

The complaint

Mr B has complained that Wills & Trusts Independent Financial Planning Limited (trading as Wills & Trusts Chartered Financial Planners) didn't manage his investments in accordance with the strategy that had been agreed; the Advanced Investment Strategy (AIS). Mr B says the growth on his investments has been low. And he didn't receive the service that he'd been charged for.

What happened

I issued my provisional decision on this complaint on 15 September 2023. The background and circumstances to the complaint and the reasons why I didn't think it should be upheld were set out in that decision. I've reproduced it below and it forms part of this final decision.

Provisional decision

Mr B's complaint was considered by one of our investigators. He sent his assessment of the complaint to both parties on 31 March 2023. The background and circumstances to the complaint were set out in that assessment, so I won't repeat them all again here. However in summary, in June 2015 Mr B attended a Wills & Trusts seminar on financial and estate planning. He was impressed by Wills & Trusts, and arranged a follow up meeting where his objectives were discussed. One of his main objectives was to develop an investment strategy for his various investment holdings.

Mr B was sent a Wealth Management Plan (WMP) in October 2015. This contained an overview of his financial position and objectives. Wills & Trusts Independent Financial Planning Limited (I will refer to as Wills and Trusts) recommended that Mr B utilise its AIS for his Individual Savings Account (ISA), General Investment Account (GIA) and Self Invested Personal Pension (SIPP). The AIS had low, medium and high-risk categories, and clients were invested into each of the risk categories in different proportions to make sure they were invested at the correct overall level of risk.

Wills & Trusts made an initial recommendation that he invest a total of £250,000 that at the time he was holding as cash. It would be invested 50% at low risk, 30% at medium risk and 20% at high risk. Mr B also transferred other pensions and ISAs across to the platform provider. He signed a fee agreement which set out the charges and the level of service he could expect.

The Wealth Management Plan said that investments should be reviewed regularly to ensure they met with the Wills & Trusts' criteria and the client's objectives. It said, amongst other things:

"Therefore the asset allocation model will be moved and amended as economic and political pressures come to bear on your portfolio as well as changes to the risk portfolio as required..."

...Of course we will also look to make changes if there are changes in the economy that may affect you, or if there are changes in your personal circumstances.

...The asset allocation model which we use changes over time. These changes tend to be slow and are considered long and hard before they are made. Asset allocation requirements tend to change as economic and political circumstances change. Some of these can be predicted and some cannot. As these changes take place the asset allocation model must change to take these circumstances into account.

...Alternatively, we may be expecting possible falls in the market, due to economic or political reasons. In which case, we may recommend a reduction in risk into the low risk area to help protect from these falls."

In 2018 Wills & Trusts established a separate Discretionary Fund Management Company. This was called Wills & Trusts Discretionary Fund Management Ltd (I will refer to it as WTDFM Ltd). Wills and Trusts recommended that WTDFM Ltd take over the management of Mr B's investments. Mr B signed to accept the recommendation on 2 August 2018.

Mr B subsequently complained to Wills and Trusts in November 2021. Wills and Trusts only upheld part of Mr B's complaint. It said the level of service that it had provided could have been more proactive. And said it could have offered Mr B one to one reviews. It therefore offered to refund the quarterly fees that Mr B had paid for the period of 2018 to 2020 - which came to a total of £1,044.

Mr B didn't accept the firm's offer, and referred the matter to us.

Our investigator noted that when Mr B initially setup the investment with Wills and Trusts any changes to the funds invested into had to be agreed with Mr B. However, once the Discretionary Fund Manager (DFM) had been engaged it no longer needed his agreement to make changes. The investigator ultimately thought that Wills and Trusts had acted within the investment remit it had been given, and with Mr B's best interest in mind.

With respect to the charges, the investigator said there was no regulatory limit on the amount that either a provider or an adviser could charge. He said he thought Wills and Trusts had set out the charges very clearly to Mr B, and he thought Mr B had all of the necessary information about charges before he decided to invest. He said the fee schedule clearly split out the charges for the different services the firm offered.

The investigator said Mr B had opted to be a 'Review Client', which meant that he didn't get a regular annual review but could request ad hoc meetings as and when he needed them. He said the onus was on Mr B to contact Wills and Trusts if he wanted to set one up. The investigator said he'd reviewed the amount and types of interactions that Mr B had with Wills and Trusts, and he thought the service it had provided matched what had been agreed to as set out in the fee agreement.

However, he noted Wills and Trusts had extended their annual reviews to all their clients. And although Mr B hadn't signed up for this service, Wills and Trusts thought it should have offered it to Mr B. So Wills and Trusts had offered to refund two years' worth of the quarterly service fees paid between 2018 and 2020 (£1,044), as a gesture of goodwill. The investigator thought this was a fair and reasonable offer.

The investigator said that in order to uphold the complaint he would need to find that Wills and Trusts had done something wrong. But the investigator said he was satisfied it had acted within the remit that had been agreed.

Mr B didn't agree with the investigator's findings. He provided further evidence and arguments which I considered in making my provisional findings below.

What I've provisionally 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.

In responding to the investigator's assessment Mr B said his complaint wasn't about performance in itself, or that the fees were high – he acknowledged that he'd agreed to them. But said it was that Wills and Trusts didn't follow their AIS. He said the correct "Issue to determine" was whether Wills and Trusts had followed the AIS. He said he was paying fees for Wills and Trusts to follow the AIS, so if it hadn't, then those fees should be refunded.

As the investigator explained, in 2018 Wills & Trusts established a separate Discretionary Fund Management Company. My understanding is this was a separate legal entity and regulated by the Financial Conduct Authority in its own right. I accept that Mr B may have been effectively dealing with the same people, and there was a fine line between the two firms and each's responsibilities. However it was WTDFM Ltd's responsibility to manage Mr B's investments in accordance with the AIS after September 2018.

I can only consider the actions of Wills & Trusts (as in Wills & Trusts Independent Financial Planning Limited), in this decision. But having said that, Wills & Trusts were still acting as Mr B's advisers after 1 September 2018. So I can still consider that period – albeit in the context of Wills & Trusts' obligations to Mr B from that date.

Wills and Trusts have provided copies of communications that were sent to clients asking for approval to change the asset allocations. And copies of the history of changes to the asset allocations as they were amended over time. The information provided is a "Template History". And for Wills & Trusts IFP Ltd. I'll ask the investigator to send Mr B copies following this provisional decision.

It's not entirely clear to me whether these 'Templates' reflect the exact make up of Mr B's investments and the amendments made over time, or act as a guide showing the model fund make up which the actual fund would then be expected to largely mirror. We asked Wills and Trusts for copies of Mr B's annual statements, but it said it didn't retain copies and didn't have access as Mr B had left Wills and Trusts. If Mr B considers the "Template" information that has been provided is significantly different to how his investments were split, he can let me know in response to this provisional decision.

The correspondence from prior to 1 September 2018 shows that the asset content was considered and changed over time. The "Template History" is also consistent with regular changes being made to the asset content. The AIS was described in the Wealth Management Plan as set out above, and I note the particular focus placed on appropriate asset allocation.

Like the investigator, I've seen no evidence to suggest that Wills and Trusts didn't manage Mr B's investments in accordance with the AIS up to 1 September 2018.

As I've said, I can consider Wills & Trusts' obligations in the context that it was still acting as Mr B's financial adviser from 1 September 2018. And from what Mr B has said, I understand he is particularly concerned about the period whilst the investments had a greater amount allocated to cash during the period that was affected by Covid. The Template Histories show up to 10/11% in cash for each particular risk category at any one point.

The investments were split into three risk categories – Low, Medium and High risk (albeit appear to be referred to by different names after the DFM became involved, but I understand the underlying risks remained the same). And the proportion of Mr B's investments in each

changed over time and for each different product he held. However he had a significant proportion invested in the low-risk category throughout, and for each product – ranging from 50% to 30%. So having significant amounts in cash for a period wouldn't be inconsistent with these allocations. The Wealth Management Plan also said:

4. Tilting

When we set up your investments, a great deal of time is taken constructing the risk and asset allocation models. However, sometimes we need to make temporary changes to these different allocations to take account of what is happening in the real world.

The temporary changes tend be proactive changes that need to be put in place to take advantage of or protect you from what we expect may happen in the investment world.

...Changes which are made on a temporary basis to amplify gains or protect from losses are known as "tilting". By tilting we are looking to slightly move the asset allocation or risk allocation temporarily, before coming back to the centrally agreed allocation models.

So irrespective of whether the Template Histories reflected the actual asset split, the DFM had discretion to move away from the centrally agreed models for a temporary period. I think it's worth noting that during the Covid period there was a lot of uncertainty about how events would unfold. It was unique, and the severity of the impact on the economy, how long for and ultimately on asset prices were all unknown. Different professionals could have different reasonable opinions, and I think the investment decisions made have to be considered in that context.

There doesn't appear to have been an updated agreement between Mr B and Wills and Trusts Independent Financial Planning Limited at the time the DFM took over management of the investments. But in continuing to act as his financial advisers, I'm satisfied Wills and Trusts was obliged to monitor and regularly review Mr B's investments to ensure they met with Mr B's objectives, and ought to have identified if they weren't being managed in accordance with the strategy agreed – the AIS.

But having carefully considered the matter, given the evidence I've set out above, I've not seen anything to suggest that the investments weren't being managed in accordance with the AIS. So I think it follows that Wills and Trusts didn't fail to alert Mr B of such a failure.

So in summary, I'm not persuaded that Wills and Trusts didn't manage the investments in accordance with the AIS prior to 1 September 2018, or failed to identify it wasn't being managed in accordance with the AIS post 1 September 2018.

As the investigator explained, Mr B was a 'Review Client', which meant that he didn't automatically get a regular annual review, but he could request meetings as and when he needed them. However Wills and Trusts said that it had subsequently extended offers of annual reviews to all clients. My understanding is that Mr B had a review meeting in November 2021. Wills and Trusts said it thought it could have been more proactive in offering Mr B a formal one to one meeting. And it offered to refund the 'Quarterly Fee' of £87 for the period 2018 to 2020. This totalled £1,044. Whilst I recognise that doesn't resolve or compensate Mr B for his concerns about the fees he's paid for Wills and Trusts not, in his view, managing the investments in line with the AIS, I think it's a fair offer for it not been more proactive in offering annual reviews earlier.

My provisional decision

My provisional decision is that Wills & Trusts Independent Financial Planning Limited's offer

to pay Mr B £1,044 is fair in the particular circumstances of the case. I therefore intend to order that Wills & Trusts Independent Financial Planning Limited pays Mr B £1,044.

I asked Mr B and Wills & Trusts Independent Financial Planning Limited to let me have any further evidence and arguments that they wanted me to consider before I made my final decision.

Mr B said, in summary, that his fundamental complaint was that his investments weren't reviewed/invested by Wills and Trusts in accordance with the AIS, irrespective of who was actually taking the final investment decisions (WTDFM Ltd).

He said from 1 September 2018 the investigation didn't appear to establish whether the investments were managed in accordance with the AIS, just that there was no evidence that they weren't. He said what was known in relation to the cash position illustrated that the AIS wasn't being followed. He said irrespective of Covid considerations, holding 10% in cash completely contravened the AIS, which clearly said:

'that your AIS is successful because it works on the understanding that successful investing is 90% asset allocation and 10% investment choice, and this is illustrated by a pie chart showing that just 1.8% of a successful investment strategy is down to market timing'.

Mr B said the letter about holding a high cash position was headed '*Taking advantage of a bad situation*', and made a glib reference to '*having a cunning plan*'. He said these words weren't indicative of a measured investment strategy, and he didn't invest with Wills and Trusts in the expectation that it would allow his funds to be managed by a Company who devised a cunning plan when faced with exceptional circumstances. He said he thought that they would invest in strict accordance with their AIS.

Mr B said the DFM advised that their strategy during COVID was to '*bounce back by more than the markets when the good news comes*'. by holding '*a great deal of cash*'. He said this was clearly stating that Wills and Trusts were trying to time the market. So he said how could this square with the AIS advising that '*that just 1.8% of a successful investment strategy is down to market timing*'?

Mr B acknowledged that Covid was disruptive. But he said the market had experienced a number of shocks over the years, and the AIS was meant to have been formulated to address them - not to be changed once the market was turbulent. He said investment decisions should have been made in accordance with the AIS, not reacting to the uncertainty of Covid. Mr B said he didn't accept that refunding the quarterly fees adequately reflected Wills and Trusts deviating from the AIS.

Wills and Trusts said it had nothing further to add.

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've seen no reason to depart from my provisional decision as set out above.

I appreciate that the main issue for Mr B is that his investments weren't invested in accordance with the AIS, and that from his point of view that's irrespective of which Wills and Trusts entity was actually taking the investment decisions. But as I explained in my provisional decision, there are separate legal entities here, and WTDFM Ltd was regulated

by the Financial Conduct Authority in its own right. A final decision is legally binding on both parties if accepted by the complainant in the time limits allowed. The complaint I am considering here is against Wills & Trusts Independent Financial Planning Limited, and so I can only consider that firm's actions and responsibilities in this particular final decision.

So as I said, Wills & Trusts were still acting as Mr B's advisers after 1 September 2018. So I can still consider Wills & Trusts' obligations to Mr B from that date. The "Template History" is consistent with regular changes being made to the asset content. And as I set out above, AIS as described in the Wealth Management Plan put particular focus on appropriate asset allocation. And also provided for "Tilting" and temporary changes to the asset allocations to take account of what was happening in the real world. The DFM had discretion to move away from the centrally agreed models for a temporary period. Cash is an asset class, and I don't think there was a disproportionate amount in cash given the risk categories and that a significant percentage was in low risk. I also don't think having that proportion in cash was inconsistent with the AIS, or that the move to having more cash for a certain period was inconsistent either.

I've taken into account what Mr B has said about market timing and in particular what was said about it in terms of *'that just 1.8% of a successful investment strategy is down to market timing'*. However that doesn't exclude some element of 'timing' in all circumstances. And as I've said above, it was provided for in the Wealth Management Plan. I appreciate what Mr B has said about there being a number of shocks to the market over time. But I think the uncertainty surrounding Covid was quite unique. Decisions have to be made at the time and results of decisions are only seen with the benefit of hindsight. As I've said, I've seen no persuasive evidence that the AIS wasn't followed or that Wills and Trusts failed in its obligations as they were over time.

As an aside, I do tend to agree with Mr B about the language used in the e-mails - I don't think they come across as particularly professional. But that doesn't necessarily mean that the underlying decisions themselves were unreasonable/inconsistent with the AIS.

The refund of fees isn't to compensate Mr B for Wills and Trusts deviating from the AIS. It was an offer to refund fees by Wills and Trusts given it thought it should have been more proactive in offering Mr B annual reviews earlier.

My final decision

My final decision is that Wills & Trusts Independent Financial Planning Limited's offer to pay Mr B £1,044 is fair in the particular circumstances of the case. I therefore order that Wills & Trusts Independent Financial Planning Limited pays Mr B £1,044.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 27 October 2023.

David Ashley
Ombudsman