

The complaint

Mr G complains that J.P Morgan SE (JPM):

- Downplayed the true risk of the OTC Price Return Swap on JPM's 95% Strike Fortnightly Put Writing Excess Return ER EU Index.
- Didn't explain the way the product worked properly, in particular didn't make him aware of the variable notion value or correct his misunderstanding.
- Didn't communicate how the product was performing in a timely or transparent way and didn't allow him to exercise the six-month break clause.

What happened

Mr G completed an application for a private client account with JPM in April 2018 with Mr B an authorised user of the account. Mr G was categorised as a retail client and JPM provided him with an advisory portfolio service. In February 2019 his account manager at JPM emailed stating she wanted to introduce the put writing strategy (the swap) setting out a brief explanation of how this worked.

There were further discussions and email correspondence between the account manager and Mr B and he was also provided with a term sheet that explained the swap in detail. There was a final meeting on 28 May 2019 following which the first tranche of the investment was made - with a second tranche being made on 5 June 2019.

An email was sent to JPM on 22 July 2021 on behalf of Mr G – although from someone that didn't have authority to act on his behalf with JPM - stating that due to significant losses which were market driven he had been reviewing the understanding of the swap based on the information provided by JPM and there were a few areas of concern. This led JPM to telephone Mr B explaining that the email writer wasn't authorised on the account and there followed various discussions about the concerns Mr B and Mr G had which in due course led to this being dealt with as a complaint.

JPM provided a final response to the complaint in which it made the following key points:

- Mr B was provided with the term sheet and PRIIPS KID which the adviser went through with him on 24 May 2019 following which he signed the term sheet.
- The number of Put Options contracts initiated on Index Publication Day is fully disclosed on page 34 of the term sheet and this highlights the formula used and the variable components and subsequent changing volume on the number of Put Option contracts sold under the Index rules.
- The scoring methodology between the PRIIPS KID, client risk profile and product risk ranking are independent of each other.
- The trade was a product risk rank of 4 at the point of initial subscription until maturity

and it didn't inform him that it had a risk rank of 3.

- The Client Affirmation Letter dated 3 May 2018 affirmed that JPM could market specific products ranked above the client risk profile score provided the overall weighted average of the account holdings remained within the risk profile ranking.
- A suitability assessment form (SAF) was returned to JPM on 29 May 2019 after the initial subscription date following which a client affirmation letter (CAL) was sent confirming a risk ranking of 5 for the account.
- The trade was suitable at the trade dates of 28 May 2019 and 5 June 2019 with the relevant risk profile scores derived from the SAFs being considered at the point of trading.

The complaint was referred to our service and one of our investigators considered it but didn't think it should be upheld. Mr G and Mr B didn't agree with the investigator and the matter was referred to me for review and decision. I issued a provisional decision explaining why I didn't think the complaint should be upheld. The findings from my provisional decision are set out below.

"In doing so, I've taken into account relevant law and regulations; relevant regulators' rules guidance and standards; codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time. But I think it's important to note that while I take all those factors into account, in line with our rules, I'm primarily deciding what I consider to be fair and reasonable in all the circumstances of the case.

It is for me to decide what weight to give evidence a party relies on and where there is a dispute about the facts my findings are made on a balance of probabilities – what I think is more likely than not.

The purpose of my decision isn't to address every point raised and if I don't refer to something it isn't because I've ignored it but because I'm satisfied I don't need to do so to reach what I think is the right outcome. Our rules allow me to do this, and it simply reflects the informal nature of this service as a free alternative to the courts.

Suitability of the swap

In opening his account in 2018 Mr G completed a SAF on 11 April 2018 which included a question as to his investment objective and his answer was 'minimal investment risk', which was described as:

"You have a preference for the relative safety of your invested capital over return on investments and are comfortable with the possibility of achieving minimal investment returns in exchange for minimum volatility and maximum liquidity."

Mr B has referenced this, suggesting that investment in the swap wasn't in accordance with Mr G's objective. However, as the form makes clear at the outset, the information provided by the client is used together with other relevant information to determine the client risk profile.

The form includes a description for the five possible risk profiles that JPM use, from very low (risk profile 1) to high (risk profile 5). JPM wrote to Mr G on 3 May 2018 informing him that it had determined he had a medium risk profile (risk profile 3). This is described as:

"You are willing to take increased risk to increase your investment returns. You accept that

for the opportunity to achieve greater returns you may need to invest in a mix of assets across the risk spectrum. Your investments may also be from the higher end of the risk spectrum, such as equities and alternative collective investment schemes or vehicles. You accept the possibility that your investments may lose some of their value and that you may experience frequent fluctuations in the value of your investments.”

The letter of 3 May 2018 also stated that:

“We may market to you or agree to accept from you requests for, investments in specific products that are risk ranked above your risk profile, provided the overall weighted average of your Portfolio is still within your risk profile.”

I have seen no evidence that Mr G (or Mr B) disagreed with the medium risk profile identified by JPM and no reason to think it wrongly assessed his profile at that time. JPM carried out a periodic review of the risk profile in March 2019 and wrote to Mr G on 14 March 2019 confirming his risk profile was still medium. The review didn't involve any discussion with Mr G or Mr B and appears to have simply been based on information that was provided in 2018 but I have seen nothing to suggest either Mr B or Mr G indicated they disagreed with this.

In the circumstances this was the relevant risk profile at the time the adviser emailed Mr B on 19 February 2019 stating that she wanted to introduce and chat about the swap and then provided some details as to how this worked, stating:

“This is something I really like as a more conservative way of adding equity exposure. It's a systematic short Put strategy and is tradable on both the EuroStoxx 50 (SX5E) and S&P 500 (SPX).”

It was also the relevant risk profile throughout the subsequent discussions between Mr B and JPM about the swap, including the discussion on 24 May 2019 following which Mr G and Mr B both signed the term sheet. JPM emailed the same day confirming it had all the approvals to proceed with the trade. I acknowledge what JPM has said about the term sheet only providing indicative terms and that it didn't amount to an execution of a transaction or trade instruction – although I would point out that it was clear at the meeting on 24 May 2019 that the intention was that Mr G would invest a notional amount totalling €20 million.

The information as to the risk of the swap explained that a put writing strategy is considered a very risky strategy and refers to options as complex financial instruments. The KID provides a risk indicator with a scale of risk from 1 to 7, with the OTC Equity Swap being classified as a 7 out of 7 – the highest risk class. However, the KID explains that all OTC derivatives are required to be certified as such and I note that JPM has said that its product risk rank was 4. Mr B disputes this, as he says he was informed in a call around 5 March 2019 that the account manager identified it as a risk rank of 3. In any event, even if the account manager did say this the KID did specify a risk of 7 out of 7 and I am not satisfied that if they had been told the product risk was a 4 rather than 3 this would have changed their decision to invest.

As I have referred to, the description for the medium client risk profile made clear that that investments may be from the higher end of the risk spectrum as long as the overall weighted average of the portfolio wasn't above the medium risk profile. So the product risk ranking of itself didn't mean that the swap wasn't suitable for Mr G's portfolio.

The initial trade was executed on 28 May 2019 with the account manager providing a short suitability letter the same date confirming the investment was suitable based on Mr G's medium risk profile. JPM has said in this complaint that whilst this first trade was suitable based on Mr G's medium risk profile and the product risk rating, the notional size of €10

million for the first tranche potentially put the trade outside of its own internal concentration limit. However, it has also said that when this was considered against his overall liquid net worth, this was reviewed and considered suitable.

However, JPM has said that the concentration risk meant the second trade of €10 million wouldn't have been suitable for the medium risk profile which had been established through the information in the April 2018 SAF. This does then raise a question as to why this wasn't addressed by the manager when she met with Mr B and Mr G on 24 May 2019 to go through the swap given the figure it had been agreed would be invested was a notional amount of €20 million.

Based on what JPM has said this was always going to be an issue given Mr G's current investment objective and risk profile and there is nothing to suggest that she had any reason to think at that time that these would change such that the concentration risk would no longer be an issue. In the circumstances Mr G was never going to be able to invest €20 million when he and Mr B met with the account manager on 24 May 2019.

Even if I accept that the term sheet they signed only provided indicative terms and that it is the suitability of the actual trades that were subsequently made that is important, I can see no reasonable explanation why the account manager didn't address this at the meeting and can only assume that for some reason this didn't occur to her. I think it should have been obvious to her that investing a notional amount of €20 million as against an overall portfolio of €30 million was likely to be an issue given Mr G's risk profile and the nature of the product.

However, I have to consider what, more likely than not would have happened if she had made clear to Mr B and Mr G that investing a total of £20 million would probably not be suitable based on Mr G's current risk profile. They had been discussing the swap for several months by this time, with Mr B having had the opportunity of considering the term sheet and raising various queries in relation to the swap over that time. It is clear that they were keen to proceed with the investment in the amount discussed.

I am also mindful that Mr G risk profile changed on 5 June 2019 following him providing an updated SAF with a change to his investment objective. I comment on the circumstances behind this change below but given this change I have no reason to think that if there had been a discussion about not being able to invest €20 million when the parties met on 24 May 2019 Mr G would have been asked to provide an updated SAF at that point which would have allowed the investment to proceed as he wanted.

I accept that the fact that investing a second tranche of €10 million was going to be unsuitable lends some weight to the suggestion by Mr B that the updated SAF with a revised investment objective was something the account manager both required and pushed for.

The evidence in relation to the change in Mr G's risk profile in my view also indicates that this was at the instigation of the account manager. I note she emailed Mr B on 28 May 2019 stating that it had been flagged that the existing SAF was out of date due to the personal financial statement (PFS) recently submitted. However, Mr G signed the PFS on 8 April 2019 so it was hardly recent and there seemed no great need for a new SAF to be completed urgently simply to reflect the increase in Mr G's net worth. Yet it was important enough that the account manager followed up the email with a telephone call the same day – which for some reason JPM has been unable to provide a record for other than a note of the call.

That note doesn't in my view provide a full picture of the discussion between Mr B and the account manager - not least because it suggests that it was Mr B that said the SAF should be updated to reflect Mr G's new objectives when the email made it clear that it was JPM

that wanted an updated SAF. The subsequent telephone discussion on 29 May 2019 also doesn't support a finding that the telephone note reflects the full discussion that took place.

Again, this is a call instigated by the account manager which I think again shows how important it was for her to get a revised SAF. Both the tone of the call and what she said indicate how urgent this was for her. She said that she needed Mr B to return the updated SAF and stated that it would help her 'lots' and 'make her life easier' and:

"Please, I need to tell my guys I've got it updated they'll back off and let me do the second tranche."

I think it is reasonably clear from this that the second tranche couldn't go ahead based on the information in the April 2018 SAF and the medium risk profile that Mr G had based on the information in that SAF. This fits with what JPM has said about the second tranche not being suitable for Mr G's medium risk profile because of the concentration risk.

However, whilst I am satisfied that the SAF sent to the account manager on 29 May 2019 was something the account manager wanted and needed before going ahead with the second tranche of the proposed investment, the information within the SAF was provided by Mr B and Mr G and Mr G signed it. And I have no reason to think the information provided in the SAF – which amongst other things showed a change to Mr G's objective from level 1 ('minimal investment risk') to level 5 (aggressive capital appreciation/unconstrained) – isn't accurate.

In the circumstances I am persuaded that JPM were entitled to rely on that information and it didn't do anything wrong in then revising Mr G's risk profile from 3 (medium) to 5 (high) on 5 June 2019 based on this. This is the trade date for the second tranche of the investment and given this change in Mr G's risk profile I am not persuaded this was an unsuitable investment for his portfolio.

In saying that I accept that the suitability letter I have seen in relation to the second tranche refers to the trade being suitable based on Mr G's medium risk profile. As I have already referred to, JPM accepts that the second tranche of the investment wasn't suitable based on Mr G's medium risk profile and if Mr G hadn't provided an updated SAF showing a marked change to his objective as well as other changes to the information shown in the original SAF of April 2018 I would have found this wasn't suitable.

However, given my findings above about the account manager needing a revised SAF in order that Mr G's risk profile could be reassessed and the subsequent determination his risk profile was 'high' as of 5 June 2019 I think it is reasonable to find that the second tranche trade that took place on 5 June 2019 was suitable regardless of the content of the suitability letter.

Did JPM provide the information it should have done about the swap?

The swap was first suggested by JPM in an email from the account manager to Mr B dated 19 February 2019 in which she said "Put Writing: This is something I really like as a more conservative way of adding equity exposure. It's a systematic short Put strategy and is tradable on both the EuroStoxx 50 (SX5E) and S&P 500 (SPX)."

I note Mr B has questioned the account manager referring to the swap as a 'more conservative' way of adding equity exposure but given JPM provided Mr B with the term sheet for the swap - which provided extensive information about the product - and the queries he raised and the discussions that took place thereafter, I am not satisfied Mr B or Mr G were misled by what the account manager said.

Whilst I am not persuaded that Mr B or Mr G were misled by the reference to the swap being a more conservative way of adding equity exposure, the main issue raised by Mr B about the information provided by JPM - and the key issue in this complaint - is that he and Mr G understood that the notional value invested each week in a swap wouldn't change, when in fact it was variable.

The term sheet does provide information about the notional being variable, as Mr B has acknowledged. Mr B and Mr G had a considerable time to consider the information in the term sheet and other information provided about performance before investing and had the opportunity of clarifying anything that wasn't clear.

Indeed Mr B emailed the account manager on 12 March 2019 because he couldn't reconcile its figures with his own calculations. So he appears to have been aware that the swap perhaps didn't work as he thought. I have seen no evidence that JPM ever confirmed that his calculations were correct and it seems to me he should therefore have known he was missing something.

Mr B has argued that JPM didn't explain the importance of the calculations set out in the term sheet. However, I am not satisfied that JPM needed to explain the importance of calculations that showed how the swap worked in practice. It is apparent that Mr B was aware of and had considered the calculations to some extent as he emailed the account manager on 8 April 2019 referring to the first part of the term sheet being confusing and querying whether they were expected to sign off on the calculations and how they knew these were accurate. He and Mr G had more than enough time between that date and when they met with the account manager on 24 May 2019 to get to grips with the information provided.

In making that finding I have taken account of the email the account manager sent to Mr B on 26 May 2020 in which she said:

"And another point to note is the notional is not fixed at 10mm, it is cumulative index which reinvest premium. So if we have a profit, we sell on a greater notional and if we have a loss, we sell on less notional. I don't think we have mentioned this to you as it isn't a massive driver of performance, but it is a factor."

Mr B has pointed to the fact the account manager saying the notional being variable hadn't been mentioned. However, given it was referred to in the term sheet this isn't an admission that no information was provided to them about this. In terms of what the account manager was referring to, she could simply have been referring to this not being mentioned in the context of the discussions then taking place about performance. In the circumstances I don't find this persuasive evidence that JPM didn't provide information that was fair, clear, and not misleading.

I accept that a different view could be taken as to the information JPM provided about the notional amount being variable given Mr G was a retail client - albeit Mr B was a very experienced investor. I acknowledge it can be argued that Mr B and Mr G couldn't necessarily be expected to grasp everything within the term sheet and that the information about the notional being variable being included in an appendix with complex calculations within a 69 page document didn't make this clear enough.

However, even if I was persuaded to accept that argument, that isn't the end of the matter, as I would then need to decide what, more likely than not, would have happened if Mr B and Mr G had been provided with information that the notional was variable. It is their case that Mr G wouldn't have gone ahead with the investment if he had known this.

But, they have made this argument with the benefit of hindsight, knowing how the swap has performed. I have considered what Mr B has said about losses being increased by €157,000 as a result of the variable notional but his calculations are based on how the swap has actually performed. In other words, these calculations are based on hindsight and the figure he has presented isn't one that they would have had in mind at the time of investing. And whilst the variable notional obviously had some impact on performance I am not satisfied they would have concluded at the time of investment that its impact would be such Mr G shouldn't invest.

In the circumstances I am not satisfied on the available evidence that it is more likely than not Mr G wouldn't have proceeded with investing in the swap if JPM had specifically drawn this to his attention at the time of investing.

Mr G has raised other issues with the information provided about the swap, such as the headline financing rate of 25bps being based on 360 days when they assumed it was annual - meaning higher financing costs than they had allowed for – and the yield being lower than specified. Even if I was persuaded that JPM hadn't provided fair, clear, and not misleading information about these points - and it isn't clear to me from the information provided, that it didn't - I am not satisfied that Mr G wouldn't have invested in the swap if Mr G had known what the financing cost and yield figure were.

The break clause

The term sheet stated clearly at the outset that the swap terminated 12 months following the trade date. Mr B did ask the account manager how they could close after six months given the term sheet indicated a term of 12 months. However, I have seen no evidence this led to an agreement that the trades would include a break clause and I am not persuaded there was such an agreement.

That doesn't mean there wasn't some discussion about the possibility they could get out of the investment at six months given the terms of the swap did allow early termination by way of request to JPM – although it was at its discretion whether to agree to this. But even if there was such a discussion I have seen no evidence that Mr B or Mr G contacted JPM at or around six months to request early termination.

Information about performance

Mr G has also complained that JPM didn't provide the information it should have done subsequent to the investment being made – in particular information about performance. But he and Mr B had access to the online portal through which they could have seen what was happening with the investment including the 10% depreciation notices provided by JPM. Moreover, if Mr B and Mr G thought they weren't being provided with the information they should have been this is something they should have addressed at the time. In the circumstances I am not persuaded there was a failing on the part of JPM in terms of the information it provided about performance.

I gave both parties the opportunity of responding and providing any further information they wanted me to consider before making my final decision. Mr B responded on behalf of Mr G and made the following key points:

- *The amount invested and nature of the investment exceeded the risk profile agreed previously.*
- *The term sheet signed on 24 May 2019 committed Mr G to a €20 million notional investment and the fact it was done over two tranches was a function of the fact that*

the trade operated on a fortnightly basis.

- It isn't the case that Mr G could avoid investing the second tranche of €10 million as if Mr G had only invested €10 million this would have increased the risk profile as there would have been one trade every two weeks rather than the product strategy of splitting the notional on a weekly basis over a fortnight.
- On that basis if the second trade was unsuitable for Mr G's risk profile then the whole trade must be considered unsuitable.
- The account manager called Mr B deliberately on her unrecorded personal mobile phone to encourage him to change Mr G's risk profile from a 3 to a 5 because the product was never suitable for him given such a high concentration portfolio risk.
- The manager explained on the call that this was a function of JPM's internal risk team and didn't reflect any increase in the risk profile or concentration risk to Mr G.
- Mr B sent the revised SAF with the new risk profile deliberately the day after the commitment to the trade had been crystallised on 28 May 2019 because he was uncomfortable in being asked to change the risk profile the day of trading.
- The time between the trade being introduced in February 2019 and it being transacted in May 2019 was because they didn't understand the trade due to its complex nature and the information sent by JPM was challenged on many occasions.
- They wanted to understand the product and its return but more importantly the risk and reward but eventually accepted JPM's explanations that this was a conservative trade idea and that even modelling a large loss would allow them to recover it over a short period of time on their working assumption that the notional was fixed.
- In hindsight they realise that the queries as to the trade and how it worked were not answered fully by JPM and in particular none of the answers referred to a variable notional.
- The ombudsman notes that they should have realised something was amiss at the stage they were querying the data provided but this was when JPM should have identified that the notional was variable.
- As retail clients they expected they would be provided with the right level of information to allow them to make an informed decision rather than chasing for this information themselves.
- It isn't accepted that it was possible for a retail investor to understand all the complex calculations in the term sheet without assistance from JPM, which wasn't forthcoming.
- Once they were aware of the variable notional, they didn't reinvest even when this meant realised losses, as they were aware that recouping the losses would take an inordinate amount of time.
- Page 34 of the term sheet wasn't highlighted and was lost in the 53 pages of complex calculations which were challenged by them and then put into an appendix by JPM.
- JPM failed to explain a key factor of the trade despite them raising numerous

concerns that they couldn't reconcile its source data to its presentations.

- The confirmation of the two trades includes the manager stating 'if you decide to continue to stay invested post the 6 month maturity' which was because it was agreed they could have a six month maturity on the trade and it was at their discretion.
- It is accepted they didn't ask to terminate the strategy at six months but JPM didn't offer a review at that point or explain how it was performing and ask if they wanted to continue.
- JPM have referred to an email in December 2019 asking if they wanted to be locked in for a further six months which they didn't receive and they didn't specifically agree to be locked in for a further six months but this does indicate there was a break clause at six months.
- The reporting of performance as a percentage is incorrect as it is misleading - for example stating that the strategy has made 1.4% is misleading where the notional has reduced.
- JPM didn't provide any prompts or notifications as to depreciation notices showing on the online portal and it should have noticed these weren't being read.
- The manager stated a report would be provided by email on the 8th of every month reports weren't received until after six months of trades at which point they queried the report as it didn't reconcile with the online portal.
- If the manager had provided the reports monthly, they would have identified that the actual performance was lower than what was showing on the online portal and that the notional was variable and could have closed the trade in accordance with the break clause.
- The strategy operated on lower yields than JPM stated, which was inconsistent with what the strategy purported to be and exposed clients to the risk of losing significant income but JPM would still collect its fees.

Mr B also calculated that it would take four years to recover from a loss of 10% with a variable notional compared to only one year with a fixed notional. I asked him to explain this as it didn't seem to me to be right. Mr B responded and said there were errors in his calculation and that it should be ignored but that the point remains that there is an impact on the ability to recover losses based on a variable notional compared to a fixed notional.

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 have considered everything that Mr B has said on behalf of Mr G in response to my provisional decision but I am not persuaded that I should change the outcome set out in my provisional decision, the findings from which form part of the findings in this final decision unless I state to the contrary. Mr B hasn't provided any significant new information that would lead me to change my findings. In large part he has raised the same arguments that were raised previously and were considered by me before I issued my provisional decision. However I will make some additional comments.

Mr B argues that the amount invested and the nature of the investment exceeded the original risk profile. However, as I noted in my provisional decision, Mr G could be invested in an investment above his client risk rank as long as the overall Weighted Average Portfolio Risk Rank (WAPRR) of his portfolio was within his risk profile. From the information JPM has provided this was the case at the time the swap was first referred to in February 2019 through to the date the second tranche was invested on 5 June 2019. In the circumstances I am not satisfied that the amount invested exceeded his client risk profile.

Mr B has argued that on signing the term sheet Mr G was committed to investing €20 million. However, whilst signing the term sheet indicated Mr G's intention to invest that amount, I have seen nothing that makes me think that this committed him to investing that amount. And I accept what JPM has said about it needing to determine if the subsequent investments made by Mr G were suitable based on its suitability framework.

In saying that I have considered Mr B's argument that the risk would have increased if only €10 million had been invested. He has suggested that this would have led to one trade every two weeks rather than every week, as intended if €20 million was invested. But this would only be the case if the strategy of the swap – which the documentation made clear was to place a short put option of half the notional on a weekly basis - changed depending on the amount of the notional. JPM has confirmed this wasn't the case and there is nothing to suggest this is how the swap worked. In short, from what I have seen, if Mr G had only invested the first tranche of £10 million then the strategy would have been applied to that amount rather than to £20 million. So, I am not persuaded that if the second tranche hadn't gone ahead that this would have increased the risk as suggested by Mr B.

I acknowledge it may have been helpful for the account manager to have considered whether the investment of the total amount would breach JPM's concentration limit for someone with Mr G's client risk rank - so that she could address this with Mr B and Mr G when she met with them – but I am not satisfied that her not doing so means that JPM did anything wrong.

Even if the account manager had raised this at the meeting on 24 May 2019, I think it is more likely than not that this would simply have led to Mr G providing an updated SAF that allowed for the second tranche of the investment to go ahead sooner than he did - given that is what happened when this was raised subsequently only four days later.

Mr B has again asserted that the account manager called him deliberately on an unrecorded line and persuaded him to change to Mr G's risk profile. This isn't a new argument and I addressed what happened in relation to the revised SAF for Mr G which Mr B provided to the account manager on 29 May 2019 in my provisional decision. I don't think there is anything I need to add to what I have already said about this.

Mr B argues that JPM didn't provide the information needed for an informed decision to be made but I am not persuaded that is the case. I am also mindful that Mr B has said they challenged JPM on many occasions as to the information it provided, so they had the opportunity of clarifying anything that wasn't clear.

I note that Mr B has said that with hindsight they realise that JPM didn't fully answer the queries raised and none of the answers referred to the variable notional. However, I am not satisfied that it would be fair or reasonable to expect JPM to have been aware that they hadn't provided the information Mr B and Mr G needed in response to their queries or that they were unaware that the trades weren't based on a fixed notional.

Mr B argues that JPM failed to set out a key factor of the trades – the variable notional – despite them making it aware they couldn't reconcile the source data. However, whilst Mr B

and Mr G consider that the notional being variable was a key factor there is nothing to indicate that JPM thought it was – it referred to this as not being a ‘massive driver of performance’ in its email of 26 May 2020.

In the circumstances, I am not satisfied JPM necessarily would have realised that this was why he couldn’t reconcile the source data or that it was such a significant factor it was required to draw it specifically to Mr B’s and Mr G’s attention. Moreover, I found in my provisional decision that even if they had been aware the notional was variable, I wasn’t satisfied Mr G wouldn’t still have invested. I have not been persuaded by what Mr B has said in response to my provisional decision to change my finding on that. So, even if this is something that JPM should have made clear, I am not satisfied it would have changed anything.

Mr B has also argued that there was an agreed break clause and points to the account manager saying ‘if you decide to continue to stay invested post the 6 month maturity’ following the investment of the two tranches. There is nothing to show the terms of the swap were changed so that termination wasn’t at 12 months as referred to in the term sheet, so I am not satisfied the swap matured at 6 months or otherwise came to an end at that point despite what was stated by the account manager.

However, I think this does provide support to Mr B’s argument that it was agreed that Mr G could end the investment at six months. However, in my view that would have required him to notify JPM that is what he wanted to do and I have seen no evidence he did so. In the circumstances I am not satisfied that JPM did anything wrong because it didn’t terminate the swap after six months.

Mr B says that it was misleading for JPM to refer to performance by way of percentage but whilst I acknowledge that it might have been clearer for it to show performance in monetary terms, I am not satisfied that referring to performance in terms of percentage was misleading or that because it didn’t set out performance in monetary terms this means it failed to comply with its regulatory obligations.

Mr B also states that JPM didn’t provide prompts or notifications as to the depreciation notices through the online portal but again, whilst this might have been helpful, I am not satisfied that JPM was required to provide such notifications nor that it is reasonable to have expected it to have identified that Mr B/Mr G weren’t reading these – as Mr B suggests it should have done.

Mr B argues that if the account manager had sent reports each month as agreed then they would have identified that the notional was variable and been able to close the investment at six months in accordance with the break clause. However, I am not persuaded that being aware that the notional was variable would have led to Mr G deciding to close the investment after six months – so by the beginning of December 2019.

Again, I think Mr B is making that argument with the benefit of hindsight taking into account how the swap performed after the six months, which is when the real drop in performance occurred. I think Mr B has overstated the impact of the variable notional on performance and I am not satisfied that this was so significant that it would have led to Mr G closing his investment at six months.

My final decision

I don’t uphold this complaint for the reasons I have set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr G to accept or

reject my decision before 24 July 2025.

Philip Gibbons
Ombudsman