

The complaint

Ms H complains that Fogwill & Jones Asset Management Ltd (“FJAM”) failed to effectively manage the investments she held with the firm through a discretionary mandate. She says the risk profile of the investments was too great, and the firm’s actions in holding large parts of her portfolio in cash from time to time was more consistent with a day trading approach.

What happened

Ms H held investments that were managed using a discretionary fund management (“DFM”) service provided by FJAM. Ms H’s investments were moved to the DFM service, from another provider, in early 2021. That switch was preceded by advice from FJAM for which Ms H paid a fee equal to 1%+VAT of the transferred amount. Following those charges the amount Ms H transferred was £723,620.37.

The advice given to Ms H to make the transfer isn’t itself the subject of this complaint. But I will need to reflect on what was said, and its impacts when looking at the way in which Ms H’s savings were invested.

Ms H transferred investments and cash to both a general investment account (“GIA”) and to an ISA. Whilst some of the transfer was in cash, following the sale of investments Ms H held, a large capital gains liability had been accrued on some other investments. So FJAM agreed for those to be transferred in-specie, and not be managed though its DFM mandate with a view to their sale over time when CGT allowances permitted. The value of Ms H’s investments fell during 2022 so she complained to the company about what had happened.

In response to the complaint FJAM says that it faced difficult market conditions in 2022 caused by factors such as the Russian invasion of Ukraine and the abortive changes in fiscal policy introduced by the UK Government. It says that it took reasonable actions to attempt to mitigate falls in the market, including holding funds in cash as a defensive measure. Whilst it accepts that those measures weren’t always as successful as it would have hoped, FJAM considers it acted reasonably and in line with Ms H’s investment mandate at all times. Unhappy with that response Ms H brought her complaint to us.

Ms H’s complaint has been assessed by one of our investigators. He thought that the actions FJAM had taken during 2022 were reasonable, and intended to protect the value of Ms H’s investments. He thought that FJAM had taken reasonable care to ensure that Ms H’s investments aligned with her capacity for loss and her agreed attitude to risk. So he didn’t think the complaint should be upheld.

Ms H didn’t agree with that assessment. So, as the complaint hasn’t been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process.

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 deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Ms H and by FJAM. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

Ms H requested advice from FJAM in late 2020. At that time she held an ISA and a GIA with another provider, but told FJAM that she had been disappointed with the way that firm had dealt with investments belonging to another family member. So she had decided to transfer her investments to a new firm.

FJAM assessed Ms H's attitude to risk and her capacity for loss as part of forming its advice. It agreed with Ms H, based on its discussions and her completion of an industry standard questionnaire, that her attitude to risk was towards the top end of medium. And Ms H confirmed that she didn't expect to need to make use of the investments for at least ten years. Her income in retirement was comfortably in excess of her expenditure.

As I have said earlier, FJAM agreed that it would transfer some of Ms H's investments in-specie to avoid crystallising some CGT liabilities. And it also agreed some other investment constraints with Ms H such as some Environmental, Social & Governance (ESG) criteria. So FJAM placed the funds it was managing though the DFM mandate in one of its responsible investment portfolios.

When FJAM initially assessed Ms H's attitude to risk it rated her at 6 on a scale of 1 to 10. That corresponds to a description of a medium risk investor. Ms H confirmed that she agreed with that assessment and the corresponding investments that would result. The information FJAM provided to Ms H suggested that medium risk portfolios might expect to contain around 85% invested in equities. Later in 2022, when FJAM reviewed Ms H's risk rating with her, she explained that world events had made her a little more cautious about her investments. FJAM measured her attitude to risk at that time at a rating of 5. But Ms H asked FJAM to not make any changes to her investments until she had considered the matter further. No requests for any changes were later made by Ms H.

I've looked at the investments that FJAM used when it constructed Ms H's portfolio, and the changes that it made during 2022. I think at first I should comment that in any balanced portfolio a mixture of different assets, and corresponding risk ratings, will be present. It is for the DFM to ensure that overall the portfolio is in line with its stated objectives and agreed risk profile. I am satisfied that the operation of the portfolio that FJAM provided to Ms H met the stated objectives.

There is no doubt that 2022 was a challenging year for most investors and DFMs. Global events put pressure on many sectors of the economy. And Governmental policy saw falls in equity and bond values unusually occurring at the same time. So in its role as DFM FJAM attempted to take measures to protect the value of the investments it was managing. At times, as a defensive measure, that resulted in large portions of investment portfolios being

held in cash. On balance I don't think that was an unreasonable response to market conditions.

FJAM accepts that the investment decisions it took were not always as successful as it would have hoped. But that in itself wouldn't be a reason to uphold a complaint. It seems to me that the decisions it made were intended to be in the best interests of its clients, and were decisions that might reasonably have been taken by other DFMs in similar circumstances.

FJAM was providing an advisory service to Ms H. So I accept that it was generally responsible for ensuring that the choices she made, and the investment approach it took, were suitable for her circumstances. But those conclusions would be predicated on information that Ms H supplied, and discussions that FJAM had with her about her expectations and needs. Ms H had agreed that her investments should be seen as long term, and that she was unlikely to have a need for the funds for many years to come. So it wouldn't be reasonable to assess investment performance over just one or two years, particularly given the market turmoil at that time.

The DFM mandate that Ms H provided to FJAM provided relatively wide authority for the firm to choose suitable investments and react to market changes. But FJAM needed to ensure it remained in line with the risk profile Ms H had agreed, and the other restrictions she had added with regards to ESG investments. From the evidence I have seen it appears that FJAM met those responsibilities when managing Ms H's investments.

I appreciate that my decision will be disappointing for Ms H. 2022 was a challenging year for many investors, and so it isn't surprising that she might have seen some reductions in the value of her savings. But I'm not persuaded those falls in value were as a result of something that FJAM did wrong. Instead I think they were simply a reflection of the instability in the market at that time.

My final decision

For the reasons given above, I don't uphold the complaint or make any award against Fogwill & Jones Asset Management Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 17 May 2024.

Paul Reilly
Ombudsman