

The complaint

Mrs H, as Lasting Power Of Attorney (POA), complains on behalf of Mr B about Rixon Matthews Appleyard (Financial Services) Limited, referred to as “Rixons” or “the business”. In summary, she says:

- Mr B is unhappy that the funds in his ISA were invested in cash for a number of years, whilst incurring charges.
- Rixons failed to provide him with any advice or guidance about what to do with this money.
- It failed to refer him to anyone, notwithstanding its concerns about his mental health and wellbeing.

What happened

In late September 2022, I issued my provisional decision, a copy of which is stated below and forms part of my final decision. In the decision, I said:

“...subject to any further submissions, provisionally I’m not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Mrs H says, I can’t safely say that the business behaved unreasonably such that this complaint should be upheld.

Before I explain further why this is the case, I think it’s important for me to note I very much recognise Mr B’s (and Mrs H’s) strength of feeling about this matter. Mrs H has provided detailed submissions to support the complaint, which I’ve read and considered carefully.

However, I hope she won’t take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn’t to address every single point raised under a separate subject heading, it’s not what I’m required to do in order to reach a decision in this case. My role is to consider the evidence presented by Mrs H and the business, and reach what I think is an independent, fair and reasonable decision based on the facts of the case.

In deciding what’s fair and reasonable, I must consider the relevant law, regulation, and best industry practice, but unlike a court or tribunal I’m not bound by this. It’s for me to decide, based on the information I’ve been given, what’s more likely than not to have happened.

Provisionally, I’m not minded to uphold this complaint, in brief for the following reasons:

- *Notwithstanding what Mrs H says, in 2015 Mr B – of his own volition – decided to move his ISA into cash. He did so as result of concerns that he had about his SIPP and the financial markets. It’s arguable that his actions were prudent in the circumstances in order to get his money out of the stock market and away from volatility. I note the business says it considered Mr B to be a low to no risk investor at the time, and certainly someone whose appetite for risk had declined – and was nil*

for this portion of his money.

- I'm aware that a separate complaint about the SIPP – involving a fund that was suspended and a fund that went into liquidation – was referred to us and upheld. This doesn't form a part of this complaint.*
- I've also seen nothing to suggest that the advice to invest in the ISA – invested in the Schroders Gilt and Fixed Interest Fund – was unsuitable, although I appreciate this is not what the complaint is about.*
- I'm satisfied that the business did what it was instructed to do. I've seen nothing to suggest that Mr B wasn't of sound mind or capable of making his own decisions at the time. In the circumstances, I can't say that his instructions were outlandish or extraordinary.*
- I appreciate that Mr B was going through a difficult time in his personal life and exhibited some vulnerabilities, but this doesn't of itself mean that he wasn't aware of what he was doing, or that the business shouldn't have carried out his instructions. I note Mrs H was granted POA in early 2020 and his instructions were from 2015.*
- I've seen nothing to suggest that the business should've questioned his instructions at the time – especially without an agreed timeframe. Or that it subsequently should've checked in with him at some point in the coming months or years as suggested, although it has not been made clear when. There's no evidence that's what Mr B wanted or had agreed to with the business. On balance, the suggestion that the business would or should question Mr B's decision of its own volition is unreasonable.*
- The above notwithstanding, I've seen nothing to suggest that the business should've provided ongoing advice and guidance, or that it did something wrong by not doing so. Contractually, I don't think it was under any obligation to question his decision at the time or subsequently, so despite what Mrs H says, it hasn't done anything wrong by not doing so. I'm also aware that the business (as of 2015), ceased to take any advisory fees, which evidently meant that it had no obligation to offer advice – I don't think Mr B would expect to receive this or any service for free.*
- I note the point Mrs H makes about the platform fees. But that's not something I can blame the business for. A financial business is entitled to charge for a service, and on balance, it's likely that Mr B would've known – or ought reasonably to have known – that he was being charged a fee for this service, which is separate to being charged (or not charged) for advice. I note the business says the platform fees were a modest 0.35% a year.*
- Unless there was a specific note on file about what the business should do if it can't get in touch (or didn't hear from Mr B), I think it was always for Mr B to decide what he wanted to do, and thereafter get in touch with the business and not the other way round.*
- Despite the purported challenges contacting Mr B, I note in or around 2017 – roughly two years after he moved his ISA to cash – he got in touch with the business (again) regarding another matter, which the business assisted him with.*
- I note that Mr B didn't raise any issue about his cash, and neither did the business. In the circumstances, and on balance, I don't think the business was wrong not to raise the issue about cash at that point.*
- If Mr B specifically wanted to do something with the money – such as re-investing – he could've asked the business to do so at the time but didn't – I note there was nothing stopping him from doing so if that's what he wanted to do. He also could've sought additional advice about what he should/could do, but he didn't which on balance would suggest that he was content with matters as they were.*
- It's unlikely that if Mr B was incapable of making decisions, he would've got in touch about making cash withdrawals from another investment which he was clearly passionate about.*
- I appreciate what Mrs H says about the contact with Mr B, but in the circumstances,*

and on balance, I can't safely say that the business has done anything wrong by not continuing to proactively get in touch him and advise him to invest, or sign post him elsewhere. I don't think the duty extends this far.

- *Even if it had, there's a likelihood that the business would've been blamed for any adverse consequences, given Mr H's state of health, especially if the advice resulted in financial loss.*
- *But the above notwithstanding, on balance I think given the SIPP situation and the actions taken thereafter, Mr B had probably lost faith in the business, so it's unlikely that he would've followed any investment advice from it in any event.*
- *Despite what Mrs H says about what the business ought to have done, I think it's unlikely that it would've made a difference, even if it had done precisely what she asked for.*
- *Without the benefit of hindsight, there was also no guarantee that reinvesting the money at the time (possibly in 2017) would've been beneficial.*
- *I appreciate the business doesn't have more information about the ISA and any agreements between it and Mr B. But in the circumstances, and on balance, given the passage of time, it's not something I can blame the business for. A financial business isn't required to retain information indefinitely, therefore it hasn't behaved unreasonably by not doing so.*

I appreciate that Mr B (and Mrs H on his behalf) will be thoroughly unhappy that I've reached the same original conclusion as the investigator. Furthermore, I realise my decision isn't what he/they want to hear. Whilst I appreciate his/their frustration, I'm not persuaded to require the business to do anything. In other words, on the face of the available evidence, and on balance, provisionally I'm unable to uphold this complaint and give him what he wants."

I gave the parties an opportunity to respond to my provisional decision and provide any further submissions they wished me to consider before I considered my final decision.

Mrs H responded and disagreed with my provisional decision. In summary, she said:

- There are some errors in my decision that might lead me to think differently about my decision.
- My conclusion has missed the point she's making because I've asked the wrong question and got the wrong answer.
- The questionnaire completed by Mr B shows:
 - He would've chosen the lowest risk investment.
 - He couldn't stomach more than 5% to 10% risk.
 - If an investment of £100,000 fell by 13%, he would sell and reinvest in something less volatile.
- He was met with losses of 50% from his SIPP, so is there any wonder he sold the Schroder Gilt and Fixed Interest fund to cash within his ISA. In his mind he had no choice – it was a panicked action.
- Mr B didn't just have "concerns", the SIPP was found by our service to be wholly unsuitable, costing Mr B significant financial loss of which Rixons has only repaid a fraction. It has let Mr B down given his "no-risk" or "nil risk assessment"
- Whilst the SIPP isn't a part of this complaint, it provides context. The decision in relation to the ISA wasn't taken in isolation. He wouldn't have sold the Schroder Gilt and Interest fund if he didn't get unsuitable advice re the SIPP. The business created the circumstances that led Mr B to act the way he did – she's not suggesting Mr B didn't know what the instructions meant.
- There's no evidence Rixons ever told Mr B that they had stopped the fees. The fact he sought advice would suggest that he thought he had an ongoing relationship.

Rixons should've written to him.

- If he was aware that Rixons had turned off their fees he might've thought that it was temporary or an attempt to atone for him losing money.
- Whilst I (as ombudsman) might think 0.35% is modest, she and Mr B don't agree. And she questions what service did he even get? He just got a cash account. He assumed the cash account didn't have a fee.
- Rixons got in touch with Mr B a number of times but didn't mention the money. It's not known if a note – regarding 'what the business should do' if it can't get in touch with him or hasn't heard from him – existed because the file doesn't exist. The business should've written to him.
- Could I explain why I think the business wasn't wrong not to raise the point about the cash?
- Mr B didn't properly understand how matters stood. Otherwise, he wouldn't have chosen 0% return and pay £440 a year. A layman on the street would think that the cash account didn't have fees.
- The business stopped doing anything the moment they stopped being paid for it. Rixons just took his instructions to move the fund to cash without question and then didn't offer a word of advice. They didn't make clear what advice was needed.
- It's very strange that I (as ombudsman) presume to say what Mr B would've done in different circumstances. But he wasn't incapable of listening to reason. If Rixons had told him that it couldn't help anymore and that he should've sought advice elsewhere, he would've done exactly this.
- Presumably I'm not insulting her husband, but he'd have to be "an idiot" to have done what he did.
- He'd invested happily in the Gilt and Fixed interest fund until he lost half the value of his SIPP. There's no reason to assume that he would've stopped without that bad piece of advice. Instead, he would've stayed invested until she took over his affairs and instructed a new adviser in 2020/2021.
- She accepts that firms don't keep information forever but shredding it during the six-month referral period to the ombudsman seems like poor practice.

Rixons also responded and accepted my provisional decision. It had no further points to make.

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 done so, notwithstanding the latest submissions from Mrs H, my decision not to uphold this complaint remains the same, principally for the same reasons as set out in my provisional decision.

In other words, despite being given time to respond to my provisional decision, I'm satisfied that no new material points have been made that persuade me I should change my decision.

In this instance, and on balance, I'm still satisfied that the key points remain the same, and have been considered by me, in my provisional decision, so I don't need to go over material already covered in great detail.

On the face of the evidence, and on balance, despite what Mrs H says, I still can't safely say that the business behaved unreasonably such that this complaint should be upheld. I am still not upholding the complaint for the following reasons:

- There's no need to doubt what Mrs H says about the meaning of the answers to the risk questionnaire (that Mr B completed). But that's a separate matter to whether or not the business had an obligation to question his instructions, and whether it has done anything wrong by not doing so. In the circumstances, and on balance, I don't believe it has. Investors are entitled to make decisions that a business has no place questioning. So, for example, whether or not, it was a good idea selling after a market crash is not a reason not to do what Mr B asked the business to do.
- Despite what Mrs H says – about whether or not Mr B would've needed, or been tempted to, put funds into cash if he had accepted advice from Rixons – the point is that Mr B chose to do what he did and did so of his own volition, without any advice or guidance from Rixons - although it's still arguable that it was a sensible course of action.
- In my provisional decision I made clear that Mr B did so as result of concerns that he had about his SIPP and the financial markets. It's arguable that his actions were prudent in the circumstances, in order to get his money out of the stock market and away from volatility. I note the business says it considered Mr B to be a low to no risk investor at the time, and certainly someone whose appetite for risk had declined – and was nil for this portion of his money. Mr B's instructions weren't out of the ordinary or surprising, and so Rixons wouldn't have thought there was anything untoward in him taking the action he did.
- Even if Mr B's actions weren't prudent, and the move didn't pay off – because of the level of returns and fees – on balance I think the chain of causation was (more likely than not) broken by Mr B's (intervening) actions, therefore I can't agree that any losses are "consequential losses" for which the business is responsible.
- Despite what Mrs H says, on the face of the evidence and on balance, I think it's unlikely that Mr B wouldn't have been told about the fee situation, but I think it's likely that he had other things going on in his life, so it probably wasn't a priority in the way that the other matter was in relation to which he got in touch with the business.
- I note Mrs H says that if Mr B was aware that Rixons had turned off their fees he might've thought that it was temporary or an attempt to atone for him losing money. Be that as it may, I've seen nothing to suggest that he was told this or led to believe that this would be the case. So, I can't blame Rixons for any conclusions that Mr B may have reached.
- It's possible that he (probably) wouldn't have left matters as they were and for as long as they were, had he not had other issues to deal with. But that's not something I can blame the business for. Rixons simply had no authority or remit to intervene in such situations, just because Mr B's decision might not have been the most financially viable option for him. As I said in my provisional decision, there was nothing to suggest that Mr B didn't know what he was doing, or that Rixons should've questioned his decision.
- In any case, I note he got in touch with the business, regarding an issue that he wanted to address, and the matter was dealt with. As I mentioned in my provisional decision Mr B could've raised the issue regarding the cash account, but didn't, which suggests that he was content with where the money was. Whether or not he was isn't something that I can blame the business for.
- Ultimately, I've seen nothing to suggest that Rixons should've questioned Mr B's instructions at the time – especially without an agreed timeframe. Or that it subsequently should've checked in with him at some point in the coming months or years as suggested, although it has not been made clear when. There's no evidence that's what he wanted or had agreed to with the business. On balance, I still think that any suggestion that the business would or should question Mr B's decision of its own volition is unreasonable.
- Despite what Mrs H says, on balance I still think, given the SIPP situation and the actions taken thereafter, Mr B had probably lost faith in Rixons, so it's unlikely that he

would've followed any investment advice from it in any event. So, despite what Mrs H says, I still think it's unlikely Mr B would've listened to Rixons.

- Despite what Mrs H says about what the business ought to have done, on balance I still think it's unlikely that it would've made a difference, even if it had done precisely what she asked for.
- I appreciate what Mrs H says about Rixons not retaining information, but I've seen no evidence that it (deliberately) destroyed the file during the six-month referral period.

I appreciate that Mr B (and Mrs H on his behalf) will be thoroughly unhappy that I've not been persuaded to change my mind.

Furthermore, I still realise my decision isn't what he/they want to hear. Whilst I appreciate his/their frustration, I'm not persuaded to require Rixons to do anything. In other words, on the face of the available evidence, and on balance I can't uphold this complaint and give him what he wants.

My final decision

For the reasons set out above, and in my provisional decision, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 December 2023.

Dara Islam
Ombudsman