

complaint

Mr and Mrs B complain that Pearson Jones Plc (trading as Parnell Fisher Child) took too long to carry out the fund switches it had recommended in May 2011. They consider that there were unacceptable delays in processing the fund switches that had been agreed which resulted in a financial loss.

background

Mr and Mrs B met with an adviser in 2011. In May, he wrote to them to set out his recommendations.

He said that Mr and Mrs B's *'principle objective is to maximise the potential to achieve tax efficient capital growth whilst remaining within the level of investment risk you are prepared to take'*.

Mr and Mrs B each had a portfolio in their own name, and a jointly owned portfolio.

He recommended that Mr and Mrs B transfer all their existing portfolios to a new platform. And he recommended that they switch their portfolios to Pearson Jones' *'model portfolios'*.

He explained that the easiest way for Mr and Mrs B to move their investments onto the new platform would be through re-registration. This basically allowed Mr and Mrs B to move their investments without selling their holdings, thereby ensuring that they remained invested at all times. This also avoided exit charges.

Once re-registered on the new platform, the adviser recommended that Mr and Mrs B switch their portfolios to Pearson Jones' *'balanced portfolio'*.

The recommendation letter explained the capital gains tax (CGT) implications of switching to the model portfolios that Pearson Jones was recommending. It explained that Mr B's investments had unrealised gains worth around £10,000, while Mrs B had just under £16,000.

The adviser explained that Mr B was carrying forward losses of just under £25,000. And both Mr and Mrs B also had a CGT allowance of £10,600. So the adviser recommended assigning the jointly held investments to Mr B's name once they had been re-registered on the new platform. He then recommended switching the investments into its balanced model portfolio.

In addition to switching Mr and Mrs B's investments to a portfolio which the adviser said was more suitable given their attitude to risk (balanced) and their objectives, the primary benefit was to use up Mr B's losses from previous years. This would effectively eliminate the CGT liability for both of their portfolios.

The adviser explained that the figures he had used weren't guaranteed as they only applied to the fund values at the date of his letter. The adviser would only be able to calculate the actual capital gain after the switch had been completed.

Mr and Mrs B accepted the advice. The completed forms were received by Pearson Jones at the beginning of June 2011. It emailed Mr B to confirm that one of the funds couldn't be re-registered and so it needed to be switched. This would cause a delay.

About a day after this, Pearson Jones sent the relevant transfer documents to the new platform. On 11 July it received the contract notes and the relevant re-registration forms were sent to the new platform.

In early August the new platform wrote to Pearson Jones to confirm that there were problems re-registering some of the funds. The adviser from Pearson Jones chased the old platform where the funds were held and established that this is where the error had occurred. Shortly after this, a small adjustment was made by the old platform to account for the error and the delay in switching the funds to the new platform in a timely fashion.

In September 2011 the funds were ready to be switched. But the recommended switches weren't completed until December. By this point the markets had dropped, and Mr and Mrs B's portfolios suffered some losses.

Mr and Mrs B complained. Pearson Jones accepted that it should've completed the switch earlier than it did. It said that the delays between June and September were beyond its control. But it accepted that in September it was in a position to carry out the switch. So it offered Mr and Mrs B the difference between the performance of the model portfolio they would've been in had the switch occurred in September, and the performance of their existing portfolio.

Mr and Mrs B disagreed with the compensation proposed and complained to this service.

An adjudicator considered the complaint and concluded that the compensation offered by the firm was reasonable. In summary she said that the evidence showed that the delays between June and September weren't caused by Pearson Jones. But she said that the delays from September onwards were. And she acknowledged that the compensation offered by Pearson Jones was in line with what this service would award.

Mr and Mrs B didn't agree. In summary, they said Pearson Jones had committed to transferring the joint portfolio into Mr B's name, but that never happened. They said that in July 2011 Pearson Jones could've re-registered all of the funds except the one that couldn't be re-registered.

And they said that, in any event, once the markets had moved against them, Pearson Jones should've stopped the switch of the portfolios. They said that the only reason to switch the portfolios was to crystallise the capital gains. Once losses had been incurred, there was no reason to switch the portfolios anymore.

The adjudicator considered Mr and Mrs B's points but wasn't persuaded to change her view.

Before issuing my decision Mr B provided some additional comments and some evidence. He said that this evidence showed that his main aim for switching his portfolios was to use up losses and crystallise the gains both portfolios had enjoyed. He said that was the reason he accepted Pearson Jones' advice. And he said the delay of 7 months in carrying out the switches caused '*unnecessary losses*'.

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 agree with the adjudicator and for essentially the same reasons.

I've carefully considered the comments which Mr B provided to the adjudicator's view and the comments he provided more recently. I understand that they will be disappointed with my decision, and I acknowledge the great amount of detail and care they have put into making this complaint. But I hope that the following explains why I've come to this decision, and why I think the compensation I'm awarding is fair.

I should say firstly that the reason Mr and Mrs B's portfolio suffered losses is because of market movements which were clearly beyond Pearson Jones's control. I agree that Mr and Mrs B should be compensated for the delay in switching their portfolios to the model portfolios. I say this because they should be put back in the position they would've been in if the switches had occurred within a reasonable timeframe.

But in itself, the delay in switching their portfolios to the model portfolios didn't cause a loss to their existing portfolios. And the losses weren't caused by the fact that the funds were eventually switched to another portfolio.

Mr B says that Pearson Jones should've told him about the '*adverse movement in the markets*' and not gone ahead with the sale. He said that this would have prevented '*unnecessary losses*'. But in fact not going ahead with the sale wouldn't have prevented the losses his portfolio had suffered.

If Pearson Jones hadn't carried out the switch at all, he wouldn't have crystallised these losses. And he would've lost the benefit of carrying them forward for CGT purposes.

By crystallising their losses, they can now be carried forward. This means that in future, they will have the benefit of these additional losses to offset capital gains. So carrying out the switch, even after it was apparent that there were no capital gains, didn't actually cause Mr and Mrs B a financial loss.

But I do agree that Pearson Jones took too long to do what it said it would do. There were clearly delays in carrying out its recommendations. And I agree that Mr B should be compensated for the delays which Pearson Jones was responsible for.

The recommendations were accepted by Mr and Mrs B in May 2011. But the switch to the new model portfolio wasn't actually completed until December 2011. Pearson Jones has already accepted that it was responsible for the delays between 23 September 2011 and 15 December. And I'm satisfied that the way it calculated compensation for this period put Mr and Mrs B back in the position they would've been in if the delay hadn't occurred.

I now need to consider whether there is sufficient evidence to say that the delay between June and September was also Pearson Jones' fault.

The evidence I've seen shows that as soon as Pearson Jones received the relevant forms, it emailed Mr B to confirm that there would be a delay as a result of one of the funds needing to be switched. And it sent the relevant forms and information to the old platform in order to begin the process of re-registration. I'm satisfied it did this promptly.

And I've also seen evidence that shows that the platform that Mr and Mrs B were moving away from made errors during July which delayed the process. Indeed the platform made a small adjustment to one of the holdings in order to compensate for the error.

I've also seen evidence that shows that Pearson Jones chased matters as soon as it became aware of the problem. On 16 August the old platform confirmed that it would normally take 'a while' to obtain acceptance from the new platform before moving units across. I understand that this happened around 19 September.

So I'm not persuaded that the delay between June and September was Pearson Jones's fault. I can see that it chased the old platform during July and August in order to ensure that the re-registration was carried out as promptly as possible. But it clearly had no control over how the old platform and the new platform carried this re-registration out. And it also had no control over errors made by either of these platforms.

So I don't ask Pearson Jones to compensate Mr B for this period.

Finally, I recognise that another aspect of what Pearson Jones said it would do is transfer Mrs B's portfolio and the joint portfolio, into Mr B's name. But it didn't do this. The main purpose of transferring both portfolios to Mr B was to mitigate the CGT liability.

Mr B had carried forward greater losses from previous years and so would've been able to absorb more of the gains without having to pay CGT. But, given the way the market performed, Mr and Mrs B's portfolios suffered losses, so this liability didn't materialise. And so, while I acknowledge that Pearson Jones should've transferred the portfolios to Mr B as it said it would do, I'm satisfied that no loss was caused by this error.

compensation

My aim in awarding compensation is to put Mr and Mrs B in the position they would've been in if Pearson James hadn't unnecessarily delayed the re-registration of their holdings with the new platform.

As I've said above, this should've happened on 23 September 2011. This means that Mr and Mrs B's funds would've been invested in the model portfolio that Pearson Jones had recommended from that date. And so I think it's fair and reasonable that they be awarded the difference between how their portfolios performed between 23 September and 15 December, and how the model portfolio performed. I understand that Pearson Jones calculated compensation using this method.

So, Pearson Jones should:

- Calculate the performance of the model portfolio it had recommended between 23 September 2011 and 15 December 2011;
- Establish the value of Mr and Mrs B's portfolios (including the joint portfolio) as at 23 September 2011 and when they were finally switched to the model portfolio on 15 December 2011;
- Pay Mr and Mrs B any loss, if there is one.

my final decision

My final decision is that I uphold the complaint. Pearson Jones Plc must pay the compensation I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 2 July 2016.

Alessandro Pulzone
ombudsman