this option and move their business elsewhere, which is what they did. But I don't think BSCL are at fault for any losses or costs they have incurred as a result of this decision – especially as they were offered an option that would still meet their agreed needs and objectives.

Overall, I haven't found BSCL made any errors when it informed Mr and Mrs B about changes to the service – and the options it gave them – so it follows I don't find it is responsible for any losses in this respect.

#### *ISA transfers*

Mr and Mrs B are unhappy with the way their ISA transfers were handled. In respect of the transfer of Mr B's ISA, it appears this was completed within the anticipated timescales that BSCL informed him about before he instigated the transfer. Mr B was seeking to transfer assets in-specie, which can take longer depending on the circumstances. But as the transfer was completed within the anticipated time considering the nature of the transfer and the number of lines of stock, it doesn't appear BSCL has caused a delay or made errors.

The transfer of Mrs B's ISA took significantly longer, and there were issues that delayed things. BSCL has provided evidence of problems it incurred when working on the transfer. Mr and Mrs B say that the new provider had blamed BSCL for the delays.

I reviewed the evidence BSCL has provided regarding the transfer, this largely consists of the email correspondence it had with the receiving ISA manager and other third parties involved in the transfer. The evidence shows initially the transfer was progressing as expected and clarifications were being resolved between the parties. But towards the end of November 2022 some issues arose. Firstly, a cash payment that was sent across to the new ISA manager as part of the ISA transfer, had been applied incorrectly as a new ISA subscription. This was investigated by BSCL with the new manager, who responded to confirm the issue was resolved. Then a second issue developed relating to whether the new provider could accept certain stock – and after initially accepting the transfer of stock it later confirmed to BSCL that it couldn't accept the units on its platform. This caused delays between December 2022 and January 2023 as the units had to be sent back, converted to allow acceptance, and then sent back again to the new ISA manager. The evidence also shows there were dealing problems in completing the conversion in February 2023, and internally BSCL were chasing and trying to rectify the issues. This wasn't resolved until 10 March 2023 – after this, the details were sent to the new manager to complete last part of the transfer.

So, it does seem there were complications and issues that needed to be overcome due to incompatibility between the two ISA managers. But this isn't uncommon in a transfer where

multiple stocks are being transferred. While these issues did cause a delay in the transfer completing and cause Mr and Mrs B to have to chase things up, I'm sufficiently persuaded from the evidence that it wouldn't be fair to hold BSCL at fault here or find it responsible for unavoidable delays. I appreciate Mr and Mrs B were frustrated by the time taken for the transfer process to complete, but in my view, this was as a result of the complications in the transfer which BSCL can demonstrate it went to reasonable efforts to resolve to allow the completion.

Mr and Mrs B have also raised concerns about a cash payment being transferred by BSCL to the new provider several months after the transfer was completed. This has caused issues as it has been applied as a further subscription in the tax year when the ISA was fully funded. This issue happened after Mr and Mrs B raised their complaint, so it hasn't been investigated as part of the complaint I'm considering. It is unclear who is at fault here or whether the issue has been resolved. If Mr and Mrs B still have concerns about this, they should raise it separately as a new complaint with the parties involved

### *Investment Mandate*

The original advice Mr and Mrs B receive recommended they invest their portfolio under the 'Income' mandate – which was described as on the low side of medium. Subsequently, there has been some confusion about this as Mr and Mrs B received a letter in April 2021 that suggested they were invested under a higher risk mandate, the 'Balance' mandate. BSCL says this was an error and has provided evidence of a letter sent shortly afterwards (in May 2021 after a review) that confirms they are invested under the correct 'Income' mandate. So on balance it does seem the April 2021 letter contained an error. I've also reviewed the quarterly statements which detail the portfolio and I'm satisfied that this demonstrates that it was invested under the correct mandate.

Mr and Mrs B have also raised concerns about specific investments within their portfolio that they think are outside of their risk profile – as they are higher risk. Their concerns appear to be driven by the fact they have suffered losses on the higher risk elements of the portfolio and incurred high fund charges too. They don't think any high-risk investments should have been included.

I've reviewed BSCL's guide to investing, which sets out the investment approach it takes when building a portfolio and the different asset classes and types that are used. This also sets out the various investment profiles and how these are designed to meet the objectives of a range of different investors. The description of the typical make up of a portfolio under the Income mandate does indicate the risk profile is below medium risk. It explains the portfolio will mainly consist of both equity (UK and international) and fixed income exposure, as well as some exposure to cash and alternative assets. There are parameters set out that indicate the level of exposure to equities being between a minimum of 30% and a maximum of 55%, and alternatives between 0% and 30%. So I think it is clear that under this mandate, an investor could expect to have at least some of their funds in assets that would be considered at the higher end of the risk spectrum.

I agree when constructing a discretionary portfolio under a mandate, it is reasonable for BSCL to include a variety of assets and funds to provide diversification. So, it is reasonable to balance out the overall risk to include some higher risk assets when achieving a portfolio in line with the overall mandate. Having reviewed the make-up of Mr and Mrs B's portfolio, I don't find that it is out of line with the agreed mandate. While I appreciate, Mr and Mrs B's concerns about the losses they have suffered on specific investments, I don't think this is as a result of a failing by BSCL in how it carried out the discretionary advice service. And I don't agree that the fact they had exposure to stocks, which individually were considered to

expose higher risk than the overall aim of 'below medium risk' means the mandate agreed wasn't being followed.

#### *Purchase of investments in September 2022*

Mr and Mrs B claim they are due compensation as a result of the purchase of an investment under the discretionary arrangement on 29 September 2022. They say this investment was sold at a loss as part of the transfer of their portfolio. They say BSCL was aware of the intention to transfer away before these shares were purchased. They don't think this purchase should have been made when it was known that the portfolio would be liquidated within weeks, so the resulting loss should be covered by BSCL.

I have seen that Mr and Mrs B did inform BSCL that they were intending to take the option to transfer their portfolio away before these shares were purchased. But I also note BSCL didn't receive a formal transfer request until late October 2022. So up until this point it was still providing the discretionary service that had been agreed and paid for. I appreciate the frustration that this investment ultimately caused them a loss, but it is reasonable for BSCL to keep providing the service it agreed to up to the point a formal transfer is requested. At the time of purchase the situation was uncertain, it is possible that an overall gain could have been made as a result of strong performance, or the stock would be transferred in-specie and remain held with the new provider. On balance, I don't find an error by BSCL has caused the loss Mr and Mrs B claim here.

#### *Relationship with the adviser*

Lastly, it does appear there has been a breakdown in the relationship between Mr and Mrs B and their last adviser at BSCL, and I acknowledge the concerns raised about the service provided. But there is evidence of the support given by the adviser to help Mr and Mrs B - especially around helping them understand the options available when the service review was explained.

Mr and Mrs B say they requested a face-to-face meeting with the adviser in April 2022 but this was never fulfilled, and instead they just received the review of service information in July 2022. I've seen the emails Mr and Mrs B exchanged with the adviser in April 2022 and note they did ask about arranging to meet. The adviser did respond to provide detailed explanation about the performance of the portfolio, and he also agreed it would be helpful to get a date in the diary to discuss the portfolio. He asked if Mr and Mrs B would prefer a face-to-face meeting or to meet via video conference. Mr and Mrs B responded and said they would prefer a face-face meeting in the next month or so. While this never got arranged, it does seem the agreement made was fairly loose and nothing specific was agreed on timescales. While I agree it would have been better to meet ahead of the July 2022 notification, I can't say the adviser refused or failed to attend a meeting he committed to.

Mr and Mrs B also raise the fact the adviser went on holiday shortly after sending them the July 2022 review of service letter. It is unfortunate that the holiday was taken soon after sending this notice. And I appreciate the contents did cause worry for Mr and Mrs B and a need for support. I've already explained why I don't think they suffered a loss as a result of the service review. I'm also satisfied overall they did receive sufficient support for them to make an informed decision. I note the time was extended for their decision too. So overall, I don't think there was a failure to provide sufficient support.

I do appreciate Mr and Mrs B's frustration with the service they've received. But overall, I'm not persuaded that there has been a clear failure of service or that BSCL needs to do anything further

I realise my conclusions will be disappointing to Mr and Mrs B and I understand why they feel BSCL ought to be responsible for the situation they find themselves in as a result of the transfer of their portfolio. But I'm satisfied that any losses they have experienced were not caused by something BSCL did or didn't do.

### **My final decision**

For the reasons I've given, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 30 December 2024.

Daniel Little  
**Ombudsman**