

The complaint

Mr B complains that Chase de Vere Independent Financial Advisers limited (Chase) didn't give suitable advice or properly administer his investments or its relationship with him.

Mr B, as a 'Protected Individual', is represented by his Court appointed Deputy.

What happened

Mr B was in an accident which sadly left him with life changing injuries which led to him receiving a personal injury compensation payment. As Mr B wasn't expected to be able to work again because of the accident he engaged with a firm, Nestor Partnership LLP (Nestor), to seek advice on how to invest his compensation payment to meet his needs now and in the future. Chase had since taken over that firm and is responsible for the advice that firm gave. For ease then, any reference to Chase includes that firm.

In the course of that advice, Chase recommended he invest £800,000 in a portfolio which included holdings in the 7IM Personal Injury Fund (PIF).

Recently a new Deputy was appointed for Mr B, who when reviewing his financial matters had concerns that Mr B's invested compensation wasn't going to last as long as he'd need it to. Following that discovery a complaint was raised with Chase. In summary the points of complaint were:

- The initial advice was unsuitable.
- The ongoing advice was also unsuitable, particularly in light of PIF's performance.
- Chase's involvement and payments received for its 'consultation' work in the creation of PIF amounted to an unfair conflict of interest.
- The suitability and merits of withdrawals from the portfolio hadn't been considered or documented.
- That tax allowances hadn't been properly utilised.

Chase considered the complaint but didn't agree it should be upheld. In summary it said this was because:

- The charges applied to Mr B's investments had been fully disclosed.
- Withdrawals have significantly reduced the amount invested and consequently how long the portfolio could provide for Mr B's needs, which the firm had warned Mr B about.
- Despite those withdrawals, the portfolio had grown reasonably for a profile at this risk level and had outperformed cash savings rates.
- Due to performance of the wider bond market since 2022 Mr B's portfolio did incur some unexpected losses for his risk level, those factors being outside of Chase's control.
- It had utilised Mr B's tax allowances where possible.

Due to some of the matters in this complaint potentially being out of time, our jurisdiction was first considered. An Ombudsman issued a decision finding that the parts around the initial

advice in 2011 and all reviews prior to September 2017 were out of time, but we could consider the advice given after that.

The complaint was then returned to one of our Investigators to consider the merits of, but they didn't uphold it. In summary this was because:

- There was no requirement to provide ongoing advice until September 2018, as there was no arrangement or agreement to do so prior to this.
- All the annual reviews since then had been carried out.
- The charges were disclosed and were fairly applied.
- There was no evidence Chase mismanaged the portfolio.
- The withdrawals were a matter between Mr B and his Deputy at that time.
- Chase had explained on several occasions that the rate of withdrawals were unsustainable.

Responding to our Investigator to disagree with the outcome reached, Mr B's Deputy said:

- Chase had a conflict of interest which led it to continue to recommend PIF, and ought to have been advised to invest in a fund without such a conflict.
- The proportion invested in PIF hadn't been demonstrated to have been suitable.
- His portfolio failed to perform above its respective benchmark over the long term and the merits of remaining invested in PIF weren't explained.

Our Investigator issued a further view which addressed Mr B's Deputy's further comments as well as his opinion on the suitability of a further investment of £75,000 in 2020. His comments were largely that the 2020 advice was suitable, no guarantee had been made about the performance of the portfolio, and Chase wasn't responsible for the management of the funds.

As an agreement wasn't reached the complaint was passed to me to decide. Some aspects of Mr B's complaint hadn't been fully addressed, in particular around the conflict of interest. I issued some initial thoughts on the complaint to Mr B and his Deputy to ensure they had some explanation around that and to provide an opportunity to respond to that before any decision was made. I haven't seen a need to first issue a provisional decision given all parts of the complaint have been addressed by our 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.

Firstly, I'd like to acknowledge the significance of the impact of the issues Mr B has complained of. He's clearly in a vulnerable and difficult position, which the outcome of this complaint will have an important impact on his future. The importance of my decision to him isn't lost on me, but for me to direct Chase to compensate him in this matter I would need to see persuasive evidence that the firm failed to meet its obligations towards him, and those failings caused him a detriment, such as financial loss, that the firm needs to put right.

The submissions provided to me are lengthy and detailed and I'd like to assure the parties I've read them, and all the evidence provided to me, in full. I may not comment on every argument and point put to me as I'll instead focus on what I consider to be most pertinent in explaining the reasons for my decision.

And having given careful thought to this matter, I won't be upholding it as I've not seen persuasive evidence Chase failed to meet its obligations to Mr B. I'll explain why.

The issues complained of around the ongoing advice have generally been focused on the inclusion of PIF in Mr B's investments, what his Deputy considers to be poor performance since, and the lack of documentation around the ongoing advice.

When giving advice to Mr B, Chase needed to ensure the recommendations it was making were suitable for him, and had sufficient information about his objectives, knowledge and experience of investing and his circumstances to do so.

The initial advice, of which I make no finding to the suitability of given that's out of time as explained above, was for Mr B to invest £800,000 taking a low level of risk to meet his income and capital needs over the short, medium and long term. Initially the amount to be invested was around £1.4m but this was later reduced to £800,000 following Mr B's decision to purchase a property.

Because Mr B's accident was expected to prevent him from working again his injury settlement was likely to be needed to last for his lifetime, supplementing the state benefits he was receiving. From the outset Chase warned that even with the initial expected investment of £1.4m there was a longevity risk for Mr B's portfolio. That meaning Chase thought it was likely he would exhaust the capital and growth earned on it within his lifetime while he still had need for those funds. This warning was repeated throughout Mr B's relationship with Chase.

Chase's initial recommendation was to invest that money across two funds, the PIF and the 7IM APP Balanced Fund (APP) on around an 80/20 basis. The documentation for PIF said that it was designed to be a useful option for those in receipt of personal injury settlements to invest for their future. And it broadly aimed to do this by focusing on assets that provide lower volatility and lower risk such as government and corporate bonds, with a small equity component. Whereas the APP had a higher exposure to higher risk assets such as equities compared to the PIF but still held a proportion of lower risk assets such as bonds. The overall aim of this portfolio was to attempt to provide some growth to maintain it around inflation and savings taking little risk and keeping volatility low.

Looking at how the portfolio evolved overtime from the information that is available, it remained largely similar until 2020, which I'll come to. In my view the portfolio allocation Chase recommended from 2017, when this complaint is in time from, to 2020 was suitable for him. I say this because:

- It met his objectives to take little risk and volatility exposure to provide some capital growth over the long term.
- The asset allocation was in line with that "cautious" attitude to risk.
- He had previous experience of exposure to the markets, through the same funds.
- There weren't any significant new circumstances from year to year which required Chase to review the allocation it was recommending to Mr B.

I don't have all the evidence I would like to see here such as the fact-finds from each review, but copies of the review letters have been provided. I've also taken into account in later advice what Chase already knew about Mr B and what the overall evidence likely portrays Mr B's situation and needs to have been. Mr B's Deputy is right that such documentation should be available and it's unclear to me why it isn't, but that doesn't on itself mean the complaint should be upheld. I will consider the overall information about what Chase knew about Mr B and from that whether I think it's likely it advised him suitably or not.

In my view the review letters provided to me do sufficiently evidence that detailed discussions were carried out when Chase advised Mr B, and it's likely regardless of the means it asked the sort of things I would expect it to. I say this because those letters include comment on whether or not there were changes in Mr B's circumstances, reviewing the value of his investments and changes around that, discussions around withdrawals, risk and ISA subscriptions. I'm satisfied then while not all documentation around it has been provided, Chase had enough information to review the suitability of Mr B's investments for him.

I've also not seen the underlying funds risk profile, or asset exposure, changed in such a way it caused them to no longer be suitable for Mr B. It follows then I'm satisfied the advice and how Chase's recommended to continue with the existing implementation was suitable in meeting his needs.

In 2020 Mr B invested a further £50,000 which Chase recommended be invested in a different fund, the Close Diversified Income Portfolio Inc fund (DIP). The suitability letter from the time explains Chase recommended this because Mr B wanted to invest some cash for the longer term, aiming to retain the purchasing power in a tax efficient manner. His attitude to risk remained "Cautious", which at the time Chase defined as:

"A Cautious investor may be sensitive to short-term losses. Your potential aversion to losses could compel you to shift into a more stable environment if significant short-term losses occur. Analysing the risk-return choices available, a Cautious investor is usually willing to accept somewhat lower returns in order to assure greater safety of your investment."

The DIP fund invested around half of its holdings in corporate bonds, a quarter in "alternatives" with the remainder in equities and cash. It targeted income and growth through some exposure assets with higher yields, taking more risk than PIF and APP aimed for. On the face of it such a fund on its own, or in large proportion, might likely expose Mr B to more risk that would be suitable for him. But I've considered that Chase advised it thinking about Mr B's portfolio as a whole, which DIP would only make up around 9.5% of. His portfolio following this advice would be consisting of:

- AAP – 48%
- PIF – 40.5%
- DIP – 9.5%
- Cash – 2%

Taking the overall balance into account and Mr B's "Cautious" risk attitude, I'm satisfied this portfolio was in line with his risk tolerance, met his objectives and was within his knowledge and experience of investing. I've also not seen anything within his circumstances that meant this strategy was unsuitable for him given as a whole it aimed to target growth above inflation against a low risk and volatility mandate in a way which was already familiar to him.

It follows then I'm satisfied the advice Chase gave Mr B to invest in the way it did, since 2017, was suitable for him.

I appreciate Mr B's Deputy has their concerns about the branding and targeting of PIF being for personal injury compensation investments and I have read her concerns in full. But on balance they don't persuade me those comments would mean PIF was an unsuitable investment to recommend. In my view it was structured to keep volatility low but still aim to

provide the required growth to meet the objectives of those investing over the long term, which was a suitable approach for Mr B in the proportions Chase recommended since 2017.

Concern has also been raised by Mr B's Deputy that Nestor, prior to Chase taking it over, was involved with the creation of PIF, and that it recommended Mr B continue to retain it because of payments the firm received from the fund manager. That arrangement has since ceased with Chase confirming those payments ceased. I've seen a copy of Nestor's conflict of interest policy as it was in 2014, and while I can't know for sure I think it's likely indicative of what it had in place when it advised Mr B since 2017. I'm satisfied this shows Nestor had arrangements in place to identify conflicts, understand the different types of conflicts that may arise and had in place a recording system for that. Given the passage of time since Nestor received those payments, further information isn't available about whether it considered its arrangement with PIF's fund manager a conflict of interest. And if so, how it recorded and managed that. But even so, I'm satisfied Mr B hasn't been detrimented by this arrangement even if there was a conflict and that wasn't being properly managed.

I say this because the conflicts of interest policy under a section headed "Remuneration" contains a statement that it may receive benefit from other parties from recommending their products, or from working with such a product provider or firm. And importantly in those circumstances, which I think Nestor's relationship with PIF would include, it says the firm will communicate the arrangement in question to its clients before carrying out that transaction.

To that, PIF's factsheet from the time of the initial advice in 2011 discloses that Nestor "have designed the fund's objectives and act as consultants to the fund". Nestor's Investment Report for Mr B from 2011 also discloses the consultation arrangement it has with PIF in several places. This includes additional detail that its role was, "to advise on the required risk/return profile for personal injury award investors, taking into account the methodology for calculating personal injury damages awards. We also assist the investment management team with regard to the relevant changes to the calculation of personal injury damages derived from case law and legislative amendments". In the costs and charges section it also explained that the normal annual management charge for PIF was 1%, but due to Nestor's arrangement with the fund manager, it received a discounted fee of 0.75% instead, of which 0.25% would be paid to Nestor for its work in that arrangement.

In my view then while arguably there is a conflict of interest I'm satisfied that was clearly disclosed to Mr B, and he also received benefit for Nestor's arrangement with the PIF in discounted fees and its impact and influence on that fund. While it's possible this arrangement incentivised Nestor, as it was then, to advise Mr B to remain invested in PIF, I'm satisfied there were enough other reasons for it to recommend PIF to Mr B, and that it was a suitable recommendation for it to make to Mr B for the reasons explained above.

Much has been said about the performance of Mr B's portfolio, and how that could've been improved if Chase advised he switch to other funds. When thinking about this I can't overlook that Mr B's capital withdrawals from the portfolio were higher than they were expected to be, amounting to £682,782 over the life of the portfolio, and Chase had already provided numerous warnings about the long term prospects of the portfolio being able to support him as it was. While I understand Mr B's need for those withdrawals, that would inevitably impact the later growth the portfolio could generate reducing the future growth potential. In my view the evidence demonstrates the portfolio did what it was recommended to do, grow capital to keep pace with inflation. That generally speaking appears to have been achieved during the life of the portfolio until around mid-2022 when inflation increased significantly against market expectation. But prior to the external events causing that, Mr B's portfolio did tend to grow in excess of inflation and so had met Mr B's objectives.

While it's possible other funds may have performed better, I'm not persuaded that means Chase's advice was unsuitable given the portfolio it recommended did meet Mr B's objectives and needs as explained above. I would also add here that it isn't for me to say what was the most suitable, or what Chase ought to have considered could've been a better performing fund to recommend Mr B, it's that what it recommended needed to be suitable. Which for the reasons I've given above I've found likely to be the case.

I've also considered whether Chase utilised Mr B's ISA and capital gains allowance, as a reminder I'm only looking at matters from September 2017 onwards given that was part of his advisory service with the firm.

Turning first to the ISA, the initial advice given to Mr B was that he utilises his ISA allowance each year. From reviewing the evidence available I'm satisfied Chase did invest from the GIA, or from new money, into his ISA each year. I say this because the valuations provided show units moving from the GIA to his ISA each year and the value of the GIA reducing by around the amount the ISA increased by, along with evidence of £20,000 from the 2020 advice being used to fully the ISA allowance for that year. It follows then while I've not seen the exact transactions taking place, I'm satisfied it's likely Chase utilised Mr B's ISA allowances as agreed.

Chase has provided some information about Mr B's capital gains utilisation. The only years it wasn't used since the 2017/18 tax year was 2020/21. In my view that can be fairly explained by the new money being invested into his ISA meaning a transfer from his GIA to his ISA, which could cause a chargeable event for capital gain purposes, wasn't required. As far as the other years, since 2017, the allowance was either utilised in full or part. It's unclear why but it isn't always necessarily going to be fully used depending on the amounts involved. Given that and as I've not seen evidence Mr B incurred a capital gains tax that he potentially ought not to have because of how Chase managed his tax allowances, I think it's unlikely it's caused him detriment here if something was amiss with how the firm managed that.

Mr B's Deputy has also expressed concern that Chase didn't always give advice on withdrawals from the portfolio, or when it did so hadn't asked which about from which funds and in what proportion it was to sell down to service those withdrawals. In my view, regardless of whether Chase ought to have advised on those, I'm not persuaded it caused Mr B any detriment in how it handled those withdrawals. I say this because it is Mr B's decision whether to take withdrawals from his portfolio, and in my view when Chase serviced those it did so in a tax efficient manner that kept the portfolio in line with Mr B's risk profile and objectives. I don't think it's likely that even with advice that would've led to a different outcome given Mr B's capital needs. So even if I were to conclude that Chase ought to have done more around the withdrawals, I'm satisfied it hasn't treated him unfairly in how it did so.

Lastly Mr B's Deputy questioned the fees he was being charged. I can't comment on the initial fees agreed to given the matter of time, but for information Nestor charged Mr B an initial fee and an annual management fee for its ongoing service. Mr B also paid platform fees and fund management fees to those service providers. From July 2018 an updated agreement was completed between Mr B and Chase which continued to charge 0.5% for its ongoing advice service. In return for that fee Chase said it'd provide reports, forecasts and valuations, an annual review of Mr B's investments and the implementation of any changes to his investments.

Having reviewed the service Chase provided Mr B since 2017 for the ongoing advice fee he paid, I'm satisfied it fairly provided the service he'd paid for. I say this because Chase has provided copies of its portfolio review letters from this service since September 2017. The content of those is in line with what I'd expect to see when a portfolio is reviewed where in my view it demonstrates discussions taking place about Mr B's objectives and circumstance,

valuations and reasons for changes in that, market commentary and a recommendation on whether the portfolio remained suitable. As I've also seen copies of valuations and reports sent under this arrangement, I'm satisfied it carried out those other aspects of the service it said it would provide Mr B with.

While I sympathise with the difficult position Mr B finds himself in, for the reasons explained above I'm not upholding his complaint.

My final decision

I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 5 November 2025.

Ken Roberts
Ombudsman