

The complaint

Mrs P says Ethical Investors (UK) Ltd ('EI') did as follows –

- Mismanaged her investments (and misused her money) ethically and financially, leading to their poor performance despite the high fees paid for its service, and leading to a loss of around £11,000 upon their liquidation. [issue 1]
- Failed to address her enquiries about (and request for advice on) issue 1, about the state of her portfolio and about its recovery prospects. [issue 2]

What happened

One of our investigators looked into the complaint and concluded that it should not be upheld. She summarised the following history:

- EI advised Mrs P on an Aviva Wrap ('Aviva') Stocks and Shares Individual Savings Account ('ISA') in 2012, which was closed in 2013. The complaint is not about this ISA.
- EI has also advised on Mrs P's pension portfolio. However, her complaint is not about this portfolio.
- Mrs P deposited £40,000 in a General Investment Account ('GIA') [also with Aviva] in 2014, and moved some money from the GIA to a new ISA in the same year. She moved more money into the ISA in 2015 and in 2020. Her complaint is about her investments in this ISA.

The investigator said Mrs P's complaint about performance will not be addressed because investment performance is dependent on market movements. However, she said, we can look into the suitability of the investment advice given to Mrs P.

The investigator referred to Mrs P being advised by EI in 2012 and 2014, and to her investor profile (including her Cautious Balanced Attitude To Risk ('ATR') and her objective for ethical investments) remaining broadly the same in both years; and to the 2014 investment recommendations being suitable for her investor profile.

She found that in 2020 EI advised Mrs P to move £20,000 from her GIA to the ISA in order to utilise her ISA allowance for the 2020/21 year; in this year her ATR was defined as 'Cautious to Moderate', and on this basis EI also recommended that she use the LGT Vestra/Ethical Investors Cautious Balanced Plus Portfolio (the 'VEI portfolio') for her ISA; and the VEI portfolio also matched her investor profile.

She concluded that, overall, EI provided Mrs P with suitable investment advice, and she found no wrongdoing by EI with regards to its fees. She noted that the fees were transparently conveyed to Mrs P in EI's correspondence with her and in all its recommendations letters, so they were clear to her. She also commented that the ISA appears to have made a return of 25.3% over eight years, so Mrs P did not incur a loss in it.

With regards to meeting Mrs P's objective for ethical investments, the investigator addressed the two specific matters raised in the complaint. Mrs P says EI breached this objective by failing to ensure that none of her investments were made in Israeli companies and/or in association with Israel, because she held, and holds, very strong views against what she considers to be its occupation of Palestine.

The investigator noted that her first enquiry to EI about this was in 2015, when she asked about whether (or not) any such investments had been made with her money; that EI responded to say that none of the funds, in which she had holdings, had a stated policy regarding Palestine, but that managers of ethical funds were aware of the nature of such investments and took the issue very seriously; and that Mrs P was happy with this response at the time.

The investigator said the second matter is Mrs P's enquiry about whether (or not) any of her holdings were linked to fossil fuels; that it was raised by her and addressed by EI in 2020; that, in response, EI shared (with her) individual fund research information showing where her money was invested; and that she raised no further questions thereafter, which suggests she was happy with the invested funds.

Mrs P disagreed with this outcome. She clarified mainly the following about her complaint issues:

- She moved a total of £15,000 into the initial new ISA between 2014 and 2015, which was changed to a new Aviva ISA account number in 2017. She then paid £20,000 into another Aviva ISA account in 2020, resulting in an overall investment of £35,000 in both ISAs. However, the value of both ISAs in May 2022 was £37,317.
- Her complaint relates to events from 2021 onwards, during which her investments performed badly and incurred losses. She had no cause to complain prior to this period and her complaint is unrelated to events prior to this period.
- In 2020 and 2021 she asked for information about where her investments were held and about their prospects. She did not receive an acceptable answer. She did not receive the information from EI in 2020 that the investigator mentioned. The email from EI that the investigator cited is from 2023, sent long after her initial request and nine months after she closed the ISAs (and had to crystallise the losses within them). Her specific enquiry about investments in Israeli companies was not addressed, she was not happy with EI's vague response and her unanswered enquiries were treated as a formal complaint.
- She no longer has access to the ISAs' values in 2021 and 2022, but evidence of those values can be obtained from Aviva and they should show substantial losses.

[She also submitted two statements for one of the ISA portfolios covering the periods from November 2021 to February 2022, and February 2022 to May 2022, which she says shows the loss of around £11,000 she claims for.]

Mrs P's comments were considered by the investigator, but they did not persuade her to change her view on the complaint. She referred to available evidence that, she considered, supports her findings – including evidence on responses from EI to Mrs P's enquiries, information she was given about her investments, and evidence that it was her decision to close and liquidate the ISAs (and crystallise any losses in them). Mrs P's comments were also shared with EI. In response, it too referred to evidence supporting its position in the

complaint, and it considered that the comments add nothing new that it has not previously addressed.

The matter was referred to an Ombudsman.

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, I am not persuaded to uphold this complaint.

Mrs P has helpfully clarified that her complaint is about, and its focus is on, events from 2021 onwards, until 2022 (when her investments were liquidated and EI's service ended). The complaint is therefore about issues 1 and 2, as summarised at the outset of this decision.

Mrs P's summary of her complaint's history and its issues, as part of the complaint's referral to us, appears to have led the investigator to address the pre-2021 suitability related aspects of the case. I note Mrs P's point that the findings in that respect are not directly relevant to her focused complaint issues, but I consider that the background those findings addressed, and the findings themselves, provide helpful context to the complaint issues.

Before treating those issues, I must echo the investigator's finding about the isolated references that Mrs P has made to underperformance of her investments under EI's advice and/or management. She says the level of returns from the ISAs were poor over the relevant eight years, and despite the substantial fees deducted over those years.

Drawing from the wider context, I have not found grounds to establish, on balance, that the initial recommendations for the ISAs were unsuitable. I share the investigator's findings in this respect and I note that no such claim (about the initial recommendations) appears to have been made by Mrs P. Therefore, their performance is indeed isolated and separated from what EI can reasonably be held responsible for. Investment performance is inherently subject to the markets, economic circumstances and other external factors that are beyond the control of investors and advisers alike. For these reasons, this service would not normally determine issues about investment performance, on their own. I have not seen cause, in the present complaint, to depart from that approach.

With regards to EI's fees, available evidence shows that they were transparent and set out in communications (including recommendation letters) with Mrs P throughout the relevant period. When it recommended the VEI portfolio in 2020 EI explained to her that the portfolio came with a Discretionary Portfolio Management ('DPM') service (jointly performed by EI and LGT Vestra), that the platform fee and EI's advice fee remained unchanged, but that the portfolio fee was higher than what previously applied because of the added DPM service. It explained the additional benefits derived from the higher fee and it illustrated the difference in fees to ease her consideration.

EI's fees were transparent to Mrs P, she was informed about them and she agreed them, so I do not consider it has done anything wrong in this respect.

Issue 1

Mrs P says EI breached her objective for ethical investments. She has cited the two specific matters summarised above (investments connected to Israel and fossil fuel related investments).

I acknowledge her point about the complaint events beginning from 2021. However, I consider it helpful to first note that evidence of the recommendations from EI prior to 2021 display adherence to an ethical objective. The 2015 portfolio valuation statements contains a list of its holdings, and they were all in funds that had an ethical basis. There is also evidence of how each fund was subjected to ethical screening in this respect. Portfolio statements from 2020, 2021 and 2022 all do the same – they list holdings in funds that share an ethical basis, and additional evidence shows each fund was ethically screened for that purpose. If Mrs P alleges a general failure by EI to ensure her holdings matched her objective for ethical investments, the balance of available evidence defeats the allegation.

With regards to Mrs P's specific claim about investments connected with Israel, I find no wrongdoing by EI. There is no evidence that she gave any notice of her position on or in relation to this prior to 2015. The email, on 1 July 2015, in which she gave related notice referred to an article she had seen which prompted her to check if any of her holdings were "*associated with the occupation of Palestine*". She said, if so she "*would like them moved*". On 2 July 2015 EI's reply to her included the following –

"None of the funds that you hold has a stated policy regarding Palestine (in fact no UK fund has such an approach) ... The managers of ethical funds are well aware of the provocative nature of investing into the Occupied Territories, and of the significant negative publicity that would arise if they were found to be holding such assets, and therefore they take this issue very seriously indeed."

Mrs P responded on the same date to thank EI for its reply.

The above supports the conclusion that her position on Palestine was first raised, to EI, in 2015. On 3 March 2022 Mrs P's email to EI included an enquiry about a related matter. The email was mainly about other subjects, but towards its conclusion she asked – "*Also, are any of the funds invested in Israel please or Israeli businesses?*". EI's reply on 7 March 2022 mainly dealt with the other subjects, and towards its conclusion it answered the question by saying – "*Israeli businesses are not automatically avoided for being based in Israel, but are excluded if they breach other ethical criteria (such as human rights).*"

Overall and on balance, I consider that EI's 2022 response is separate to, but also compatible with, its 2015 response, and that the latter was meaningful to Mrs P's state of awareness in 2022. In 2015, she was informed that none of the funds she held had a stated policy regarding Palestine and that no UK fund did that. She understood this at the time, and she knew, before 2022, that the most she could expect was that "*... managers of ethical funds are well aware of the provocative nature of investing into the Occupied Territories, and of the significant negative publicity that would arise if they were found to be holding such assets, and therefore they take this issue very seriously indeed*".

I acknowledge that her 2022 question was phrased differently to that of 2015. However, based on her evidence, it is clear that both shared the same personal position Mrs P held/holds on the combined subject of Israel and Palestine. It is for this reason that I consider EI's answer in 2015 to be meaningful to her state of awareness in 2022. That answer was not definitive. It did not assure her that funds could be distinguished on their policies on Palestine because, based on the answer, they could not, so she would have known that the enquiry was not as straightforward as she might have thought it was. Indeed, it is possible, if not probable, that she put the 2022 question differently in order to explore her concern from a different approach – one that she had not previously used. In any case, EI gave its response to the 2022 question, and it is clear that she was unhappy with the response – because it did not give the assurance she wanted.

The fact that Mrs P did not get the assurance she wanted does not automatically mean EI's

response was unreasonable – in the context of it being her ethical investments adviser and DPM (as it was, jointly, in 2022) – and it does not automatically mean it breached her objective for ethical investments.

The ‘ethical profile’ agreed between the parties rested on terms about the positive characteristics that investment decisions could/would pursue and the negative characteristics that such decisions would avoid.

This is important to note, because they defined what EI could do in its ethically based advisory and DPM service, they defined what Mrs P could reasonably expect and they defined how her objective would be pursued. I have not seen evidence (within the terms) that bound EI’s advice or DPM service specifically and expressly with regards to investments connected to Israel. Other *positives* and *negatives* are addressed including, as EI’s 2022 answer mentioned, human rights abuse, but there is nothing directly related to Israel. Therefore, there is nothing to support what Mrs P appears to have expected.

There is also no evidence of her presenting a profile to EI, at the outset, that included this expectation. The first relevant evidence before her 2015 enquiry is the ethical profile questionnaire she completed and signed in 2012. In this document, she confirmed “strict avoidance” of investments related to human rights abuse, but no more than that. The document provided space for any additional information on her ethical profile, but this was left blank.

Mrs P gave notice in 2015 about her position on ‘Palestine’ but, as I explained above, she adopted a different approach in 2022, one based on her position on ‘Israel’. That was wider than the 2015 enquiry about ‘occupation of Palestine’, because it was her enquiry about investments in any way connected to Israel. In other words, EI’s first awareness of that specific wider position appears to have been in 2022, so it could not have breached something it was not previously aware of or bound by. The facts show that Mrs P subsequently took the matter into her own hands. Her reaction to it (and to the performance and correspondence dissatisfactions she had) was to liquidate the ISAs. As such, the question of whether (or not) EI acted reasonably, in its DPM service, in response to this 2022 awareness is somewhat redundant.

Mrs P’s enquiry about fossil fuels was one of three she put to EI on 28 April 2020. Her basis for this question would have been her 2012 ethical profile confirmation of “strict avoidance” of investments connected with negative impacts on the ‘environment’. However, it could be worth noting that nothing in the profile specifically referred to *fossil fuels*.

She asked for information on any of her investments linked to fossil fuels. EI replied on 5 May 2020 with attachments of ethical screening documentation for each fund she was invested in, and it explained that the documents gave details “... *on each underlying fund where your money is invested and provides links for further information if required*”. She replied on the same day to thank EI for all its responses (to her three questions). Later, in August 2020, there is evidence of email correspondence between both parties discussing advice on dividends from her investments, on moving more funds from the GIA to the ISA, on reviewing her ATR and then on the recommendation of the VEI portfolio (which she proceeded with). This evidence supports the conclusion that Mrs P had no problem with EI after her fossil fuel enquiry and no problem with the information she was given in response to that enquiry. I have not found grounds to conclude that a breach of her ethical profile was established in this respect.

The £11,000 loss cited by Mrs P was not limited to her ISA. The documentation she submitted shows that a total loss around this figure resulted from across her GIA, pension and ISA accounts. As the investigator said, the investments were liquidated by Mrs P, based

on her decision to do so. In the next section I address why I do not find that EI did anything wrong to prompt her action in this respect. In this section, I have not found that EI mismanaged her ISA financially because there is no evidence to show such mismanagement, and available evidence is that EI did not manage her investments unethically. The loss she crystallised can be attributed to the state of the market around the time of the liquidations, but those market conditions were beyond EI's control and responsibility.

Overall, on balance and for the above reasons, I do not uphold issue 1.

Issue 2

I have already addressed, above, how EI answered Mrs P's questions about Palestine, Israel and fossil fuels, and I found no wrongdoing on its part in these respects. Therefore, it follows that I do not uphold her allegation that EI failed to provide her with responses to the latter two matters.

She says EI did not provide her with detailed information about her underlying investments, their valuations and their performance. Available evidence defeats this allegation. One of the three questions she put to EI in April 2020 was about her ISA and GIA investments and their current values. On 5 May 2020 EI sent her Aviva portfolio reports for both accounts. Each report gave valuations as of 4 May 2020, a summary of account activities (including fees) for the previous month, performance information for the same period, portfolio asset allocation information, and additional investment information (including individual valuations) for each fund holding (and cash) within the portfolio.

Mrs P received reports like the above during 2021 and 2022. One of the *other subjects* in her email to EI of 3 March 2022 was about her receipt of the February 2022 Aviva report and her dissatisfaction with the loss she saw in it. EI explained, on 7 March 2022, that the fall in value began at the beginning of 2022 and was caused by the impact of inflation, the cost of living and the invasion of Ukraine. Another subject raised by Mrs P was about EI's work on disinvesting from fossil fuels, in response to which EI said exposure to this area in her portfolio will be kept to a minimum and that major firms in the area will be avoided.

In May 2022 she wrote to EI again with regards to her receipt of and dissatisfaction with another Aviva report (in terms of fees and losses). For this reason, and because she was unhappy with EI's response on her Israel related question, she said she wished to closed her accounts. EI replied and addressed all she had raised, then it responded further to inform her of the steps to be taken to close her accounts if she wished to.

On 12 June 2022 Mrs P sent EI an email which said mainly the following – she had reviewed her accounts with EI; she was happy with its work on her pension account but unhappy with how investment of the money she had moved from the GIA to the ISA had underperformed; she did not consider that EI was clear on what minimal fossil fuel exposure in her portfolio meant; she could not reconcile herself with the idea that her ethical portfolio could be allowed to invest in Israeli companies; and she wanted advice on the prospects of recovering her losses in the coming months.

EI treated this email as a complaint. It gave its complaint response on 25 July 2022.

In it, it summarised the chronology of its engagements with Mrs P (starting from 2012), including her objectives, her ethical profile and its advice to her; it addressed her underperformance allegation and noted that no performance guarantees were ever given to her, and that external events (such as the pandemic and the invasion of Ukraine) had impacted on performance; it addressed her concern about investments linked with Israel

and, in the context of 'human rights abuse' avoidance, it explained that each fund manager applied discretion on whether (or not) an investment was ethically acceptable in this respect; it went on to say that the fund managers could, if required, explain their decisions specifically on Israeli companies; and in response to the advice Mrs P sought, EI essentially said it retained the view that the investments were suitable and would perform well in the long term, as they were advised for, so it could not give advice to second guess negative events during that investment term.

Mrs P referred her complaint to us shortly after the above response, and, as I said earlier, she also proceeded to liquidate and close her accounts.

On balance, I am satisfied that EI gave reasonable answers to Mrs P questions. I appreciate they were not the answers she wanted, but that does not automatically mean they were unreasonable. Her enquiry about fossil fuel exposure had already been satisfactorily addressed in 2020, and EI reassured her in 2022 that such exposure would be kept to a minimum. EI explained to her that the individual fund managers held discretion on when human rights issues rendered an investment ethically acceptable or unacceptable, and it informed her that those managers could be called upon to address her specific concern about Israeli companies – however, despite this apparent offer, it does not appear that she pursued this.

In terms of her request for advice on recovery prospects, EI was entitled to its professional view, as it expressed, that the existing investments would serve her long-term objective. Perhaps Mrs P was expecting the recommendation of fund switches designed to regain the losses she was unhappy about. That's understandable, but it would have been wrong for EI to recommend or conduct such switches only for the sake of conducting fund switches, without any belief that they were suitable and in her best interest (and/or supporting strategy). Instead, it took the view that holding the investments for the long term, despite short term negative events, was suitable and was in her best interest. I have not seen evidence of a particular reason why this was an unreasonable response, and, in the absence of such a reason, it was not unreasonable for EI to remain committed to the investments it had recommended for the long term.

Overall, on balance and on all the above grounds, I do not consider that EI did anything wrong in issue 2.

My final decision

For the reasons given above, I do not uphold Mrs P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 26 December 2023.

Roy Kuku
Ombudsman