DRN-5197940

The complaint

Mr O and Mrs O complain that Evelyn Partners Investment Management Services Limited ('Evelyn') transferred shares out of their ISAs without giving them the opportunity to replace the ISA funds.

What happened

Mr O and Mrs O had stocks and shares ISAs with Evelyn. One of the investments they held in their ISAs was a holding of shares in a company I'll call 'S'.

In November 2021 it was announced that shares in S would no longer be eligible to be held in stocks and shares ISAs. Evelyn didn't communicate with Mr O and Mrs O about that at the time. And neither Evelyn nor Mr O and Mrs O took any action in relation to the shares.

Later Mr O and Mrs O decided to transfer their ISAs elsewhere. At that point Evelyn became aware the holdings of S shares shouldn't have been in the ISAs. Again Evelyn didn't communicate with Mr O and Mrs O about that. It simply removed the S shares from their ISAs. By the time Mr O and Mrs O became aware of this, it was too late for them to add funds to their ISAs to replace the shares that had been removed.

Mr O and Mrs O complained to Evelyn. They said the following:

- Evelyn didn't tell them their shares were no longer eligible to be held in an ISA, despite knowing that in 2021.
- Evelyn didn't contact them to give them the opportunity to sell down and replace the shares with ISA eligible investments.
- Because of these things Mr O and Mrs O incurred increased costs, including a capital gains tax (CGT) liability after a combined amount of USD 144,396.20 was no longer in their ISAs.

Evelyn investigated and found it hadn't acted fairly. So it upheld Mr O and Mrs O's complaint. In summary it said the following:

- Evelyn was aware in late 2021 that shares in S became ineligible to be held in an ISA. It should've made Mr O and Mrs O aware of that.
- By not making them aware Evelyn caused Mr O and Mrs O to miss out on the opportunity to make arrangements to retain their funds in an ISA wrapper after the shares in S were moved out.
- Since these events Mr O and Mrs O had retained their S shares in a non-ISA account.
- To put things right for Mr and Mrs S Evelyn would assess the impact of the funds no longer benefitting from the tax advantages of an ISA wrapper. Evelyn followed

guidance from this service and made the following assumptions:

    - Mr O and Mrs O would pay CGT on their shares at the highest rate applicable to them which was 20%.
    - Their CGT position would remain unchanged for as long as they held the shares.
    - Their shares would increase in value by 7.5% per year.
    - The shares would be held for 10 years before they were sold.

- The combined loss to Mr O and Mrs O was £15,982.24. This was on the basis that the total CGT charge if their shares were sold after 10 years would be £32,939.92. but because Evelyn was paying compensation in advance it discounted the compensation by the assumed annual growth rate of 7.5%.
- Evelyn also offered a combined £400 for distress and inconvenience.

Mr O and Mrs O weren't satisfied with Evelyn's response. So they referred their complaint to this service.

This service asked Mr O and Mrs O what they would've done if Evelyn had told them when it should have that its shares in S were no longer eligible to be held in an ISA. Mr O and Mrs O said they would have taken the shares in S out of the ISA and transferred into the ISA other shares they held in a GIA. They said they had no intention to sell the shares in S.

One of our Investigators looked into Mr O and Mrs O's complaint. She agreed Evelyn hadn't acted fairly, but she took a different view about how to put things right. In summary she said the following:

- It was unfair and unreasonable for Evelyn to remove Mr O and Mrs O's shares in S from their ISAs rather than give them the opportunity to sell the shares and keep their funds in their ISAs.
- Had Evelyn not done that Mr O and Mrs O would likely have sold the shares in S and rebought them outside their ISAs, and replaced the shares in the ISA with ISA-eligible shares. That meant that even if the error hadn't happened the shares would've been held outside the ISA and they would've been subject to capital gains tax if they were sold.
- Due to the error Mr O and Mrs O had lost ISA status for a combined total of USD 144,396.20.
- Mr O and Mrs O wanted Evelyn to refund all the fees they'd paid it. But that wouldn't be fair because they'd received services from Evelyn and it was fair they should pay for those services.
- It also wouldn't be fair for Evelyn to pay the cost of advice Mr and Mrs R received from their new provider because their shares were sold before the transfer to the new provider.
- This service doesn't consider compensation for the time and effort of raising a complaint.

- To put things right for Mr O and Mrs O the investigator recommended Evelyn should do the following:

    - Reimburse Mr O and Mrs O £1,500 for the cost of seeking advice from their accountants, if they provided an invoice and bank statement showing they'd paid that fee to the accountant. And pay 8% simple interest on that amount.

    - Pay Mr O and Mrs O a combined total of £600 for distress and inconvenience. Payments such as this were modest amounts based on the circumstances of the complaint and the impact it had on the complainant.

    - Using the benchmark for a medium risk fund calculate the growth based on £144,396.20 between 2021 (when the funds were no longer ISA eligible) to the date of settlement with no tax deducted.

Evelyn partly agreed with the investigator's view, but suggested a change to the recommended redress calculation. It said the following:

- The investigator had said Mr O and Mrs O had always intended to retain their shares in S even after they became ISA ineligible and on that basis would have sold the shares in December 2021 whilst they remained in the ISA and repurchased an ISA eligible alternative with the proceeds. And they would've used savings to purchase shares in S in a general investment account outside their ISAs. Evelyn understood the logic behind the investigator saying that on that basis no compensation should be paid for the capital gains tax implications of the S shares.

- Compensation for lost investment growth should be reduced by any interest Mr O and Mrs O have earned on the savings they would've used to buy the replacement investment in their ISA. In light of that a rate of 5% per annum simple would be reasonable instead of the high risk benchmark the investigator had suggested.

Mr O and Mrs O didn't agree with the investigator's view and they also didn't agree with Evelyn's proposed amendment to the investigator's recommendation. In summary they said the following:

- The high risk benchmark was the correct benchmark. They didn't agree with Evelyn's suggestion to reduce the rate to 5%.

- Evelyn should also pay the amount it had offered them for an increase to their capital gains tax liability.

- Evelyn should also pay the £600 recommended by the investigator for distress and inconvenience.

- Instead of providing a calculation the ombudsman's final decision should set out the total compensation as a monetary amount in USD converted to GBP using the conversion rate from the date Evelyn moved the shares from Mr O and Mrs O's ISAs.

Because no agreement could be reached, this complaint was passed to me to review afresh and make a decision.

I issued a provisional decision in which I said I was minded to uphold the complaint. I said I intended to require Evelyn to pay Mr O and Mrs O £600 for distress and inconvenience, and an amount that represented the likely tax liability they would incur in the future by losing ISA protection for a proportion of their investments.

Evelyn accepted my provisional decision. Mr O and Mrs O said the following:

- Compensation for their tax liability on future investment returns should be calculated using a high-risk investment benchmark. Mr O and Mrs O had only ever used high-risk investments. The securities they held and could've used to add to their ISAs had grown in value by about 800% since December 2021.

- They wanted to know what the calculated amount would be and the timeframe in which Evelyn would be required to pay the compensation.

- The view that Mr O and Mrs O shouldn't be refunded the fee for services they paid to Evelyn didn't acknowledge that Mr O and Mrs O didn't receive services for a proportion of their invested wealth because they were paying to have their investments held in an ISA and they didn't receive that service. Mr O and Mrs O should be reimbursed for at least some of the fee they paid for the service.

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'm upholding the complaint and requiring Evelyn to compensate Mr O and Mrs O for missing out on replacing funds in their ISAs by paying the capital gains tax liability that this will have caused them. I'm also requiring Evelyn to pay Mr O and Mrs O £600 for distress and inconvenience, and the cost of relevant advice from their tax accountant if they can evidence that in an itemised invoice from their accountant showing the cost of advice which was directly necessitated by Evelyn's error. I'll explain below why I've reached these conclusions.

The purpose of this decision is to set out my findings on what's fair and reasonable, and explain my reasons for reaching those findings, not to offer a point-by-point response to every submission made by the parties to the complaint. And so, while I've considered all the submissions by both parties, I've focussed here on the points I believe to be key to my decision on what's fair and reasonable in the circumstances.

Evelyn has accepted it caused Mr O and Mrs O to miss the opportunity of moving funds into their ISAs to replace the funds that were transferred out when their shares had to be removed from their ISAs. Evelyn has acknowledged that it was at fault in doing this and it should compensate Mr O and Mrs O for missing out on replacing the funds that were taken from their ISAs. So the question I've considered is what has been the impact of this on Mr O and Mrs O and what Evelyn must do to put that right.

I accept that – if it had been possible - Mr O and Mrs O would've taken steps which would have resulted in the shares, in effect, transferring from their ISAs to their non-ISA account in return for cash being transferred into their ISAs. Put another way, I accept they would've arranged things so that they could both keep the shares and retain the full amount of ISA protection they had accumulated. Evelyn appears to accept this too.

Having reviewed the communications between Mr O and Mrs O and this service I've seen they said a number of times that they would've used investments in their general investment account (GIA) to replace the shares that had to be removed from their ISAs. That means the investments they could've had in their ISAs must instead remain in their GIA. Those investments are therefore not protected from tax in the way they would've been if they'd been held in Mr O and Mrs O's ISAs. So I've concluded that the impact of Evelyn's mistake on Mr O and Mrs O includes that they're likely to be liable for paying tax on those

investments when they otherwise wouldn't have been. So I think Evelyn was right to offer to compensate them for that, and I intend to make an award requiring that to be done.

Having said that, I don't fully agree with the methodology proposed by Evelyn. The suggestion that the amount payable should be discounted by 7.5% due to the fact the payment is being made in advance isn't in line with the approach this service usually takes in circumstances such as these. And I don't think it would be fair in this case. The calculation this service usually specifies to compensate for future liability for capital gains tax is a broad brush estimate, based on assumptions. The assumptions include how long the customers will hold their investments – it could well be that they hold them for longer and so incur a higher tax liability than I have assumed. And the calculation is based on current tax rates and allowances which might well be different in future. So in this case I don't think it's fair to reduce the compensation on the basis that it's being paid in advance.

I understand Mr O and Mrs O would like me to provide a monetary figure for the compensation Evelyn must pay. But it's standard practice for this service to require the business to calculate the actual amount in circumstances like these. The award I'm making includes the assumptions that Evelyn must use to ensure the calculation is done in a way that's fair and reasonable. I haven't calculated the amount of compensation Evelyn will need to pay and I can't comment on whether calculations Mr O and Mrs O have done are correct – the amount will depend on their respective tax positions. Mr O and Mrs O and Evelyn should ensure Evelyn knows what tax rate currently applies to Mr O and Mrs O.

I can't conclude that any compensation is required for lost investment growth. That's because Mr O and Mrs O have said the funds they would've used to replace what was taken from their ISAs would've come from their GIA. That indicates to me that the funds were already invested. And even if they weren't, Evelyn's error didn't prevent those funds from being invested in a GIA.

I should also point out to Mr O and Mrs O that if I'd agreed Evelyn had to compensate them for lost investment growth on savings (which I haven't), then I couldn't also require Evelyn to pay them for the capital gains tax they'll have to pay on the investments in their GIA that they would've moved into their ISAs. That's because the compensation I award must be based on putting Mr O and Mrs O in the position they would've been in if Evelyn hadn't made any mistakes. If Evelyn hadn't made any mistakes, Mr O and Mrs O could've used their GIA investments to replace the shares that were taken out of their ISAs. Or they could've used savings to replace the shares that were taken out of their ISAs. But they couldn't have done both. My decision has been based on my understanding that they would've used investments from their GIA to re-fill their ISAs, and they wouldn't have used cash savings.

I do find that Mr O and Mrs O suffered distress and inconvenience. Their financial planning was disrupted. They faced a loss of ISA protection which they'd built up over a number of years. And the amount in question was a significant amount. I consider that the £600 recommended by our investigator is a reasonable acknowledgement of the distress and inconvenience that was brought about by these circumstances.

I understand why Mr O and Mrs O feel they should be refunded the fees they paid for Evelyn's service. They say they missed out on receiving the core benefit of the service which was to have their investments held in a tax efficient manner. However, the impact of that failure was that Mr O and Mrs O incurred a likely future tax liability. And I'm making an award to put that right by requiring Evelyn to pay Mr O and Mrs O the amount of tax liability they're likely to incur. I'm also requiring Evelyn to pay Mr O and Mrs O an amount for the distress and inconvenience they suffered. By putting these things right Evelyn will put Mr O and Mrs O as near as possible to the situation they would've been in if Evelyn hadn't made any errors. Mr O and Mrs O will effectively have used Evelyn's services. And I haven't seen that

there's any additional impact on Mr O and Mrs O that would be put right by reimbursing the fees they paid.

Mr O and Mrs O have questioned whether the method I proposed for calculating compensation will adequately compensate them for the tax they're likely to incur on the investments they missed out on adding to their ISAs. They mentioned a particular a very high growth rate achieved by their taxable investments over a particular recent timeframe. It's not possible to use an actual return for calculating compensation in this case because the return they're likely to pay tax on is an assumed future return. Historic performance isn't a guarantee of future performance. And we're looking over a long timescale here. So, I'm not persuaded to depart from the usual approach of this service which is to assume an annual investment return of 7.5%.

Putting things right

To put things right for Mr O and Mrs O Evelyn Partners Investment Management Services Limited must do the following:

(1) Calculate and pay Mr O and Mrs O the amount of capital gains tax they're likely to pay on the investments they would've used to replace the shares taken from their ISAs. The calculation must use the following assumptions:

   a. Any charges on holding the investment outside the ISA will not be significantly different from those that would have applied if it had been held within an ISA.

   b. Mr O and Mrs O will hold the investments for a period of 10 years from date their shares were removed from their ISAs.

   c. The tax position of the investment will remain unchanged for the period they hold it.

   d. Mr O and Mrs O will pay tax on the investment at the tax rate applicable to each of them.

   e. Their tax position will remain unchanged for the period of 10 years.

   f. The investment will return 7.5% compounded per year.

   g. When calculating the amount that would've been required to replace the shares that were taken from the ISA, the date of any exchange rate required should be the rate that applied on the date the shares were taken from the ISA.

(2) Pay Mr O and Mrs O a combined total of £600 for the distress and inconvenience caused.

(3) Pay Mr O and Mrs O the amount they paid for any relevant advice from their tax accountant if they give evidence to Evelyn in the form of an itemised invoice from their accountant showing the cost of advice which was directly necessitated by Evelyn's error.

My final decision

For the reasons I've set out above, my final decision is that I uphold the complaint. Evelyn Partners Investment Management Services Limited must take the steps and pay the amounts set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O and Mrs O to accept or reject my decision before 7 July 2025.

Lucinda Puls
Ombudsman