DRN-3931619

The complaint

Mrs F and Mr M complain that Thornton & Baines Independent Financial Advisers Limited ("T&B") gave them bad investment advice in 2020. They say they were advised to sell all their investments to cash during the Covid-19 pandemic, and were left out of the market too long before being advised to re-invest their money. They say as a result, their investments lost value and failed to take advantage of the market recovery.

What happened

Mrs F and Mr M had used T&B for investment advice for a number of years. They had an investment bond (initially held jointly, later separated into their own names) and Mr M had received pension advice. Mrs F and Mr M took an income from the investment bond(s) to fund their living expenses.

In early 2020, the markets fell sharply after the start of the pandemic. At around this time, T&B was also in the process of migrating their clients, including Mrs F and Mr M, from their own advised portfolios, to a discretionary portfolio offering from another company I'll call A.

In February and March 2020 Mr M had a number of calls and emails with T&B about the fall in the markets and what this might mean for his investment and the income he was drawing from it.

On 13 March 2020, T&B wrote to Mrs F and Mr M about this change. It said the discretionary approach would mean A could rebalance their investments more quickly and frequently as it wouldn't need to confirm their acceptance of any changes (as T&B needed to under its managed advisory model). It also said they'd benefit from reduced platform and fund fees.

T&B went on to explain that to move into the new service, *"we must first sell down your existing portfolio into cash – and then move your fund into the new portfolio."*

T&B said that *"given the current financial landscape, we would like to suggest a move into cash now"*.

It explained that *"the potential downside could be that the market bounces back while you are in cash"* but that on the other hand *"your money would be safer while in cash if the markets continue to fall"*.

T&B then gave Mrs F and Mr M three options:

- Move their investments to cash and consider taking up the new service with A;
- Remain invested but receive the details of the new service; and
- Stay invested and continue the same advisory relationship with T&B as before.

Mr M confirmed to T&B that he and Mrs F wished to *"follow the advice"* and move their funds to cash. A few days later he wrote to T&B again saying he was *"extremely worried about the* *situation"* and asked about *"the likelihood of regaining the losses […] after we return to the market sometime in the future"*.

Mrs F and Mr M's adviser replied to say that things were uncertain and that *"the only assurances I can give you at this hour is I have instructed for my personal plans as you have to take a cash position. […] But regardless of everything going on now. Things will come back. When, however, is the big question? But as explained, not many people see the markets coming back in these coming days. However, there simply are no guarantees."*

Mrs F and Mr M's money stayed in cash for the next few months. On 24 August 2020, T&B wrote to them about its view on when to re-enter the market.

It said that *"being in the market is typically the right place to be, on the understanding that investments are for the long term. […] However, given the pandemic and its continued impact on world markets, there is a distinct possibility the bottom of the market could be tested once again. Our view is to stay in cash until we see the impact of the withdrawal of the furlough scheme planned for October. […] This strategy obviously comes with the risk that should there be an upturn in markets then you would miss out on this by not being invested. Despite this potential risk we recommend staying in cash for the moment. If you are in favour there is no need to do anything. If you would prefer to re-enter the market now please contact us"*.

Mrs F replied to say that it was *"very difficult to know what is going to happen next. I am happy to take [T&B's] advice on this."*

T&B wrote to Mrs F and Mr M again on 9 November 2020. It now said *"we believe now is the time to re-enter the market, but still with a sense of caution"*. It offered them three options – to phase their investments back into the market, to fully re-invest, or to remain in cash.

Mrs F and Mr M opted to fully re-invest, and their money was reinvested in November 2020.

By mid-2022, Mrs F and Mr M's investments hadn't recovered, and their income drawn from the investments was reduced. They'd had to deplete cash savings in order to meet their expenditure needs. They complained to T&B. In summary, they said:

- The move to cash in March 2020 was excessively cautious, and timed to coincide with the move to the discretionary service with A.

- T&B didn't listen to their concerns or reconsider their attitude to risk.

- Coming out of the market, and staying out of it for so long, went against their goals to invest in a way that would protect their capital but give them a monthly income.

- They weren't warned that the move to cash would lock in the losses they'd suffered at the start of the pandemic, and effectively cost them over a quarter of their portfolio.

T&B didn't uphold their complaint. It said it had explained the rationale for moving to cash in 2020, and considered it the most prudent approach at the time. It said it had engaged in dialogue with Mrs F and Mr M between March and August 2020, explaining its reasons for its approach and giving its view on the likelihood of a market recovery. It said it had taken on board their concerns and given reassurances.

Mrs F and Mr M came to our service, where one of our investigators considered the matter. She didn't think the complaint should be upheld. Overall she concluded that the decisions

T&B had taken were suitable for Mrs F and Mr M's objectives and risk appetite. She said that without the benefit of hindsight, moving to cash between March and November 2020 was a suitable strategy.

T&B accepted the investigator's view, but Mrs F and Mr M didn't. They asked for an ombudsman to review the complaint. They reiterated their main complaint points, and said that as investors they were totally reliant on the expertise of T&B. They said that *"in this case the advice we were given was wrong"*. They noted that *"the vast majority of advisors were recommending their clients should stay in the market"*.

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 reached the same conclusions as our investigator and for broadly the same reasons. I'll explain why.

This complaint centres on the actions of T&B across 2020. Most of the background facts leading up to those events aren't in dispute. T&B were advising Mrs F and Mr M on their portfolio of investments. They were rated as medium risk investors which T&B said meant their portfolio *"is likely to experience both rises and falls in value. So while there is good potential for returns from your investment to match or go above the rate of inflation […] you also need to accept that your investment could fall in value, particularly in the short term."*

It's not in dispute that Mrs F and Mr M wanted to take an income from their investments, which they needed to support their quality of life.

In considering the events this complaint relates to, I've taken account of the regulatory obligations on T&B, under the FCA's Principles for Businesses (PRIN) and Conduct of Business Rules (COBS). Of relevance here, T&B needed to:

- Conduct its business with due skill, care and diligence (Prin 2);
- Pay due regard to the interests of its customers and treat them fairly (Prin 6);
- Manage conflicts of interest fairly (Prin 8);
- Ensure its communications with customers are fair, clear, and not misleading (COBS 4.2.1R); and
- Comply with the suitability rules in COBS 9A, including to *"only recommend investment services, financial instruments and insurance-based investment products, as applicable, or take decisions to trade, which are suitable for the client and, in particular, in accordance with the client's risk tolerance and ability to bear losses."* (COBS 9A.2.1R (2)).

With these in mind, I've thought carefully about the decisions T&B took in 2020. This must be done considering the unique and unprecedented conditions which were a result of the pandemic. I've been careful not to allow hindsight to cloud an assessment of decisions taken at the time, when outcomes were uncertain.

I'll start by saying I think there are some issues with the way T&B went about advising Mrs F and Mr M. Its obligations above meant that when giving advice it ought to have taken into account Mrs F and Mr M's particular circumstances and expressed a personal recommendation for them. But that isn't what it did here – it made a sweeping recommendation to all its clients to move to cash, and then to reinvest, at times it selected without consideration for the particular needs or risk tolerance of the individual.

I do, however, have some sympathy for T&B here. It has explained that it had to act with urgency given the market conditions, and took a decision it felt best for its clients overall. Ultimately that decision still needed to be suitable for each individual investor though. And as I'll go on to explain, I don't think this failing means I should uphold this complaint – because I think even if T&B had looked at Mrs F and Mr M specifically, I think it's more likely than not it would have made the same recommendations at the same time, and that it would have been fair and reasonable for it to have done so bearing in mind its need to give suitable advice.

I've also thought carefully about Mrs F and Mr M's points regarding the timing of the initial advice to move to cash. T&B itself has been open that this was in part to facilitate the move for its clients to the new service it had set up with A. I've considered whether T&B appropriately managed this conflict – in other words whether its advice was driven more by the desire to set clients up with the new service than what was best for their investments given their objectives and attitude to risk.

Overall though, I find, like our investigator, that the advice T&B gave was at the end of the day suitable for Mrs F and Mr M at the time, regardless of the failings in the individual assessment or the presence of the switch to A's service at the same time.

I would also note that I think this issue is finely balanced. Even without hindsight, there were compelling reasons to stay invested – some of which T&B itself set out in its March 2020 email. But the test I must apply isn't whether the advice was, as Mr M put it, *"wrong"* in the sense that it turned out not to be the best course of action. It is whether it was fair and reasonable for T&B to have given that advice, bearing in mind its need to act with due skill and care, and to ensure that its advice was suitable.

The situation in March 2020 (and the months that followed) was incredibly, and unprecedentedly, uncertain. The scale and impact of the pandemic was as yet unknown, and the consequent impact on economies across the globe, and financial markets, was very hard to predict. Clearly, the risk of further falls in the market was not zero. And I find that while Mrs F and Mr M were willing to take some risk – they were medium risk investors – their need to take an income meant that they couldn't afford drastic falls to their investment.

I do accept Mr M's points that by moving to cash when they did, they'd already locked in a large loss of around 25%. And I know that this loss, and the relatively slow growth once they reinvested, meant that it was harder for he and Mrs F to take an income without depleting capital further or dipping into other savings. But I'm mindful that the risk of yet more losses in a heavier market downturn was a very present one in March 2020. T&B couldn't do anything about the capital already lost, but I don't think it was unreasonable for it to have concerns about protecting the remaining capital from further losses which may prove to be even harder to recover from.

In effect, where as T&B acknowledged, remaining in the market for a medium risk investor like Mrs F and Mr M is usually the prudent approach, the whole risk spectrum had shifted to the point that, in T&B's view, the normal risk of some short term fluctuations had become a real risk of substantial losses which would have jeopardised Mrs F and Mr M's ability to meet their objectives. Even if this risk didn't, in the end, materialise, I don't think it was an unreasonable view for T&B to have taken at that particular point in time.

I also accept that other advisers may have taken a "braver" view – but that isn't to say that it wasn't within the scope of T&B's discretion, acting with due skill and care, to reach a different viewpoint.

I've also taken into account that the risk of a market rebound while they were out of the market was highlighted to Mrs F and Mr M in T&B's March 2020 email. And that of the three options they were given in that email, two of them were to remain invested. So I don't think T&B failed to make Mrs F and Mr M aware of the risks of their recommendation or the potential downside of moving to cash. I understand why Mrs F and Mr M say that as retail investors they relied on T&B and followed their recommendation, rather than selecting another option. But for the reasons I've given above, I don't think that recommendation was fundamentally unsuitable for Mrs F and Mr M.

There's then the question of whether Mrs F and Mr M ought to have been advised to re-enter the market earlier. I can see that there were discussions about this over the summer of 2020. And while the tone of some of T&B's responses was somewhat curt, I think it explained clearly that its view was still that the risk of being invested was too great at that time. Similarly to the March decision to disinvest, I think it was reasonable for T&B to have considered at that point that for a medium risk investor who required some capital preservation and to take an income, that the still extant risk of a severe market downturn meant it was suitable to remain in cash for a while longer.

This is reflected in the email T&B sent them in August 2020. In this email T&B explain at some length the particular factors which led it to believe, at that point, that the chance of further market falls were significant – such as the withdrawal of the furlough scheme. The email makes it clear that there's a chance this could mean Mrs F and Mr M missed out on the start of a recovery (*"this strategy obviously comes with the risk that should there be an upturn in markets then you would miss out"*).

Overall, I understand and sympathise with Mrs F and Mr M's frustration at the way events unfolded. Undoubtedly, their investments would have gained more had they been out of the market for less time or not at all. But I don't think it would be fair and reasonable for me to require T&B to compensate them for giving advice that turned out to have led to a less financially advantageous outcome. I think T&B could have done some things better – it should have given consideration to Mrs F and Mr M's particular circumstances. But taking everything into account, I think it gave Mrs F and Mr M advice which was suitable for their circumstances and objectives, and gave weight to the non-trivial risk that remaining in the market in mid-2020 could have done irreparable harm to their investments. And I think it communicated the reasons for its advice clearly, including highlighting what might happen (and as it turns out, did to a degree happen) if it was wrong in its assessment of where the balance of risk lay in the markets over that period of time.

So, taking account of the obligations T&B had towards Mrs F and Mr M, I find that it acted fairly and reasonably towards them and gave them suitable advice. It follows that I don't think it would be fair to require T&B to compensate Mrs F and Mr M for any losses they consider they have suffered as a result of following T&B's advice.

My final decision

For the reasons I've given I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mr M to accept or reject my decision before 1 August 2025.

Luke Gordon
Ombudsman