DRN-4465501

The complaint

Mr and Mrs E complain that the investment portfolio they took out following advice from Jade Independent Financial Advisers Limited ('Jade') has performed poorly and they've suffered a loss as a result. They also complain they've not received any documentation or information about their investment since it started in 2019. Mr and Mrs E are seeking compensation for their loss and a refund of the fees they've paid.

What happened

The following is a summary of the key background and circumstances leading up to this complaint.

In 2019, Mr and Mrs E met with Jade to seek lump sum investment advice. In a report dated 2 July 2019, Jade recommended Mr and Mrs E invest in a portfolio managed by a Discretionary Fund Manager ('DFM') – a fund manager it was recorded they already had an established portfolio with. The recommendation report said, amongst other things that, Mr and Mrs E were looking for capital growth in excess of bank deposit rates; access to ad hoc / regular withdrawals as and when required; to minimise tax liability; to have access to ongoing investment advice; and to invest over a time horizon of five to ten years. Jade assessed Mr and Mrs E's attitude to risk as 'balanced' (a score of 4 out of 10) and it recommended investment in a 'category 3' portfolio for income and growth, which it deemed matched their attitude to risk. The report said that Jade's initial fee was 1% of the investment fund and its ongoing fee was 0.5% – both to be deducted from the plan.

Mr and Mrs E accepted the recommendation and the investment was made in line with Jade's recommendation.

In October 2020, Mr and Mrs E contacted the DFM directly and instructed it to sell their investments with immediate effect and hold the proceeds in cash. In an email dated 29 October 2020, Mr and Mrs E told Jade what they had done copying it in on their email correspondence. They also said: "...this is only a temporary measure and fully intend to re-invest as soon as we can." They also indicated that they wished to continue receiving payments from their investment.

Jade says that during 2021, the DFM wanted to understand Mr and Mrs E's plans for their money because it remained in cash. And later in 2021, Jade met with Mr and Mrs E to discuss matters. Following this meeting Jade instructed the DFM to re-invest their funds as per the original investment risk and strategy recommended.

In December 2022, Mr and Mrs E complained about the loss they'd incurred on their investment and the lack of ongoing service and advice. They said they were surprised at the lack of contact from Jade given their portfolio had lost around £60,000. They said they thought the investment wasn't risky. They said when Jade last visited them, it said they were losing money staying in cash and it advised them it was time to re-invest. They said they wanted compensation for their loss.

Jade didn't uphold the complaint. In a response of 7 March 2023, it said that the DFM don't keep clients in cash and it either needed the funds to be withdrawn or re-invested. It said following a meeting in late 2021, it advised Mr and Mrs E it was unwise to remain in cash and the funds were re-invested. It explained the reasons for the poor investment performance were due to geopolitical world events, which had caused all asset classes to fall in value. It said the DFM had sent Mr and Mrs E quarterly valuations explaining this and that their portfolio had fallen 10% over the last quarter. It said the adviser had made plenty of contact with Mr and Mrs E citing 'Whats App' messages, although it acknowledged that it hadn't provided a full ongoing service of late due to the adviser's personal circumstances for which it apologised. It also said that it didn't understand why Mr and Mrs E believed their investment was safe given they'd since moved their investment to another DFM.

Dissatisfied with its response, Mr and Mrs E referred their complaint to us. Mr and Mrs E explained the above sequence of events – they said they were advised in 2021 to re-invest, and although reluctant they eventually agreed during the meeting with Jade's adviser. They said they received no paperwork following this visit about how their funds were invested. They said they contacted Jade because of their concerns about the fall in value with a view to understanding why. They said they have no understanding or indeed if there were any risks – they understood it was a safe investment. They said they are disappointed not to have received any advice or support from Jade despite it taking a fee – assistance sooner might have limited their loss.

In response to our request for its business file, Jade said that, in the interest of settling the matter quickly, it was willing to make an offer of settlement to Mr and Mrs E for the amount of all associated fees from the investment as requested by them.

Mr and Mrs E rejected the offer, so one of Investigators considered the complaint. They upheld the complaint, in part. In summary they said, the evidence indicated Jade sent Mr and Mrs E its 2019 recommendation report, which was correctly addressed. They said the recommendation recorded that Mr and Mrs E's investment objective was to invest for at least 15 years, so while their decision to move into cash was only temporary, this was nevertheless against advice. So they didn't think it was fair to hold Jade responsible for short-term fluctuations.

They said the re-investment in 2021 put Mr and Mrs E's investment back in-line with the original recommendation. They said by moving into cash, Mr and Mrs E had lost out on growth and they would have been in a stronger position had they remained invested according to figures given by Jade. They said they though the original advice in 2019 was suitable, and with no evidence to indicate anything had fundamentally changed in 2021, they didn't think Jade needed to re-assess the portfolio's suitability before instructing the re-investment. They said the responsibility for sending regular valuations was the DFM's. But they said, they didn't think the annual reviews were carried out since the investment was made in 2019, so they recommended Jade refund the annual management fees of £4,809.78 to put things right, which it had offered to do.

Mr and Mrs disagreed. They broadly repeated the points they'd previously made – the fact they'd not received any documents from Jade or any other third party since their investment began; Jade advised them to come out of cash; there was no regular contact from Jade despite what the selected 'Whats App' messages show and what Jade says about frequent informal meetings; and their losses would have been limited had the regular reviews taken place.

Because the Investigator wasn't persuaded to change their opinion, the complaint was referred 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.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

Having done so, I've reached the same overall conclusion as the Investigator and for broadly the same reasons. My reasons are set out below.

Suitability of 2019 recommendation

The first thing I have considered is the suitability of the advice Mr and Mrs E received from Jade in 2019 to invest a lump sum. I've done this because, in my view a complaint about poor investment performance or losses incurred on a portfolio, particularly over the short-term, could be an indicator that the original advice was unsuitable. But in this case, I've not seen anything to persuade me that the advice Mr and Mrs E received was unsuitable.

Jade carried out an assessment of Mr and Mrs E's attitude to risk, which it deemed to be 'balanced' – a score of 4 out of 10. The answers to the questions Mr and Mrs E were asked as part of the assessment look reasonable and there are no inconsistent answers, which lead me to believe Mr and Mrs E were not prepared to take a 'balanced' risk with their investment or that they didn't reasonably understand what this meant. Reference was made to Mr and Mrs E already having an 'established portfolio' with the DFM being recommended, so I think they already had some experience with an investment of this nature. And I'm mindful that, given Mr E's occupation, and even accounting for Mr E not having worked directly in an investment advice capacity as he says, I still think he ought reasonably to have had a good general understanding of personal financial matters at the time. And this includes an understanding of the concept of risk and the different classifications / terminology used here.

So, while I can see Mr and Mrs E have said they thought their investment was safe (I assume they mean without risk), I'm not persuaded it is reasonable for them to have believed this was the case. I've seen no evidence that Jade either told Mr and Mrs E this was the case or that it implied so.

Mr and Mrs E's objective was for capital growth over the long term – at least five to ten years, with a later reference to a time horizon of at least 15 years. And Mr and Mrs E have confirmed this was and continues to be the case. The funds under consideration appear to have been surplus to any capital expenditure requirements or short term needs, and Mr and Mrs E's income appears to have been sufficient for their day-to-day requirements.

So, given Mr and Mrs E's circumstances and objective and taking account of the investment recommendation into the DFM's 'category 3' portfolio and its broad composition, I think overall the recommendation was suitable.

Non-receipt of 2019 suitability report

Jade's recommendation, or Investment report was issued on 2 July 2019. Mr and Mrs E say they didn't receive this report. But Jade has provided a copy of a letter dated 3 July 2019 which said the report was enclosed along with a copy of the service and fee agreement. The letter is correctly addressed, so on balance I think it was likely sent. Mr and Mrs E have questioned this as evidence because it is unsigned. But as a file copy I wouldn't expect it to carry a signature, so I don't think the absence of a signature is important here. I'm mindful too that given Mr E's occupation, I think he would likely know to expect to receive a suitability report in these circumstances, so it strikes me as odd that if Mr and Mrs E didn't receive it as they say, they didn't contact Jade to chase things up or query things sooner.

Investment value falls / losses incurred

At the heart of Mr and Mrs E's complaint is their disappointment at the loss or reduction in value of their investment, which they say is a large sum of money. And I appreciate that a fall in the value of an investment portfolio, particularly if it is significant, can be concerning. I've already said that I think the investment was suitable for Mr and Mrs E, so Jade didn't do anything wrong when it made the recommendation. As I've said, a key part of the suitability of the recommendation is that Mr and Mrs E's investment objective was for the long-term and I consider they agreed to accept some investment risk with their money.

Despite Mr and Mrs E's long-term investment objective, in October 2020 they decided to approach their DFM direct and they instructed it to liquidate their investments with immediate effect and hold the proceeds in cash. It seems to me that, rather than a fundamental change in their investment objectives or goals, like many people, the unprecedented global events of 2020 created fear and panic amongst investors, which Mr and Mrs E acted on. Crucially here, Mr and Mrs E took this decision without firstly seeking advice from Jade or indeed another third-party. This was a decision they took themselves. And I think this is a key point here – Mr and Mrs E's decision to liquidate their portfolio isn't something I can ignore in the broader context of considering the investment value falls they witnessed on their investment.

I'm mindful too that Mr and Mrs E appear to have continued to take regular payments from their investment during the period they held their monies in cash. I can also see they withdrew a lump sum at this time. So, these things would've had an impact on the performance and value of their investment during this time. Mr and Mrs E did re-invest in November 2021, which I will discuss next. And according to figures Jade obtained from the DFM, Mr and Mrs E's portfolio lost out on growth of more than 20% between October 2020 and November 2021 by not remaining fully invested. Because Jade did not advise Mr and Mrs E to liquidate their investments, it is neither fair nor reasonable to hold Jade responsible for this lost growth or the loss of investment value during this period.

Mr and Mrs E re-invested their funds in November 2021. There is some dispute about whether Jade advised Mr and Mrs E to come out of cash and re-invest their funds – Mr and Mrs E say they did receive advice, and although reluctant at first, they say they eventually agreed to move out of cash. Jade says no advice was given. It says the adviser was simply acting as a go-between the DFM and Mr and Mrs E to understand their intentions, and to satisfy the DFM's enquiries / concern about Mr and Mrs E's decision to remain in cash.

There is no documentary evidence that Jade gave Mr and Mrs E advice at this point. There is not, for example a suitability letter, file note or other similar document setting out the position. And I think it's plausible that Mr and Mrs E chose themselves to re-invest following a general discussion with Jade's adviser. I say this because Mr and Mrs E did after all acknowledge in their email of October 2020 that their decision to sell their investments was temporary and it was their intention to re-invest as soon as they could. Furthermore, it's also the case that it wasn't usual practice for the DFM to hold client investment monies in cash this way, so it's possible the DFM also played a part in the decision to re-invest and Jade's adviser was simply acting as a go-between.

But, even if I found that Jade did advise Mr and Mrs E to move out of cash (or that it was reasonable for Mr and Mrs E to have believed advice was given even if it wasn't) I don't think that advice was unsuitable. There is nothing to suggest that Mr and Mrs E's objectives, circumstances or general attitudes to investing had fundamentally changed since 2019. As I've indicated earlier on, Mr and Mrs E still consider their investment is long-term in nature. So, any advice at this time to re-invest based on the same reasons and basis as the recommendation Jade made in 2019 was not, in my view, unreasonable.

Unfortunately, over the period Mr and Mrs E re-invested to the point they complained at the end of 2023, geopolitical events meant investment conditions were difficult and investment returns / performance across most asset classes suffered as a result. But as I've already said, Mr and Mrs E's 'losses' were not as a result of receiving unsuitable advice from Jade. So, for this reason, and because Mr and Mrs E took it upon themselves to encash their investments and continue to take payments from it without firstly seeking advice, I don't consider it is fair and reasonable to hold Jade responsible for the short-term poor investment performance or returns Mr and Mrs E experienced. I don't think Jade acted unfairly or unreasonably here.

Non-receipt of any documentation post 2019 recommendation

Mr and Mrs E say they haven't received any documentation about their investment since Jade recommended it in 2019. I've already said I think the suitability letter was sent to them along with the service and fee agreement. But in terms of other information, I think investment valuations or statements would've been issued by the DFM because Mr and Mrs E's investment was under their management. For example, Jade has provided copies of market commentary letters the DFM sent out in February and May 2022 triggered by a 10% valuation fall explaining the reasons why. And Mr and Mrs E should've received these. But I don't think there's evidence of a failing by Jade in relation to issuing of documentation.

Annual servicing / reviews and fees paid

Despite the above, I don't think Jade acted fairly and reasonably towards Mr and Mrs E when it came to the annual reviews / advice they were paying Jade for. From the evidence Jade has provided in the form of 'Whats app' messages, it appears the adviser made some attempt to contact Mr and Mrs E to discuss or review their investment. And some of this appears informal in nature. But there's no real documentary evidence of it carrying out, or attempting to carry out, more formal reviews, which in the circumstances I think ought reasonably to have happened. So, I agree that Jade's service fell short here and below the level I think Mr and Mrs E reasonably expected given the fees they were paying. And while I accept Jade's failings were, in part due to unfortunate personal circumstances of their adviser, I think Jade could've put things in place to mitigate that.

So, I think a refund of all the annual management fees Mr and Mrs E paid, is in my view fair compensation for Jade's failings here.
I can see that Mr and Mrs E say better service here would've limited their losses. But I'm not persuaded by this. The DFM arrangement meant the day-to-day investment management of their funds was being carried out and any investment changes within the mandate they'd been given, including fund switches would've taken place regardless. There's also nothing to indicate that Mr and Mrs E's objectives had fundamentally changed as I've already said. But I accept Jade could've done more and that ongoing servicing aspect of the service fell short. But, only to the extent that they didn't get the service they ought to have expected and paid

for, not that this contributed to the investment value falls. So, I think a refund of the annual fees fairly put things right.

Overall, I uphold this complaint, in part and award compensation.

Putting things right

Jade should pay Mr and Mrs E £4,809.78 representing a refund of the annual management fees they have paid since 2019.

My final decision

For the reasons above, I've decided to uphold this complaint in part. To put things right, Jade Independent Financial Advisers Limited should pay Mr and Mrs E compensation as set out above. I make no other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E and Mr E to accept or reject my decision before 12 April 2024.
Paul Featherstone
Ombudsman