

The complaint

Mr I complains that abrdn Financial Planning and Advice Limited (“abrdn”) failed to switch his portfolio from abrdn Client Portfolio 2 (“portfolio 2”) to abrdn Client Portfolio 3 (“portfolio 3”) despite undertaking to do so, following his April 2022 review. As result he says he’s suffered a financial loss.

He’s also complaining about the (seven month) delay in receiving the review letter, as well as the way that his complaint was handled.

To put things right, he’d like compensation for losses claimed.

What happened

On 14 April 2022, Mr I had a review meeting with his adviser who I will refer to as Ms C. Unfortunately, the review letter wasn’t sent until 16 November 2022, shortly before she left abrdn.

Whilst the letter confirmed that Mr I’s agreed risk profile remained ‘low to medium’ (2 out of 6), Mr I says his recollection of the meeting is different. He has a handwritten note (written on an A4 envelope) which supports his case that Ms C recommended he increase his risk to a ‘medium’ (3 out of 6), by switching from portfolio 2 to portfolio 3.

At some point in November 2022 abrdn announced that Ms C was leaving the business and in due course Mr D took over as Mr I’s adviser.

On 12 April 2023, in a meeting with Mr D, Mr I discovered that that his portfolio remained invested in portfolio 2 and that it hadn’t been switched to portfolio 3. Unhappy with this discovery, Mr I formally complained to abrdn.

In a Final Response Letter (FRL) dated 15 September 2023, abrdn rejected the complaint, however it offered Mr I £250 compensation for any distress and inconvenience caused. Unhappy with abrdn’s response Mr I referred his complaint to our service.

One of our investigators considered the complaint and thought it should be upheld. In summary, he said:

- He’s no reason to doubt that Mr I’s handwritten note – written on an A4 envelope and dated 14 April 2022 – was taken during the meeting on that date.
- Despite Mr I’s note, the fact find and recommendation letter don’t make the same recommendation.
- There are several points of contradiction between what Mr I noted down and abrdn:
 - Both the fact find and review letter suggest that the agreed risk profile was ‘low to medium’ (2 out of 6).
 - Although the outcome of Mr I’s risk profile questionnaire suggests he was a ‘medium’ risk investor, it was agreed that this would be too high. The following was recorded in the fact find: *“Mr I completed the new ORRA questionnaire and came out as medium risk with a score of 3. However, through*

discussions and having spent time with Mr I over the last few years, this would be too high a risk for him and we agreed that based on his needs and objectives, that the level below this is more in keeping with his risk tolerance and capacity for loss and agreed to proceed with a risk group 2 low to moderate risk."

- In addition to this, the following was also recorded in the fact find in relation to expectation and returns: *"Performance expectations: We discussed what Mr I wanted to achieve in terms of returns. I explained that returns could never be guaranteed and that they would rise and fall. Mr I will rely on these funds for his retirement so he does not want to lose too much but understands that some risk must be taken to achieve the level of growth that he would like. He would be more worried about the downside than the upside which is why we agreed that risk level 2 is more suitable."*
- The November 2022 letter showed the following:
 - In Section 1, under 'Introduction' – there's no mention of a switch to portfolio 3. There's a partial fund switch recommended to move a tranche of Mr I's personal portfolio out of the existing portfolio funds into portfolio 2.
 - In Section 2, under 'Needs and objectives' – it states: *"you also want to continue investing in line with your agreed risk profile"*.
 - In Section 4, under 'Attitude to risk' – it states: *"...we agreed that you were comfortable taking a Low to Medium level of risk. This year you confirmed that your views on risk have not changed."* and *"...you will continue to invest at Level 2"*.
 - In Section 6, under 'Recommendation' – the tables clearly show that the recommendation is to invest in portfolio 2.
 - In section 7, under 'Investment strategy' – it's states: *"We recommend you continue to invest the majority of your Wrap savings in the abrdn Client Portfolio 2"*.
- Based on the above, it's clear that Ms C's recommendation was for Mr I to continue to invest in portfolio 2. Aside from Mr I's handwritten note (and what he says about it) there's no evidence to suggest that Ms C recommended he invest in portfolio 3.
- The recommendation letter confirmed Mr I's (formal) recommendation which wasn't to invest in portfolio 3.
- Mr I, in due course, accepted the recommendation without raising any issue.
- For the reasons set out above, this part of the complaint shouldn't succeed.
- It was unreasonable for abrdn to take (around) seven months to issue the recommendation letter. Its service level agreement ('SLA') is to issue the recommendation letter within two months (40 working days) of the review meeting with the customer.
- Despite what abrdn says, the reasons for the delay – namely eight action points which came out of the April 2022 meeting – doesn't justify the delay. The action points could've been carried out once the letter was sent. In other words, this wasn't a reason to delay sending the recommendation letter.
- The delay exceeded the SLA by five months which has – more likely than not – resulted in financial loss.
- The following was recommended in the letter:
 - Sell £20,000 of the M&G Strategic Corporate Bond fund within Mr I's personal portfolio and invest it in portfolio 2 within his ISA.
 - Sell £2,880 of the M&G Strategic Corporate Bond fund within his personal portfolio and invest it in portfolio 2 within his SIPP.
 - Switch approximately £115,837 of the funds held in his personal portfolio to portfolio .2
- Assuming the recommendation letter was provided within two months of the meeting, it's likely Mr I would've received it by 14 June 2022. Thereafter, allowing a

reasonable amount of time for the sale and purchase to conclude – namely five days – it's likely the switches would've happened on 22 June 2022 (rather than 1 December 2022).

- Based on the preliminary comparison – comparing what happened with what would've happened had Mr I actioned the recommendation sooner – it's clear that:
 - Portfolio 2 outperformed the M&G Strategic Corporate Bond from June 2022 to December 2022.
 - It's unclear as yet, how the other recommendations performed.
- For the reasons given above, this part of the complaint should succeed.
- Complaint handling isn't a regulated activity therefore isn't something that we'd consider on its own unless it's ancillary to a regulated activity which is not the case here. Put differently, Mr I's substantive complaint – failure to switch investments and delayed recommendation letter – isn't related to complaint handling.
- Nevertheless, abrdn offered Mr I £250 compensation for the delay in responding to his complaint. Which shows its willingness to resolve this complaint amicably.
- abrdn should put Mr I as close as possible in the position he would've been in, but for the delay in carrying out the switches.
- So, to put things right, abrdn should carry out the following calculations:
 - Note the number of units Mr I purchased in portfolio 2 in his ISA, personal portfolio, and SIPP on 1 December 2022.
 - Calculate the number of units Mr I would've purchased in portfolio 2 in his ISA, personal portfolio, and SIPP had the switches happened on 22 June 2022.
 - If there's a negative difference in respect of the ISA, personal pension and SIPP, abrdn should refund the requisite units in portfolio 3.
 - If Mr I has already utilised his ISA and SIPP allowances for the current tax year, abrdn should get in touch with Mr I to organise a suitable alternative.
- The £250 compensation offered is sufficient to compensate him for any distress and inconvenience caused.

Mr I disagreed with the investigator's view and asked for an ombudsman's decision. In summary, he made the following key points:

- He's very clear about the advice which he received (and accepted) from Ms C in April 2022, so has difficulty in accepting the investigator's view.
- The fact find is an internal business document and he has no idea about when it was prepared. However, it's at variance with what was agreed with Ms C.
- He has to accept that there's no corroborative (documentary) evidence which supports the handwritten note he made.
- There is however evidence from 24 November 2022 meeting, when Ms C confirmed how fortunate it was that he'd been moved to portfolio 3 that limited the overall loss to his portfolio. Ms C was happy about this, and he has no reason to think she'd say different now.
- How could risk level 2 be more suitable – as recorded in the fact find – when Ms C recommended portfolio 3?
- His written note of the meeting at the top right hand side makes reference to '£2880' - this was to make tax efficient use of his pension allowance. His note below confirms 'ISA use allowance', and there's a bracket which states portfolio 3. He agreed at the meeting to utilise his tax allowance with both his pension and ISA.
- There was no discussion in the April 2022 meeting that the funds would come from M&S Strategic Corporate Bond. There was also no mention of the switch in the sum of £115,837 which the investigator referred to. If this specific amount had been mentioned, he would've made a note of it.
- Mr D gave the exact same advice that Ms C gave a year earlier. Both advisers

- recommended portfolio 3.
- The review letter wasn't issued until 16 November 2022. He just received this when Ms C phoned to tell him that she was leaving. She asked him to bring the letter to their meeting on 24 November 2022 so that she could deal with it.
- Reference to portfolio 2 is an error on abrdn's part some seven months after the review took place.
- He's strongly of the view that abrdn failed to look after his financial interests.

The investigator having considered the additional points, wasn't persuaded to change his mind. In summary, he said:

- He'd like to contact Ms C to ask for her account of what happened at the April 2022 meeting, before the case is sent to an ombudsman for consideration.
- Mr I accepted the formal recommendation which was for a portfolio 2.
- The investigator upheld the complaint (on the basis of the delayed recommendation letter) and recommended it pay him £250 compensation for the distress and inconvenience caused.

In a response dated '15 February 2024' Mr I confirmed that he contacted Ms C and that a summary of her view was as follows:

- Ms C confirmed her recollection was to change Mr I to portfolio 3 following her recommendation and his agreement at the April 2022 meeting. Her rationale at the time was poor performance of equities, poor interest rates and inflation.
- She even recalled the coffee shop they were in, as well as the benefits of changing to portfolio 3 before her departure.
- Her view is that any reference to portfolio 2 is a clerical error by abrdn or as a result of the delay issuing the recommendation letter.
- She believed the fault lies with abrdn.
- The compensation should therefore cover this period, until abrdn sort this issue out.

In response to a request by our investigator to provide her own account, Ms C provided the following response:

- She'd spoken to Mr I and read the report and her notes (made back in 2022) but hasn't had access to this material since then.
- Having done so, she's satisfied that the agreed risk level was level 2 based on a number of factors clearly labelled in the fact find and documentation provided.
- At the review meeting in April 2022, in light of his risk profile, she would've discussed the advantages and disadvantages of portfolio 2 and portfolio 3.
- The report issued in November 2022 reflects what was documented in the fact find in terms of agreed risk, and the rationale for this. Mr I would've received this document, as well as quarterly statements from abrdn since the original meeting showing that he was portfolio 2.
- Any subsequent discussions around portfolio 3 could only have been a response to Mr I's belief that he was moved to portfolio 3, based on his note attached.
- She's taken Mr I at face value because this was two years ago. She wouldn't be able to recollect what portfolio each client was in at that time, having had no access to their documents since leaving abrdn.

In light of the above response from Ms C the investigator wasn't persuaded to change his mind. He's satisfied that the recommendation letter and fact find is an accurate reflection of the advice given in April 2022.

Mr I said he believes that the duty of care still rests with abrdn. He's disappointed that Ms C's response is different to the discussion he had with her.

As no agreement has been reached, the matter has been passed to me for review.

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.

Having done so, I agree with the investigator's conclusion for much the same reasons and I'm going to uphold this complaint accordingly.

On the face of the evidence, and on balance, despite what Mr I says I can't safely say that abrdn did anything wrong by not switching his investments from portfolio 2 to portfolio 3 following the April 2022 meeting, because I'm not persuaded that's what was agreed.

The above notwithstanding, I think the seven month delay in providing the recommendation letter (and actioning what was recommended in it) is unreasonable. On the face of the evidence, and on balance, I'm persuaded that the recommendations would've been carried out by 22 June

I uphold this complaint, in summary, for the following reasons:

There appear to be three main elements to this complaint which I will consider in turn.

The switch from portfolio 2 to portfolio 3

- On the face of the evidence, and on balance, despite what Mr I says, I'm not persuaded that he was advised and/or that it was agreed (at the April 2022 meeting) that he would switch his investments from portfolio 2 to portfolio 3. I haven't seen any evidence that persuades me that this was the case.
- The fact find – which is likely to have been completed at or around the time of the April 2022 meeting with Mr I – confirms that the agreed risk profile was low to medium which is '2 out of 6'. This is also confirmed in the recommendation letter which also explains why this level of risk was suitable for him rather than a medium risk. In addition to this documentary evidence, Ms C also confirmed that she's satisfied his level of risk was 2. In other words, she didn't support Mr I's contention that his handwritten notes were correct, and that the official business documents were incorrect.
- Mr I didn't object to the recommendation once it was received in November 2022. In other words, he went along with the recommendation without any objection, and would've received statements that would've made clear he was invested in portfolio 2.
- Despite what he says, I've seen no evidence that an administrative error was made by abrdn. Therefore, like the investigator, I'm also satisfied that the record in the fact find and recommendation letter is accurate.
- It's likely that Mr I's recollection of what was discussed at the meeting and agreed is inaccurate, and his ad-hoc handwritten notes aren't a true reflection of what happened.

The delay providing the suitability letter

- There's no doubt that there was a delay providing the recommendation letter –

between 14 April 2022 (when the meeting between Mr I and Ms C took place) and 16 November 2022 (when the recommendation letter was received).

- Despite what abrdn says, I don't think this period of delay is reasonable. Its explanation about why there was a delay doesn't justify why it couldn't have been done sooner. I'm mindful its SLA states 2 months from the date of the meeting, so it ought reasonably to have sent the letter by then at the latest. So, I agree with the investigator's suggestion as to when the letter ought to have been sent.
- On the face of the evidence, and on balance, I think the delay is likely to have had an impact on Mr I's investments, therefore I think abrdn should compensate him for any financial losses that occurred as a direct result of the delay.
- I agree with the investigator that had there not been this delay, the recommendation letter probably would've been received by 14 June 2022, and the various recommendations successfully actioned by 22 June 2022.
- So, to put things right abrdn should compare the value of the investments in December 2022, with the value had the changes been implemented by June 2022. If there's a negative difference (in terms of units) it should refund the number of units along with £250 compensation for the distress and inconvenience caused. I understand that abrdn isn't opposed to this methodology.
- Put differently, abrdn should do the following:
 - Compare the number units purchased in portfolio 2 – in Mr I's ISA, personal portfolio and SIPP – on 1 December 2022, with the number of units that could've been purchased in portfolio 2 – in his ISA, personal portfolio and SIPP – on 22 June 2022.
 - If there's a negative difference in the number of units, abrdn should refund the loss of units. If that's not possible, it should return the cash equivalent of buying the same number of units at today's price.

Complaint handling

Complaint handling isn't a regulated activity, therefore it's not something that I can consider a complaint about. An exception is if the complaint handling is ancillary to a regulated activity, but in this case given the nature of the complaint I'm not persuaded that it is.

Putting things right

To put things right, abrdn Financial Planning and Advice Limited should do the following:

- Compare the number units purchased in portfolio 2 – in Mr I's ISA, personal portfolio and SIPP – on 1 December 2022, with the number of units that could've been purchased in portfolio 2 – in his ISA, personal portfolio and SIPP – on 22 June 2022.
- If there's a negative difference in the number of units, abrdn should refund the loss of units. If that's not possible, it should return the cash equivalent of buying the same number of units at today's price.
- Pay £250 compensation for the distress and inconvenience caused.

My final decision

For the reasons set out above, I uphold this complaint.

To put things right, abrdn Financial Planning and Advice Limited should calculate and pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 6 December 2024.

Dara Islam
Ombudsman