DRN-6157266

The complaint

Miss M says that Warner Matthews Limited ("WML") should compensate her for losses caused by its delays in providing her with investment advice and ultimately when it declined to give her formal advice at all. Miss M also complains that during this process, WML told her to surrender an Executive Investment Bond ("EIB") - which she now thinks was unsuitable advice.

What happened

Miss M has a representative assisting her with her complaint – Mrs M. Mrs M is Miss M's mother. Mrs M was dealing with WML on behalf of Miss M throughout most of the events to which this complaint relates.

The following is a *summary* of the main events.

Mrs M was an existing client of WML. In around April 2023, Mrs M had informed WML that Miss M was about to receive an inheritance from Miss M's grandmother, and they would both require financial advice. Mrs M was to be the lead executor of the estate.

On 21 June 2023 Mrs M wrote to WML with some further details about the advice they'd require. An EIB (no reference number was given) was set out in an accompanying table with the investments forming part of the estate to be inherited.

In the email, Mrs M asked, *"Should the invested assets be transferred to one or both of us, in full or in part, or should they be surrendered and reinvested?"*

WML responded on 9 July 2023 with replies to individual points set out in Mrs M's email. On the above question, the adviser replied: "*This depends on whether assets come across to form one or a range of Transact portfolios. As you know, the EIB structures are clunky and restrictive. Much more discussion to be had on this when we meet.".*

Mrs M says that on 9 July 2023 a further telephone conversation took place wherein Mrs M was advised to encash the EIB. WML disputes this.

A meeting took place between Miss M, Mrs M and the WML on 13 September 2023 to discuss the financial advice to be given.

On 14 September 2023, an application was made by Mrs M as executer of Miss M's grandmother's estate for EIB ("EIB #74") to be surrendered. This EIB was worth approximately £155,000.

On 27 September 2023, "terms of engagement" were signed by Miss M. This agreement shows the advisory service from WML would include:

- "EIB Utmost Bond Rebalance". This appears to be a reference to an EIB ("EIB #631") already held by Miss M – worth approximately £600,000.

- Transfer to Transact of Miss M's Columbia Threadneedle General Investment Account (the "CT GIA").

- Transfer to Transact of Miss M's "IWEB ISA" valued at around £114,000.

- Investment of £300,000.

Thereafter, there were further communications between Mrs M and WML between September 2023 and January 2024. I'll refer to some of these in my findings below. But, for present purposes, it's enough to say that WML didn't provide Miss M with the advice requested and the client relationship effectively ended in January 2024 when Mrs M raised a complaint to WML on behalf of Miss M. Miss M's complaint said that WML needed to:

- Provide a suitability report as agreed on her investments.

- Set up an equivalent product to the EIB #74 that had been surrendered on the advice of WML.

- Account for the loss of any investment gains.

- Make a payment of £320 for the time spent dealing with the matter.

WML didn't uphold the complaint. It said it couldn't provide the advice as it had been waiting for the amounts for investment to be confirmed and also for Miss M's attitude to risk ("ATR") to be finalised. The response didn't address the issue of the surrender of EIB #74.

Miss M's complaint was then referred to our service together with a separate complaint for Mrs M about alleged lack of service provided to her about her investments.

One of our investigators looked into matters. He concluded that the evidence suggested that WML was unable to provide the advice requested by Miss M as it was waiting for information from Mrs M. So WML hadn't delayed giving advice or failed to provide the service it had agreed to provide before it ended the terms of engagement. He acknowledged there was some poor service when WML cancelled a meeting in December 2023 and failed to follow up on later correspondence. But these matters were sufficiently addressed in Mrs M's separate complaint about WML's service to *her* in which it agreed that Mrs M didn't need to pay its outstanding fees of £2,414.

Mrs M on behalf of Miss M didn't accept the investigator's findings. In *summary* she said:

- WML knew that time was of the essence and the expectation was that advice would be provided by mid-October 2023. Mrs M had chased on behalf of Miss M on a number of occasions. So there was a failure by WML "to act with the fiduciary duty of care."

- It *wasn't* the case that:

    - Miss M's instructions to WML changed;

    - WML had indicated that there was an issue that needed to be resolved in relation to the ATR or that Mrs M had instructed WML to change the ATR;

    - Mrs M had decided to manage some of the investments herself;

    - The change in the cash available for investment would make a material difference to WML's advice – and the adviser knew about this change in any event;

    - WML were awaiting up to date valuations of investments.

- The issue of the surrender of EIB #74 hadn't been addressed. This had been surrendered as a result of advice WML had given on 9 July 2021. If WML had advised Miss M that it wouldn't be possible to provide advice to her given Miss M's ATR then Mrs M would not have issued instructions to surrender EIB #74. Instead she would have issued instructions to assign EIB #74 to Miss M who would have had the benefit of investing part of the inheritance via that EIB.

The investigator looked at these additional submissions and amended his findings. Whilst he was still satisfied that WML weren't at fault for not providing Miss M with the substantive advice that she'd requested, he thought that WML had advised Miss M that EIB #74 should be surrendered. So he thought that WML should put this right by reinstating EIB #74 or (if that couldn't be done) by putting Miss M in the position she'd be in if she'd remained invested in the EIB.

WML says it didn't provide advice on EIB #74 – so it too disagreed with the investigator's findings.

I then looked at the complaint and issued a provisional decision. My view was that I didn't think WML caused an unreasonable or unfair delay in providing Miss M with financial advice before the client engagement agreement was ended.

However, I said WML should have been more proactive in assuring Miss M about the timescales in which it would provide advice – and assuring her about the work it had undertaken before she complained. In view of this, I said WML should pay Miss M £250 to reflect the inconvenience caused to her.

I also said that I wasn't satisfied that WML should fairly and reasonably be held responsible for the surrender of EIB #74.

WML accepted my provisional decision. But Mrs M, on behalf of Miss M, didn't agree with the findings I'd reached. She said in *summary*:

- I was wrong to conclude that there were no terms of engagement before 27 September 2023. There was in fact a contract in the form of Terms of Business from 4 September 2023 and which were verbally agreed at the meeting on 13 September 2023.
- WML had received all relevant information and data to provide the advice from as early as 2 October 2023.
- WML repeatedly put its interests ahead of Miss M's interests and delayed the provision of advice.
- I was wrong to conclude that it was fair and reasonable for WML in December 2023 to question whether Miss M needed its professional services.
- WML did give advice on the surrender of EIB #74. WML hadn't retained phone records as it ought to have done under its regulatory obligations and if it had, the evidence of the advice in July 2023 would be clear. As it is, my decision should reach the conclusion that the advice was given on a balance of probabilities as WML had

previously given verbal advice and did so on this occasion too. And WML followed that up with advice about EIB #74 at the meeting on 13 September 2023.

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 want to make clear that I've taken account of all of the detailed submissions – including Mrs M's recent submissions. But the purpose of my decision isn't to address every point raised and if I don't refer to something it isn't because I've ignored it but because I'm satisfied that I don't need to do so to reach what I think is the right outcome. This simply reflects the informal nature of this service as a free alternative to the courts.

There are two distinct issues that need to be addressed in my decision. First, whether WML treated Miss M fairly when it agreed to provide her with advice about all her investments and then didn't do that. And secondly, whether WML gave advice that EIB #74 should be surrendered for and on behalf of Miss M.

Did WML's treat Miss M fairly when it didn't provide advice about all her investments?

In my view, the following are relevant factors in answering this question:

- In my provisional decision I set out that WML's terms of engagement were signed by Miss M on 27 September 2023 and so I said this is a reasonable start date to assess any contractual duty owed by WML. I've noted Mrs M's point that terms of business may have been verbally agreed earlier - at the meeting on 13 September 2023. But even accepting this, I don't think that fundamentally changes the broad position that WML were engaged to provide financial services from September 2023 and not significantly earlier.

- Miss M did have significant assets and investments that needed to be assessed. There would be tax implications to take account of too. I remain of the view that the advice that was to be given by WML was unlikely to be straightforward.

- I'm satisfied that it was reasonable for WML to request further information from both Mrs M and CT about purchase/transaction histories for the CT GIA. Mrs M appears to accept this too in her recent submissions. So whilst WML did say to Mrs M in October and November 2023 that it had received information for Miss M (and I address this below in my compensation award) for it work on the advice, I think some key information was still required before WML could give advice. This is demonstrated by WML's reply dated 23 November 2023 to an email from Mrs M asking about the progress on the advice:

  "We agreed that you were going to email [WML] *with information on the Threadneedle book costs and finalise the numbers available for investment. So we can advance matters asap, can you let us have this information at your earliest convenience, please.*

  WML didn't receive all the CT GIA information until 29 November 2023 when Mrs M also wrote to WML with further details about the advice required.

- At this point, I think the instructions for the scope of the advice to be provided by WML were, at the least, given more specific focus. The correspondence from Mrs M:

- proposed that she would manage the "administration" of the CT GIA for Miss M;

- provided investment allocation preferences for Miss M;

- stated that Miss M's attitude to risk needed to be adjusted to facilitate her investment preferences. She said, *"If you are not able to do with the results of her AtoR then the questionnaire will need to be re-done"* [NB in making this point here, I'm not suggesting that there was anything improper being proposed by Mrs M at all – ATRs can be revised where appropriate to do so after discussion between advisers and clients];

- the cash amount available for investment changed.

The WML adviser responded agreeing to a meeting to discuss the advice further in light of the issues raised. A meeting was scheduled for 19 December 2023. I don't think I can reasonably conclude that WML could or should have provided its advice or any meaningful financial analysis before the meeting had taken place.

- I think it's right to acknowledge that, following Mrs M's correspondence on 29 November 2023, there was concern from WML about whether its services were even required by Miss M. The adviser wrote to Mrs M on 4 December 2023 setting out that:

  "I am seriously wondering whether [Mrs M and Miss M] *really need a service and firm like Warner Matthews Ltd to look after your investment and financial affairs*. [You have] *alluded to the fact that* [you] *find Transact expensive and this increases when you add in our fees on top. As am I sure you understand, we are not able to review products and investments free of charge and equally I do not feel like I can charge you for my investment recommendations when you have already indicated what you would like to purchase and in what proportions. You seem very capable of managing your and* [Miss M's] *financial affairs."*

  Mrs M expressed her surprise and disappointment at this suggestion and insisted that she and Miss M did need professional advice. Whilst I understand Mrs M's reaction, I don't think WML's suggestion was unfair or unreasonable.

  In any event, I also want to make clear that this point isn't critical to my findings at all. The relationship didn't end at that point and, so far as I can see, WML was still prepared to give Miss M advice. But I include it here as relevant background to the events that unfolded.

- From September 2023 until the end of the terms of engagement, Mrs M had repeatedly stressed the urgency of getting advice from WML for Miss M. But what is likely to have been a crucial meeting on 19 December 2023 was cancelled at short notice by WML. WML says it offered to meet again in January 2024. But I can understand why Mrs M was left frustrated and unconvinced that any meaningful work on the advice had been done up to that point as illustrated by the email from WML on 10 January 2024 that said:

  "working on things for you with no date yet in mind. [A WML adviser] *is on holiday this week* […] *I will revert when I have a date for you."*

- After Mrs M complained to WML on behalf of Miss M in January 2024, WML served notice to end the terms of engagement on 7 February 2024.

  I don't think it was right for WML to suggest at that point that the engagement was ended *partly* because it couldn't work with Miss M given her low ATR. After all, it had known about the initial outcome of Miss M's ATR assessment for a considerable time. I think it's much more likely that the only reason for cancelling the engagement was because trust between the parties had broken down by the time of the complaint.

- WML hasn't charged Miss M for any work it undertook on her behalf.

Taking this all into account, I don't think I can conclude that there was an unreasonable or unfair delay in WML providing Miss M with financial advice before the client engagement agreement was ended. It was also within WML's prerogative to end the client agreement when it did. I think the relationship between an adviser and client is one built on mutual trust. If either party (including the advice firm) thinks that the relationship isn't working well, I think it's reasonable that they serve notice to end it under the terms of the agreement. And of course WML didn't charge Miss M for any work it had undertaken up to that point.

However, WML cancelled the meeting on 19 December 2023 at short notice knowing that Miss M wanted advice as soon as possible. And I think WML should have been more proactive in assuring Miss M about the timescales in which it would provide advice including at times in October and November 2023 when it said it was working on the advice. In view of this, I think a modest award for the distress and inconvenience caused to Miss M is warranted.

I know that WML has written off fees that Mrs M owed for services provided to *her*, but this complaint does not directly relate to Mrs M. WML hasn't charged Miss M for any work undertaken for her which I think is fair but I also think a separate payment of £250 should be paid to Miss M to reflect the inconvenience caused to her.

Did WML advise that EIB #74 should be surrendered?

In my view, the following are relevant factors in answering this question:

- There was no client agreement with Miss M until September 2023 – Mrs M alleges the advice was given earlier on 9 July 2023.

- Mrs M may have made the application to surrender "*in good faith*" (Mrs M's words) that advice from WML would later be given about the assets and investments available to Miss M including the funds surrendered. But that is not the same as thing as WML actually advising on the surrender itself.
- There is no formal documentation regarding any advice given by WML about the surrender of EIB #74 although I accept that advice isn't always documented.

- I don't think WML's email dated 9 July 2023 can fairly be regarded as advice that EIB #74 should be surrendered. The email said "*Much more discussion to be had on this when we meet".* So I think WML made it clear that although it may have considered EIB structures to be "*clunky*", further discussion would be necessary before it could advise about what should happen.

- Mrs M says that a telephone conversation subsequently took place on 9 July 2023 where WML advised on the surrender the EIB. But there are no records of this

conversation. I can't fairly uphold this part of the complaint simply because WML hasn't provided a phone record. And I can't fairly conclude that advice was given in that conversation about the EIB on the basis of Mrs M's testimony alone.

- I think it's also notable that the surrender application was made much later in September 2023 – not straight after the July 2023 telephone call that Mrs M says took place.

- Following the meeting held on 13 September 2023, Mrs M wrote to WML on 14 September 2023 summarising what had been discussed. This appears to have been the first time they all met after WML's earlier email on 9 July 2023. No mention is made in this summary of the impending surrender of EIB #74 or that it was being done on the advice of WML.

  Furthermore, Mrs M previously told us (in her submissions dated 18 March 2025):

  "At the meeting on 13 September 2023 WM did not provide an assessment or any information concerning the [EIB #74] *as offered on 9 July 2023".*

  So I'm satisfied that the surrender of EIB #74 was made on 14 September 2023 without any discussion at the meeting the previous day.

- Given the above, I don't think the fact that WML may have given verbal advice to Mrs M in other matters is a compelling basis to hold it responsible for the surrender of EIB #74 in this complaint.

In the circumstances, I don't think it would be fair and reasonable to hold WML responsible for the surrender of EIB #74.

I understand that Miss M will be disappointed with my decision. It's clear that she and Mrs M feel very strongly about matters and are very unhappy at how things panned out with WML. And for the avoidance of doubt, I lay no blame on Miss M or Mrs M. But, for the reasons set out above, I don't think it would be fair for me to ask WML to pay any more than £250 compensation.

My final decision

For the reasons set out above, I uphold Miss M's complaint in part. Warner Matthews Limited should pay Miss M £250 for the distress and inconvenience caused to her. But Warner Matthews Limited doesn't need to pay Miss M for anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 17 March 2026.

Abdul Hafez
Ombudsman