DRN-2728483

The complaint

Ms H complains that Smith & Williamson Investment Management LLP (SWIM) wrongly advised her to take out a risk-based Junior ISA (for her grandson) and then mismanaged the investment.

What happened

Ms H said that SWIM invested most of her money in the Woodford Patient Capital Trust (WPCT), failing to diversify her portfolio via other funds. She queried whether investment in the WPCT was suitable for a teenager with no investment experience, why SWIM was slow to act when problems around Woodford Investment Management (WIM) became prevalent in the media, and also whether the costs of the WPCT made it viable. She said SWIM should have advised her to open a building society account for her grandson instead.

An investigator at this service did not feel Ms H's complaint should be upheld.

In his 'View', he outlined the background to the case including SWIM's role, Ms H's investment objectives, her status as a non-advised client and the various communications between the parties over the years. These, in essence, were the main reasons why he did not believe the complaint should be upheld:

- Ms H chose to invest through SWIM as a non-advised client; it was not therefore in a position to suggest, or otherwise, that she should invest her money in a building society
- Ms H agreed that it would manage her investment on a discretionary basis, having complete freedom over fund and asset decisions (within the agreed risk level)
- She was repeatedly asked to confirm the level of risk she was looking to take with this money and reiterated she wanted a medium-high risk portfolio (only asking it to be reduced to 'medium' late in the day)
- While most of the money was in the WPCT fund, this was a very diversified fund; so, he was satisfied that the portfolio was suitably diversified
- SWIM regularly checked Mrs H's risk level and overall objectives
- While her grandson was 12 at the start of the investment and her objective was to provide funds for his future education, she repeatedly said she was looking for a long-term investment, even confirming this approach when her grandson had reached 15
- All the fees were clearly spelt out in the documentation; WPCT's fees were particularly low so he didn't accept that these made it an unsuitable part of her portfolio
- SWIM notified Mrs H about the impact of WIM's problems in June 2019 but advised her to stick with its funds as the underlying diversified assets remained strong
- After Ms H reiterated her concerns about funds linked to WIM, SWIM agreed to move her money to another product without charging for this
- Mark Woodford/WIM had a strong track record of bouncing back from fund difficulties, so it was not unreasonable for SWIM to advise against instantly withdrawing all her money from the WPCT; also, Ms H mandated it operate with

complete discretion over investment decisions and was entitled to make its investment decisions until clearly instructed otherwise

Ms H did not agree, reiterating many of her earlier points:

- SWIM should not have recommended the investment which was never viable given the high costs compared to the amounts she invested
- It was aware that she wanted to access this money after her grandson's A levels so should have acted to change her objectives as this date got closer
- The overall charges on such a small fund were always going to be disproportionately high; she didn't realise this at the time but SWIM should have done
- The investigator said that Woodford's funds had previously bounced back over four and seven-year periods, but given her need for the money when her grandson was 18, these time periods wouldn't have been acceptable even if WIM's funds had ultimately bounced back
- Even if the WPCT was initially a reasonable fund, why didn't SWIM invest future money in other funds?
- In April 2018 she reduced the level of risk she wanted to take; why didn't SWIM disinvest from the WPCT at this point?
- SWIM should have disinvested as soon as she made her concerns known

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.

In this case I agree with the investigator and for the same reasons. As such, I will not repeat his lengthy arguments (outlined in his 'View').

I have seen no evidence to suggest that SWIM provided Ms H with investment advice, including producing a suitability document or written recommendations etc. She did, however, agree it would have discretionary powers to manage the investment within the agreed mandate of a medium-high risk level and a five-year plus timeframe. As she was planning to access this money some time on or after her grandson's 18th birthday (six years' hence), this timescale was understandable.

Therefore, I cannot agree that it ought to have advised her or advised her not to invest in this product.

It did regularly ask her to confirm her ongoing objectives; and in my view, it was Ms H's responsibility to check if she was still happy with investments which were designed as medium/long-term time commitments – including, for example, by the time her grandson was 16. As this was not an advised sale or one where she was paying for ongoing advice, I don't believe it was up to SWIM to question whether she should amend her investment objectives the closer her grandson got to 18.

As the investigator explained, the WPCT fund invested in a wide range of assets, so I don't agree that it should have been diversifying further when Ms H added new money over the years. As she admitted, the amounts involved were very modest, and I don't believe there was an overwhelming need to spread these small sums between various funds. This may have increased the size of the overall charges.

I also don’t believe that the WPCT fund became unsuitable when Ms H slightly reduced her capacity for risk in 2018. In my experience, the spread of assets continued to be comparable with many other medium risk-rated products in the market.

It’s important to stress that my role, and that of this service, is to assess whether there is sufficient, persuasive evidence to safely conclude that a business clearly did something wrong; not merely to conclude that it might have done something differently.

With hindsight, one may well conclude that most businesses would have been better off withdrawing their clients’ money from Woodford funds as soon as they began to fall and/or when the media raised concerns about them. But it would not be fair to judge any business’ decisions by relying on hindsight. Many businesses, including SWIM, did not take that view at the time and for understandable reasons. Sudden market movements do not always indicate permanent or even medium-term falls in the value of a particular fund or asset. Also, once the first fall has occurred a client has already lost money so exiting a fund at that point guarantees a loss which may be reversed.

Crucially, SWIM had wide discretionary powers, as mandated to it by Ms H, so it was for its manager/s to use their judgement when deciding investment switches in these situations.

I also think SWIM was entitled to say to Ms H that, in its view, the initial fall in Woodford funds did not necessarily indicate longer-term problems. It was for Ms H to decide when to instruct it that she wanted to withdraw her money from such funds.

Finally, I think that SWIM was responsible for ensuring all the fees were clearly displayed. It was, in my view, for Ms H to decide whether she was happy to pay these taking into account the likely sums she planned to invest.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms H to accept or reject my decision before 6 May 2021.

Tony Moss
Ombudsman