

The complaint

Mr B's complaint concerns fees and performance guarantees for investments managed by Henry Spain Investment Services Limited and, further, its decision to stop providing him with its services and close his account.

What happened

In 2017 Mr B was initially advised to invest by a different business. Changes in the Financial Conduct Authority authorisation of that business led to management of Mr B's investments moving to Henry Spain in mid-2019. (A complaint has also been made about the business that provided the original advice, which has been dealt with under a separate reference.)

Henry Spain continued to manage Mr B investments – a general investment account, an ISA, and a SIPP, from mid-2019 to March 2022, at which point it terminated its agreement with him.

Mr B complained to Henry Spain about several issues, broadly as set out above, and it issued a final response in April 2022. It first confirmed that it was only responsible for matters following the mid-2019 change then went on to explain its reasons for not upholding Mr B's complaint.

It said, in brief, that it was satisfied appropriate information regarding its fees had been provided to Mr B, noting that they had remained the same as they'd been with the previous business. And it said no guarantees had been provided to Mr B in respect of the ongoing performance of the investments. It concluded by saying that in accordance with its terms of business it retained the right to terminate the agreement with Mr B and close his account. And in doing so it had provided the required thirty days written notice.

The complaint was then referred to this service, but our investigator also didn't think it should be upheld, for broadly the same reasons as those given by Henry Spain.

Mr B didn't accept the investigator's opinion, so the matter was referred to me to review.

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, while I recognise Mr B's strength of feeling about the matter, I too have concluded that the complaint should not be upheld. I'll explain why, focussing my comments on what I think is relevant. If I don't comment on a specific point, it's not because I've failed to consider it. Rather, it's because I'm satisfied that I don't need to comment on it in reaching what I think is a fair and reasonable outcome.

I'm conscious Mr B's concerns focus very much on the advice he was given originally in 2017. It was at that 'point of sale' that the primary causes of his dissatisfaction – the assessment of his attitude to risk, the explanation of fees and the comments about

performance – arose. And those issues have been considered in respect of his other complaint.

That said, for completeness, I don't think there's anything to suggest that Mr B was misinformed about the fees that applied to his investments, nor the potential returns, during the period from mid-2019 when his investments were managed by Henry Spain. The documentation shows that his circumstances and attitude to risk were reconsidered following the move to Henry Spain and his portfolio continued to be managed on broadly the same basis as it had been prior to the move. I note Mr B comments regarding conflicts of interest, but I've not seen anything that persuades me that Henry Spain acted improperly in respect of the management of his investments, which were significantly diversified across many different asset types.

I think it's fair to say that Mr B's primary issue in respect of Henry Spain is the decision to terminate the agreement with him and close his account in 2022. This followed a period during which Mr B was raising concerns about the performance of his investments, particularly in light of what he saw as the 'pledges' he'd been given at the outset (by the other business) that he would receive a return of somewhere between 6% and 10% per year.

Henry Spain has said that when it became clear that Mr B was expecting results – effectively guaranteed returns – that it wasn't able to give, it made the decision to stop providing him with a service. It notified him in writing on 17 February 2022, in accordance with its terms of business, and gave him the requisite 30 days' notice that it would stop managing the investments and close the account.

I think the motivation behind this decision probably extended beyond simply not being able to provide Mr B with a service – and guarantees – that would meet his requirements. It looks very much like the nature of communications between the parties had by this point resulted in a complete breakdown in the relationship. But in any event, I'm satisfied Henry Spain was entitled to terminate the agreement under the terms of business that applied at the time. While this would of course have led to some inconvenience for Mr B, I don't think Henry Spain treated him unfairly.

One further issue with the closing of the account that's of particular concern to Mr B is that he was not warned that when Henry Spain's management of the investments ceased, the portfolio would remain subject to market volatility. So, he was under the impression that its value – at that point around £320,000 – was crystallised and would be the amount available to transfer to the management of another business as and when he arranged to do so.

Henry Spain's terms of business address this point, saying that during the notice period its management service will cease, and the account will remain static. And further, the asset allocation of any funds at the time of cancellation will remain static. But there is nothing to suggest that the *value* of the portfolio will remain static. And the letters sent by Henry Spain to Mr B concerning the account closure gave no indication that the portfolio would no longer be subject to the market volatility it had been subject to for the previous five years.

I understand that Mr B may have misunderstood the position and have genuinely been of the view that the value had been crystallised. He's provided evidence, for instance in the form of diary entries, that supports that this was his understanding at the time. But I don't think Henry Spain did anything to create that understanding.

Following the issuing of the notice letter on 17 February 2022 there were further requests for valuations from Mr B and responses from Henry Spain that reiterated that the value of investments could go up and down. While I accept that this wasn't an explicit statement that

the portfolio value remained subject to change with market movements, I think it demonstrates how there was nothing in what Henry Spain was telling Mr B that indicated that the portfolio wasn't still subject to changes in value.

I understand why Mr B will have been very disappointed that by the time he came to transfer his portfolio, some months after Henry Spain had closed the account and stopped managing the investments, its value had fallen significantly. But I don't think that Henry Spain can be held accountable for that.

The portfolio could have been transferred sooner, and as an 'in specie' transfer – where nothing was sold and individual holdings simply moved to a new business as they were – the portfolio would've remained subject to the same market-related price movements – down, or up - wherever it was held. When transferring there was no requirement that assets be sold and losses at that point crystallised.

While, as noted, I recognise this matter will have created some inconvenience for Mr B I'm satisfied that once he was made aware of the need to transfer the investments it became his responsibility as to how this was done. While the eventual transfers may not have completed until many months later, there was nothing preventing Mr B from seeking advice and acting sooner.

My final decision

For the reasons given, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 9 October 2023.

James Harris
Ombudsman