DRN-4430208

The complaint

Miss J has complained about advice she received from JM Independent Financial Advisers Ltd to partially transfer her personal pension to another pension provider. She says the funds recommended in the new pension weren't in line with her attitude towards risk. She also says the charges increased and they weren't properly disclosed.

What happened

Miss J's complaint was considered by one of our investigators. He sent his assessment of it to both parties on 13 October 2023. The investigator's understanding of the background and circumstances to the complaint were set out in that assessment. Both parties have subsequently disputed some of the circumstances. Whilst I've taken everything into account, I've focused on the key points which I think are material to deciding the fair outcome of the complaint, which in my view turns on the suitability of the advice given.

Miss J had transferred her previous pension arrangement to a personal pension on the advice (given in 2016) of JM IFA. Her transfer value was invested in one of the pension provider's own funds. Miss J's attitude to risk was moderate at the time. The investigator said the total charges on the existing personal pension were 1.7%, which included a 0.75% ongoing service charge.

In late 2021 JM IFA advised Miss J to transfer part of her pension to a Self-Invested Personal Pension (SIPP) and invest in a range of funds. Her pension at the time was valued at approximately £587,000. She was advised to transfer £200,000 of it. Miss J's attitude towards risk was still moderate (3/5). It was recorded that Miss J's existing fund had a risk rating of 2/5.

The reasons recorded for recommending the transfer included:

- Miss J could build and manage a retirement portfolio that met her attitude towards risk.
- Through JM IFA, Miss J's portfolio would be regularly reviewed, taking into account her other areas of financial planning. This was likely to be on a quarterly basis.
- JM IFA would build a bespoke investment strategy to meet Miss J's needs and ensure that should her views on risk change JM IFA would alter the funds within the plan accordingly.
- JM IFA were recommending that Miss J invest in a plan that had access to a good selection of funds in the marketplace whilst still offering a competitive cost.

The suitability report said JM IFA would be remunerated by the product provider, by way of a deduction of a fee from the initial investment for the advice, administration and research provided to Miss J. It said charges on the new plan, including the initial fee and ongoing annual service charge of 1%, were 2.09%.

In 2023 Miss J complained to JM IFA about the advice she'd been given. JM IFA didn't uphold the complaint, and Miss J subsequently referred it to us.

Our investigator thought that Miss J's complaint should be upheld. He referred to the Financial Service Authority's (the industry regulator as it was known at the time) report and checklist for pension switching published in 2009. He said he thought it was still applicable. He said the checklist identified areas where consumers had lost out which included:

- They had been switched to a pension that was more expensive than their existing one(s) or a stakeholder pension (because of exit penalties and/or initial costs and ongoing costs) without good reason.
- They had switched into a pension that didn't match their recorded attitude to risk (ATR) and personal circumstances.

The investigator said the new SIPP Miss J had been transferred to was more expensive than her existing pension, albeit he was satisfied that the increased charges had been properly disclosed to Miss J.

The investigator said Miss J had been recorded as being a moderate risk investor which was described as:

"You are prepared to take a moderate amount of investment risk in order to increase the chance of achieving a positive return. Capital protection is less important to you than achieving a better return on the investment. A typical Moderate investor will usually invest in a variety of assets to obtain diversification and therefore reduce risk. Equities and property, which can boost longer term returns but are associated with more risk, would often account for a higher proportion of assets than fixed interest gilts and bonds or cash. At shorter investment terms the proportion of higher risk assets is usually reduced. The range of asset types helps reduce the overall risks while increasing the chance of better returns."

The investigator said the risk score for the fund Miss J had been invested in with her original provider was 49 out of 100. He thought this indicated Miss J was invested in line with her attitude to risk.

The investigator said the risk score for the new funds Miss J was advised to transfer to was quoted as 77 out of 100. He said he'd looked at the individual funds in question. He said the vast majority of these funds were categorised as above average and higher risk funds. The investigator didn't think Miss J had been invested in funds aligned to her moderate attitude towards risk. He said if Miss J had wanted to increase the amount of risk she wanted to take she could have switched funds with her existing pension provider.

Overall, the investigator said he thought it was difficult to see what the benefit of transferring was to Miss J. He said Miss J was reliant on the advice she'd paid for. And he thought if JM IFA had advised Miss J against the transfer she wouldn't have transferred.

Both parties provided further evidence and arguments. As agreement couldn't be reached the complaint was passed to me for further consideration.

The investigator sent an e-mail on my behalf to both parties setting out my provisional findings on Miss J's complaint. In summary, I said that having considered all the available evidence and arguments, I was minded to come to a different conclusion than the investigator.

I said Miss J's complaint was closely linked with her partner's complaint. JM IFA had said that advice was provided on a holistic basis taking both Miss J and her partner's circumstances into account. I noted the periodic reviews of the pensions that JM IFA had completed over time did consider both Miss J and her partner's circumstances in the round. And that I was required to decide a complaint on the basis of what was fair and reasonable in all the circumstances. I said I'd taken Miss J's partner's position into account in deciding whether the advice was suitable.

I said my understanding was that Miss J and her partner had just over £1million invested between them in their former fund. Miss J had just under £600,000 herself (£587,336 in the suitability report). Her attitude to risk was moderate. There had been some back and forth with the investigator and JM IFA about whether the charges on the new plan were higher than the existing plan. I said it looked to me like the charges were slightly higher following the transfer taking all charges into account including for advice. However, I thought, given the relative difference in charges, that this wasn't key. Given that Miss J and her partner had a significant amount all invested in the same fund, I said I was satisfied that it was reasonable to transfer some of the money to a completely different provider for diversification/ risk management purposes.

Given I thought it was reasonable to transfer some of the money, I'd considered whether the transfer recommended was aligned to Miss J's objectives and circumstances – in particular with Miss J's agreed attitude to risk – moderate/medium risk. I noted what JM IFA had said about the FE Risk score. And I said there were a wide range of analytical tools and information available to advisers to help them assess a client's appetite and ability to accept risk and then build a suitable portfolio. Different businesses and advisers used different tools and information. However I thought such tools or assessments should only be used as part of a wider process to assess whether a portfolio was suitable for a particular client's circumstances.

I said Miss J's existing fund appeared to have been performing well. The suitability letter said it provided a return of 15 and 20% over 1 and 3 years respectively. And it was invested in different asset classes and rated as 2 out of 5 risk wise. JM IFA had said if it believed a portfolio of lesser risk was better suited to a client's needs it would recommend it – which I understood it considered to be the case when it originally recommended Miss J's original fund.

I said Miss J's existing fund appeared to be providing healthy returns at the lower end of the risk scale that Miss J had agreed to take. So I thought there would need to be a good reason to move from a position/ strategy that appeared to be achieving its aim and presenting lower risks.

However given, as I'd said, that I thought transferring some money to another provider wasn't unreasonable given the amount of money held in one single fund, I thought there was some room to take some increased risk. My understanding was that the existing fund was invested 48% in Equities (20% UK and 28% International), 21% Fixed Interest, 14% Property, 9% Others and 8% Alternative Investment Strategies. The £200,000 Miss J transferred was into a number of equity-based funds. Following the transfer I said the proportion of her funds invested in equities was around 65%. When considering the portfolio as a whole and including her partner's transfer, the combined portfolio was invested around 80% in equities.

I said if Miss J had only transferred this £200,000, and her partner had remained in the original fund, the overall position would be that they had around 55% invested in equities. I said I thought 55% in equities was reasonable for Miss J's circumstances and aligned to the risks that she'd agreed to take.

Taking all the circumstances into account, I said I didn't think the advice to partially transfer Miss J's pension was unreasonable assuming that her partner hadn't transferred, and in the context that only £200,000 of the total combined value of the pensions of approximately £1 million had actually been transferred. So I wasn't minded to uphold Miss J's complaint as I didn't think the advice was unsuitable in the context of the overall position.

Miss J didn't agree with my provisional findings. She said, in summary:

- The firm didn't assess her position on a holistic basis. She said she had never had anything to do with her partner's money or her partner with hers. She said they weren't married, took different pension amounts for their separate needs and had different dependents.

- She initially approached the firm a number of months before her partner and the advice was for her alone. They accessed their funds at different times and in the context of suiting their own personal lifestyle. She provided further details about her and her partner's finances being separate. Miss J said her complaint wasn't about diversification – it was about putting her pension into high-risk funds and there being a substantial increase in charges. She said she didn't agree that the charges were increased slightly – there was a 33% increase.

- She felt moving £200,000 altered her risk strategy. Apart from one new fund recommended by JM IFA, the others were deemed more volatile than her existing fund. She said increasing the amount of equity exposure in a third of her pension meant there was a marked increase in the risk taken. She said investing in funds with exposure to Russia and India presented a lot more risk. And some of the funds were now worthless. Even in the run up to the Russian invasion the funds weren't switched out of. She said she had been invested in funds that had in-house risk ratings of 6 out of 7 – and questioned how this wasn't high risk.

- She hadn't been disappointed with the performance of her existing fund but did ask for advice about diversifying. However this was on the basis of keeping the same level of risk which could perhaps have been achieved by remaining with her existing provider and investing in its funds. She had been retired for 5 years and wasn't looking to increase her risk. Miss J said she had been sold the new funds on their increased returns and better past performance. She said she was guided by the adviser – if she'd been advised that the funds were riskier than holding her existing funds she would never have agreed to the move.

Miss J's financial adviser also provided a further submission on her behalf. In summary, he said:

- JM IFA's Transfer Report from December 2021 had been prepared for and written only for Miss J. It didn't include her partner's circumstances. The adviser understood Miss J and her partner operated their financial affairs independently of each other.

- There were a number of facts that were set out in the report which were incorrect relating to Miss J's mortgage. And some inconsistencies between what JM IFA had said and Miss J's recollection of events.

- The report confirmed Miss J's existing risk strategy for her existing fund was 2 out of 5. Although the Attitude to Risk section of the report made reference to the new funds being 3 out of 5, he said at no point did JM IFA alert Miss J that there was a 'physical change' or make any reference to taking Miss J's partner's assets into account when recommending the increase in overall risk.

- The report said Miss J was happy that the attitude to risk that had been agreed was within her stated capacity for loss. But he thought if Miss J's overall risk profile was increasing as part of JM IFA's recommendation, then Miss J would have had to agree she was willing to suffer a greater degree of capital loss.

- There were inconsistencies in the information given about charges between the suitability letter and the illustration. Although the suitability letter said the new contract needed to outperform by 0.39%, given the information in the illustration it appeared to actually be 0.46% He said he didn't think this was 'slightly higher'. He said he thought it would have been important for JM IFA to have properly highlighted the increased cost. The adviser didn't think the feasibility of switching within the existing arrangement had been properly considered to diversify risk.

- The risk score for Miss J's existing funds was 49 compared to a score of 77 for the proposed funds – an increase of 57%. He said although this related to £200,000 of the fund there was no mention of the potential effect of taking on the additional risk. He said the report said the risk was in line with Miss J's requirements – with no mention of her partners – but he didn't see how this was possible.

- The new funds were invested in equity backed investments apart from one fund which was a UK listed 'bricks and mortar' property fund. He said the equity holdings were in specialised areas and carried a greater degree of risk, volatility and capacity for loss than the existing funds. He said the decision to invest in Indian and Russian equity funds couldn't be made without an increased acceptance of risk. He said the new strategy was materially different in the risks it presented even with a 65%/35% composition (into the existing/new funds)

- Miss J's existing fund had returned 15% over a year and 20% over three years in the midst of the global health pandemic and with a risk rating of 2/5 – it had done very well. He could see no reason to seek to change investment strategy. Miss J had intimated there was no formal reassessment of her risk strategy - so questioned how it could be decided she wanted more risk. The level of risk wasn't consistent with the assessment of risk he had conducted which was more cautious.

- The ultimate position was that more risk was taken for an increased cost of advice. The adviser said he was unconvinced this was properly explained in the report of December 2021.

JM IFA also provided further evidence which I have taken into account in making my decision below.

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.

Miss J had around £587,000 invested in a single fund. Her partner had just over £400,000 invested in the same fund. In my view it was sensible and reasonable to move some of Miss J's money to another fund for diversification and risk management purposes. That is on the basis of taking Miss J's holding in that fund into account without her partners. But even more so taking his holding into account.

Miss J's new adviser has said there are inconsistencies in the information that JM IFA provided on charges. Whilst there may be some inconsistencies, I don't think they were material in as far as they impacted on the suitability of the advice given. I don't think the *additional* outperformance of 0.07% or around that figure (0.46% - rather than the 0.39%) is material to the outcome of the complaint.

JM IFA has said given the nature of Miss J's existing fund it discounted its ongoing charge from 1% to 0.75%. So if Miss J had moved to a different fund for diversification purposes the charges would have increased by 0.25% on the money moved in any event. I accept that money could have been moved within the existing provider. However in my view, given the actual differential in the increase in charges, it wasn't an unreasonable proposition to move some money to a new provider for diversification purposes. And given the nature of the new funds they had the potential to provide the outperformance required.

Ultimately, I think what's key here is whether the degree of risk presented by the recommendation was aligned to the degree of risk that Miss J had agreed to accept – moderate.

As I've said, in my view transferring some money to another provider wasn't unreasonable. I accept that the recommended funds increased the degree of risk from what Miss J was already taking. Miss J and her adviser say she wasn't told that the recommendations resulted in an increased risk. JM IFA says risks were discussed.

Clearly I can't say with any reasonable degree of certainty what exactly was and wasn't discussed about increased risks at the time. On the one hand I haven't seen any *explicit* explanation in the suitability letter that the degree of risk had increased from what Miss J was taking. However the suitability letter did clearly set out that Miss J's existing funds had a risk rating of 2 out of 5. It said her attitude to risk had been discussed and it had been identified Miss J's attitude to risk towards retirement planning was 3 out of 5 (Moderate). And that this was the level of risk Miss J wished to apply to the current recommendations.

The suitability letter said the FE Risk score had increased from 49 to 77 following the recommendation. I wouldn't expect Miss J to understand all the implications of this risk score/nos. But it was a higher score. And looking at the suitability letter in the round, I think Miss J ought reasonably to have been alerted that the recommendations meant she was increasing the degree of risk she was taking in the broad sense – albeit still within her moderate risk profile. And that the firm understood she was willing to take this moderate risk (3 on a scale of 1 to 5). So I think it's reasonable to assess the advice on the basis that the recommendations needed to be in line with a moderate (3/5) attitude to risk.

JM IFA didn't specifically say in its suitability letter that its recommendations were being made, in particular in relation to risk, in the context of Miss J and her partner's pensions combined. And I accept that Miss J and her partner each had their own separate pensions and used them independently.

I think there is likely to be some broader financial interdependency The new adviser records Miss J and her partner jointly own their property which has a mortgage - albeit as I say, I accept they could treat their pensions separately. However advice isn't given in a vacuum. Even if the adviser didn't specifically consider the risk in the context of both pensions, it was reasonable for the adviser to take Miss J's partner's circumstances *into account* in providing suitable advice to Miss J. I don't think, for example, it would have been reasonable for him to ignore the factual situation that they both were entirely invested in the same single fund and the risk that presented through lack of diversification.

Miss J and her partner did have a joint review meeting in December 2021 to discuss their pensions. The Pension Transfer Reports were both dated 6 December 2021. And some of the documentation from the time of the advice does consider their portfolios on a combined basis. So it appears their pensions and the risks they wanted to take were likely discussed at the same time. JM IFA provided copies of several other reviews/reports that it provided to

Miss J and her partner over a period of time both before and after the December 2021 advice. These showed their positions in detail, firstly on a joint basis with the total value of their funds together and the split of underlying asset content on a joint basis. And then going on to provide details for each in isolation. In Miss J's e-mail to the firm dated 25 July 2021 Miss J said she was interested in reinvesting 50% of her pension. JM IFA has said that because Miss J's partner couldn't transfer just part of his pension it considered the position together, and this was the reason it only recommended that Miss J transfer about a third of her pension.

There is no doubt that the degree of risk that Miss J was exposed to increased following the transfer. But I have to consider whether that level of risk was greater than the degree of risk that I'm satisfied Miss J had agreed to take (3/5 – moderate).

My understanding is that the existing fund was invested 48% in Equities (20% UK and 28% International), 21% Fixed Interest, 14% Property, 9% Others and 8% Alternative Investment Strategies. The £200,000 Miss J transferred was largely into a number of equity-based funds. Following the transfer the proportion of her funds invested in equities was *around* 65% (slightly under 65% given a small percentage of the £200,000 was in a property fund). So the equity content had increased following the transfer. And the new funds Miss J invested into were largely above average and higher risks funds.

In my provisional findings I said if Miss J had only transferred her £200,000, and her partner had remained in the original fund the overall position would be that they had around 55% invested in equities (or again slightly under this figure). Looking at their position together, I'm satisfied around this amount in equities was reasonable in the circumstances.

Whether or not JM IFA considered the risks in the context of both Miss J and her partner is unclear. As I've said, it wasn't specifically set out in the suitability report. But other documents from the time did relate to a combined portfolio, and the firm had provided reports on a joint basis both before and after the transfer advice. However either way, I've therefore also considered the position of Miss J's pension in isolation.

I think the make-up of Miss J's own portfolio was consistent with the description of a moderate risk investor that JM IFA had provided as set out above. It was also consistent with the suggested asset mix for a moderate risk investor (60% in equities). Although it was slightly above this figure it wasn't significantly. As I've said, there are a number of tools and sources of information available to advisers to help them build a suitable portfolio such as the FTSE Private Investors Index Series or MSCI PIMFA Investor Index Series. I don't think this amount in equities was inconsistent with the firm's description of moderate risk or the asset allocations set out in these benchmarks.

Clearly it's not just the category of asset that is material however, but also the nature of the assets within that category. Portfolio construction isn't an exact science. Different businesses and advisers use different methods, tools and theories behind building suitable portfolios. There are no specific rules defining suitable portfolios for different levels of risk. And there's no hard line against which to judge where one level of risk ends and another starts. There does comes a point however, where a portfolio is clearly misaligned to the degree of risk that a client has agreed to take.

JM IFA has said Miss J's funds - considered on a stand-alone basis or with her partner – were aligned to her moderate degree of risk. It says this was consistent with the risk score the analytics system it uses provided. I've taken this into account, and agree that investing in a spread of equity funds with exposure to different areas does provide some diversification and mitigates risk. But as I've said, I think the risk score needs to be considered as part of a wider process and given appropriate weight in the overall assessment of risk.

There has been comment from both parties about the fund with Russian exposure. The recommendation was to invest 7% of the transfer value in it. I don't think there was anything wrong in recommending a fund with Russian exposure in itself at the time. Investment managers will have different reasonable opinions about the future direction of asset prices, and they will take into account wider events in making their decisions.

The issue here is that the Russian fund was recommended along with a number of other funds presenting significant risks. Investing some capital in a higher risk investment(s) isn't unreasonable for a moderate risk investor in itself, if the overall portfolio has sufficient weightings of lower risk assets and so is appropriately balanced to moderate risk overall.

I realise that both parties have strong opinions about the outcome of the complaint. I'm required to make a decision by reference to what is, in my opinion, fair and reasonable in all the circumstances of a case.

The majority of Miss J's pension - about two thirds – remained in the original fund. This fund rated itself as 2 out of 5 on a risk scale, and had material exposure to a wide range of different types of assets including to some lower risk assets. It employed a 'smoothing' mechanism to provide some protection against market volatility. So the majority of Miss J's pension was invested in a fund presenting risks at the lower end of Miss J's moderate risk profile, and provided some balance to the risk presented by the £200,000 invested largely in equities.

As I've said above, even if the firm didn't *specifically* consider the risks in the context of both Miss J and her partner, I think the adviser would needed to have taken Miss J's partner's general position into account when providing advice. I accept that Miss J and her partner might treat their pensions completely separately. But at a high level, and without looking at it forensically, if Miss J's partner had remained fully invested in the original fund it would also have provided some further balance.

I recognise the £200,000 was invested in funds that presented significant risks in themselves. However as JM IFA has said, the money was invested in a wide range of different funds, in different geographic areas and with different strategies. This blend of different funds did provide some diversification and risk mitigation when considering the funds in the round rather than each independently.

On the one hand, I do think that, even when combined with the fund Miss J was already invested in, the degree of risk Miss J was taking increased towards the higher end of the level of risk she'd agreed to take. However, as I've said, different professionals can have different reasonable opinions about risk. And I don't think the level of risk was beyond what a professional firm, acting competently, might consider reasonable for a moderate risk investor in the particular circumstances of this case.

I think it also follows that I don't think the advice was unreasonable *if it was* considered in the context of the overall position with Miss J's partner.

My final decision

Accordingly, my final decision is that I don't uphold Miss J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 25 April 2024.

David Ashley

Ombudsman