

## **complaint**

Ms H and Mrs B are unhappy with the way Elevate Portfolio Services Limited handled their father's (Mr H) portfolio between his death and its distribution to his beneficiaries as it appears to have lost value when it shouldn't have. They are also unhappy with the way Elevate then handled the transfer of their part of the portfolio to them and the subsequent misinformation provided about the amounts paid out.

## **background**

I issued a provisional decision on this complaint on 16 August 2017 a copy of which is attached and forms part of this final decision. In summary I made the following findings:

- The complaint about the drop in value of Mr H's portfolio between May 2015 and December 2015 - when it was suggested markets were actually going up - was one properly made by his estate, not Ms H and Mrs B. But having considered what was happening in the markets at the time it seemed they had dropped in value anyway, contrary to what had been suggested.
- Elevate weren't responsible for the wrong proportion of the estate being transferred to Ms H and Mrs B. This was down to the IFA having sold too much of the stock in the portfolio which was paid to the executor to be divided between him and the fourth beneficiary.
- Elevate had wrongly sent the whole of the cash amount in the portfolio to the executor. It put this right on 10 February 2016 when it paid Ms H and Mrs B the amount they should have received.
- Elevate used the wrong decimal place on reassigning funds to Ms H and Mrs B. This was resolved by Elevate on 29 January 2016 for Ms H and 5 February for Mrs B. Ms H had been able to key a fund switch in early January 2016 before the mistake over the decimal place was picked up. And was able to carry out further fund switches from 5 February 2016 after Elevate had sorted out the problem created by using the wrong decimal place. I had seen no evidence Ms H had intended to carry out further fund switches whilst Elevate sorted out the problem with the decimal point.
- Mrs B's position was different as the reassignment of funds to her had been delayed anyway. And I had seen no evidence she intended to switch funds whilst Elevate sorted out the problem with the decimal place.
- Elevate had provided the wrong information to Ms H about the amount payable to the executor as it hadn't realised that the IFA had cashed in more than 50% of the portfolio so the executor had mistakenly received more than 50% of the value. It wrote to the IFA on 25 February 2016 with the correct amount the executor should have received. But it didn't provide a full explanation of what had happened until a letter of 11 April 2016.
- It was clear Elevate had got things wrong but I wasn't satisfied Ms H was prevented from switching funds sooner because of this. I wasn't satisfied any loss had been suffered by her.
- I wasn't satisfied Elevate were responsible for any delay in transfer of Ms H's funds between May 2016 and September 2016.
- The £500 Elevate offered each to Ms H and Mrs B for trouble and upset caused by the mistakes it had made was reasonable.

I gave both parties the opportunity of responding to my provisional decision. Ms H made the following points:

- Her account wasn't rectified as of 29 January 2016 as I had said. She wrote to her IFA on 10 February 2016 about his advice not to remove funds to reinvest as it would complicate matters. And her IFA had responded the following day referring to having been advised not to key any alterations until the problems had been resolved.
- The first time they heard anything from Elevate was its letter of 25 February 2016 which was full of errors.
- I am wrong that she switched funds in January as her account wasn't available to her.
- She never knew she had £141,000 in her account as the amounts showing in the account varied wildly between January and April 2016. And she was never told she could switch funds.
- She was not able to start the process of moving her funds until Elevate's response of 11 April 2016 and it then caused further delays between June and September.
- The conclusion that Elevate did nothing wrong and have no responsibility when they caused the errors, failed to notice them, failed to communicate and failed to provide a clear explanation, beggars belief.

Elevate had nothing further to add and said it was still willing to pay the £500 trouble and upset amount it had offered to Ms H and Mrs B.

### **my findings**

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

I note Ms H's comment about my conclusion Elevate had done nothing wrong as begging belief. But I said in my provisional decision there was no dispute it *had* got several things wrong. However I didn't think any financial loss had been caused by its mistakes and the offer it had made of £500 each to Ms H and Mrs B was reasonable.

I note Ms H has said she wasn't able to switch any funds in the first part of January before the mistake over the decimal point had been picked up. But I have seen a contract note addressed to her dated 13 January 2016 showing switches out of four funds completed the previous day. So I'm satisfied the switches did take place.

The main issue raised by Ms H's response however is that she wasn't able to switch further funds as of 5 February 2016 as I have suggested she could, and that she was only able to do this once she received Elevate's letter of 11 April 2016.

I note what Ms H has said about the amount in her account varying wildly between January and April 2016. But although there were different figures set out in correspondence, I don't think there was any significant change to her actual account after the end of January. From what I have seen the only changes was the payment of £2,881 - being her part of the cash account - and a small amount (just over £200) being cash that had come into Mr H's portfolio account later.

Between February and April 2016 what Ms H and the IFA argued with Elevate about was it not having paid her (and Mrs B) the amount they were due from the portfolio. In other words it was argued Elevate should pay them more than had been received to put them in the same position as Mr H's other children. There is nothing to suggest Ms H or the IFA thought what was actually received in the account wasn't hers to do with as she wanted, just that this should have been more.

This can be seen from an email sent by the IFA to Elevate on 9 February 2016 where he sets out that what Ms H and Mrs B were seeking was to be put in the same position as the other children ( who had received more) and didn't want to pay fees until this had happened. He also asked for a payment for the stress and time they had wasted.

The email response from Elevate the same day refers to the priority having been to correct the client accounts 'which has now taken place' with letters having been sent to the beneficiaries about this the previous Friday - 5 February 2016.

So it seems clear that as far as Elevate were concerned it had resolved the issue over the decimal point and Ms H's and Mrs B's accounts were showing what was actually in their accounts as of 5 February. As at this point Ms H and Mrs B were in a position to switch funds if that is what they wanted to do. The fact there was a possibility Elevate could have agreed to pay them an additional amount didn't prevent this.

I have considered the email the adviser sent to Ms H on 11 February 2016 in response to hers of the 10 February when he said:

*"We were advised not to key any alterations until the problems have been resolved, you have received the money to you and we get you back into the original position as at 24th Dec 2015."*

But there is no evidence Elevate 'advised' the IFA that Ms H and Mrs B shouldn't remove funds and reinvest them. I think if this had been suggested by it the IFA is likely to have wanted some assurance it would pay for any losses resulting from any ongoing delay in switching – which I have seen no evidence he asked for. His email of 9 February 2016 to Elevate setting out what Ms H and Mrs B wanted makes no mention of it paying for any loss for delay in being able switch whilst it looked into what the IFA had said.

I think it's also of note that Elevate never gave any indication it would put Ms H and Mrs B back to the position they would have been in as at 24 December 2015. So I think it's very unlikely it advised there should be no alterations to the accounts until this had been done, as the IFA's email to Ms H of 10 February suggests it did.

I still think Ms H and Mrs B could have switched funds as from February 2016 if that is what they wanted to do. Even if they were due a further amount from Elevate, as they argued, this didn't prevent them doing what they wanted with the funds showing in their accounts as of 5 February. So I don't think Elevate are responsible for any delay in them being able to use their accounts between that date and when they actually made changes to their accounts. I have also not been provided with any further evidence that would change my decision that Elevate weren't responsible for the delay in the transfer of Ms H's funds between May and September 2016.

I still think the offer of £500 for trouble and upset each to Ms H and Mrs B is reasonable and if they want to accept this they should contact Elevate.

### **my final decision**

For the reasons set out above and in my provisional decision I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H and Mrs B to accept or reject my decision before 16 November 2017.

Philip Gibbons  
**ombudsman**

## **COPY PROVISIONAL DECISION**

### **complaint**

Ms H and Mrs B are unhappy with the way Elevate Portfolio Services Limited handled their father's (Mr H) portfolio between his death and its distribution to his beneficiaries as it appears to have lost value when it shouldn't have. They are also unhappy with the way Elevate then handled the transfer of their part of the portfolio to them and the subsequent misinformation provided about the amounts paid out.

### **background**

Mr H died in 2015 and his portfolio of investments held with Elevate was to be distributed equally to his four children. His son, Mr H1 was the executor of the estate and he and one of his sisters wanted to cash in their proportion of the portfolio. The other two sisters, Ms H and Mrs B wanted to keep the investments so these needed to be reassigned to them once they had set up accounts with Elevate.

The IFA acting for the family put in sell requests for the part of the portfolio that was to be sold and given to Mr H1 so it could be split between him and his sister. There was also a small amount already in cash in the portfolio which also should have been split equally between the children. Due to an error too much of the portfolio was sold and all of the existing cash was sent to Mr H1 so he received more than 50% of the portfolio.

A mistake was then made when the units in the portfolio were reassigned to Ms H and Mrs B. This was because the wrong decimal place was used when reassigning the units. Elevate then provided the wrong information to Ms H and Mrs B about what Mr H1 should have got so it wasn't clear what each child had received or should have received.

Elevate said Mr H1 had received too much of the portfolio because the IFA had sold too many units which it wasn't responsible for. But it did accept it had paid him all the cash already existing in the portfolio account by mistake but had now paid Ms H1 and Mrs B the amount they should have received for this. It accepted there had been other errors in the reassignment of funds from Mr H's account to Ms H and Mrs B and offered £500 for the trouble and upset caused. It didn't consider any loss had been suffered as a result of the mistakes made.

One of our adjudicator's considered the complaint. He said the IFA had instructed Elevate what units it wanted to be sold to pay 50% of the investment account to Mr D1. But the number of units it had identified to be sold amounted to more than 50%. And it was the IFA who was responsible for this mistake.

The adjudicator said the mistake by the IFA was then compounded by Elevate using the wrong decimal place when reassigning funds from Mr H's portfolio account to Ms H and Mrs B. But he noted Ms H was able to switch her funds before the mistake was noticed and no loss to her resulted from the mistake.

The adjudicator noted the reassignment of Mrs B's funds started later and was put on hold until the mistake was rectified so any switch she wanted to do was delayed. He said Elevate should compensate her for any loss resulting from the delay in her being able to switch her funds but it had calculated no loss had been suffered.

The adjudicator didn't think it was reasonable to ask Elevate to pay to Ms H and Mrs B the same value as was paid to Mr H1 and the other beneficiary as they had kept the funds so what was paid to them depended on the market.

The adjudicator also considered a further complaint made by Ms H about a later transfer of funds she requested which she thought Elevate had delayed. He said it wasn't at fault for this as it had sent the stock transfer forms by recorded delivery and they were shown as having been delivered.

The adjudicator also thought the £500 offered to Ms H and Mrs B was a reasonable amount for the trouble and upset caused.

Ms H didn't agree with the adjudicator. She said:

- The adjudicator's opinion consists of repetition of data provided by her and documents she has provided.
- She wasn't happy with the valuation of Mr H's estate at the time it was distributed in December 2015.
- Elevate has said there were irregularities in the distribution of assets and it still isn't known whether there has been equal distribution of the portfolio.
- It was still not known whether there had been compensation for Elevate giving all the cash in the portfolio to Mr H1.
- It is untrue to say re-registration of her proportion of the portfolio had completed on 8 January 2016 as the adjudicator claimed. There were inaccurate values shown on 13 January and 28 January of around £19,000.
- Her account showed as around £141,000 on the 28 January but by this time it had been established Elevate hadn't distributed the investments and cash equally.
- Elevate sent a letter to the IFA on 1 March 2016 which contained further errors and it wasn't until 11 April 2016 an accurate account was provided and she and Mrs B were able to take control of their own accounts.
- Mr H's accounts were low risk and she wanted to invest in more lucrative investments as soon as possible. But she had to cancel appointments with her IFA in January and February because of the errors on the account so was not able to reinvest until April 2016.
- Elevate caused delays in providing information to her new IFA in May and June 2016 which delayed transfer forms being sent to it until the end of June 2016. It then caused further delays in the transfer of funds so this didn't go ahead until the end of September 2016.
- She missed out on the huge growth that occurred between December 2015 and September 2016 because of Elevates mishandling of her account.

As Ms H didn't agree with the adjudicator the matter has been passed to me for review.

### **my provisional findings**

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

I think it's important to clarify what my role is given Ms H has questioned whether the adjudicator investigated this complaint as he should have done and had the information he needed.

I have to consider the evidence provided by both parties and try and reach a decision on a balance of probabilities – what is more likely than not to have happened. It is for me to decide what weight I give to any particular piece of evidence.

If I consider I need more evidence from a party before I can make my decision I will request it. But it is not part of my role to try and get evidence myself to disprove or prove one parties case. That is for the parties themselves to do. In this complaint Ms H has provided the documents and information she relies upon and Elevate has provided its file of papers. Having considered these I don't think I need any further information before making my decision.

I also think it is important for me to clarify who the appropriate complainant is in this complaint. The complaint was brought initially by Ms H and Mrs B. But as part of the complaint was on behalf of Mr H's estate the executor was then asked to sign the complaint form. We then set up the complaint as being by the executor of the estate of Mr H.

The executor can bring a complaint on behalf of the estate in relation to anything Mr H himself could have complained about. So I think the part of the complaint about the drop in value of Mr H's overall portfolio, between May 2015 and December 2015, is one only the executor can make.

But I think the parts of the complaint about Elevate having got the transfer of funds to Ms H and Mrs B wrong in various ways are properly made by them and not by the executor. In the circumstances as Ms H and Mrs B initially made the complaint I am considering the parts of the complaint relevant to them as they are the complainants not the estate.

But although I think the drop in value of the overall portfolio is a complaint only the executor can make I think it would be helpful to all parties – given the time this complaint has been ongoing - if I set out my views about this issue.

Ms H has suggested the Stock Market had risen so doesn't understand why the portfolio dropped in value.

I have considered two indices to get an idea of what was happening in the markets at the time. Both the London Stock Exchange All Share Index and Dow Jones Industrial Average Index show the overall value in December 2015 was lower than in May 2015 with significant drops having occurred in August 2015.

I have also considered two of the funds Mr H was invested in to see whether these also show a drop in value. The 'Aberdeen Ethical World Equity I Inc' fund was on an overall downward trend from the middle of April 2015 until the middle of February 2016. It is clear its value was significantly lower in December 2015 than it was in May 2015. The same applies to the 'SEI Core Sterling Wealth A GBP' fund.

In the circumstances there is nothing to suggest Elevates overall valuation of the investments in December was wrong.

*Were Elevate responsible for the wrong proportion of the estate being transferred to Ms H and Mrs B?*

It's accepted Mr H1 should have received 50% of the overall portfolio but received more than this. This was because too many units in the portfolio were sold by the IFA and the cash from the sales was then transferred to Mr H1 in accordance with the IFA's instructions.

The IFA has suggested he relied on advice from Elevate as to what should be sold. But Elevate has no record of there being a discussion about what should be sold. In the circumstances there isn't sufficient evidence for me to be satisfied Elevate did anything wrong in paying Mr H1 the cash resulting from the IFA's sell requests.

As I don't think Elevate did anything wrong in sending Mr H1 the proceeds of the sell requests it doesn't need to make any payment to Ms H or Mrs B for the shortfall in the proportion of funds in the portfolio they received.

*Elevate paying too much of cash already in the portfolio to Mr H1*

There was already some money in the cash account within the portfolio. This should have been dealt with separately to the cash resulting from the sell requests and only 50% of it should have been sent to Mr H1. Instead once the cash from the sell requests was in the account Elevate paid everything in the cash account to Mr H1.

Elevate has accepted it shouldn't have given him the whole of the cash account in the portfolio. And I have seen transaction listings from Elevate showing it put this right on 10 February 2016 by paying £2,881.73 into both Ms H's and Mrs B's accounts. I have seen nothing that indicates Ms H and Mrs B have suffered a loss because of this mistake.

*Elevate using the wrong decimal place on reassigning the funds*

Elevate has explained a further mistake was then made when reassigning funds from Mr H's account to the accounts of Ms H and Mrs B. This was because the wrong decimal place was used which meant the wrong number of units were reassigned. Elevate accepts this shouldn't have happened.

From the information provided by Elevate the reassignment of funds to Ms H's account was completed on 8 January 2016 and the IFA keyed for a switch of funds on 11 January 2016. The error with the decimal place was then identified on 12 January 2016.

Ms H has questioned whether the funds were reassigned when Elevate has said because when she checked her account on 13 January 2016 and 28 January 2016 it was showing only around £19,000 in the account. She said she only saw around £141,000 in her account on 28 January 2016. I note Elevate has said her account was corrected the following days so this may have been 29 January but this doesn't make any significant difference.

I think there was an initial reassignment of funds to Ms H which completed on 8 January as Elevate has said and which allowed her IFA to key a switch of funds on 11 January. The reason Ms H then saw only £19,000 in her account was because the reassignments were reversed so her account didn't reflect the correct position on her holdings. Given the reversals that took place I think the reassignment was only properly completed when the issue over the decimal point had been corrected on the 28 or 29 January.

The reassignment of funds for Mrs B didn't complete at the same time as Ms H as she took longer to return Elevates terms and conditions. So the reassignment of her investments was put on hold until the issue over the decimal place was resolved.

Elevate says Ms H's account was corrected as of 29 January 2016 and Mrs B's account was corrected by 5 February 2016.

The funds obviously remained invested throughout the period of time the corrective action was being taken so there is obviously no loss in value in those funds in this time. But a loss could arise if Ms H and Mrs B wanted to switch funds and were prevented from doing so.

Ms H had requested her IFA to make a switch at the beginning of January 2016. But this switch had gone ahead so no loss was suffered by her in relation to that switch.

On the 4 February 2016 Elevate told the IFA that if any switch of funds was required they could now be keyed. So if Ms H wanted to carry out any further switches she was in a position to do so as of that date. I have seen no evidence she intended to make any other fund switch between the one she made in January and when she was made aware she could make further switches in February.

Mrs B's position was different in that her reassignment was delayed and she couldn't do any fund switches until the corrective action had taken place. But I have seen no evidence she intended to carry out any fund switches which she was prevented from going ahead with. And Elevate has calculated if she had switched into the same fund as Ms H the delay she suffered actually means she would have been better off so no loss will have been caused by that delay.

*Elevate providing incorrect information after the correction of the accounts.*

There was further confusion over what amount should have been in Ms H's and Mrs B's accounts. This is because when Elevate wrote to Ms H on 5 February 2016 to explain what had happened, it calculated the executor should have received £299,501 but had received £305,264 - because he had wrongly received all of the cash that was already in the account before any units were sold instead of 50% of this cash.



What Elevate didn't take account of was that the executor had also received more than 50% of the value of units in the portfolio as well due to the IFA selling too much as it hadn't picked up on this at the time.

It had realised this when it wrote to the IFA on 25 February 2016 and stated the executor should have received £296,336 – which did take account of the overall overpayment to the executor. It's understandable this caused Ms H and Mrs B some concern as this was different to the £299,000 it had previously referred to.

The position was only made clear when Elevate wrote to Ms H on 11 April and explained how it had arrived at the different figures for the amount that should have been paid to the executor.

There isn't any dispute Elevate has got several things wrong in the course of dealing with the accounts of Ms H and Mrs B. But what I have to consider is whether any loss has been caused as a result of the mistakes made.

Ms H has suggested she would have switched out of the funds but for the delays that occurred due to the corrective action and the ongoing issues which she says weren't resolved until she received the letter of 11 April 2016 from Elevate. She has said the funds Mr H was invested in were based on him being very low risk and she intended to reinvest as soon as possible in more lucrative investments.

I accept what Ms H has said about wanting to invest differently to her father as she instructed her IFA to carry out a switch in January 2016. I take account also of her then instructing different IFA and proceeding to invest differently. But this was a long time after she knew she had around £141,000 in her account and was told she could switch funds after the corrective action had taken place.

I acknowledge it was unclear whether Elevate had reassigned the full amount she was entitled to at that point. But I can see no reason she couldn't have switched what she knew was in the account as at the end of January 2016. I also note she has suggested it was the first IFA who had suggested keeping the portfolio as it was at the time. If so Elevate can't be held responsible for this decision.

So whilst I accept she wanted clarity about what she was entitled to I can see no reason she couldn't have reinvested in the meantime. In the circumstances I'm not satisfied Elevate is responsible for any loss she may have suffered because she didn't switch earlier.

I'm also mindful her IFA at the time said both she and Mrs B were prevented from moving to cash because of the uncertainty over what should have been in their accounts. This isn't consistent with her wanting to invest in more high risk investments as soon as Mr H's funds had been reassigned to her.

In the circumstances I'm not satisfied on the evidence I have seen that it's more likely than not Ms H was prevented from investing differently because of the delays caused by the correction of her account and subsequent confusing information as to what she was entitled to which was only clarified on 11 April 2016.

#### *Delay in transfer of Ms H's funds between May 2016 and September 2016*

Ms H complains Elevate caused a delay in transfer of funds later on in the year at which point she had instructed a different IFA.

In her response to the adjudicator's opinion Ms H said Elevate hadn't provided the information she needed in May and June 2016 to allow the transfer to proceed.

But I have seen no evidence of any request for information made to Elevate in this period. According to the information provided by Ms H's new IFA it sent transfer forms to the new platform on 27 June and presumed this was sent to Elevate soon afterwards. Its records indicate this was received on 7

July and it sent a valuation on 11 July. Its records indicate acceptance was received on 22 July and it sent the stock transfer form to the fund manager on 27 July.

From the information Elevate have provided the fund manager said it didn't receive the stock transfer form despite Elevate having a delivery tracking number which indicated it had been received. So a new stock transfer form was sent on 22 August. However this also wasn't received and a third stock transfer form was sent on 19 September to a different address provided by the fund manager with the transfer then being completed on 27 September.

There was clearly a delay in the transfer but for me to decide Elevate were responsible for the delay I have to be able to say it did something wrong. There is nothing to suggest it did anything wrong up to the point it was told the first stock transfer form hadn't been received. The question at that point is whether it should have done something other than send a further stock transfer form. Given all it was aware of was that the fund manager had said the form hadn't been received I'm not satisfied it was wrong to send a further form.

It was only when the second form wasn't received that it appears Elevate were made aware of a different address to send the form to. I have considered whether it should have checked the address sooner. But it has explained that it sent the form to the original address because the fund was an offshore fund and that would be the address that normally dealt with offshore funds. In the circumstances I don't think it was unreasonable for it to do this until it was given a different address by the fund.

I'm also mindful Elevate has said its records indicate the first stock transfer form was received. So it had no reason to think there was any issue with the first address at the time it sent the second stock transfer form.

In the circumstances, on the evidence I have seen, I'm not satisfied it's more likely than not Elevate were responsible for any significant delay in transfer between May and September 2016.

#### *Payment for trouble and upset.*

Elevate offered £500 each to Ms H and Mrs B for the trouble and upset resulting from initially getting the reassignment wrong and the contradictory information it provided about what had been paid out to Mr H1. Ms H has said the adjudicator's acceptance of this being a reasonable sum has no basis in fact.

Trouble and upset isn't an award for financial loss. It is to compensate for things like distress and inconvenience caused when a business gets something wrong. In this case there is no doubt Ms H will have been distressed by seeing only around £19,000 in her account in January 2016.

And I think she would also have had further concerns because Elevate had paid too much of the cash account to Mr H1 and then specified different amounts for what Mr H1 should have received. But I think £500 is a reasonable amount for the trouble and upset caused by this.

Mrs B didn't have exactly the same experience as Ms H as she never saw her account with the wrong amount showing as Ms H did. But there is reference to her not being able to access her account at certain times which I think will have been concerning to her. So I think the £500 offered to her is also reasonable.

If Ms H and Mrs B want to accept the offers they have received for trouble and upset they should contact Elevate directly about this.

#### **my provisional decision**

For the reasons set out above I don't intend to uphold this complaint or make an award.

Philip Gibbons  
**ombudsman**