DRN-3136246

The complaint

Mr and Mrs S complain about the advice they received in March 2020 from Thornton & Baines Independent Financial Advisers Limited, to switch their investments into cash funds.

What happened

In 2015 Mr and Mrs S were advised by Thornton & Baines to place around £54,000 in ISAs, and to enter into an advisory service relationship. This consisted of Thornton & Baines providing advice on an ongoing basis, with regular reviews. Mr S' attitude to risk was assessed as 'medium' and he preferred ethical investments. Mrs S' attitude to risk was 'highest medium' - though after discussion, she invested in a slightly lower risk portfolio – and she also preferred ethical investments. They were investing for the medium term, which was described as a period of five to ten years.

On 14 March 2020 they were contacted by Thornton & Baines with an email titled '*A better service for your investments – with lower costs*', which appears to have been sent to all their customers. This email set out that Thornton & Baines had been looking to source a discretionary fund manager (DFM) to provide a discretionary service for its clients and explained the benefits of that type of service. They explained it was something they'd been planning for some time, and that it would involve a switch out of existing funds into cash, in order to facilitate the move to the DFM. Thornton & Baines explained that:

"*given the backdrop of the recent coronavirus, we have had to bring forward our work… As we are delighted with the new service, we are advising all of our model portfolio clients, to switch into cash. While we prepare the final details of the offer, then we will endeavour to come back within two weeks, with the final details. The reason we do not have it now, is we have not finished our final negotiating of the fees with* [the DFM]. *However we have already secured the best deal they have given any other IFA in the UK, so it will be a great offer no matter what the outcome is…*

All we require you to do at the current time is to decide if you want to move into cash and consider the new service, stay invested and consider the new service. Alternatively, you can remain in the same funds you are currently in, and we will review the portfolio in the same manner – but you will not benefit from the reduced platform fees/fund costs as negotiated by T&B with [the DFM].

Please click on the hyperlink below to select your choice.

- *Yes, please move my investments into cash, given the current financial climate, and while I consider the new investment service.*
- *No, leave me invested, but let me have details of the new, improved service.*
- *No, leave me invested, I do not want to consider the new service at this point."*

Mr and Mrs S replied and chose the first option. Over the following several months they got in touch with Thornton & Baines to ask when they should reinvest, but were advised each time to remain in cash. In October 2020 they had a meeting with an adviser, who found their attitude to risk to be level five, which was described as balanced.

On 10 November 2020 Thornton & Baines emailed their client base and said that in their opinion, it was a good time to reinvest. Soon after, Mr and Mrs S decided to leave Thornton & Baines and made a complaint about the move to cash and the fact they had not been advised to reinvest sooner.

Thornton & Baines didn't uphold the complaint, and explained that all recommendations they made had been accepted by Mr and Mrs S, and given the uncertainty due to the pandemic, they felt the advice to reinvest came at the right time. As they remained unhappy, Mr and Mrs S brought their complaint to our service.

An investigator at our service upheld the complaint, as she felt the advice to switch to cash went against Mr and Mrs S' attitude to risk. She found that Thornton & Baines had not done enough to ensure their advice was suitable for Mr and Mrs S' circumstances and objectives. To put things right, she recommended that Thornton & Baines compare the amount Mr and Mrs S received when they moved their money elsewhere, with the amount they would have had if they weren't advised to move to cash in March 2020. She also recommended that they pay £100 for the distress and inconvenience caused. Mr and Mrs S accepted this recommendation.

Thornton & Baines disagreed with the investigator – in summary they said that had they completed a full advice meeting in March 2020, their advice would have been the same – to switch to cash due to the pandemic. They said they told Mr and Mrs S that they could reinvest at any point after March 2020, but that it would be against their advice. They also pointed to a phone call with Mr S in May 2020 where he said that he and Mrs S appreciated the caution shown by Thornton & Baines and that they were 'reasonably cautious' themselves. The investigator wasn't persuaded to change her mind, so the case has been passed to me for a final 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.

In their submissions to our service, Thornton & Baines have said that it was Mr and Mrs S' decision as to what steps to take – placing more emphasis on their decisions, rather than Thornton & Baines' advice. I don't agree with that position, and I'll explain why. Any information – and in particular information presenting an option in a favourable way – given to Mr and Mrs S, must be considered in the context of the established relationship Mr and Mrs S had with Thornton & Baines. They had provided an ongoing advisory service, which Mr and Mrs S had been happy with for five years. The report issued to Mr and Mrs S in 2015 said:

"We recognise that all our clients have different financial needs and objectives and we will build a plan appropriate to the needs of each client."

So, its natural – and reasonable - for Mr and Mrs S to expect that anything presented to them by a Thornton & Baines adviser was considered suitable for their individual circumstances. It's also reasonable for them to have followed the advice they were given, as they had trusted the previous advice wholly and appeared happy with it. This is especially the case at a time of such uncertainty in the financial markets – most regular retail investors would rely heavily on advice given by their professional adviser at such a time.

Though it was sent to many clients, I'm satisfied the email sent on 14 March 2020 constituted advice to Mr and Mrs S – it clearly presented Thornton & Baines preferred option in a positive light and a reasonable recipient would have considered it to be advisory in nature. Given the background to their relationship, its reasonable for Mr and Mrs S to think they were being advised here. As such, Thornton & Baines were responsible for ensuring the advice was suitable for Mr and Mrs S' circumstances and objectives.

Thornton & Baines didn't carry out a review of Mr and Mrs S' circumstances ahead of the advice given in March 2020 – they didn't complete a new fact find or update the existing information they held. From the evidence I've been given, the last time a fact find was completed was in 2015. Given the agreement entered into, I expect that Mr and Mrs S had a number of meetings with Thornton & Baines over the intervening years, however I've not been provided with documents showing any changes in circumstances over that time.

The investigator asked Mr and Mrs S to consider what their attitude to risk was in March 2020 compared with 2015 – they confirmed it had remained the same. Given they had remained invested in medium risk investments over the course of many conversations with Thornton & Baines between 2015 and 2020, I'm satisfied it's fair and reasonable to find that their attitude towards risk hadn't changed significantly. So, I think it's fair to rely on the information provided in 2015 in that regard.

I also note that documents completed in May and October 2020 by Thornton & Baines, following reviews with Mr and Mrs S, also confirm their attitude to risk as 'balanced'. Though the titles of the risk categories had changed, the definition of 'balanced' is quite similar to that of 'medium'.

In 2015, both Mr and Mrs S invested in 'medium' risk funds – in the 2015 report this was explained as:

"You are likely to be more comfortable and better able to adapt to losing money on your investments than someone whose attitude to accepting risk is lower…

you would probably prefer your investment to go up and down less and make more modest returns than risk losing money for higher returns. However, you are probably prepared to accept some falls in order to make higher returns than just investing in low-risk investments. This means that you could make a loss on the amount you invest, particularly in the short term."

Based on this, I'm persuaded that Mr and Mrs S were prepared to accept loss and weather disruption. They clearly understood that their investments were long-term in nature and would fluctuate in value – *particularly in the short-term*. The advice to switch into cash funds at the sign of trouble in the markets caused by the pandemic, seems directly at odds with Mr and Mrs S' tolerance for disruption. As a result, I'm persuaded that the advice wasn't suitable for their attitude towards risk.

In the 2015 report, Thornton & Baines said that their approach to advising on poorly performing investments would be:

"should any fund that we have recommended for you be performing poorly we will continue to monitor this for three months and should the performance not improve we may advise switching fund…

We recognise that all our clients have different financial needs and objectives and we will build a plan appropriate to the needs of each client."

So, the approach set out in 2015 to signs of underperformance was essentially to wait and see whether losses were short-term in nature, and presumably to take the time to properly consider the markets and various influences on the performance of the funds. This isn't unusual, or in my view unreasonable, as these types of investments are typically expected to fluctuate in the short-term, with the view that longer-term, the fluctuations would be smoothed out. That approach seemed in line with the approach Mr and Mrs S wanted to take in 2015, in that they would be prepared to weather short-term losses. However, that is not the approach Thornton & Baines took in 2020, when they advised the switch without waiting.

Throughout the progression of this complaint, Thornton & Baines' have increasingly said their advice to switch to cash was due to the uncertainties that the pandemic presented to the market. However, this wasn't how it was presented on 14 March 2020. At that time, it was primarily presented as a switch to cash in preparation to use a DFM. That change gave no consideration to Mr and Mrs S' desire for ethical investments, or whether their existing portfolio continued to meet their needs more widely. Investing in an ethical way wasn't mentioned in the March 2020 email, nor is it mentioned in the paperwork for the portfolio they were advised to invest in within the DFM. I don't think it was reasonable for Thornton & Baines to advise the switch from advisory to discretionary management in March 2020 without giving any consideration to that element of their objectives.

The fact that Thornton & Baines advised all clients to do the same thing, regardless of individual objectives, also contradicts their statement that they'd act in line with individual needs. Thornton & Baines have explained that if they had taken the time to give full individual advice to Mr and Mrs S, then their advice would have been to move into cash funds. However, merely because that was Thornton & Baines' approach across the board doesn't make that a suitable recommendation for Mr and Mrs S. I'm satisfied the advice was unsuitable, particularly given their risk tolerance, as I've set out above.

In addition, the advice given in March 2020 wasn't balanced – it only focused on the positives of the DFM proposition. It briefly compared the difference between advisory services and discretionary – it said that under an advisory service, delays are inevitable, which wouldn't happen in a DFM arrangement. It didn't explain any other differences between the two – for instance the difference in cost. Nor did the email fully explain why the recommendation was being made at that particular time – it merely said:

"However, given the backdrop of the recent coronavirus, we have had to bring forwarded our work…

given the current financial landscape, we would like to suggest a move into cash now."

It didn't explain in what way the markets were reacting to the pandemic or explain Thornton & Baines' opinion on why they felt moving to cash was better than staying invested. Nor did it explain any of the downsides of exiting the market, or what any delay in making a choice might mean. There was no discussion of any loss that Mr and Mrs S may have already incurred prior to that date, which they would be crystalising by exiting the market.

Given how imbalanced the email was, I don't think Mr and Mrs S were given a fair and reasonable amount of information on which to make an important financial decision. Its unsurprising – giving the praise of the DFM – that they decided to follow the advice.

I've listened to phone calls that took place in March 2020 between Mr S and Thornton & Baines. I accept Mr S seems more cautious regarding investing at that time – but I'm persuaded this is primarily because of the advice being given by their adviser to go into cash.

If the adviser had properly considered their attitude to risk and fully explained the downsides of going into cash at that point, then I think it's more likely than not that Mr and Mrs S would have stayed invested. This is evidenced by Mr and Mrs S' willingness to go back into the markets later in the year, showing they were keen not to miss out on the potential opportunities, and their clear tolerance for risk, as set out above. I'm satisfied that had they been given full, balanced, information about their options at that time, that Mr and Mrs S wouldn't have chosen to change their investments at all. It's possible they've lost out as a result, and I've set out below how Thornton & Baines should calculate whether there's been any financial loss.

As I've found the advice to leave their investments was unsuitable and so the switch to cash funds shouldn't have happened, there's no need for me to consider the timing of the advice to reinvest.

I'm satisfied Mr and Mrs S were caused unnecessary stress and inconvenience by the advice they were given. Had they been given suitable advice in March 2020, I don't think that would have happened, and I don't think they would have lost confidence to the point of needing to find a new adviser at the end of 2020. I agree with the investigator that it's fair to award £100 to compensate Mr and Mrs S for this.

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr and Mrs S as close to the position they would probably now be in if they had not been given unsuitable advice.

I take the view that Mr and Mrs S would have remained with the previous investments they held prior to the switch to cash funds in March 2020. I'm satisfied that what I've set out below is fair and reasonable in this situation.

What must Thornton & Baines do?

To compensate Mr and Mrs S fairly, Thornton & Baines must:

- Compare the performance of Mr and Mrs S's investments with the notional value if they had remained with the previous investments. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation of the difference between the notional and actual values is payable.

- Thornton & Baines should also add any interest set out below to the compensation payable.

- Pay Mr and Mrs S £100 for the distress and inconvenience caused by giving incomplete and unsuitable investment advice.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
ISAs under the Advisory Service	No longer in force	Notional value from previous investments	Date of the switch into the cash funds	Date ceased to be held – when Mr and Mrs S moved away	8% simple per year on any loss from the end date to the date of settlement

Actual value

This means the actual amount paid from the investment at the end date.

Notional Value

This is the value of Mr and Mrs S' investments had they not been switched to cash and instead remained invested as they were prior to that switch.

My final decision

I uphold the complaint. My decision is that Thornton & Baines Independent Financial Advisers Limited should pay the amount calculated as set out above.

Thornton & Baines Independent Financial Advisers Limited should provide details of its calculation to Mr and Mrs S in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 14 June 2023.

Katie Haywood
Ombudsman