

The complaint

Mr B has complained that Budge and Company Limited ('Budge') failed to recognise that a gold purchase on his account hadn't completed as it should have done. Mr B says if he now bought the same amount of gold he intended to buy, it would cost him between £250,000 and £300,000 more.

What happened

Mr B had a Self-Invested Personal Pension ('SIPP') for which Budge provided financial advice. I shall refer to the SIPP provider as 'Business S' in my decision.

In 2013 Mr B wanted to invest in gold within his SIPP, which Budge couldn't advise on or administer, but for Mr B to carry out transactions in gold orders Budge contacted Business S who told of a third party who was a gold broker and could assist. Mr B would deal directly with that business and deal online. I shall refer to the gold broker as 'Business G' in my decision. Mr B successfully carried out a £250,000 gold investment.

Mr B wanted to carry out a second transaction in 2016 and £200,000 was transferred to Business G. But Mr B didn't carry out the trade until 2018 and later found out in November 2022 that he had only invested £200 and the balance of £199,800 had been held in a non-interest-bearing account in the meantime. While Mr B accepted he made the trading error, he questioned why Budge didn't notice the intended 2016 trade hadn't been carried out or the subsequent trading error and raised a complaint with Budge.

Budge didn't uphold Mr B's complaint in its letter of 14 April 2023 or its final response on 27 November 2023. It said;

- It only had access to valuations with Business S which only showed the value of the Business G account. It had no direct access to Business G's account and couldn't trade on it.
- Only Mr B could carry out the trades and it was Mr B who made the error by only investing £200 rather than £200,000.
- The value of the Business G account wasn't queried in October 2018 – a query was raised with Business S about an incorrectly input valuation from Business G and a new valuation was produced.
- It had told Mr B it had seen the £200,000 in his account in 2018, but Mr B confirmed he had gone online to make the purchase.
- It wasn't until November 2022 that the trading error was recognised, and this was the first time Budge was aware of it.
- Mr B knew Budge didn't have control over the Business G account and Budge was unable to advise or administer on that type of investment.

Unhappy with the outcome, Mr B brought his complaint to the Financial Ombudsman Service, but Budge thought the complaint had been made too late under the rules that apply. A fellow ombudsman looked at the jurisdiction of the complaint and decided this service

could consider the events complained about after 25 October 2017, so Mr B's complaint about the £200,000 remaining uninvested from October 2017 to April 2018 and that the error in the incorrect amount invested wasn't identified.

Our investigator who went on to consider the complaint didn't think Budge needed to do anything more. She said;

- She was satisfied the access Budge had to Mr B's account with Business G was limited to Business S' valuations but not a breakdown of Mr B's holdings within the account.
- In March 2018 Budge confirmed to Mr B the price of the gold purchased in 2013 but said the £200,000 credited in November 2016 was still uninvested. When asked about this further Mr B later confirmed to Budge, he had purchased the gold on 3 April 2018.
- In February 2019 Business S confirmed it wasn't able to obtain the quantity purchased but confirmed the price of gold on 3 April 2018 and manually worked out how much Mr B would have bought if he had invested £200,000. But Mr B had been emailed on 3 April 2018 by Business G confirming an investment of £200 so the amount had been made clear to him.
- Budge didn't have access to Business G's account and was reliant on Business S for any information about it. It was Mr B who had direct access. Budge hadn't fallen short in its communication with Mr B, and the investigator couldn't fairly say that Budge was responsible for not spotting the error earlier.

Mr B didn't agree. He said;

- The booklet from Business S about the Business G account said the adviser would be able to view the holdings and further, a 2013 email from Budge confirmed it would have access to the account for valuation purposes.
- A recent email he received from Business G said financial advisers would be able to view balances and transactions on the account.
- Budge would have seen the cash sitting on the account every time they did a valuation report, and he referred to a February 2019 email with Budge which referenced £200,000 being invested.

Mr B's response didn't change the investigator's opinion so Mr B requested that his complaint be decided by an ombudsman and provided a submission for my 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.

After doing so, I've reached the same conclusions as the investigator and broadly for the same reasons. I'll explain why.

As referred to above, I am only considering Mr B's complaint about the £200,000 remaining uninvested between October 2017 to when it was invested in April in 2018, and recognition of the incorrect amount being invested in April 2018. But where relevant, I have referred to earlier dates if I consider I need to reference them in reaching my findings.

What access did Budge have to Mr B's Business G account

Mr B has said that Budge should have recognised the £200,000 cash he held on his Business G account since 2016 hadn't been invested in gold as he intended. So, I've looked at the background to the cash being in the Business G account and whether Budge had an awareness or should reasonably have had an awareness about it remaining uninvested from October 2017 onwards.

Its common ground that Budge couldn't advise on, trade in gold or administer the account so after contacting Business S it was informed of a third party who could assist Mr B. I've reviewed the 'Investing in gold bullion within your Active Money SIPP' document as provided by Business S. I note that says;

'[Business S] will update the value monthly on your SIPP holding. The value displayed will include the value of the gold held in your holdings plus any cash'

And with reference to what Mr B's financial adviser would see it said;

'If you asked your financial adviser to set up your [Business G] holding for your, they will be able to review your holding. They cannot trade on your behalf though. Only you can make trades.'

I can see that Mr B contacted Business G in March 2013, the account was opened, and he successfully went ahead with his first investment of £250,000.

Mr B has argued that Budge would have seen the £200,000 cash added in 2016 showing on his Business G account and so should have alerted him. In support of this he has provided an email of 24 April 2024 he received from Business G which says;

'...I can confirm the Financial Adviser would be able to view the balance and transactions on your [Business G account].'

And Mr B has provided a copy of his account as of 1 April 2018 which shows the gold held, cash balance, asset movements and transaction statement.

However, further to the above message from Business G, Budge told us it had contacted the business to establish on what basis it had concluded that Budge could view transactions, and I can see it responded to say its answer to Mr B 'was based on information provided by [Business S].'

But Budge has provided sample valuations of the valuations it obtained from Business S, via its adviser portal – the 'Adviser Zone' – of Mr B's SIPP as of 21 March 2018 and 5 November 2018 (amongst other examples) – so before and after the second gold purchase – to evidence what it had sight of. I can see the information it provides is limited to the monetary valuation of the SIPP, Mr B's external deposit bank accounts and a 'Miscellaneous Investment' of the Business G account which shows a value of £422,199.72 and £423,722.14 respectively. There's no breakdown of the gold and/or cash held within the account, so from the information presented I'm persuaded that what Budge is telling us about its visibility of the Business G account is more likely correct. And this does tie in with what was said in Active Money SIPP document that the amount 'displayed' on the valuation would include both cash and gold.

And Budge has also provided a copy of the 'Payments Out' statements it received from Business S and these only refer to income payouts and not any changes to capital amounts so it couldn't have identified whether funds were used to trade, or otherwise. And again, referring back to the 'Investing in gold bullion within your Active Money SIPP' document, it says that if the customer asked for their financial adviser to set up their Business G account,

the financial adviser would be able to review the holding. But we know that Budge didn't set up the account as Budge didn't advise on gold. Mr B did that direct with Business G and because of that, the access Budge had to Mr B's account was limited to the valuations etc it received from Business S via its portal.

I've looked at whether Mr B was aware of the limited access Budge had to his account with Business G. With regard to the account opening, I can see an email of 6 March 2013 sent to Mr B by Budge which said;

'You will have a cash account with [Business G] and when the set-up is complete [Business S] will transfer £250K from the SIPP bank account to the [Business G] account. Once that's done [Business G] send you a welcome pack with login details and you can then go online and trade immediately as and when you like 24 hours a day. This allows you to use the full £250K all in one go or to buy gold in stages. **We get access to the account for valuation purposes** and I did ask if we could trade for you as we can deposit for investments and collective funds, but that's not possible for this asset class. That [may] be just as well if the price of gold drops drastically at 3.00am and you needed to call me to make a purchase!!' (my emphasis)

So, I'm satisfied the access Budge had to Mr B's Business G account was limited to valuations only via the Business S platform. And it was Business S who would update the valuation of the Business G account. And from the evidence presented to me I am also satisfied those valuations were limited to the monetary value of the account and didn't show the cash and/or gold as separate assets, only a total of the two. And the above also persuades me that Mr B was sufficiently made aware of this during the account opening process.

Failure to identify the cash on account from October 2017 to April 2018 and failure to identify the subsequent underinvestment from April 2018

As already concluded, I'm persuaded Budge didn't have access to Mr B's Business G account so wasn't aware of the breakdown in assets, but the fact the £200,000 remained uninvested became clear in 2018. Mr B had a meeting with Budge on 21 March 2018. The meeting note says;

'Also, during the meeting [Mr B] asked if we had information regarding the amounts of gold bullion purchased through his [Business G] account in 2013 and 2016. I told [Mr B] that we had no direct access to the [Business G] account as it is managed by him and I was sure they would not release information to us over the telephone, but we may be able to get information regarding the **prices** via [Business S] as the plan administrator/trustee.

I told [Mr B] that I would ask our admin team to take the matter up with [Business S] and get back to him once we receive their reply.' (my emphasis)

Further to the above Business S contacted Business G on Budge's behalf to find out the gold prices on 7 March 2013 and 22 November 2016 – Mr B's two supposed trade dates – and it was at this point it became clear Mr B's second intended purchase hadn't completed. Budge's file note of 29 March 2018 said;

'...I telephoned [Mr B] to say that the money transferred was still in the cash account and he has not instructed the purchase of the Gold. He instructed me to make the purchase of the Gold on his behalf but I said we could not do this as we did not have

access to the [Business G] account and I would look into the procedures and get back to him.'

Further to the above, Budge email Mr B on 29 March 2018 and said;

'In the meantime I've looked back through my emails around the time and found this one below that I sent on 6th March 2013 [as already referred to above]. This does confirm that [Business G] won't let us operate the account for you and that they were sending you a pack with account and login details which I guess arrived the next day given the purchase date of 7th March 2013.

In theory therefore you should be able to log on at [online address] and make further purchases as and when required and you may want to try that first. However I'm more than happy if you still want to come in here on Tuesday...'

So, Mr B was to log on to make the investment or could visit Budge's offices if he needed additional support. And I can see Budge chased Mr B about this in its email of 4 April 2018 Budge;

'I was just wondering if you managed to get sorted out with [Business G] yesterday and if you made the purchase?
...'

Mr B responded on the same day to say;

'Thanks for your email – it is very helpful. I did do the business with [Business G] yesterday, and so we are now all straight.'

But we now know that Mr B didn't invest £200,000. He mistakenly only invested £200 despite him being sent an email from Business G on 3 April 2018 confirming;

'Your Buy Order has been Processed

'Your order to buy 6.480gg for GBP 200.00 has now been processed and has been credited to your Holding.

To view the details of this order, please log into your Holding and select Transactions from your Dashboard...'

And the 'Holding Overview' – 'Completed Transactions' on Mr B's account with Business G show a completed buy order of 3 April 2018 for 6.480 gold grams with a currency equivalent of £200.

Again, Mr B says that Budge should have recognised this error sooner that it did. That only came about much later in November 2022. But prior to that I note there was a meeting held on 8 February 2019 where Budge reminded Mr B of the gold position and that he could check his Business G account. The meeting note says;

'The other query revolved around the [Business G] account where [Mr B] has made two purchases via his online account in March 2013 and April 2018.

I reminded [Mr B] that we don't have access to the account and that he operates this online.

I reminded [Mr B] that we looked at this about 12 months ago and had provided him with details of the 2013 transaction but at that time discovered that the cash transfer by [Business S] to [Business G] from the SIPP bank account was at that time still sitting in cash and after I had pointed this out to [Mr B], he confirmed that he had gone online and made the purchase.'

Contract notes and confirmation of purchase would have been sent to him directly by [Business G].

I reminded [Mr B] that if he logged onto his account, he should be able to see this information but I would ask our admin team to try and obtain details from [Business S] as this would not be something we would have on file.'

But its unlikely Mr B did check his account as Business G sent a message to Mr B's Business G account regarding the large cash balance on 16 February 2022 and then sent an email to Business S on 15 November 2022 asking for assistance with contacting him. Further to this Business S contacted Budge on 17 November 2022 as;

'We have tried on several occasions to contact our mutual client regarding the large cash balance he currently holds in his [Business G] since transferring the funds in 2016.

Although a small metal buy order was placed in 2018 none of the remaining funds have been used to purchase metal.

Please could you try and contact the client to see if this was his intention and clarify that [Business G] will not return funds, which have not been used to purchase metal.'

As a result of this a meeting was held at Budge's office on 23 November 2022 and after seeing a copy of the April 2018 contract note it established that only £200 had been invested.

But as I have already concluded, it was Mr B who was responsible for trading on his Business G account, and it was Mr B that received the confirmation details of the trade he did carry out. Budge didn't have access to the account and only received the overall valuation of the account via Business S' financial adviser portal. So, I can't see it would have been possible for Budge to have known any earlier than it did either about Mr B's initial failure to invest in 2016 of the subsequent incorrect trade in 2018.

I appreciate Mr B argues this should have been recognised sooner and particularly when he asked about the values in 2019. Further to a recent meeting Budge emailed Mr B on 12 February 2019 and with regard to the gold trades it said;

'As far as the investment in the [Business G] account is concerned, according to my file the first purchase was made on 7/3/2013 and you invested £250K which bought 7,305.167 goldgrams equivalent to 234.867 oz. The second purchase was made on 3/4/2018 and the investment was £200K but you made that deal online so I don't currently have details of the amount of gold purchased. However I have asked ... admin to find this out and will get back to you on this.'

I can see from Budge a file note of the same date with regard to the gold;

'I eventually received a response from [Business S] but they were unable to give me details of the quantity purchased and the price in ounces but can confirm the price per gold gram on 3 April 2018 was £30.711.'

This was followed up by Budge in an email to Mr B of 14 February 2019;

‘Just to follow up and finish off on my last email, I can confirm that the investment of £200K on 3/4/2018 purchased 6,612.32 grams of gold. The equivalent to Troy Ounces is 209.37595 and I trust this is in order.’

So, while I can understand why Mr B may have been comforted that the trade had taken place – as per the details given in the above email – I’ve also considered the basis of previous valuations provided to him. And because of that I’m satisfied that Mr B was likely aware that Budge provided its valuations of the gold on a best endeavours basis. It should also be borne in mind that Budge wasn’t aware Mr B had only invested £200 rather than £200,000.

I say this because its already known Budge couldn’t access Mr B’s account with Business G so didn’t have access to details of any trades carried out – prices and amount purchased etc. And I also note further to a conversation on 21 March 2018 Budge emailed Mr B with regard to ‘Gold prices’;

‘Just to let you know we don’t have the prices you paid for each tranche of gold on file and [Business S] don’t keep a record so they are obtaining the information from [Business G] and will email it to us. They tell us it will take about a week to come through but as soon as it does myself or [a colleague] will get the details to you.’

Business S provided the prices as of 7 March 2013 on 29 March 2018 (and it was the email from Business G that highlighted the £200,000 remained in cash). Budge then emailed Mr B on 4 April 2018;

‘... Also I’ve looked again at the email I was sent about the 2013 purchase it doesn’t give the price per goldgram. However it does tell me that there are 31.1034 goldgrams in a troy ounce and if the price per ounce was \$1,580.5 I therefore calculate that the price per goldgram was \$50.81 (\$1,580.5 divided by 31.1034 = \$50.81).

I checked this calculation using the price in £’s and it works back more or less to the original purchase price.’

So, the only previous ad hoc valuation Mr B had received from Budge about the value of his gold holding was clearly calculated manually by Budge and based on the prices it received from Business S. Because of this, while I do think Budge could have potentially been clearer in that particular email – I don’t think it is unreasonable for Mr B to have realised that the second valuation was to be on the same basis. Afterall Budge had said again it didn’t have access to the prices but would obtain them from Business S.

And Mr B had been informed at the outset and on several subsequent occasions by Budge that it couldn’t access his Business G account – it was only Mr B that could do that. I can’t see that Mr B was ever told otherwise or given any reason for him to have reasonably concluded this wasn’t the case. Mr B could have accessed his Business G account at any time to get updated valuations. But Mr B chose to be reliant upon Budge who had made clear it didn’t have access to Mr B’s gold account, trades or prices and who in turn was reliant upon information provided by Business S.

While Budge could have been clearer about the basis for its calculation of 14 February 2019, I think there was sufficient alternative information that should have made Mr B aware it was only an estimate – the basis of the previous valuation he had received and him being

advised that Budge couldn't access his gold account. Mr B has said it is the availability of information that is critical to his case and if the lack of information was an issue, Budge should have done something about it. But I'm persuaded it was clear from the outset of Mr B's relationship with Business G that the relationship was with him and Budge was limited in what it had access to. That was always the basis of the relationship, and I haven't seen anything that I think would cause Mr B to conclude otherwise.

So, it follows that I don't think Budge was wrong in not identifying the lack of investment of the £200,000 after October 2017 and prior to March 2018 as I don't see it had the knowledge or had the ability to do so. And my conclusions are the same for the underinvestment of the trade carried out by Mr B in 2018. It was Mr B who carried out the trade and received the trade confirmation from Business G, and it was Mr B who confirmed to Budge that the trade had been carried out. So, I don't agree it would be fair and reasonable for me to conclude that Budge should have realised Mr B had only invested £200 rather than £200,000. I can't see how it was in the position to have done so.

Breach of Budge's duty of care

Mr B has said that Budge didn't fulfil its duty of care which meant it was legally obligated to act in its clients' best interests and provide advice with reasonable skill, care, and diligence. However, I don't agree with Mr B.

I say this because I am satisfied that Budge was transparent with Mr B about what information it was able to access about Mr B's gold positions from the outset. That was via Business S' adviser portal – the valuations for which didn't split out gold and cash – and from Mr B himself. It was Mr B who had the relationship with Business G and not Budge. And I don't think Budge had the knowledge or the tools available to it to recognise that anything had gone wrong – either with the initial retention of cash or the subsequent error in the April 2018 trade. And I don't think it could be expected that Budge could have been foreseen that there was an error in the April 2018 trade. That would be an unreasonable expectation particularly as Mr B had confirmed he had carried out the trade and Budge was reliant on that confirmation.

I do acknowledge the information Mr B received from Budge in February 2019 reinforced his opinion about the trade that he had carried out in April 2018. But on balance, I think there was sufficient other indicators for Mr B to have recognised Budge was making the calculation on a best endeavours basis as per the previous calculation and by Budge making Mr B aware it didn't have access to the gold prices, transactions and valuations etc. And it has to be remembered that Mr B had already been advised of the actual trade he carried out by Business G in 2018.

I'm satisfied that Budge did provide assistance to Mr B. In November 2022 it offered for him to access his Business G account at its offices where his financial adviser would be on hand. It provided Business G's processes for Mr B to follow when making the purchase and followed this up with Mr B to ensure he had carried out the transaction.

While Budge could have been clearer with regard to the February 2019 valuation, overall, I haven't seen sufficient evidence that Budge did anything wrong or failed in its duty of care to Mr B. So, it follows that I don't uphold Mr B's complaint. I appreciate the outcome to the complaint will be disappointing to Mr B. He understandably feels strongly about it, and I'd like to thank him for the time and effort he has spent in bringing his complaint. But I hope I have been able to explain how and why I have reached the conclusion that I have.

My final decision

For the reasons given, I don't uphold Mr B's complaint about Budge and Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 25 July 2025.

Catherine Langley
Ombudsman