

The complaint

Ms T complains THORNTONS INVESTMENT MANAGEMENT LIMITED (Thorntons) delayed the enactment of her instructions when transferring a portfolio, the poor performance of it, shares being sold against her instructions, and matters around safeguarding, and the accurate recording of information collected during the advice.

What happened

Ms T has been a client of Thorntons since 2018. In the course of that relationship, she sought advice to gift an investment portfolio to another individual, who I'll refer to as 'B'. She wanted this to be gifted quickly so to start the 'seven-year clock' for inheritance tax purposes and met with Thorntons on 16 May 2023 to discuss this. Advice was given leading to the transfer of the portfolio taking place on 18 October 2023, around five months after Ms T initially instructed Thorntons to advise on the transfer.

Ms T was unhappy with the time it took to transfer this portfolio and other matters that had taken place during her time as a client of Thorntons. She complained to Thorntons, in summary saying:

- Thorntons unfairly delayed the portfolio transfer and didn't properly record the details of the discussions where this advice was given.
- The portfolio performed poorly between October 2021 and April 2022 which she attributed to the individual performance of those managing her portfolio. She said this poor performance was more than could be attributed to market factors alone.
- Sentimental shares she held were sold instead of worse performing assets. Thorntons knew these were cherished shares and weren't to be sold.
- It failed to safeguard medical and personal information.
- It showed itself to have an unconscious bias towards her.

Thorntons considered her complaint but didn't uphold it and explained this was because:

- Ms T hadn't fully decided what to do and B needed to be onboarded as a client before the recommendations could be enacted.
- The firm transferred the portfolio promptly when it could and wasn't able to before all recommendations were agreed and onboarding enacted.
- The records of the meetings conducted were accurate records from the time, and these weren't challenged by Ms T until she complained.
- It conducts regular performance monitoring which includes the views of its investment governance committee.

- The cherished holdings had been noted as such but due to concerns about equity concentration, it consulted on reducing those holdings with Ms T. As she had agreed to this it sold them down over several years.
- It apologised for sending Ms T the statements for someone known to her. It had to inform that person about what happened and the flowers it sent to apologise were intended as a genuine gesture to apologise.

As Ms T continued to feel Thorntons hadn't treated her fairly, she referred her complaint to our service to look into further. One of our Investigators considered it and thought it should be upheld.

He said the portfolio transfer should've happened earlier than it did. In his view there was clear urgency to start the 'seven-year clock' and the firm had sufficient instruction from 5 September 2023 to liquidate the portfolio and transfer the proceeds regardless, and the onboarding meeting with B wasn't fair reason to delay the transfer. He wasn't persuaded there was evidence to uphold the other parts of her complaint.

In response to our Investigator, Ms T agreed with the findings around the portfolio delays and accepted the parts around gender discrimination were difficult to establish. She was however surprised that the parts raised around use of confidential medical information hadn't been addressed.

Thorntons responded to our Investigator to explained it didn't agree with his findings. In its view the instructions made no reference to the liquidation of the portfolio. While it was clear she wanted to gift the portfolio, Ms T kept changing her mind on how to go about it and took several months to decide all the details. As well as this it couldn't transfer the portfolio until B had an account for the proceeds to be sent to and it couldn't assume B would accept the recommendations it would advise. It also explained that it had concerns about the redress being proposed if it were that the outcome our Investigator reached was correct, which it didn't think was.

As an agreement wasn't reached the complaint was passed to me to decide. I reached a different conclusion to our Investigator and issued a provisional decision to explain the outcome I reached, and to allow an opportunity for the parties to respond to it before making any decision final.

In my provisional decision I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Ms T has submitted several lengthy submissions in the course of this complaint. While I may not comment on every point she's mentioned I'd like to assure her I have read and considered everything submitted from both parties about this complaint. In explaining my decision below I'll focus on what I consider to be key.

Portfolio Transfer

The key issue here to determine is whether Thorntons unfairly delayed the implementation of Ms T's transfer. I've considered everything both parties have said on this point and overall, I'm not persuaded it did.

The suitability letter sent in June 2023 following the May 2023 advice shows that Ms

T and Thorntons, among other matters, discussed potentially gifting some assets to reduce her inheritance tax liability. The key evidence provided following this advice in my view shows:

- During a phone call on 4 July 2023, Ms T told Thorntons she needed time to decide whether to accept the recommendation made. Which at the time was to transfer £500,000 from her portfolio and reinvest the remainder across her other holdings.*
- A following meeting took place caused the recommendation to be amended. The updated suitability letter dated 16 August 2023 shows this to have been the full value of the portfolio value to be transferred.*
- Discussions to place around using a life policy to cover the inheritance liability should Ms T pass within seven years of making this gift. Ms T was uncertain about whether to purchase this and in the end decided not to.*
- Ms T signed the recommendation confirmation and transfer authority forms on 25 August 2023, which was received by the firm on 29 August 2023.*
- A meeting was agreed to take place between Ms T, B and Thorntons to finalise the plans and mechanics of transfer.*

To say that Thorntons needed to sell down this portfolio earlier than it did, I would need to see persuasive evidence that Ms T provided clear instruction for it to do so at a specific time. It's clear that Ms T thought her completion of the acceptance form did that, with Thorntons on the other hand expecting that to be once B's recommendations were complete and an account set up for him to receive the proceeds into. I can see why there was miscommunication between the parties about what was intended. But having reviewed everything available to me about this matter, I'm satisfied Thorntons acted in a fair and reasonable manner selling the assets and transferring the portfolio when it did.

In my view between June when the advice was given and August when it was updated, I've not seen Thorntons ought to have reasonably considered it had been instructed to immediately sell down and transfer the portfolio proceeds in that time. I say this because the evidence demonstrates that Ms T wasn't ready and needed more time to decide what to do, which led to changes to her plans. In those circumstances Thorntons couldn't reasonably enact the transfer where these decisions were still ongoing.

To me then, the wording of the August suitability letter and the acceptance forms are key in interpreting what Thorntons ought to have understood the instruction on what it was to do and when.

The detail of the recommendation Thorntons made to Ms T in that letter was:

"Taking the above into consideration I am now recommending the following:

- Gift the entire Discretionary Managed portfolio...*
- The holdings will be sold and moved as cash into a new account for [B].*

(...)

We discussed meeting in Edinburgh together with [B] to run through the proposed recommendations and the mechanics as to how this transfer would work to ensure you are both comfortable and have full understanding. Only at this point if you are happy to proceed as recommended, will we get you to sign the enclosed paperwork and return it in the prepaid envelope provided."

I understand Ms T finds much within Thornton's suitability letters to not accurately record conversions that took place, or contain information that wasn't discussed at all. But I don't find that relevant here where the recommendation reached to gift the portfolio proceeds and a meeting being arranged afterwards isn't in disagreement, only the timing of enacting the sale and transfer is.

The authority form, to instruct the custodian to make payment of the proceeds says:

"I, [Ms T], sign this letter of authority authorising the entirety of dealing account [redacted] to be transferred to a new dealing account held for the following: [B's personal details but no receiving account number provided]."

The acceptance form said:

"I have read the contents of the advisory letter stated above [16 August 2023]... Please proceed with arranging the investments as detailed.

By signing [this form], you authorise me to proceed with these recommendations..."

Reading these as a whole, along with the meeting notes, in my view doesn't persuaded there was a clear, or ought to have been clear, instruction to Thorntons to sell down or transfer the portfolio at this stage. In my view Thorntons reasonably understood that a recommendation was in place with the execution and timing of that being dependant on the meeting in Edinburgh and accounts and recommendations for B being arranged and finalised. I say this because the recommendation refers to these aspects and the custodian instruction didn't, because it couldn't yet, provide details to transfer to proceeds to.

I think it's likely Thorntons reasonably communicated that with Ms T given the extracts above, as well as a phone call which took place on 5 September 2023. The content of this phone call is disputed by the parties and Thorntons hasn't been able to provide a copy of the call. But it has provided its call notes from the time of the call. Reviewing that call note and considering how events later unfolded in line with those discussions, I'm satisfied it fairly reflects the discussions in this call. I find the following from the call note to be key here:

"I detailed that we were issuing the formal recommendation for the transfer of the portfolio to [B] but would only look to proceed with the instruction to sell down her funds at the point both she and [B] were perfectly comfortable with the recommendation. [Ms T] detailed that she was perfectly comfortable and did not intend to change her mind."

As B's account to receive this money wasn't arranged until mid-October, Thorntons wasn't able to complete the transfer. And hadn't been given any interim account details, or clear instruction to disinvest, from Ms T to enact her wishes sooner. For

the same reasons neither do I think Thorntons ought to have encashed the portfolio in the interim. I don't dispute that Ms T was keen to start the 'seven-year clock' as soon as possible, the evidence demonstrates there were reasonable obstacles to that and in my view encashing or transferring the portfolio sooner than it was simply wasn't the instruction Thorntons had from her.

Outside of this, I've not seen persuasive evidence to say Ms T requested the portfolio be sold down ahead of its transfer. I appreciate she may feel she did, but from reading all evidence available, I'm more persuaded that there wasn't a clear instruction to sell down the portfolio earlier than it was.

It follows then I think it was fair and reasonable for Thorntons to have understood there was an agreement on how to act but it being enacted was dependant on final meetings and setting up of B's accounts. And that the portfolio was sold promptly from both Ms T and B being ready.

It isn't my intention then to uphold this part of her complaint.

Other Matters

In reviewing the evidence available, I've also not seen I should direct Thorntons to take any action regarding the matters pertaining to, performance, the cherished shares, safeguarding and disclosure of personal information.

Since 2020 there have been several external factors which have significantly affected the markets. Including the pandemic, war and increases in inflation and interest rates. I've not seen from my review any evidence to suggest that any unfair or unreasonable action by Thorntons contributed to or caused the performance Ms T has experienced. In my view then it's most likely affected by volatility in the markets at the time rather than any particular act or omission of Thorntons.

Ms T included in her complaint that two shareholdings she considered to be cherished were sold without her consent, and another poor performing holding ought to have been sold instead, Scottish Mortgage. But I've not seen to agree. Her shares were held within a discretionary managed portfolio and so the management of them had be devolved to her portfolio manager. However the firm has confirmed that despite these shares not being ones it would hold in this arrangement they were noted cherished. But from 2020 it says it had instructions to sell these down following advice it gave about the equity concentration of her portfolio and so reduced those holdings over the next few years. While I've not been provided with a copy of that advice I have seen an extract from it which likely demonstrates the instructions it received such instruction from Ms T and sold them following them.

Around the Scottish Mortgage holdings and why that wasn't sold instead, Thorntons has explained that was due to its positive long term outlook on that holding and the strong performance it considered it was capable of, as it had provided before. Given the discretionary managed arrangement in place, it wasn't unreasonable for Thorntons to have that view and retain that asset despite it not performing at the time in the way Ms T wanted. It follows then I've not seen Thorntons has fallen below its obligations towards Ms T on those points.

The impact of a disclosure of Ms T to Thornton about B has led to her frustrations that the firm had discussed this with B. I can't consider this complaint from B's perspective as that isn't the complaint before me. This is information that Ms T shared with Thorntons and what it did with that can only impact B, who this complaint

isn't brought by.

In a similar vein, the disclosures of the accounts of another party didn't involve the disclosures of Ms T's information and so I can't consider aspects around this apart from the distress and inconvenience that caused Ms T by receiving them. I appreciate this was upsetting to receive but I'm satisfied Thorntons has already apologised for this, and I've not seen to direct it to do anything more in the circumstances.

Lastly, Ms T has said she feels she has been treated differently by Thorntons because of her gender. I appreciate the events within the complaint which Ms T has described to me in detail have had a significant impact on her and the method of apology by Thorntons led her to a degree of insult and concern it did this because of her gender. I don't by any means want to diminish how Ms T felt but I've not seen sufficient evidence that demonstrates the unconscious bias Ms T says Thorntons demonstrated towards her. In my view it thought it was making an appropriate apology, and I can't fairly say it acted improperly in doing so.

It follows then while I've considered these matters, I don't currently intend to uphold those parts of her complaint."

Thorntons responded agreeing to the outcome I reached and had nothing further to submit.

Ms T didn't agree and provided further submissions and evidence. In addition to restating points raised already, in summary she also said:

- My decision contained numerous factual inaccuracies and misinterpretations.
- Her intentions could only reasonably be understood to have been to liquidate the portfolio, and to have commenced that with immediacy to start the inheritance tax mitigation.
- B was onboarded with Thorntons in May 2023, not in October 2023.
- Thorntons conflated Ms T and B and merged their recommendation as one entity, it should've encashed her portfolio on Ms T's instruction alone.
- The authority and acceptance forms were legally binding documents which should've led to her instructions to encash the portfolio.
- Thorntons had its own motivations to delay doing so.
- The performance of her portfolio wasn't being complained about, it was its unwillingness to share information about how it performance manages and quality assures those managing her portfolio that her comments related to.
- Thornton's assertions around her 'changing her mind' were untrue and unevidenced remarks.
- Disputed the recollections of discussions in phone calls.

As both parties responded to my provisional decision, the complaint was then passed back to me to decide.

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 read Ms T's response in full, in addition to all the other evidence submitted previously, I won't be upholding this complaint. I know Ms T has strong feelings about her recollection and understanding of events, but it remains the case I haven't seen persuasive evidence to demonstrate that Thorntons delayed the encashment of her portfolio prior to transfer. I've considered everything put to me but for brevity I won't comment on every point made, focusing instead on what I consider to be most salient.

For clarity I've built my picture of the likely events that took place based on all the evidence provided, not just one parties. I must in doing so decide what I think most likely happened on the balance of probabilities, which they key points remains as I've set out in my provisional decision. I appreciate Ms T has received some of these as inaccuracies, but I'm satisfied how I've described events were as they likely took place based on the evidence before me.

Fundamentally, I remain of the opinion that Ms T received advice to partially encash and gift, chose not to go ahead until she thought about it some more and then received updated advice to transfer the entire value of the portfolio. The advice documentation clearly demonstrates this. I also remain of the opinion Ms T's acceptance of the recommendation and completion of the authority forms didn't amount to a clear instruction to Thorntons to encash the portfolio, whether it was to be encashed immediately or at the time B was ready to receive those funds. My reasons for this remain as they are in my provisional decision as set out above, and while I understand Ms T's position her comments and recollections don't persuade me to depart from what I previous said around this part of her complaint. And as I said before I'm satisfied the call notes provided to me are fair reflections of the discussions held.

I also don't agree that Thorntons treated Ms T as if her and B were the same 'entity' as she describes it. The position of both parties was relevant to the advice Thorntons gave her and I'm satisfied it wasn't unreasonable Thorntons understood the portfolio to remain invested until the gift was ready to both be made and received, for the same reasons I've set out above. Regardless of when B could be considered to have been onboarded, which given the evidence I've not seen was formally until the October 2023 meeting, I'm satisfied Thorntons understanding of the Ms T's instructions were to encash once the account to send the proceeds to was ready to receive them wasn't unreasonable. I fully understand that may be what she intended but I'm not persuaded that Thorntons ought to have understood that to be the case in the circumstances.

Ms T has said in reply to my provisional decision that Thorntons had its own interests to delay. While she isn't wrong that its fees would reduce if some of this money was used for other ventures, which Thorntons did know possible, I've not seen any evidence to persuade me Thorntons acted unfairly because of that. As I've explained above, in my view the portfolio wasn't encashed because Thorntons hadn't received a clear instruction to do so given the final arrangements that were to be completed first.

On performance, it wasn't wrong of me to consider that Ms T was unhappy with the performance of her portfolio given the comments she made about it. In addition, Thorntons isn't obligated to provide her with information she asked it around its internal quality assurance and review process of those managing her portfolio, which I hadn't seen to have unreasonably managed for the reasons explained in my earlier decision.

My final decision

For the reasons given above, I don't uphold Ms T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 2 October 2025.

Ken Roberts
Ombudsman