**complaint**

Mrs R complains that J. Edward Sellars & Partners Limited (JES) didn't manage her investment portfolio in line with her attitude to risk.

**background**

Mrs R moved her investment portfolio to JES at the end of 2013. Part of the portfolio (approximately £83,000) was to be managed under JES's 'Discretionary Managed Service'. JES was not given discretion over two investment bonds (valued at approximately £51,000). However, these bonds were looked after by JES. At this time, Mrs R was 85 years old.

Following completion of a 'know your client' (KYC) form in October 2013 Mrs R was classed as having an 'Ultra Low' attitude to risk. Her objective was to achieve income with capital growth a secondary consideration. On acquiring Mrs R's assets in December 2013 JES noted that Mrs R was a 'Low Risk: Income Objective' client.

JES decided to diversify her portfolio. They sold some of her fixed interest holdings and reinvested in UK and global equity funds.

In November 2014 another KYC form was completed. JES had changed their risk classifications, and this time Mrs R was classed as having a 'Cautious' attitude to risk. Mrs R was consistently recorded as having a 'Low' or 'Cautious' attitude to risk.

In April 2016 Mrs R received a 'Portfolio Valuation Summary' which valued the fund at around £74,000, and she raised concerns with JES about the management of her assets.

In November 2016 Mrs R's representative, her daughter, made a formal complaint to JES. She said that JES's management of the portfolio since 2013 had been inconsistent "*with a cautious low risk investment strategy*". She complained that her mother's individual requirements had not been taken into consideration; that her investments had been churned; and that the portfolio had lost value.

JES didn't agree that they'd managed Mrs R's portfolio contrary to her attitude to risk. They said that they'd moved away from fixed interest bonds because of the "*real possibility*" of an interest rate rise in 2015; that her losses reflected overall market conditions; and that all changes made to the portfolio were justifiable. They also explained that they'd had difficulty getting Mrs R to complete an up-to-date KYC form in 2015; and that without it they were unable to buy new investments. This meant that Mrs R missed opportunities to reinvest.

When we asked for their file, JES said that they'd taken Mrs R's two investment bonds into account when reviewing her overall position.

Our investigator upheld Mrs R's complaint. He didn't think that JES had done anything wrong about getting the KYC completed. But he did think that the investments were unsuitable for Mrs R. This is because the portfolio was predominantly invested in equities, and he didn't think this was consistent with Mrs R's attitude to risk. He also found that JES had charged her approximately 5% of her portfolio value for the service.

And he didn't think this was right because Mrs R was reliant on the income generated from her investments.

He recommended that JES compensate Mrs R for the performance of the investment by paying her the difference between the actual performance and what she'd have got if her portfolio had been managed in line with her attitude to risk. He also said that JES should pay Mrs R £500 for the distress and inconvenience caused by their poor service.

JES did not accept the investigator's view. They said:

- Fixed return bonds would not have been suitable to achieve Mrs R's objective of modest capital growth and an income of approximately £2,300 a year;
- Investment in collective funds was suitable;
- In making decisions Mrs R's whole investment portfolio was taken into consideration so the collective funds were balanced by her cash deposits and her investment bonds;
- The bulk of the funds were UK funds and a small proportion of the portfolio (typically less than 10%) was invested in overseas funds to offer wider diversification;
- The outcome of the KYC is considered alongside "*wider circumstances such as age, knowledge and experience, health, time horizon and access*";
- An unprecedented number of economic events have led to greater activity on clients' accounts than normally expected;
- Investment in Fixed Term Bonds can restrict access to funds;
- The value of Mrs R's fund fell because the FTSE 100 fell by 14%; and
- Mrs R's portfolio, as a whole, "*out-performed the market somewhat*".

Mrs R's representative was happy with the investigator's findings, but said that £500 "*does not begin to recognise the severe impact this matter has had on my mother*". She said they expected JES to take into account Mrs R's concern that she would one day have to pay for residential care.

**my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I have decided to uphold Mrs R's complaint. My reasons are broadly the same as the investigator's.

*portfolio management*

JES needed to make sure its advice and discretionary decisions were suitable for Mrs R. I've thought carefully about what JES did in light of this.

When Mrs R moved her investment portfolio to JES at the end of 2013 she was classed as having an 'Ultra Low' attitude to risk, and later a 'Low risk' or 'Cautious' attitude. Mrs R doesn't dispute these classifications. I don't think she should have been given any significant exposure to equity investments which could experience significant volatility. This conclusion is consistent with JES's own description of a low risk investor:

> "*<u>Low Risk Investor</u>*

> *A Low risk investor will have the traits of an Ultra Low risk investor; however they are prepared to take on a little more risk in order to try and counter the effects of inflation and/or to generate a relatively satisfactory level of income from the portfolio.*
>
> *Typical Investments:*
>
> • *As Ultra Low Risk (Fixed Interest - Corporate Bonds, Bond Funds, Conventional and Index Linked Gilts) but also including*
> • *Equity exposure (Blue chip equities, via collectives and may include FTSE 100 stocks)*"

According to JES's definition, an ultra low risk investor would typically only invest in gilts and fixed interest securities. A low risk investor – "*prepared to take on a little more risk*" - would therefore expect their portfolio to be made up of predominantly low risk investments, such as bonds, with modest exposure to higher risk investments such as equities.

But JES's management of her fund exposed her to collective equity funds which, although lower risk than direct equities, are still significantly riskier than fixed interest bonds.

By the end of the first financial year in which JES managed Mrs R's portfolio (valued at around £86,000), it consisted of 10% cash and fixed interest bonds, 5% European equity funds, 7% private equity trusts, 16% property based funds and 62% in UK equity funds. And this portfolio mix was broadly similar throughout the period of the firm's management.

The portfolio was significantly higher risk than the low level of risk that Mrs R agreed to, and I don't think it was suitable for her.

JES say that investing in fixed interest products alone would not have achieved Mrs R's objectives of modest capital growth and an income. They think taking more risk was necessary. But it is not reasonable for a portfolio manager to increase the risk profile of the portfolio to meet their client's objectives, without first making that clear to the client. JES should have had gained Mrs R's consent before taking more risks on her behalf.

JES also say that the investments in collective equity funds were balanced by Mrs R's cash deposits and her investment bonds so that, overall, despite the exposure to equities, her portfolio remained low risk. Mrs R expected JES to manage the discretionary part of her portfolio in a low risk way. The preservation of that capital was vitally important to her at her time of life because of the possibility of needing to pay for residential care. If JES were managing Mrs R's investments on an 'overall' basis then this should have been made clear to her. Furthermore, I have seen no contemporaneous evidence that this was in fact how JES managed Mrs R's assets. For example, I have seen no evidence that what was held in the investment bonds or the cash holdings were considered by her portfolio manager.

*completion of an up-to-date KYC*

Throughout the course of this complaint JES have made reference to the fact that they had difficulty getting Mrs R to complete an up-to-date KYC form towards the end of 2015. They attribute some of her losses to this; saying that they could only sell, not reinvest, until they had an up-to-date KYC. The investigator didn't think JES had done anything wrong here because they'd made efforts to contact Mrs R in early 2016 and Mrs R wasn't keen on answering their questions. But I think JES should have done more.

At the very least JES should have written to Mrs R and explained that without the KYC they would cease making any new investments. And in the meantime, they should have managed the portfolio in accordance with the appetite for risk Mrs R had previously expressed. Mrs R had remained a low risk investor since the start of her relationship with JES. It was unlikely that her appetite for risk would have changed so significantly that JES should restrict its actions to selling investments alone.

*service charges*

Between acquiring the portfolio in 2013 and April 2016 JES undertook an average of 27 transactions a year. This volume of transactions led to Mrs R being charged approximately 5% of her portfolio value a year including an annual management fee of 1% a year. The majority of Mrs R's portfolio was invested in collective investment schemes which would carry their own management charges of around 1% a year. Given the modest return that a cautious portfolio would be expected to return, this level of charging would make it very difficult for the portfolio to generate a positive return.

As I consider the portfolio as a whole was unsuitable I have set out below how Mrs R should be compensated. This calculation will take into account the fees charged, so I have not considered this point further.

**fair compensation**

In assessing what would be fair compensation, I consider that my aim should be to put Mrs R as close to the position she would probably now be in if she had not been given unsuitable advice.

I take the view that Mrs R would have invested differently. It is not possible to say precisely what she would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mrs R's circumstances and objectives when she invested.

**what should JES do?**

To compensate Mrs R fairly JES must:

- Compare the performance of Mrs R's investment with that of the benchmark shown below and pay the difference between the fair value and the actual value of the investment. If the actual value is greater than the fair value, no compensation is payable.

- JES should also pay interest as set out below.

- Provide the details of the calculation to Mrs R in a clear, simple format.

Income tax may be payable on any interest awarded.

| investment name | status | benchmark | from ("start date") | to ("end date") | additional interest |
|---|---|---|---|---|---|
| Mrs R's investment portfolio | transferred | for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds | date of investment | date transferred | 8% simple per year on any loss from the end date to the date of settlement |

***actual value***

This means the actual amount paid from the investment at the end date.

***fair value***

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the fair value when using the fixed rate bonds as the benchmark, JES should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal, income or other payment out of the investment should be deducted from the fair value at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

If there are a large number of regular payments, to keep calculations simpler, I will accept if JES totals all those payments and deducts that figure at the end instead of deducting periodically.

**why is this remedy suitable?**

I have decided on this method of compensation because:

- Mrs R wanted income with some capital growth, but a small risk to her capital.
- The average rate for fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to her capital.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mrs R's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mrs R into that position. It does not mean that Mrs R would have invested 50% of her money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mrs R could have obtained from investments suited to her objective and risk attitude.
- The additional interest is for being deprived of the use of any compensation money since the end date.

**other compensation**

Mrs R's representative rejected the investigator's view that Mrs R should receive £500 for the distress and inconvenience caused by JES's management of her portfolio.

Although I recognise that Mrs R has suffered some anxiety about the management of her funds I have seen no evidence that the impact on her has been more than moderate. I therefore agree with the investigator that £500 is an appropriate amount of compensation.

With regard to the time and assistance provided by others in pursuing the matter, I make no award. Mrs R has not provided any evidence of costs over and above the inevitable and unavoidable consequences of making a complaint. And we can only tell a business to pay compensation for inconvenience experienced by their customer - not by a third party. I am also mindful that Mrs R could have put her complaint to the business and to us without the help and professional views of colleagues and friends. We do not require a complainant to know exactly what has gone wrong with the management of their investments; only that they are unhappy with what has happened.

Mrs R's representative has also asked for the costs of moving the portfolio elsewhere; the cost of a professional calculating what compensation Mrs R would receive using the benchmark provided by the investigator; and reimbursement of the fees charged by JES.

I understand what Mrs R's representative is saying about having to now pay for the portfolio to be moved elsewhere. This is a cost that she wouldn't be paying now were it not for her being unhappy with how JES managed her investments. However, although investors usually have to pay some fee for the advice they receive at the outset; Mrs R paid no costs to move her portfolio to JES when her previous adviser retired. She paid no initial set-up fees in 2013 because JES bought the retiring adviser's business.

If Mrs R had paid JES an initial set-up fee then she would be compensated for this. But as she didn't, I think she is in the position that she would have been if JES had not been involved. That is, she will be paying another business an initial set-up fee. I do not, therefore, consider that there needs to be any additional compensation for moving to another portfolio manager.

I also don't think the cost Mrs R incurred by getting a professional compensation calculation should be reimbursed. If Mrs R agreed with the investigator's findings that her portfolio should have been managed differently, in line with her low attitude to risk; the precise value of the compensation payable was secondary. It was not necessary to know the compensation value in order to accept or reject the findings.

Finally, I think that the method of fair compensation outlined above, should mean that, in effect, Mrs R is reimbursed the fees that she was charged by JES for their 'Discretionary Managed Service'.

**my final decision**

I uphold the complaint. My decision is that J. Edward Sellers & Partners Limited should pay the amount calculated as set out above.

J. Edward Sellers & Partners Limited should provide details of its calculation to Mrs R in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs R either to accept or reject my decision before 14 May 2018.

Beth Wilcox
**ombudsman**