

## The complaint

Mr Z complains that The Private Office Limited ('TPO') failed to follow his wishes when transferring part of the monies in his self-invested personal pension (SIPP) to a new provider.

Mr Z would now like TPO to recompense him for the investment losses he says he's suffered as a result of their error.

## What happened

In August 2022, Mr Z met with an adviser from TPO to discuss his retirement planning needs. Following the meeting, the adviser issued a suitability letter to Mr Z, setting out a number of recommendations to achieve his objectives. One of those recommendations was for a partial transfer from his existing SIPP that Mr Z held with a business that I shall call 'Firm A', to a new SIPP with InvestAcc.

Mr Z's SIPP with Firm A had a transfer value at the time of £191,650 and was invested in the following four funds:

- BlackRock Over 5 Year Index-Linked Gilt Index Tracker
- BlackRock Sterling Liquidity
- BlackRock 60:40 Global Equity Index Tracker
- BlackRock World ex-UK Equity Invest Tracker

TPO's adviser recommended Mr Z encash all of the monies in the first two funds which totalled c£166,000. As the Firm A pension was still receiving employer contributions, TPO also recommended that Mr Z should retain that plan and leave the latter two funds (that held a balance of c£25,000 between them) untouched to keep the plan open.

The following month, Mr Z signed the application form to switch £166,660.56 from Firm A to InvestAcc. However, no instruction was provided on the application form that those monies should only be taken from the first two funds. As a result, on 23 September 2022, Firm A sold units proportionately across all four funds in Mr Z's pension.

Firm A were planning to send the proceeds to InvestAcc on 29 September 2022. But, that same day, Mr Z, who was keeping an eye on the transfer via his online portal, spotted the error and contacted his adviser at TPO. TPO's adviser then telephoned Firm A to discuss the issue. The adviser then emailed Firm A asking them to pause the transfer to InvestAcc. In his email to them, TPO's adviser wrote: *"As a matter of urgency, can any transfer over to InvestAcc be postponed for the time being? In addition, if it is possible, please reinvest the cash into the two funds which should have been untouched and for the two funds which*

*should have been sold down fully, if there is anything remaining in them sell that down into cash as well in readiness for transfer”.*

On 3 October 2022, Firm A undertook a buy-back exercise, reinvesting the realised cash into the four funds. A week later, Firm A sold all the units held in the BlackRock Over 5 Year Index-Linked Gilt Index Tracker and BlackRock Sterling Liquidity funds, realising £122,962.73 which was then paid to InvestAcc on 12 October 2022.

Shortly afterwards, Mr Z decided to complain to Firm A; he was unhappy that they'd failed to execute the transfer as his adviser had originally intended. After considering Mr Z's complaint, Firm A didn't uphold his concerns. They said, in summary, that unless they're instructed otherwise, when they receive a partial transfer request monies are taken proportionately from all funds held within the plan. Firm A said that as TPO hadn't informed them that only two funds should be liquidated, they were satisfied they'd followed the correct course of action.

Firm A went on to say that had they received the correct initial request, they would have transferred the monies to InvestAcc on 29 September 2022, but because of the delays and the need to re-purchase and sell down units together with market fluctuations, the value of the funds that were eventually transferred, were less than Mr Z had originally hoped.

Mr Z was unhappy with Firm A's decision, so he asked this service to look into matters for him. That complaint was considered by one of our Investigators who felt that on balance, Firm A had acted reasonably in the approach they'd taken.

Unhappy with that outcome, Mr Z then decided to formally complain to TPO. In summary, he said that he was dissatisfied the Firm A transfer was carried out incorrectly which then resulted in a loss. After reviewing Mr Z's complaint, TPO concluded that whilst they'd not initially confirmed to Firm A that only two of the four funds were to be sold, they were satisfied that once they'd highlighted the error to Firm A, the approach that they'd asked them to follow to remedy matters, would've put Mr Z at a financial advantage. TPO said that in their view, it was Firm A who were liable for any remediation costs.

Mr Z was unhappy with TPO's response, so he referred his complaint to this service, this time about TPO. In summary, he said that he didn't feel either firm were taking ownership of the issue and he just wanted to be put back into the position that he would've been in were it not for TPO's original mistake. And Mr Z said he felt it was TPO's original mistake that was the catalyst for the losses that then followed, so it should be them that put things right for him.

The complaint was then considered by one of our Investigators. He concluded that TPO hadn't treated Mr Z fairly because whilst they'd acted promptly to pause the transfer when the error was spotted, because Firm A had already completed the sales of units from the four funds and then needed to complete a buy-back, matters had progressed too far before TPO's request was clarified.

TPO, however, disagreed with our Investigator's findings. In summary, they said that Firm A didn't have to undertake a buy-back exercise and could have simply bought back enough units in the BlackRock 60:40 Global Equity Index Tracker and BlackRock World ex-UK Equity Invest Tracker funds to rectify the issue. TPO went on to say that having spoken to Firm A, they were informed that *“cancelling the entire transaction results in reversing everything”*. And when TPO explained to Firm A during that call that they could've just re-purchased enough units in those two funds, TPO said that Firm A explained to them *“that is not the way [Firm A] do things”*. TPO concluded by stating that they found it unlikely that there was no other way to have resolved this issue other than via the buy-back method.

Our Investigator explained that in his opinion, the comments that Firm A had made to TPO during that discussion indicated to him that the buy-back approach was a commercial decision and in any event, he felt that Firm A's reasoning for undertaking a buyback wasn't unreasonable.

In conclusion, our Investigator explained that he was not persuaded to change his view as he didn't believe TPO had presented any new arguments he'd not already considered or responded to. Unhappy with that outcome, TPO then asked the Investigator to pass the case to an Ombudsman for a 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 have summarised this complaint in less detail than Mr Z has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts.

My role is to consider the evidence presented by Mr Z and TPO in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, I'm upholding Mr Z's complaint - I'll explain why below.

Having looked at the suitability report that TPO issued to Mr Z on 16 August 2022, it's clear the intention was for only part of his Firm A SIPP to be switched to InvestAcc. But, when the request to move Mr Z's monies was made to Firm A, TPO didn't set out any instructions to them about how that partial switch should be undertaken. So, whilst my decision is about the actions of TPO, I don't think Firm A acted unreasonably when they undertook a proportional sale across all of Mr Z's four funds to raise the monies that TPO had asked for.

TPO have explained they're of the view that the issue here is the way in which Firm A went about rectifying their initial switch instruction error. TPO say that they specifically requested Firm A remedy matters by selling down the rest of the funds that needed to be sold and then using available cash funds to repurchase those units that shouldn't have been sold down; instead, Firm A insisted on re-investing the entirety of the cash proceeds only to then sell down the two funds that needed to be sold down. TPO are of the view that had Firm A followed their instructions, there would have been no loss and Mr Z would in fact have been advantaged by their error.

But, Firm A were informed an error had occurred and were asked to set about putting things right for Mr Z. And, whilst TPO provided Firm A with a suggested approach, I've not seen anything to suggest that Firm A agreed to that methodology. Firm A say that when they're notified of a mistake and a transfer has to be cancelled, they normally reverse the transaction; that means, they unwind the steps that they've taken and try and put the customer back to a similar position (using the prevailing unit prices at that specific time).

Once that's complete, Firm A then undertake the transaction as it should have been. And, having thought about Firm A's approach, I don't think that they acted unreasonably. Whilst I agree that TPO's suggested approach would have resulted in fewer steps, Firm A's methodology wasn't incorrect or unsuitable and reached the same outcome of putting Mr Z into the correct fund position that he should've been in by only liquidating two of his four funds.

TPO has questioned whether Firm A met the requirements of the Consumer Duty in how they handled the transfer buy-back as they say that Firm A's actions could amount to foreseeable harm. I've taken the regulator's guidance into account when deciding what's a fair and reasonable outcome to the complaint. For the reasons already given, I'm not persuaded that Firm A's actions did amount to inappropriate conduct because their approach in trying to put things right for Mr Z wasn't, in my opinion, unreasonable.

So, for all of the reasons that I've set out above, I'm upholding Mr Z's complaint and I therefore require TPO to put things right for him.

### **Putting things right**

When mistakes occur, the aim of this service is to help ensure the consumer is placed as close as is reasonably possible into the same position that they would've been in were it not for the original error. TPO therefore needs to undertake a loss assessment to confirm if Mr Z has been financially disadvantaged by the mistake:

#### The two funds that should have been sold and the subsequent cash transfer to InvestAcc

1. Determine what amount would have transferred to Mr Z's InvestAcc SIPP on 29 September 2022 had the correct instruction been passed to Firm A on 11 September 2022.
2. Compare this amount to what was actually transferred on 12 October 2022.
3. The amount in (2) should be deducted from the amount in (1) to determine the loss.
4. The loss assessment must also consider what would have happened to those monies had they been correctly invested in the InvestAcc SIPP when the transfer should have originally taken place until the point that they actually are.
5. The redress, if any, should then be paid into Mr Z's InvestAcc SIPP. The payment should allow for the effect of charges and any available tax relief. The redress shouldn't be paid into the plan if it would conflict with existing protection or allowances.
6. If a payment into the InvestAcc SIPP isn't possible, then it should be paid directly to Mr Z as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.
7. If Mr Z has any remaining tax-free cash entitlement, 25% of the loss would be tax free and 75% would have been taxed according to his likely income tax rate in retirement, presumed to be 20%. So, making a notional reduction of 15% overall from the loss adequately reflects this.

#### The two funds that TPO advised Mr Z retain with Firm A:

1. TPO must also check to ensure whether Mr Z has suffered a loss on the monies which

were earmarked to stay with Firm A (the BlackRock 60:40 Global Equity Index Tracker and BlackRock World ex-UK Equity Invest Tracker funds) but were partially encashed in error.

2. TPO should use 23 September 2022 as the date the monies were disinvested and 3 October 2022 as the date the monies were re-purchased. The loss assessment must also determine what investment growth, if any, Mr Z would have benefited from on his monies during the window within which they weren't invested.
3. The redress, if any, should then be paid into Mr Z's Firm A SIPP. The payment should allow for the effect of charges and any available tax relief. The redress shouldn't be paid into the plan if it would conflict with existing protection or allowances.
4. If a payment into the Firm A SIPP isn't possible, then it should be paid directly to Mr Z as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.
5. If Mr Z has any remaining tax-free cash entitlement, 25% of the loss would be tax free and 75% would have been taxed according to his likely income tax rate in retirement, presumed to be 20%. So, making a notional reduction of 15% overall from the loss adequately reflects this.

#### Trouble and upset

Having carefully considered matters, there's no doubt that Mr Z has been inconvenienced whilst trying to resolve this matter. I'm therefore of the view that TPO must pay Mr Z £150 for the trouble their error has caused him.

I'm satisfied that the above approach is fair and reasonable in all of the circumstances of this specific case.

#### **My final decision**

I'm upholding Mr Z's complaint and require The Private Office Limited to put things right for him the manner that I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 3 June 2025.

Simon Fox  
**Ombudsman**