

The complaint

Mr M complains that Phoenix Wealth Services Limited, trading as Phoenix Wealth ('PW'), failed to correctly action the quarterly trades on his pension policy. Mr M would now like PW to recompense his pension for the lost investment growth potential he says he's missed out on by the monies being sat in cash.

Mr M is represented by his financial adviser in this complaint but for simplicity, I'll refer to all submissions, where possible, as having come from Mr M.

What happened

Mr M held a Retirement Wealth Account with PW that was invested in a risk-rated non-discretionary model portfolio that was subject to quarterly reviews. At those reviews, the underlying assets would be rebalanced if necessary. On 21 May 2020, Mr M's adviser sent a re-balancing instruction to PW that included the following wording: *"the 2% cash referred to in each summary reflects the overall asset allocation per each model portfolio investment. It does not infer or instruct you to invest any of the funds currently allocated to the SIPP cash account. These are to remain untouched for now"*.

After a number of email exchanges, a new instruction was sent to PW on 22 May 2020. Various investments were listed, setting out what percentages of the portfolio they should make up. The instruction also stated for 2% to be placed into cash. Mr M's adviser again set out: *"please do not reinvest any of the cash currently held in the SIPP cash account"*.

The next set of rebalancing instructions were sent to PW on 10 November 2020 and 15 February 2021. Both had the same instructions as before about placing 2% into cash and to not invest any of the monies allocated to the SIPP cash account. On 16 February 2021, a telephone call took place between PW and Mr M's adviser, where the trade instructions were verified and during that conversation, confirmation was given that cash wasn't to be included.

Further rebalancing instructions were provided to PW on 20 May 2021, 16 August 2021, 19 November 2021, 8 March 2022, 18 May 2022, 10 August 2022, 22 November 2022, 22 February 2023 and 25 May 2023. Again, those instructions provided the same direction about the 2% cash allocation and not to invest any of the funds that were currently held in the SIPP cash account.

Mr M's adviser started liquidating his holdings in August 2023 and then the following month, he transferred the monies away to a new provider. In May 2024, Mr M's financial adviser raised a complaint on his behalf with PW after reviewing his transaction and performance history. In summary, he said that Mr M's pension should have grown by c6.8% or c£24,600 but that hadn't happened as, in his opinion, PW had failed to properly execute the quarterly trades. He went on to say that whilst some cash should have been ringfenced, additional cash had been accumulated with each instruction.

After reviewing Mr M's complaint, PW concluded they were satisfied they'd done nothing wrong. They also said, in summary, that based upon the instructions provided, they understood that all cash within the pension was specifically excluded from the rebalance. PW went on to say that all of the cash held within each sub account was held collectively so that meant the whole cash balance was excluded when the rebalance was processed.

Mr M's adviser explained that his intention was to only exclude the original cash balance of approximately £350,000 from the alterations but with each rebalance, an additional 2% was added to the cash each quarter, reducing the overall amount invested.

Mr M was unhappy with PW's response, so he referred his complaint to this service. In summary, he said that PW had a duty to clarify any instructions that they considered ambiguous by contacting either himself or his financial adviser before executing any of the rebalance requests. Mr M went on to say that he's concerned how he'll go on to fund outgoings in later life.

The complaint was then considered by one of our Investigators. He concluded that PW hadn't treated Mr M unfairly because from what he'd seen, the instructions provided by his financial adviser weren't unclear. He went on to say that he'd seen no reference from Mr M or his adviser specifically asking that only £350,000 in cash was to be excluded.

Mr M, however, disagreed with our Investigator's findings. In summary, he said that they were never told that ringfencing cash balances would be problematic. Mr M also said that PW's systems don't provide any access to transactional history, making it very challenging for both him and his adviser to reliably reconcile any infringements or errors when executing orders.

Our Investigator was not persuaded to change his view as he didn't believe Mr M had presented any new arguments he'd not already considered or responded to. Unhappy with that outcome, Mr M 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 M 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 M and PW 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 not upholding Mr M's complaint and it's largely for the same reasons as our Investigator - I'll explain why below.

The crux of this complaint is whether Mr M's initial instruction about what he wanted PW to do with his cash was clear or not. Mr M's instructions stated that PW should exclude the cash in the pension from the rebalance, and as a result, they excluded all of the cash that was held in the wrapper. However, Mr M has now explained that that his intention was for PW to only exclude £350,000 that was sat in a sub-account, so part of his cash. But, following each quarterly re-balance instruction, PW then added an additional 2% to that, reducing the amount of assets invested. Mr M has said that PW had a duty to clarify any instructions that they considered ambiguous by contacting either himself or his financial adviser before executing any of the rebalance requests. However, PW have said that they rely on the instructions that they receive at the time and will only ever query them if they have any reason to believe they're unclear at the time of processing. PW say they're firmly of the view the instructions weren't unclear and that they actioned them as directed – and I agree.

The instructions state that PW shouldn't invest any of the funds currently allocated to the SIPP cash account – and from what I've seen they didn't. As each new rebalancing request came in, that meant more of Mr M's monies were building up in cash. Whilst Mr M may be of the view that PW should have clarified matters with him, I don't think they needed to do because the instruction isn't, in my opinion, vague or unclear. Having looked closely at PW's terms and conditions, it seems clear to me that whilst PW are obligated to check with the adviser if any instruction is unclear (which as I've already said in my opinion, they weren't), it's also the adviser's responsibility to ensure that they check the contract notes match the instructions provided. Page 15 of PW's terms state: *"It is the responsibility of Your Financial Adviser/ Investment Deals Manager to ensure that the contract note details correctly match the trading instructions given"*. Whilst I've not seen any evidence to confirm that PW did issue contract notes, Mr M's adviser did have access to PW's online portal.

Mr M's adviser has stated that PW's portal was challenging to decipher because they didn't provide any access to transactional history, making it difficult for both him and Mr M to reliably reconcile any infringements or errors when executing orders. But, in his complaint to PW, Mr M's adviser submitted a detailed spreadsheet demonstrating the running balance of the SIPP cash account to his risk-based assets over a five-year window; so it would seem that this information was available if sought out. And, from what PW have stated, advisers are able to see their respective customers' cash balances within their portal at any time. But, whether that information was readily available online to Mr M's adviser or not, is largely immaterial because if it was challenging to source, I'm satisfied that PW would've happily provided transaction level reporting by post as they did for Mr M in their letter to him of 13 February 2024.

From what I've seen, the misdirected cash issue wasn't spotted for over three years, and it was only identified after Mr M had moved his account elsewhere. But, I can't conclude that PW have treated Mr M unfairly, that's because had Mr M or his adviser paused at any point during that three year window and checked to ensure that PW were interpreting any of the 10 plus quarterly instructions they'd sent in as intended, I'm satisfied on balance, that the issue would've surfaced far sooner, allowing the misunderstanding to be rectified. It was PW's responsibility to execute the orders asked of them, and from what I've seen, they did but I can't reasonably conclude that the instructions provided to PW were vague or ambiguous – and it's for that reason I'm satisfied PW have correctly actioned the requests that were presented to them.

My final decision

I'm not upholding Mr M's complaint and as such, I won't be instructing Phoenix Wealth Services Limited, trading as Phoenix Wealth, to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 May 2025.

Simon Fox
Ombudsman