DRN-4844923

The complaint

Ms T has complained about advice she received from Thornton & Baines Independent Financial Advisers Limited in respect of the underlying investments in her pension. She's also unhappy with aspects of the service she received.

What happened

Ms T was an existing client of Thornton & Baines. In March 2020 Thornton & Baines recommended that Ms T move the funds in the underlying investments of her pension to cash. It said this was to protect the funds from further potential falls in value due to the recent onset of the Covid pandemic. Ms T proceeded in line with the recommendation. During 2020 Thornton & Baines advised Ms T to keep the funds as cash due to continued uncertainty in the investment markets.

In September 2020 Ms T complained to Thornton & Baines about the advice and the service she'd received to that point. Another ombudsman issued a final decision on that complaint.

In November 2020 Thornton & Baines contacted Ms T about moving her funds back into an investment portfolio. It said the landscape had moved since March 2020 and it felt the time was right to re-enter the investment market rather than continuing to keep the funds as cash. It suggested moving the funds back into the investment market in three phases. It felt this strategy offered Ms T some protection of her funds while getting them reinvested for the long term. Ms T followed the advice and her pension funds were phased in an 'August 2019' portfolio – one-third of the funds were placed into the portfolio in December 2020; the second third was placed into the portfolio in February 2021 and the remainder was placed into the portfolio in April 2021.

In 2021 Ms T had four telephone reviews with Thornton & Baines's advisor. The main topics discussed were the value of the pension, the performance of the portfolio and Ms T remaining at risk level 3. A review planned for 23 September was missed by the advisor. In 2022 Ms T had four further telephone reviews with the advisor. The main topics discussed were the performance of the portfolio and Ms T remaining at risk level 3. Reviews planned for 25 April and 10 November were missed by the advisor.

On 28 January 2023 Ms T wrote to Thornton & Baines to terminate her relationship. She referred to the performance of her pension, to the service she'd received and to being advised to not withdraw money from the pension and deposit it in an ISA. In July 2023 Ms T formally complained to Thornton & Baines. The main strands of the complaint were:

- the performance of the investment following the advice she'd received from November 2020 onwards
- Thornton & Baines not telling her that she didn't need a financial advisor for her pension investments
- communication with the advisor – including emails not being answered, him frequently failing to keep appointments without explanation, reports lacking an explained strategy or rationale for the advice and portfolio valuations containing inaccurate figures.

Our investigator concluded that the complaint should be partially upheld. In summary, she felt the portfolios Thornton & Baines recommended were reasonable as they were in line with Ms T's appetite for risk. She also felt it wouldn't have been fair if Thornton & Baines had told Ms T that she could manage her pensions on her own. But she felt Thornton & Baines could have provided a better service and that it should pay Ms T £200 compensation for the distress and inconvenience caused.

Thornton & Baines agreed with our investigator's conclusions but Ms T didn't. The complaint has therefore been passed to me to decide.

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.

As another ombudsman has already decided Ms T's complaint about the advice she received in 2020 to move her funds to cash, the advice during 2020 for the funds to remain in cash and the service she received up to that point I won't be revisiting those issues here. The issues I've considered for this complaint are from November 2020 onwards.

Advice

It's not my role to decide with the benefit of hindsight what the perfect advice should have been eg whether November 2020 was the right time for Ms T to return to the market; what portfolio the funds should have been place in. It's to decide whether the advice given was suitable based on the circumstances and what was known at the time.

I think there are three main elements of the November 2020 advice that I need to consider:

- returning to the investment market in November 2020
- returning to the investment market in phases
- placing the funds in the August 2019 portfolio.

In general, keeping investment funds in cash isn't advisable in the longer term. This is because the overall investment loses value in real terms as the interest earned is seldom sufficient to match inflation. Further, I don't think keeping the funds in cash for the longer term was in line with Ms T's level 3/cautious attitude to risk – Ms T needed to reinvest her funds at some point. Accordingly, I don't consider Thornton & Baines's general thoughts about Ms T returning to the investment market unreasonable.

Thornton & Baines explained in an email to Ms T on 19 November 2020 why it felt the time was right for her to move her funds into the investment market sooner rather than later. In summary, it said the landscape had shifted "in our favour" since March due to the recent US election, the furlough scheme being extended and positive news about testing for Covid and a vaccine. It further explained to us that the outcome of the US election provided increased clarity and optimism in global markets, the extension of the furlough scheme mitigated economic strain by continuing to support businesses and workers and progress in testing for Covid and the initial rollout of vaccines signalled potential for economic recovery. So while uncertainties remained it felt the investment markets had begun to stabilise following the initial impact of the pandemic.

I consider Thornton & Baines's thought process and reasoning for recommending that Ms T return to the investment market in November 2020 reasonable. Although, like everyone else, Thornton & Baines couldn't have predicted what would actually happen in the coming months and years, I think the points it made shed there was sufficient grounds for optimism.

Accordingly, I conclude that Thornton & Baines treated Ms T fairly when it recommended in November 2020 that she return to the investment market.

Thornton & Baines explained to us that it recommended a phased reinvestment to manage ongoing risks and to reduce the impact of any volatility in the market. In the abovementioned email Thornton & Baines said reinvesting in three phases would benefit Ms T irrespective of whether the market went up or down. It said:

- if the market went down after the first phase Ms T would benefit because the unit price of the investment would be lower when the second phase is invested
- if the market went up after the first phase Ms T would benefit because the second phase of the investment would benefit from any future growth.

I don't think this messaging was fair or balanced. I say this because if the market went down after the first phase it's difficult to argue that would benefit Ms T as the value of her first reinvestment would have decreased. I accept the market going down and causing a lower unit price for the subsequent phase would benefit Ms T, but by the same token she wouldn't benefit by the market going up as the unit price would then be higher. This wasn't explained to Ms T. Similarly, I think it was misleading to say that the market going up would lead to Ms T benefitting from future growth. This is because the second phase of the investment would have benefitted from any growth irrespective of whether the market had fallen or increased since the first phase. I think it would have been more accurate to say that if the markets rose the initial phase would benefit from that growth.

However, while I don't necessarily agree with Thornton & Baines's reasoning I'm not persuaded that the recommendation to reinvest in phases was unsuitable. This is because although the situation in November 2020 might have been clearer, more stable and/or more favourable than it was in March 2020 it was still during the pandemic and there was still some volatility in the investment markets. So phasing the funds back into the investment market protected Ms T from any sudden drop in the market if she'd reinvested it all in one phase.

When Ms T's funds were reinvested into the investment market they were placed into the "August 2019" portfolio. August 2019 is just the name of the portfolio and doesn't indicate it was designed solely for conditions at that time. The portfolio was actively managed and was regularly reviewed. And it was described as "Level 3 Cautious". So I think it was suitable for someone with Ms T's attitude to risk. Accordingly, I think the recommendation that the funds be placed in this portfolio was fair.

I turn now to the advice Ms T received after her funds had been placed back into the investment market.

In a telephone review on 1 July 2021 Ms T and the advisor discussed that there had been an upward trend in the investments and that the value of Ms T's pension had increased by about 4%. Ms T asked what annual growth could be expected from a level 3 and a level 4 investment portfolio and the advisor said 3 to 4% for the level 3 portfolio and 4 to 5% for the level 5 portfolio.

So at this point Ms T's portfolio had performed in line with what the advisor said could be expected at the higher end from a level 3 portfolio and at the lower end from a level 4 portfolio. Accordingly, I don't think there were grounds for the advisor to suggest switching the funds from the August 2019 portfolio.

In a telephone review on 21 October 2021 Ms T and the advisor discussed that the pension had increased slightly (by about 0.4%) since July. The advisor recommended that Ms T switch to a new “October 2021” portfolio. In a further telephone review on 6 January 2022 (which was before the funds had been switched to the October 2021 portfolio – as Thornton & Baines needed Ms T’s written confirmation that she wanted to switch) the advisor said that based on Thornton & Baines’s comparison of the two portfolios the October 2021 portfolio had performed better than the August 2019 portfolio over the longer term. He therefore again recommended that Ms T switch to the October 2021 portfolio. Ms T confirmed that she wanted to switch portfolios.

The situation had changed from October 2021 because the growth of Ms T’s pension since July 2021 had dwindled. There was also another portfolio that was now available, which had performed better than the portfolio Ms T’s funds were in. It don’t therefore think it was unreasonable for the advisor to have suggested switching the funds to the October 2021 portfolio (which was described as “Level 3 Cautious) which might perform better going forward.

In a telephone review on 19 May 2022 Ms T and the advisor discussed a decline in the October 2021 portfolio but the advisor said that moving to cash or withdrawing the funds from the pension and paying tax wasn’t advisable. In a further telephone review on 18 August 2022 Ms T and the advisor again discussed the drop in the market. The advisor said he expected there to be a similar trend for the next three to six months but he recommended that Ms T remain cautious and “ride out the storm”. He said there was no other portfolio Thornton & Baines could offer that had a chance of performing better than the October 2021 portfolio. He did refer to an “all bond” portfolio which was more cautious but he advised against that as there was no diversification if all of Ms T’s funds were placed in bonds.

Given Ms T’s attitude to risk I think there were limited options for the advisor. Ms T was opposed to the idea of placing her funds back into cash so he could only really recommend a lower risk portfolio. But he specifically said that there was no other portfolio he could offer that would likely outperform the existing October 2021 portfolio. So I don’t think the advisor’s advice to remain in the October 2021 portfolio and to ride out the storm was inherently unreasonable (although I appreciate the difficult position Ms T found herself in seeing her pension savings reduce and not knowing when they’d increase again).

In a telephone review on 6 December 2022 Ms T and the advisor again discussed the performance of the October 2021 portfolio. The advisor said there had been some growth in the last few months, although the growth didn’t compare to 12 months previously and he felt things were likely to get worse before they got better. The advisor further said that Thornton & Baines had now created a “Defensive” portfolio as a short term solution – it wasn’t designed for major growth but if things got worse it would give greater protection. The Defensive portfolio was described as “Level 3”. I understand that following the advisor’s recommendation to switch to this portfolio Ms T agreed to do so.

The situation now was different to earlier in 2022 because there was another portfolio that was available which, in the short term, was designed to offer greater protection if the falls seen throughout 2022 continued. Ms T was understandably disappointed at the continued falls she’d seen so I don’t think it was unreasonable for the advisor to have recommended switching the funds to the Defensive 2021 portfolio.

Separate to the investment recommendations, Ms T has complained about advice she received to not withdraw funds from her pension so that she could deposit them into an ISA. She said the advisor told her not to do this because withdrawing from the pension would lead to a tax charge. But she said the money in the ISA wouldn’t be subject to tax and the capital would have grown in the ISA rather than reducing in the investment portfolios.

The first withdrawing from the pension in order to deposit the funds into an ISA was discussed was during a telephone review on 6 January 2022. The advisor said that because Ms T would pay 20% tax when she withdrew from the pension unless she would recoup that 20% (plus any growth that would have been gained in the pension) from the ISA it was probably not worth doing. He further said it was fine if Ms T was withdrawing from the pension to spend the money the year, but if it was to just deposit into an ISA he felt Ms T should think twice because it didn't make sense. Ms T said she hadn't thought about it that way ie that what would be deposited into the ISA would only be 80% of what she withdrew from the pension.

I understand Ms T's point that any funds she deposited into an ISA would have grown due to the interest being earned rather than reducing by remaining in the investment portfolio. And she is correct that any interest earned in the ISA wouldn't be subject to income tax. But the tax-free status of an ISA is different to income tax that Ms T would have been liable for if she withdrew funds from her pension in the first place. And as the 20% income tax charge would have been significantly more than the interest Ms T could have earned in the ISA I don't think the advisor's advice against withdrawing the funds was unreasonable. I appreciate the investment in the pension might have decreased in the following months due to the portfolio performing worse than expected but the advisor could only work with the information available at the time and he couldn't have predicted the future performance of the investment portfolio.

So, to summarise, for the reasons outlined above I conclude that Thornton & Baines treated Ms T fairly in respect of:

- the advice given in November 2020 to rephase her cash funds back into the investment market
- the advice given from November 2020 onwards about which portfolio her funds should be placed into and
- the advice given in January 2022 not to withdraw funds from the pension purely to deposit them into an ISA.

Ms T not needing an advisor

Ms T's argument is essentially that it was a requirement for her to get financial advice to initially gain access to her additional voluntary contributions when she retired and she was under the impression that a financial advisor was always required for her pension. She said Thornton & Baines never told her that a financial advisor was unnecessary and that had it done so she would have ended the relationship with it earlier.

I've seen documentation that shows Ms T was one of Thornton & Baines's clients from at least 2016 – when she wanted advice on her pension. So Ms T was a client of Thornton & Baines in 2020 when it contacted her and recommended that she move her funds into cash. There's also an ongoing service agreement that Ms T signed on 7 April 2020. So I think it was reasonable for Thornton & Baines to continue on an existing client/advisor basis.

In my view, it wasn't a requirement for Thornton & Baines to tell Ms T that she no longer needed its services or otherwise didn't need an advisor to help her with her pension and investments. On the contrary, if she no longer wanted to receive financial advice I think it was for Ms T to tell Thornton & Baines.

I therefore conclude that Thornton & Baines didn't treat Ms T unfairly by not telling her that she didn't need a financial advisor.

Communication with the advisor

Ms T has made several points (some of which are outlined above) about the overall service she received from Thornton & Baines's advisor. Our investigator concluded that Thornton & Baines could have provided better service to Ms T and that this caused her unnecessary frustration. She also recommended that Thornton & Baines pay her £200 compensation in recognition of this. Thornton & Baines accepted our investigator's conclusion and acknowledged its shortcomings.

In considering this element of a complaint I generally look at the service provided as a whole (rather than exploring each and every issue that might have arisen) and the effect that had on the consumer. I have no doubt that Ms T would have been frustrated by the service she received and that this caused her distress and inconvenience that she otherwise wouldn't have suffered. For example, she shouldn't have had to chase for various pieces of documentation and she shouldn't have had to rearrange appointments. I typically consider compensation between £100 and £300 suitable where there have been repeated small errors requiring a reasonable effort by the consumer to sort things out. This in turn has tended to cause some inconvenience and/or lower levels of distress, disappointment and loss of expectation. I think Ms T's distress and inconvenience falls into this category.

Our investigator's proposed compensation sits within the parameters of what I consider fair. Accordingly, I agree with her that Thornton & Baines should pay Ms T £200 compensation for the distress and inconvenience caused.

My final decision

I partially uphold this complaint. I require Thornton & Baines Independent Financial Advisers Limited to pay Ms T £200 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 12 November 2024.

Paul Daniel
Ombudsman