DRN-4370919

The complaint

Mr and Mrs T complained about the advice and service they received in relation to the investments in their stocks and shares ISAs from St James's Place Wealth Management Plc (SJP). They said SJP didn't properly advise them when the value of their ISAs dropped in early 2020, and SJP's charges weren't transparent.

The advice Mr and Mrs T received was provided by DFS Financial Consultancy Ltd ('DFS'). As shown on the Financial Services Register, DFS is an appointed representative of SJP, and has been since 2013. I note Mr and Mrs T have said the adviser himself, who worked for DFS, should respond to their complaint rather than SJP. But it's standard practice for a principal firm – which in this case is SJP – to handle complaints on behalf of its appointed representative – in this case DFS. Mr and Mrs T can be assured that this is not unusual. I'm aware SJP had input from the individual adviser at DFS when responding to the complaint. And because SJP is the regulated firm that is responsible for the advice given to Mr and Mrs T I've referred to SJP as the responsible party in this decision.

Mr and Mrs T have individual ISAs. Their complaint has been brought together, and I've considered the complaint as one.

What happened

In July 2014 SJP advised Mr and Mrs T to invest into stocks and shares ISAs. They transferred and invested about £48,000 and £74,000 respectively.

SJP recorded its assessment of the risk appetite of both Mr and Mrs T as between medium and lower-medium risk. And it noted that they wanted to invest for the medium-to-long term which was described as '*at least 5 years*' and '*5-15 years*'. It was noted that they had enough income for their needs from other sources and the objective of their investment was to achieve growth at a higher rate than inflation. SJP advised them to invest 50% in a balanced fund portfolio and 50% in a conservative portfolio.

A copy of the '*Welcome to St James's Place*' brochure that I've seen from 2015 says SJP provides ongoing information and support to investment advice customers by making available information from the Investment Committee which oversees the performance of its fund managers. And the level of ongoing service from SJP would be discussed on an individual basis. It says:

> '*Primarily this will involve holding regular review meetings, either face-to-face or via the telephone, to discuss your investments and personal circumstances, thus ensuring that whatever decisions you have made remain appropriate and continue to meet your objectives. … Whatever the frequency of the regular contact with your Partner, you should feel free to contact them at any time to discuss any aspect of your investment.*'

SJP's recommendation letter dated 25 July 2014 said it would send a statement each year so a review could be arranged and it strongly recommended regular reviews.

Mr and Mrs T have said they were pleased with the performance of the investments until 2019. But in early March 2020 Mr and Mrs T contacted SJP to discuss reducing their risk exposure. At that time the ISAs were worth more than in 2014 but had reduced from recent levels due to the effects of covid on the market.

Mr T said SJP came to see them but tried to persuade them to '*hold tight*'. But Mr and Mrs T '*weren't convinced*' that '*SJP would stabilise* [their] *investment*' so they contacted SJP again and they said they '*insisted*' on switching their investments.

In a recommendation letter dated 1 April 2020 SJP wrote:

> '*My recommendation was to leave your funds where they were and wait until the markets settle down but you were adamant that you no longer had any appetite for risk.*
>
> *We discussed that by making this selection, there was much less chance of you regaining your losses once the markets starts to rise eventually but you had made your mind up.*'

The investments in both ISAs were switched to a '*Money Market*' fund with a risk profile of '*Low*'.

The recommendation letter said the new investment was '*not consistent with your previous investment objectives for this plan as it is below your attitude to risk.*' But SJP had now recommended switching to the money market fund '*because you are currently very worried about your investment and you have decided that keeping the investment in cash funds will prevent your investment from falling as it did since the outbreak of Covid19*'.

Mr and Mrs T's complaint

In February 2021 Mr and Mrs T complained about the advice and service SJP gave them. They said they'd just received a statement for the period up to 31 December 2020 and they were concerned about a reduction in the value of their investments. In summary they said the following:

- They were concerned about significant falls in the value of their investments between 14 January and 18 March 2020. They later described this as a loss of about £44,000 in a matter of five weeks. And they said, '*This has been a massive loss to us when we had been so pleased how our investment had progressed prior to 2019*'.

- In the context of the covid pandemic SJP should've anticipated falls in the value of their investments and made adjustments. And Mr and Mrs T had received no advice between 14 January and 18 March 2020 when their investments had lost significant value. And SJP should've encouraged them to switch back to allow their investments to recover.

- In early March 2020 Mr and Mrs T expressed concern to SJP but SJP '*told* [them] *to hold on as plans would recover*'.

- Mr and Mrs T eventually insisted that action be taken but by then further value had been lost from their investments. About this they later said:

  > '*We consider that if* [SJP] *had not tried to talk us out of moving the funds initially when* [Mrs T] *was holding back on switching due to his persistence …*

we would not have lost so much … [SJP] *could have saved us less of a loss if we had acted immediately*.'

- They wanted SJP to compensate them for the value they'd lost on their investments.

Mr and Mrs T later added that:

- SJP's fees weren't made clear to them – and they wanted to know how much their individual adviser had received.

- SJP didn't explain in March 2020 that after the covid crisis funds could bounce back to 2019 levels in 2020. Mr and Mrs T had thought their investments would take years to recover. And if SJP had've given a better explanation they might not have switched in 2020.

Mr and Mrs T also mentioned in later correspondence that they had never received the SJP welcome brochure or the advice letters from SJP dated 25 July 2014 and 1 April 2020.

In response to the complaint SJP said it hadn't done anything wrong. In summary SJP said the following:

- Fees were set out in the illustrations provided at the time of the advice. SJP enclosed an illustration from 2014 showing the fees it would charge Mr and Mrs T.

- Covid had caused volatility in the stock market. But unless Mr and Mrs T's goals had changed, the best response to volatility was to do nothing and focus on long-term objectives. Although volatility in early 2020 was extreme SJP didn't actively recommend fund switches. SJP's strategy had '*always been*' that '*time in the market*' was better than trying to time the market by switching investments to try and take advantage of peaks and troughs in the market.

- SJP's funds were managed by fund managers who actively monitored the market and made active investment decisions within the mandate of each fund. But SJP advisers didn't actively switch funds for clients on the basis of short-term fluctuations.

- In its 1 April 2020 letter SJP had said it recommended not switching investments but Mr and Mrs T had insisted on switching. SJP had said in the letter that by switching Mr and Mrs T wouldn't benefit from future rises in the market.

- Between 18 March and 31 December 2020 Mr and Mrs T's original fund portfolio – the investments they switched out of – had grown 23% so in hindsight SJP had been right to recommend not switching.

- Given Mr and Mrs T had decided not to take SJP's initial advice not to switch, it was difficult for SJP to know when they might feel confident enough to want to switch back. SJP said its adviser would discuss it with them if they got in touch about that.

Mr and Mrs T wrote to SJP again on several occasions. And they referred their complaint to this service.

Our Investigator's view

One of our Investigators looked into Mr and Mrs T's complaint. He said he was sorry to see Mr and Mrs T's investments had decreased in value from their pre-covid levels. But he didn't think the complaint should be upheld because SJP told Mr and Mrs T in 2020 that their ISAs would be unlikely to recover if they switched to a low risk option, but Mr and Mrs T wanted to switch anyway because their risk appetite had changed. The Investigator also said it wasn't the role of the adviser to provide commentary on price fluctuations; the adviser's role was to periodically review if the investments were suitable. The Investigator also said he couldn't see that SJP had charged Mr and Mrs T any fees that were outside the terms and conditions of their contract, or otherwise unfair.

Mr and Mrs T didn't accept the Investigator's view. They said their complaint was about the individual adviser and the quality of his advice in 2020 when he simply told them not to panic. They said a new adviser had now explained the equity market to them. And they now thought that if they'd received a better explanation in 2020 then they wouldn't have panicked and wouldn't have switched their investments. They said they still hadn't been given a satisfactory breakdown of fees they'd paid to the adviser.

Mr and Mrs T also said the adviser hadn't told them he was affiliated with SJP. And they said they were unhappy with advice he'd given in 2014, including in relation to their pensions. And they questioned information received in documents provided by their pension provider.

Because no agreement could be reached, this complaint was passed to me to review afresh and make a decision.

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 decided not to uphold the complaint. I'll explain why.

The purpose of this decision is to set out my findings on what's fair and reasonable, and explain my reasons for reaching those findings, not to offer a point-by-point response to every submission made by the parties to the complaint. And so, while I've considered all the submissions by both parties, I've focussed here on the points I believe to be key to my decision on what's fair and reasonable in the circumstances.

In considering what's fair and reasonable in all the circumstances of this complaint, I've taken into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

I've limited my decision here to the complaint that Mr and Mrs T made to SJP, which was considered by SJP and then by our Investigator. The status of DFS as an appointed representative of SJP isn't material to this complaint. And the 2014 advice is outside the scope of this decision because any dissatisfaction about that didn't form part of the complaint Mr and Mrs T brought to SJP.

I understand Mr and Mrs T said in response to our Investigator's view that they want to complain about the competence of the individual adviser. And they've said they want the adviser to be publicly identified to protect other consumers. But the role of this service is to make a decision on the complaint about the actions of the respondent (which in this case is SJP, as the regulated firm responsible for the advice) insofar as those actions are alleged to have caused Mr and Mrs T a loss. It's not the role of this service to assess the competence of an individual to give advice or to publish any such assessment.

<u>SJP's fees and charges</u>

In response to Mr and Mrs T's complaint SJP gave Mr and Mrs T written information about the fees it had charged. Mr and Mrs T gave us an annotated copy of that information on which they commented that the breakdown didn't show how much of that fee was paid to the individual adviser.

From the information I've seen I think SJP was transparent enough about its fees after Mr and Mrs T asked for information about them.

I understand Mr and Mrs T would like a further breakdown of the fees showing how much their individual adviser was paid. I don't think that information is something SJP was obligated to provide. The fees Mr and Mrs T paid were for a service to be provided by DFS, a firm which acted as an appointed representative of SJP. How DFS chose to remunerate an adviser who provided services on its behalf in these circumstances is not within the jurisdiction of this service to consider. And I don't believe it's material to Mr and Mrs T's complaint about the advice and service they received from SJP (as provided by its appointed representative DFS).

Lack of ongoing advice and proactive action

It's not in dispute that after being approached by Mr and Mrs T in March 2020 SJP advised Mr and Mrs T not to switch investments. Mr and Mrs T initially complained that SJP should've anticipated changes in the market and should've acted to stop their investments from losing value.

It's not fair and reasonable to expect SJP to have known in advance exactly how and when the market would change in response to the covid pandemic, either at the time that values fell or later when prices recovered. I can't say SJP should've proactively sought to change Mr and Mrs T's investments in response to the covid pandemic. SJP viewed covid as a short-term fluctuation (albeit an extreme one) and so it didn't recommend switching investments in response to it. As SJP said in its response to Mr and Mrs T's complaint, attempting to take advantage of or minimise the effects of market fluctuations by switching investments wasn't consistent with the medium-risk strategy that SJP had recommended and Mr and Mrs T had accepted in 2014. SJP's position on this was a reasonable one to take, keeping in mind Mr and Mrs T's original risk appetite and investment objectives. So I think SJP acted in with the best interests of Mr and Mrs T in mind. And I can't say SJP did anything wrong by not seeking to switch Mr and Mrs T's investments when covid emerged.

Attempting to take advantage of or minimise the effects of market fluctuations was also outside the scope of the service I think SJP had agreed to provide to Mr and Mrs T. In response to their complaint SJP told Mr and Mrs T that ongoing advice entailed periodically reviewing their investments to ensure the investments were still suitable for their circumstances and objectives. And that didn't involve switching investments in response to short-term fluctuations. SJP's recommendation letter of 25 July 2014 said SJP would send Mr and Mrs T a statement each year and an annual review could be arranged. Again, in light of Mr and Mrs T's risk appetite which was rated in 2014 as medium to medium-low, I think SJP's position on this was fair and reasonable.

I note that SJP wasn't providing a discretionary portfolio management service which would've given SJP the right – and the obligation – to make changes to Mr and Mrs T's investment portfolio at its own discretion. SJP's welcome brochure and the 2014 advice letter indicate that the ongoing service it offered was a periodic review which the adviser suggested should happen annually. And it made market-related information available to its customers and provided oversight of its fund managers. This doesn't suggest to me that SJP had offered to provide continuous monitoring of Mr and Mrs T's individual portfolios or to proactively make or advise changes to their investments in response to market fluctuations throughout the year. So I don't think it's fair and reasonable to say that in response to the covid pandemic SJP should've advised Mr and Mrs T sooner to change their investments.

For the same reasons I can't say SJP should've proactively advised Mr and Mrs T at any particular point later in 2020 to switch their investments back in order to take advantage of a recovering market. SJP couldn't know when and how the market would recover, whether there would be further falls (if, for example, the covid situation worsened), or when Mr and Mrs T's attitude to risk would change enough that a switch would be suitable for them. And I haven't seen anything to suggest that after the switch Mr and Mrs T did change their attitude to risk again during 2020. If they did, it was open to them to contact SJP to discuss options. Again, continuous proactive monitoring of and adjustments to their investments in response to market conditions were outside the scope of the service SJP had agreed to provide.

Communication of the advice

In response to our Investigator's view Mr and Mrs T said SJP should have stopped them from switching by giving them a better explanation of the advice not to switch and so persuading them to follow the initial recommendation to do nothing.

Correspondence from Mr and Mrs T in 2021 said SJP told them (in March 2020) to '*sit tight*' and '*hold on as plans would recover*'. Mr and Mrs T mentioned that Mrs T had been reluctant to switch because SJP recommended against it. They initially complained that their losses were increased by SJP's '*persistence*' in '*trying to talk* [them] *out of moving the funds*'. They said Mrs T was holding back because of SJP's persistence, whereas they could've reduced their losses if they'd been able to switch more quickly, meaning when they first contacted SJP in March 2020 rather than when they contacted SJP a second time that month and '*insisted*'.

SJP's letter of 1 April 2020 told Mr and Mrs T clearly that SJP had taken the view that they shouldn't switch their investments, but that Mr and Mrs T had insisted on switching. This is consistent with Mr and Mrs T's version of events. The letter also set out the risks involved in switching and the reasons the adviser didn't initially recommend it. I think the letter shows what was in the adviser's mind when he discussed Mr and Mrs T's investments with them in March 2020.

I know Mr and Mrs T have said they didn't receive the 1 April 2020 letter and SJP didn't give them a good explanation. But I think that, on the balance of probabilities, it's more likely than not that SJP gave them reasons that were along the lines of those set out in the letter. Mr and Mrs T have shown they were aware at the time that SJP thought they should wait for the market to recover. And from Mr and Mrs T's descriptions in 2021 of SJP's efforts to persuade them – for example when they described SJP's '*persistence*' in trying to convince them – I don't think it's fair for me to say SJP didn't make a fair and reasonable effort to communicate to Mr and Mrs T the benefit of following its recommendation. It's not in dispute that discussions were had on at least two occasions in March 2020. And Mr and Mrs T didn't follow up after the switch to ask what the money market funds were or why they'd been switched into them. So I think it's safe to say on balance that SJP explained its reason for recommending not switching, whether or not Mr and Mrs T received SJP's 1 April 2020 recommendation letter which set out a summary of discussions SJP said had taken place.

SJP told Mr and Mrs T that in hindsight it was evident their investments would've recovered by the end of 2020 if they hadn't switched. And after speaking to a new adviser Mr and Mrs T said if they'd had a better explanation about how the market worked and what would happen then they wouldn't have switched and so wouldn't have incurred losses. But as I've said it's not fair and reasonable to expect SJP to have known exactly when and by how much the market would recover. So SJP couldn't have told Mr and Mr T when and how that would happen. I think it was reasonable for SJP to say in March 2020 – without the benefit of hindsight – that recovery was likely to happen sometime within Mr and Mrs T's investment horizon and so SJP didn't recommend switching. And, as I've said, I think that on balance that's likely to be what SJP said.

Although Mr and Mrs T have said they didn't understand how the market worked and so didn't know what to expect, they haven't said they didn't understand what SJP recommended. SJP said the risk of the switch was '*much less chance of you regaining your losses once the markets rise*' – and I'm satisfied that whether in the letter or in discussions SJP would've communicated this particular point. Mr and Mrs T's correspondence shows they knew SJP had said it's best to wait for the market to recover. So I don't think the communication of the advice failed to be clear and fair. And I don't think it was misleading.

Understandably Mr and Mrs T are upset that the value of their investments dropped and didn't recover as they would have liked after they switched investments. And I'm sorry that's happened to them. But Mr and Mrs T's 2021 correspondence shows they felt strongly that a switch was necessary to prevent further loss of value. And I don't think it's fair and reasonable in the circumstances to say SJP should've done more to talk them out of their position.

When Mr and Mrs T contacted SJP at the outbreak of the pandemic SJP had to take on board their worries and what that meant for SJP's understanding of their overall circumstances, attitude to risk and investment objectives. And SJP had to give them suitable advice in light of that and bearing in mind their ability to understand the risks involved.

I'm satisfied that – in both saying initially that they should hold tight and then recommending a money market fund when Mr and Mrs T maintained that they wanted to reduce risk exposure – SJP acted fairly and reasonably bearing in mind these obligations. SJP had to have regard for Mr and Mrs T's interests, including their interests to act in a way they were comfortable with, even if that wasn't SJP's first choice of action. And SJP had to ensure it communicated clearly enough that Mr and Mrs T could make informed choices about whether to accept SJP's advice. Overall I'm satisfied SJP did these things.

My final decision

For the reasons I've set out above, I don't uphold Mr and Mrs T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mr T to accept or reject my decision before 9 November 2023.

Lucinda Puls
Ombudsman