

The complaint

Mr F complains about the management of his Stocks and Shares ISA by Philip J Milton & Company Plc ('PJM') and its overall performance. He's unhappy about the (high) risk he was advised to take and consequently feels that this was unsuitable, not only to remain invested in, but also for purchasing additional shares.

He's also unhappy about being forced to leave PJM and find a new home for his ISA, with a 2% encashment fee.

To put things right, he'd like compensation for his losses.

What happened

Mr F maintains that he's lost £600 investing in Blue Planet Investment Trust Plc ('*Blue Planet*') and a further £116.32 when (additional) shares were incorrectly bought.

PJM didn't uphold the complaint. It doesn't agree that it behaved unreasonably with regards to Mr F's complaint points. In other words, it maintains its advice was suitable in light of Mr F's objective for capital growth, medium attitude to risk, capacity for loss and overall investment strategy.

Its relationship started with Mr F in 1999, and he's always been happy with its approach. His relationship with Blue Planet started in 2008 so if he wasn't happy about it – bearing in mind, he only wished to challenge this one element of his investment within which he held 0.8% of his total funds – he would've raised a complaint sooner. Despite Mr F's complaint, his account continued to be managed well.

It hasn't lied or misled Mr F. He hasn't incurred a loss on his exposure to Blue Planet, and overall, he's had a positive portfolio outcome. So, it's very unhappy about the allegations made.

In any case, a complaint about performance alone isn't something that it can consider, which is what Mr F's complaint appears to be about. It highlighted some of the 'significant unexpected traumas' that the financial world experienced, including during Covid-19, that's had a grave impact on the market.

All in all, it felt the best approach in the circumstances was to hold on to the investment. Under the discretionary management agreement, it's entitled to make that decision. Without the benefit of hindsight, it can't say that it has done anything wrong.

One of our investigators considered the complaint but didn't think it should be upheld. In summary, she said:

- Mr F's portfolio was managed on a discretionary basis. Ultimately PJM had a discretion to manage his portfolio in line with its agreed mandate.

- Whilst she appreciates Mr F's frustration at the inclusion of Blue Planet, she needs to look at the overall portfolio – and whether it has been managed with the agreed mandate – and not just the individual fund.
- The discretionary agreement dated May 1999 states that Mr F had a medium risk profile. His overall portfolio was in line with this. The Blue Planet made up a very small percentage of his overall portfolio.
- Although Mr F says he lost £600, the performance of the overall portfolio will depend on investment decisions which involve skill, expertise, and professional judgement not to mention management discretion exercised by fund managers.
- These decisions involve subjective choices, it's not our role to interrogate these decisions and certainly with the benefit of hindsight. There were no guarantees given as to which investment may or may not succeed.
- In the circumstances, she can't say that PJM has acted unfairly.
- Despite what Mr F says about TripAdvisor reviews, she can't comment, as its not within our scope.
- Despite what Mr F says about having his agreement with PJM terminated, a financial business is entitled to terminate a contract of business with a customer just as it is possible to do the same.
- PJM charged Mr F £30 for the transfer of his investments to a third-party business in line with its terms and conditions. So, it hasn't done anything wrong.

Mr F disagreed with the investigator's view. In summary, he said:

- Regulations are there to protect him as an ordinary consumer.
- He accepts that the portfolio could be overall medium risk, with balanced high and low risk components.
- If there's a separate regulation about liquidity. PJM broke the rules by building up such a large stake in Blue Planet so that his holding became materially illiquid.
- What finally persuaded him to make this complaint was:
 - Two subsequent purchases of Blue Planet stocks after PJM stated to Blue Planet that the stock had become highly unsuitable. PJM later denied doing this with clients' money in an effort to take over the trust. It should've used its own money if that's what it wanted to do.
- The investigator didn't comment on the issue of the Cost and Charges Schedule. This should've been made clearer. He's not claiming money for this but thinks this should be a concern for our service.
- The investigator didn't acknowledge recent correspondence from PJM. He would be disappointed if there's no rule protecting him from being treated this way. If there are no rules around financial advisers 'bullying and intimidating clients', he wonders if the system is fit for purpose.
- PJM 'forcing' him to leave isn't dealing with his complaint fairly. If PJM wishes to "terminate" him as a client then it should write to him calmly, suggesting the best time over the next six months.
- He shouldn't have to lose out like this by exercising his right to complain.

The investigator having considered the additional points wasn't persuaded to change her mind.

PJM made the following key representations:

- It's disappointed by Mr F's comments, which it feels are 'vexatious' and 'defamatory' in law.
- It gave Mr F an opportunity to reflect and reconsider his position – it wasn't seeking to dissuade him from complaining – and this didn't remove his right to continue to

pursue the complaint.

- It even advised him about what to do if he wanted to preserve his tax-free ISA status, which it wasn't obliged to.
- It has, at all times, taken care to carefully explain its position, especially in relation to Blue Planet.
- It had a discretionary mandate to act as it felt best for Mr F at all times, in line with the mandate. Buying £116 worth of an investment – in an account worth over £60,000 – which subsequently fell in value isn't reckless.
- It has endeavoured to do its best for Mr F not only in respect of his investment but also in its communication with him. Over two decades it has had a disproportionate amount of interaction with him but hasn't ever complained about his 'size' or 'worth' to it as a financial business.
- Despite Mr F's relatively miniscule exposure to this one trust which recently fell in value, it has an enviable record of designing and managing investment strategies which maintain careful, balanced, and appropriate overall exposure to its clients.
- Despite his historic happiness with its service, Mr F has chosen to complain about this investment and ignored the many extremely successful investments.
- Mr F was even involved with his parent's investments, so if he truly believed it didn't provide a satisfactory service he wouldn't have stayed with it for over two decades.
- In summary:
 - It denies arguing with any solicitors about Blue Planet. It doesn't know if the Financial Conduct Authority (FCA) are investigating Blue Planet but it's nothing to do with it.
 - It's pleased that Mr F accepts that his overall portfolio was medium risk.
 - It doesn't buy any illiquid investments. Blue Planet was a fully London listed public limited company and EU approved fund.
 - A general letter to Mr F inadvertently overlooked the purchase of £116 of Blue Planet shares. An apology was made as soon as it was noted but not accepted by Mr F.
 - The minute acquisitions were for £81.24 on 23 December 2021 and £35.08 on 29 December 2021.
 - These acquisitions weren't mistakes and all decisions to buy were very carefully considered. They were for larger accounts, where all other opportunities were full exhausted, and very tiny acquisitions did take place.
 - It is true that very little additional client money was expended in acquiring Blue Planet. It has never noted that 'the stock had become highly unsuitable' for Mr F or any other clients. The stocks were purchased at discount, and it doesn't agree that it lied to its customers. There was no crusade to take over the trust.
 - Authorised Blue Planet letters to its customers were misleading, defamatory, and contained many inaccuracies. This was raised with the FCA and the Information Commissioner's Office (ICO).
 - The £116 losses Mr F refers to has no bearing on his complaint.
 - It can't predict, upon termination of its contract with Mr F, when the best value for his investments might arise, whether that be in six months' time or not. If a client decides to leave, they have to provide instructions, as Mr F did in this case.
- It has dealt with Mr F's complaint fairly. It spent much time going through his complaint post referral to the ombudsman service and hopes it has done so with courtesy and professionalism.
- It is very sorry to lose a client. It has tried its hardest to address all his points regarding Blue Planet, over and beyond what was required.
- All things considered it doesn't believe that it is the firm best suited to assist him with

his investments.

As no agreement has been reached, the matter has been passed to me for review.

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.

Having done so, I agree with the investigator's conclusion for much the same reasons. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Mr F says, I'm unable to safely say that the recommendation to invest in Blue Planet was unsuitable because it didn't achieve better returns or that it represented a higher risk than he was willing to take. I also can't safely say that his portfolio was mismanaged by PJM, despite what Mr F says, I've seen no evidence that it was.

On the face of the evidence, and on balance, I'm satisfied that Mr F was prepared to take a medium level risk overall, in order to achieve potential returns. So, in the circumstances I'm unable to say that investing around 0.8% of his portfolio in Blue Planet means that PJM has behaved unreasonably.

Before I explain why this is the case, I think it's important for me to note I very much recognise Mr F's strength of feeling about this matter. He has provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope he won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy. The purpose of my decision isn't to address every single point raised under a separate subject heading, it's not what I'm required to do in order to reach a decision in this case. In other words, I don't have to comment upon every single point made.

My role is to consider the evidence presented by Mr F and PJM, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case. In the circumstances, I don't need any further evidence to make my decision.

I don't uphold this complaint, in summary, for the following reasons:

- I'm aware that this was a discretionary management service, which allowed PJM to make decisions on Mr F's behalf, in line with the agreed mandate. So, I can't say investing in Blue Planet was wrong or that PJM had acted outside of its authority and against Mr F's express wishes.
- I note that up until the issues Mr F refers to, he had no complaint about this course of action. It's arguable that the issues he raises, he does so with the benefit of hindsight because the specific fund didn't perform as well as he'd hoped. Otherwise, he probably would have complained in 2008 when the investment was first made.
- On balance I'm satisfied that Mr F's overall portfolio was medium risk – comprised of higher and lower risk elements – in line with the May 1999 agreement between him and PJM. It's arguable that this particular strategy – which is common industry practice – was needed in order to fulfil his objective for growth.
- I note Mr F is unhappy about PJM purchasing additional shares, but regardless of his views, PJM had a mandate to do this, and I've seen no evidence that it was doing this, or using Mr F's money, to take over the trust.
- Furthermore, a business is entitled in the reasonable exercise of its legitimate commercial judgement – providing it has the authority to do so – to do what it feels is

best for its customers. I understand that customers may not always agree, however based on what PJM says, I can't say that its decisions and conduct didn't involve skill, expertise, and professional judgement.

- I'm aware that PJM's approach might not have always worked out financially, but this isn't something I can blame PJM for.
- Without the benefit of hindsight, it's difficult to know which trades would've done the best. And just because he might have made a loss doesn't mean that PJM has behaved unreasonably.
- I agree with PJM that without the benefit of hindsight, it's impossible to know which shares should've been sold and which should've been kept. Nevertheless, I'm satisfied that PJM acted within its authority and in an effort to do what was in Mr H's best interest.
- Given the risks involved, I can't say that any strategy was fool proof, and no guarantees were given by PJM that they would be. Mr F will be aware of this and his tolerance for loss.
- A financial business is entitled to decide who it provides a service to. It is not obliged to provide a service in response to every application and it is not obliged to continue to provide a service if it doesn't want to. It also doesn't have to provide a reason for its decision either.
- In this instance it looks like PJM felt that it wasn't best placed to assist Mr F going forwards. It's arguable that the relationship with Mr F had broken down and so it was reasonable that the parties went their own ways.
- Despite what Mr F says, I can't say that the relationship ended just because he raised a complaint. Based on the correspondence between him and PJM, I'm not persuaded that this was the case.
- I note Mr F feels that he's been bullied/intimidated by PJM, but I'm not persuaded that he has. On balance I'm persuaded that he was simply given an opportunity to retract what PJM felt were unkind and defamatory comments. I don't think it was suggesting that he should just withdraw his complaint just because it was a complaint that it didn't agree with.
- In this instance I can't say that PJM has done anything wrong by charging Mr F a fee for transferring his ISA to a new provider, in line with its terms and conditions. Despite what Mr F says I don't think it has done anything wrong by doing so.
- I also don't think PJM has done anything wrong by not giving him six months – as opposed to a month or two – to move his investment elsewhere, because it wasn't obliged to. And, as it quite rightly points out, there was no way of knowing in advance when might've been a good time to move or encash his investments.

I appreciate that Mr F will be thoroughly unhappy that I've reached the same conclusion as the investigator. Furthermore, I realise my decision isn't what he wants to hear. Whilst I appreciate his frustration, I can't safely say that PJM gave unsuitable advice or mismanaged the portfolio or behaved in such a way that this complaint should be upheld. In other words, on the face of the available evidence, and on balance, I can't uphold this complaint and give Mr F what he wants.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 19 June 2024.

Dara Islam
Ombudsman