

The complaint

Mr and Mrs C's complaint against Evelyn Partners Investment Management LLP ("Evelyn Partners") is about the management of their investment portfolios.

What happened

Mr and Mrs C contacted Evelyn Partners in November 2020 for advice on managing their assets. Evelyn Partners presented an investment proposal which explained that they would manage Mr and Mrs C's portfolios together as one combined mandate and on a discretionary basis. The proposal included an illustrative portfolio which was based on what was described as medium risk (or 'C1') investment strategy.

Mr and Mrs C accepted the proposal and invested a total of £2.1m of assets with Evelyn Partners in 2021. They each opened a personal investment portfolio (combined value of £764,000), which was deposited in several tranches between February and October 2021. Mr C also set up a SIPP portfolio in May 2021 and transferred in £1.3million over a period of a few weeks.

Evelyn Partners invested Mr and Mrs C's funds and sent them regular statements showing how they were invested and the value of their portfolios. Mr and Mrs C raised a concern with their adviser (Mr S) in 2022 that their personal portfolios had underperformed Mr C's SIPP as well as a relevant benchmark. They sought an explanation for the difference in performance because they understood that the portfolios were being managed as a combined mandate. It was ultimately explained to Mr and Mrs C that the difference in performance was due to how the UK equities part of their portfolios was invested – their personal portfolios were mostly invested in a selection of collective funds while Mr C's SIPP was invested directly in individual companies.

Mr and Mrs C formally complained to Evelyn Partners in January 2024 that their investments had not been managed in line with the combined mandate they had agreed. Evelyn Partners didn't uphold the complaint. They said:

- Mr and Mrs C provided Evelyn Partners with a discretionary mandate to make investment decisions on their behalf within their three portfolios.
- Mr S explained at the outset that he would use a different asset allocation within Mr C's SIPP to Mr and Mrs C's personal portfolios, whilst maintaining the agreed investment strategy.
- They did not feel compensation was warranted but noted that Mr S had suggested waiving six months of management fees as a gesture of goodwill and changing the investment approach in Mr and Mrs C's personal portfolios to align more closely with the SIPP.

Mr and Mrs C remained unhappy and brought their complaint to our service. They said they had agreed with Evelyn Partners that the three portfolios would be run on a combined mandate basis and not doing so had caused the performance differentials. They hadn't

agreed that their personal portfolios would be run slightly differently or hold collective funds instead of individual shares.

Our investigator didn't think Evelyn Partners had done anything wrong and decided not to uphold the complaint. She said, in summary:

- She could only consider whether Evelyn Partners invested Mr and Mrs C's portfolios in the way they said they would and dealt with any issues at the time they were raised.
- She thought Evelyn Partners had communicated with Mr and Mrs C in a way that was clear, fair and not misleading and had complied with the terms of their agreement. She said Evelyn Partners had done what they said they would.
- The valuations of their personal portfolios that Mr and Mrs C received in March 2021 made clear that the two portfolios would be managed as one and showed that the UK equities holdings included some collective funds.
- Mr C received an email from Mr S on 20 May 2021 about his SIPP which said that the only difference in portfolio construction was that it would invest in direct equities for the UK equity allocation. Mr C responded positively to that email and although he said he thought it was simply another email confirming that the SIPP cash had been successfully transferred, it was reasonable for Evelyn Partners to have taken it as confirmation that he didn't oppose their investment strategy.

Mr and Mrs C didn't accept our investigator's findings and asked for an ombudsman to make a final decision. They said, in summary:

- Evelyn Partners were supposed to be managing all their portfolios as a combined mandate (akin to one single pot with common risk, common investment and common performance) and have not done so. That was the plan in their original proposal document in December 2020 and was confirmed in an email dated 20 January 2021 from Mr S.
- Evelyn Partners have not to their knowledge disputed their understanding of what a combined mandate means. At some point Evelyn Partners have changed the strategy from combined management to separate management of the SIPP and personal portfolios. They did not inform Mr and Mrs C of that in advance. They don't know when that change took place, but the pots were all up by about 4% at the end of 2021 which suggests that any change of approach was made after that.
- We should consider if the presentation and promotional material provided by Evelyn Partners met the relevant requirements.
- They disagree that the 20 May 2021 email from Mr S to Mr C communicated anything about changing the original mandate. The main purpose of that email was to confirm receipt of Mr C's SIPP funds. There was no reference to changing the combined mandate approach and if Evelyn Partners were planning to change to separate management, they should have communicated that in advance and not after the event. In any event that email was addressed to Mr C as it was about SIPP matters and no communication was made with Mrs C who holds the larger share of the private money.

- They alerted Evelyn Partners to the divergence in performance between the portfolios in May 2022 and again in June and December 2023. They could not have done more. Evelyn Partners only reacted after Mr and Mrs C said they proposed to escalate the matter.
- They cannot accept Evelyn Partners' proposal now to change the investment approach on the personal portfolios. That would mean them accepting that the losses already incurred would never be recovered.

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 would like to reassure both parties that I have looked at all the information they have submitted. The background I have provided above is a summary of this complaint. I have set things out in less detail than Mr and Mrs C have done, and at times I've done so using my own words. I have concentrated my findings on what I consider to be the key factors in reaching a fair and reasonable outcome to this complaint. 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 it and it simply reflects the informal nature of our service as a free alternative to the courts.

It is not in dispute that Mr and Mrs C's portfolios were to be managed on a discretionary basis, at medium risk, and with what was described as a combined mandate. It seems to me the crux of this complaint is what that meant and whether Evelyn Partners have acted in line with what was agreed with Mr and Mrs C.

Mr and Mrs C say they understood the combined mandate to mean that their three portfolios would share common investments, a common risk profile and common outcomes. I can't be sure what was said in discussions between the two parties, but I think the documents from the time are most likely an accurate reflection of what was agreed.

I've looked at the proposal document and illustrative portfolio that Evelyn Partners presented to Mr and Mrs C in December 2020. I note the following:

- It said that Mr and Mrs C were looking to appoint an investment manager to manage their assets on a discretionary basis.
- It said, *"We have discussed establishing an investment portfolio for each of you, though we propose to manage the portfolios together as one combined mandate."*
- The proposal said, *"Any example portfolio is for illustration purposes only.... Examples of specific stocks or funds are included solely to illustrate the investment process and strategies which may be utilised by the Investment Manager. Please note these investments are not necessarily representative of future investments that the Investment Manager will make."*
- The illustrative portfolio was based on an initial investment of £1.6 million and a 'medium risk' investment strategy, with 55% of the portfolio invested in equities. The proposal explained that was for illustrative purposes only and was provided to give an indication of what a typical portfolio might look like.

- The illustrative portfolio allocated 25% of assets to UK equities. The UK equity holdings shown were all individual companies except for one smaller companies investment trust (which represented 3% of the total portfolio). The accompanying text said: “For a portfolio of this size, we would typically invest in the shares of individual UK companies.”

I’ve also looked at the application forms Mr and Mrs C completed for each of the three portfolios. It was clear from each form that the portfolios were going to be managed on a discretionary basis. In line with the accompanying terms and conditions, the forms said:

“We will have full and complete discretion to make decisions to buy, sell, retain, exchange or otherwise deal with, or exercise rights in the Assets of the Portfolio without prior reference to you.”

The forms for Mr and Mrs C’s personal portfolios included an instruction that they should be managed in conjunction with each other. The SIPP application form was left blank in the section headed ‘managed in conjunction’.

I’ve also seen an email of 20 January 2021 from Mr S to Mr C, following Mr and Mrs C’s agreement to go ahead and invest with Evelyn Partners. Referring initially to Mr and Mrs C’s personal portfolios, Mr S said:

- *“We will set these accounts up such that the monies are managed as one combined ‘pot’. We will also ensure that you have authority over one another’s affairs in the event that you wish to make transfers from either account. As and when [Mr S’s colleague] provides guidance on the SIPP set-up, we will add that to the combined mandate too.”*

As I’ve said, I think the key point in determining this complaint is what was meant by combined mandate. It’s clear from the documents that the three portfolios would be managed with the same attitude to risk and broadly the same spread of investments across different asset classes. It was also clear from the application forms that Mr and Mrs C’s personal portfolios would be managed in conjunction with each other. But, based on the points I’ve noted above, I’m not persuaded that it was agreed that the three portfolios would be invested in identical assets and therefore be expected to perform in exactly the same way.

I think Evelyn Partner’s proposal document made sufficiently clear that the example portfolio was for illustrative purposes only and was not necessarily representative of future investments for Mr and Mrs C’s portfolios. It did say that for a larger portfolio Evelyn Partners would typically invest in the shares of individual UK companies. But I don’t think that precluded them, given their discretionary mandate, from investing also in collective funds - just as the illustrative portfolio did not mean they would stick rigidly to the percentages in different asset classes at all times.

I’ve seen copies of the various valuation reports that Evelyn Partners sent to Mr and Mrs C. From these, I think it’s clear that Mr and Mrs C’s personal portfolios were invested in collective UK equity funds from the start. I accept that Mr and Mrs C would not necessarily be expected to read the valuation reports in detail, but the reports are evidence that the portfolios were invested in collective funds from the outset.

Overall, I don’t think I can fairly say that Evelyn Partners did anything wrong by investing in the way they did. I think their investment decisions were in line with the risk level and indicative asset allocation agreed with Mr and Mrs C. Their decision to invest directly in

equities in Mr C's SIPP, which had a higher value, and in collective funds in the personal portfolios was reasonable in view of the discretionary mandate they had.

With reference Mr S's email to Mr C of 20 May 2021, I don't think that was communicating a change from what had been previously agreed. Rather, it explained how the UK equities element of the SIPP would be invested differently to the personal portfolios. I think that difference was explained clearly in a relatively short email, and it was not unreasonable for Mr S to think that Mr C might have said something if it was not what he expected.

Mr and Mrs C have said we should consider if the presentation and other material provided by Evelyn Partners met the relevant regulatory requirements. I have considered this point, but I think the material provided by Evelyn Partners was clear, fair and not misleading. Their proposal provided information on Mr and Mrs C's requirements and how they would construct an investment portfolio – including the level of risk and spread across different asset classes. It didn't say that all three portfolios would invest in exactly the same assets, and I don't think that was necessarily implied by referring to a common mandate.

Mr and Mrs C have said they alerted Evelyn Partners to the divergence in performance between the portfolios in May 2022 and again in June and December 2023 and that Evelyn Partners only reacted after Mr and Mrs C said they proposed to escalate the matter. As I've already discussed, Evelyn Partners provided regular valuations of Mr and Mrs C's portfolios, which showed how they were invested. After Mr and Mrs C queried the difference in performance, Evelyn Partners provided an explanation and offered to change how the personal portfolios were invested – although making clear that was not their recommendation. I think their actions have been reasonable in the circumstances.

Mr and Mrs C pointed out that the SIPP quarterly reports referred to a "specialist strategy" having been agreed with them. I agree that this was most likely a reference to the fact that Evelyn Partners had agreed to manage Mr and Mrs C's portfolios to a common mandate. But as I've already found, I'm not persuaded that meant the portfolios would necessarily invest in exactly the same assets.

Mr and Mrs C have said that in emails going back to May 2021 Evelyn Partners said the portfolios were intended to perform similarly and only latterly, when forced to acknowledge the scale of the discrepancy, they regretted that they had not. I don't think it was unreasonable for Evelyn Partners to say they would expect the portfolios to perform similarly as they had broadly similar asset allocations. But that was not a guarantee, and in the event, the portfolios have performed differently because of decisions taken by Evelyn Partners acting in their discretionary capacity and which I don't think were unreasonable.

I appreciate that Mr and Mrs C feel strongly about what has happened and that this will be a disappointing decision for them. But I don't think that Evelyn Partners have done anything wrong or acted unreasonably and so I won't be upholding this complaint.

My final decision

For the reasons given, I don't uphold Mr and Mrs C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 21 May 2025.

Matthew Young
Ombudsman