

## **The complaint**

Mrs G complains about the investment advice she received from Timothy John Pollitt trading as Tim J Pollitt & Co IFA ('TJP'). She also says she didn't receive the ongoing reviews she was paying for, and says in any event, she didn't need such a service.

## **What happened**

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

Mrs G met with TJP in February 2017 to discuss her investments. TJP completed a fact-find document to record her circumstances and objectives. The key details recorded here are as follows:

- Mrs G's investment objective and purpose for the meeting was to reduce her equity exposure to around 50% and wanted something where she wasn't involved in fund switching.
- She was 66, retired and in good health.
- She had around £146,000 in cash assets, which included ISAs, fixed rate bonds and premium bonds. She also had an equity ISA valued at around £66,500 and an investment bond valued at around £28,000.
- Her monthly income was around £1,000 a month and she had no disposable income.
- Her investment objective was capital growth.

TJP also carried out an assessment of Mrs G's attitude to risk, which after discussion and her answers in relation to her capacity for risk, was deemed to be 'low/medium' – 5 on a scale of 1-10.

In a suitability report dated 6 March 2017, TJP recommended that Mrs G transfer her ISA to a different provider and surrender her investment bond. It said there was a small penalty charge for surrendering the bond – around £2.00 – but no liability to further income tax. It recommended the funds should be invested in an ISA because it was more tax efficient. TJP recommended that Mrs G invest more of her cash funds, but she declined. TJP also recommended its 'Premier' service so Mrs G could take advantage of a managed portfolio service or discretionary fund management (DFM), and annual review meetings. It said this allowed fund switches to take place without Mrs G's involvement. It recommended Mrs G invest via a platform in an investment portfolio with a 40-60% equity content with the remainder in cash, property and bonds.

Mrs G accepted the recommendation and also signed an agreement accepting the 1% initial fee for the advice and 0.75% annually for the ongoing advice service.

TJP says it carried out annual reviews each year for Mrs G. It said she declined face-to-face meetings, so they were carried out by phone. TJP's file notes for Mrs G record the following:

March 2018 – “...phoned client to review the arrangements and follow up letter sent. Agreed to chat on the phone, but [adviser] also recommended a meeting as client is talking about possibly investing more funds. No change in circumstances, investment or the investment. Reviewed funds generally and is happy with current fund selection and the level of investment risk being carried.”

August 2019 – “...phoned client to review the arrangements. No change in circumstances, requirements, or the investment. Reviewed funds and is happy with current fund selection and the level of investment risk being carried. Another review required next year and will contact [adviser] if need anything in the meantime.”

July 2020 – “Client phoned to request £5,000 ISA withdrawal for car purchase. Adviser also offered review meeting but client declined. Reviewed portfolio on the phone and client position and attitude to investment risk hasn’t altered. Reviewed portfolio and no changes recommended. [Provider] are overseeing the portfolio on an ongoing discretionary basis. [Adviser] offered phone or face-to-face review meeting in her home at any time.”

July 2021 – “...reviewed portfolio with [client] by phone and email and client’s position hasn’t altered and she is happy with performance and equity exposure. No additional requirements on this occasion.”

In June 2022, Mrs G instructed TJP to surrender her investments. She said, while she understood the reasons why, she couldn’t accept any more falls in value. TJP responded to Mrs G’s email request offering a discussion and commentary before actioning her request. Mrs G chose to surrender her investments in full.

In November 2024, using the services of a professional complaint representative, Mrs G complained to TJP. In summary she said:

- She didn’t receive all of the annual reviews she paid for and there’s no evidence ongoing suitability of the investments was adequately carried out. It’s unclear what benefit was received from this service.
- The complaint about missed reviews more than six years ago should not be time barred.
- Her existing investments show she was a moderately cautious investor and not a medium risk investor the recommendation was based on.
- The existing ISA should not have been transferred because unnecessary fees were incurred.
- The charges weren’t considered or adequately explained.
- There is no evidence her IHT position was considered.
- Despite fully surrendering her investment, funds remain in the plan.

TJP did not uphold the complaint. In summary it said that it contacted Mrs G each year inviting her to a review meeting, but she declined them in favour of a phone review instead. It said it was satisfied it had carried out reviews of Mrs G’s circumstances, requirements and attitude to risk each time. It said it was happy its advice was suitable – Mrs G wanted to reduce her existing equity exposure, and the use of a DFM arrangement meant Mrs G’s

funds were invested appropriately with fund switches made without the need for her involvement. Which is what she wanted. It said charges were disclosed and clearly set out in the suitability report. It said it was satisfied inheritance tax planning had been discussed, and again was clearly documented in the suitability report. It said it had identified a small credit balance in Mrs G's investment account, which related to investment income received after the surrender. It said it would arrange for this to be paid out.

Because Mrs G remained dissatisfied, she referred her complaint to us.

One of our investigators considered the matter and they did not uphold the complaint. In summary they said TJP's advice to Mrs G was suitable based on her attitude to risk, her circumstances and her objectives. They said a DFM arrangement was suitable and although it was more expensive, the costs were disclosed in the advice paperwork, and it was reasonable to assume Mrs G accepted and was willing to pay more. And they thought TJP could reasonably argue that there was the prospect of outperformance to offset the additional cost. In relation the ongoing advice, they set out the evidence of the contact TJP had with Mrs G each year and they concluded that the reviews had likely taken place.

They said TJP had said it consistently offered face-to-face review meetings with Mrs G, but she declined them. They said, even if Mrs G felt the phone reviews fell short in some way, TJP had followed the regulatory guidance about demonstrating that it was ready, willing and able to provide reviews, so no refund of fees was due. On the other matters – they said they understood TJP had sorted out the issue of the small remaining balance in Mrs G's investment account. And they said in answer to Mrs G's point about not needing an ongoing service, both the nature and the cost of the service was disclosed at the outset, so Mrs G made an informed decision to go ahead with it.

Mrs G, via her representative said that she accepted the investigators findings on the suitability of the advice aspect of the complaint. But she disagreed with the conclusions reached on the ongoing advice point. In summary she said the investigator had overlooked the regulator's expectation in its guidance which said that a firm should consider whether continuing with an ongoing service is still in a client's best interests where they've declined to engage with it over a number of years. She said it's clear she has been disadvantaged and that a refund of fees was due for TJP's consistent and repeated failure to provide the service promised. She said there is no evidence that reviews were carried out correctly, pointing to the rule which says a firm should assess and evidence a client's attitude to risk, update their personal and financial objectives and assess and evidence the continued suitability of their investments. She also said the fees were not clearly disclosed and TJP did not confirm the ongoing cost of the reviews, so there was nothing to make Mrs G aware she had cause for complaint.

The investigator wasn't persuaded to change their opinion. They said that the regulator's guidance about clients regularly declining annual reviews wasn't relevant here because, while Mrs G declined face-to-face reviews, the evidence shows they still took place. They said they still considered the evidence was enough to conclude Mrs G was provided with the service she paid for.

They said they accepted that TJP didn't issue suitability reports following the reviews, but given the adviser's notes of the meetings recorded that there were no changes in Mrs G's circumstances, the reports would have been brief in any case. So, they didn't think this failure justified a refund of fees. And finally, they said Mrs G was told about the cost of the ongoing advice at the outset.

Because things couldn't be resolved informally, the matter was 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.

I've taken into account relevant law and regulations, regulatory rules, guidance and standards, codes of practice, and (where appropriate) what I consider to have been good industry practice at the relevant time. And where the evidence is incomplete or inconclusive I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened, given the available evidence and wider circumstances.

## **The applicable rules, regulations and requirements**

As a regulated firm, TJP had many rules and principles that they needed to adhere to when providing advice to Mrs G. And these can be found in the Financial Conduct Authority (FCA) handbook under the Conduct of Business Sourcebook (COBS) and Principles for Businesses (PRIN) as they were at the time of the advice.

In relation to the ongoing advice element of the complaint, the following are most relevant and provide useful context for my assessment of TJP's actions here.

COBS 6.1A.22: A firm must not use an adviser charge which is structured to be payable by the retail client over a period of time unless (1) or (2) applies:

- (1) the adviser charge is in respect of an ongoing service for the provision of personal recommendations or related services and:
  - (a) the firm has disclosed that service along with the adviser charge; and
  - (b) the retail client is provided with a right to cancel the ongoing service, which must be reasonable in all the circumstances, without penalty and without requiring the retail client to give any reason; or
- (2) the adviser charge relates to a retail investment product for which an instruction from the retail client for regular payments is in place and the firm has disclosed that no ongoing personal recommendations or service will be provided.

In 2014, the FCA produced guidance in the form of a factsheet (For investment advisers - Setting out what we require from advisers on how they charge their clients). The factsheet said:

### **'Ongoing adviser charges**

Ongoing charges should only be levied where a consumer is paying for ongoing service, such as a performance review of their investments, or where the product is a regular payment one. If you are providing an ongoing service, you should clearly confirm the details of the ongoing service, any associated charges and how the client can cancel it. This can be written or orally disclosed. You must ensure you have robust systems and controls in place to make sure your clients receive the ongoing service you have committed to.'

While the factsheet wasn't published until late 2014, it didn't mark a change to the rules firms like TJP were already expected to follow. In my view, it re-enforced or reminded firms of the standards already in place when providing on-going advice services.

COBS 9A.3.9 (from 3 January 2018 arising from MiFID II): For some products, investment firms providing a periodic suitability assessment shall review, in order to enhance the service, the suitability of the recommendations given at least annually.

Having considered all of this and the evidence in this case, I've decided to not uphold the complaint for largely the same reasons given by the investigator. My reasons are set out below.

### **Suitability of advice**

Mrs G, through her representative has said she accepts the investigator's findings on the advice suitability element of her complaint. While this means I don't think it is necessary for me to decide this point, for the sake of completeness, I agree with the investigator's conclusion that TJP's recommendation was suitable for the following summarised key reasons:

- Mrs G's 'low/medium' attitude to risk was reasonable in the circumstances given her objective, investment experience and her other assets, which gave her reasonable capacity for loss.
- Her objective for capital growth over the medium term was reasonable given that her income needs were met, and she had other available assets, including an adequate emergency funds to draw on if needed.
- The transfer of Mrs G's existing ISA to a new provider invested in a portfolio with a 40-60% maximum equity exposure using a DFM service, met Mrs G's objective to reduce her equity exposure and take away the need for her involvement in fund switches. The additional cost was reasonable, clearly disclosed and did not likely prohibit the potential for outperformance.
- Surrender of her investment bond did not result in a significant surrender penalty or give rise to an additional tax liability. Investing the proceeds in an ISA maximised Mrs G's otherwise unused ISA allowance and so was tax efficient.
- Leaving Mrs G's ISA in situ would still have incurred fund switch charges to rectify the risk imbalance, and likely the same ongoing advice fee to regularly monitor things. And it would not have taken away her responsibility for fund switches in line with her desired objective.

### **Ongoing advice**

Mrs G accepted TJP's recommendation that she sign up for its 'Premier' service, which in addition to the DFM investment service offering, offered Mrs G annual review meetings.

Much reference has been made to Mrs G declining TJP's offered face-to-face annual review meetings and that they were carried out by phone instead.

TJP might have preferred to conduct the annual reviews via a face-to-face meeting, but I don't think the channel used to carry out the reviews is important here – it isn't crucial to the outcome of the complaint. It simply appears the phone was a more convenient method by which Mrs G wanted to interact and deal with TJP on an ongoing basis. And conducting things by phone, in my view, had no impact on the process TJP needed to follow or its ability to carry things out properly.

So, did TJP offer and carry out the required annual reviews? I think the available evidence indicates that it did. I accept the level of detail recorded by TJP following each review is relatively light. But what is recorded, in my view, reasonably shows that a review of Mrs G's circumstances, risk, objectives and the recommended investment was carried out to assess the ongoing suitability of her investments. Which is what I think an ongoing advice service ought to have provided. I'm mindful of the fact that Mrs G was invested via a DFM, so fund switches were already taken care of. TJP's main role here was to see if there were any changes in Mrs G's situation, including her objectives and risk appetite, which might suggest other changes were needed. The notes state that Mrs G's situation remained the same and recorded that no such changes were needed. I think this was reasonable in the circumstances.

Like the investigator, I think TJP could have followed up each review with a written report of the outcome of it confirming the ongoing suitability. In fairness this wouldn't have likely said much more than the files notes recorded – but would perhaps be reflective of good practice. But importantly, the absence of any written report doesn't change my view of things. I think there is enough here to fairly and reasonably conclude that Mrs G got the service she paid for. So, because TJP did nothing wrong, it isn't fair that Mrs G gets a refund of fees paid.

Mrs G has said that the cost of the annual reviews wasn't disclosed on an ongoing basis. But I think the advice paperwork at the outset was clear about what Mrs G should expect to get, when, and importantly what it would cost. I'm satisfied Mrs G ought reasonably to have understood this.

Mrs G has said that TJP needs to demonstrate that she benefitted from the ongoing service. I think TJP needed to set out what ongoing services it would provide, the cost of providing them and that Mrs G could cancel it at any time without penalty. And I'm satisfied TJP did that. So, Mrs G was in an informed position and presumably saw the value in the service being recommended to her. Which is likely why she agreed to it. And as I have explained, I also think the evidence shows Mrs G got the service she paid for.

So, it follows that because I think TJP did nothing wrong here, it doesn't need to do anything to put things right.

### **My final decision**

For the reasons above, I've decided to not uphold this complaint, so I make no award in Mrs G's favour.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 29 August 2025.

Paul Featherstone  
**Ombudsman**