DRN-4858348

Financial Ombudsman Service

The complaint

Ms S complains that J M Finn & Co Ltd ("JMF") unsuitably managed her general investment and SIPP portfolios. She feels the level of risk they were exposed to was too high, primarily due to an over exposure of technology stocks, resulting in a significant loss in value during early 2022.

Ms S is also unhappy with the way in which her complaint was handled by JMF, and that it permitted its staff to act as they did.

What happened

The background to the complaint will be well known to both parties, so I won't repeat it in detail here. In short, Ms S had been a customer of JMF since 2015 when it began managing her general investment portfolio on a discretionary basis. This was joined by her SIPP portfolio in 2018.

In September 2022 Ms S complained to JMF following a significant drop in the value of the portfolios between November 2021 and August 2022. JMF didn't uphold the complaint as it felt the portfolios had been managed in line with Ms S' investment objectives and risk profile. It did, however, offer to waive any charges associated with moving the investments to another provider, which I understand she's done.

Ms S didn't accept JMF's response and referred her complaint to this service. But our investigator also concluded it shouldn't be upheld.

In respect of the general management of the portfolios she said, in brief:

- It was documented that JMF made clear it wasn't going to provide personal financial planning advice. Rather, it would manage Ms S' investments in line with the information provided to it.
- Ms S initially agreed with JMF that the portfolios would be managed with an objective of growing the capital, rather than providing income.
- The definition of a medium risk portfolio provided to Ms S explained the risks involved, how the portfolio would be invested and that it "*may be worth considerably less than its original value*" as well as that the portfolio should be viewed over the longer term, "*for at least five years*".
- Ms S selected that there be "*No minimum percentage of Low-Risk investments*" from a choice of four options, ranging from a minimum of 0% to a minimum of 50% of low-risk investment.
- The application forms then went on to say, "*Your portfolio may also contain a small percentage of High-Risk investments (normally this will not exceed 15% High Risk investments by value)*" and indicated an option to select if no high-risk investments should be used, but that option wasn't selected.

In respect of Ms S' concerns about the portfolios' focus on technology and healthcare stocks, the investigator went on to carry out some analysis of the holdings around the time the values fell. She noted that just over a third of the portfolios had been held in these areas and that generally the specific holdings appeared to be consistent with JMF's description of what might be held in a 'medium risk' portfolio – "*securities issued by the leading 350 UK companies or their equivalents from overseas markets*" – when looking at their approximate market capitalisations.

The investigator noted two stocks in these sectors she didn't feel were in line with the medium risk profile but felt that as they represented around 4.4% of the value of the portfolios this was in keeping with the 15% of holdings in high-risk investments that Ms S had agreed to at the outset. The investigator also considered several other specific lines of stock about which Ms S had voiced concerns but felt that they generally fell into the medium risk definition. The one holding in an investment trust that she did feel was high-risk represented around 2.8% of the portfolio, so coupled with the other high-risk holdings still fell within the agreed 15%.

In conclusion the investigator felt the portfolios had been compatible with the medium risk – with up to 15% high risk - investment strategy Ms S had agreed to. She said the risk profile hadn't indicated that there couldn't be a focus on a certain industries or geographical locations at any one time, so overall she didn't think JMF had acted incorrectly when managing the portfolios.

In respect of Ms S' additional two complaint points concerning the way in which her complaint was handled by JMF, and that it had permitted its staff to act as they did, the investigator felt that JMF had generally acted fairly and in her best interests, by managing her portfolios in line with what had been agreed.

The investigator also felt that JMF had handled Ms S' complaint in the correct manner, consistent with the Financial Conduct Authority's DISP rules. She noted that the final response letter had set out the background to the complaint before forming a view as to whether it should be upheld or not. And while it may not have provided the outcome Ms S sought, it appeared to have been carried out in an impartial manner based on the evidence held by JMF.

Ms S didn't accept the investigator's view. She felt points had been made that were irrelevant or incomplete and several aspects of her complaint hadn't been addressed. She made a further comprehensive submission stressing, among other things -

- She hadn't been made aware of the potential issue of focusing solely on capital growth as opposed to adopting a balanced approach combining growth and income.
- The level of investment in tech and tech-related stock was too great, particular into her retirement.
- The investment manager's attempts to alter the portfolios to lower the risk level once the complaint had been made shows that they had been managed incorrectly prior to that.
- She'd selected a 'medium' level of risk at the outset in the context of the investment manager suggesting that low-risk investment was little better than holding cash and an understanding that it was high-risk investments that carried the high level of volatility she'd subsequently experienced.
- The complaint was not focussed solely on the period post-November 2021. Rather that was the point at which it had become apparent that the portfolios had been invested inappropriately.
- Valuation statements had not been clear on the overlap between sectors and, as such, it hadn't been apparent how over-weighted the portfolios were toward tech stocks and the US.
- The investigator had drawn too simplistic an equivalence to FTSE 350 companies

and overseas stocks based solely on market capitalisation – there were many other aspects to consider.

The investigator considered Ms S' further submissions but wasn't persuaded to change her opinion. So, as no agreement could be reached, the matter was referred to me to 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 find I've come to the same conclusions as those reached by the investigator and for broadly the same reasons. I want to assure Ms S I've read and considered everything on the file. But that said, I'm satisfied I don't need to comment on every point raised to reach what I consider to be a fair and reasonable decision. Where I've chosen not to comment on something, it's not because I haven't considered it. It's because I've focused on what I think are the key issues. That approach is in line with the rules we operate under.

In doing so, I've taken account of relevant law and regulations; relevant regulators' rules guidance and standards; codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time. But I think it's important to note that while I take all those factors into account, I'm ultimately deciding what I consider to be fair and reasonable in all the circumstances.

Further, where the evidence is incomplete, contradictory, or inconclusive, I've reached my decision based on the balance of probabilities. That is, what I think is more likely than not to have happened in light of the available evidence and a consideration of the wider circumstances.

I understand that concern was created by the significant losses on the portfolios during the first half of 2022. While I can see there'd been previous fluctuations in value, there'd been nothing on the scale of that particular downturn. So, I appreciate why Ms S would've voiced concerns and it's clearly document that she did so. Those concerns then escalated in response to the investment manager's explanations and his suggested courses of action to become the formal complaint of September 2022.

There's been considerable correspondence between the parties in that respect, but I think it's fair to say the key theme is that the investment manager focussed too narrowly on certain stocks, categories of stock and geographical locations. In doing so, he created portfolios with an exposure to risk inconsistent with the mandate agreed at the outset and, further, in a manner inconsistent with both Ms S' understanding of how and where her monies would be invested and her personal and financial circumstances.

As noted, Ms S selected a medium risk portfolio profile when she started to be advised by JMF in 2015. It was also noted that she had fairly limited investment experience, an ISA and a small holding of shares.

JMF's documentation provided some narrative around the 'medium' profile, primarily referring to such a portfolio containing *'leading 350 UK companies or their equivalents from overseas markets - in assessing equivalence, market capitalisation will be one of the factors taken into accoun*t', which the investigator noted. The documentation also said that a medium-risk portfolio could include up to 15% high-risk investments, described as high-risk '…*particularly in terms of volatility and potential capital and or income loss*.' There was, as noted, the potential to opt out of investments of this nature but that option wasn't selected.

There was also an option to select a minimum percentage of low-risk investments and Ms S selected that there be no minimum.

This taken alongside the information included in the 'New Client Background note' concerning Ms S' experience and understanding and the subsequent documentation produced over the following years relating to regular reviews, leads me to conclude that she would likely have had a reasonable understanding of the way her money was being invested. And she was provided with valuation statements, which, while I note her comments about a lack of clarity and the potential for overlap between sectors, did provide in my view reasonably clear snapshots of how she was invested, in terms of specific stocks and areas.

Looking at the way the investment manager proceeded to manage Ms S' portfolio over the subsequent years it does appear that he focussed on a strategy that leant towards tech stocks and North American markets. But to my mind the evidence doesn't indicate that he did so such that he acted outside the parameters of the original mandate.

There were significant changes in Ms S' circumstances over the term of the relationship, most notably in 2018 when she ceased employment. But I don't think there was anything at that point that should have led the investment manager to believe the mandate originally agreed should be altered, or the level of risk reduced. I can see that Ms S actively confirmed her desire at that time for her investments to continue aiming for capital growth.

In that respect I note what she's said on this point, that not adopting a strategy that balanced capital growth and income was unsuitability risky. I accept that a more balanced approach may have reduced the overall risk to a degree – for instance, if there was a greater focus on income-producing fixed-interest assets. But there would've been no guarantee that the other assets held within the portfolios wouldn't have offset this. And ultimately, as noted, it appears that Ms S sought capital growth as she had no requirement for income from the portfolios.

Later towards the end of 2020, the annual suitability review that looked to confirm that the mandate remained consistent with Ms S' objectives noted that in terms of risk profile the portfolio was at 1.4% in low risk, 89.3% in medium risk and 9.3% in high risk. Asset-wise it was around 85% equities and 15% cash and fixed assets.

A note of what the investment manager termed the 'annual fireside chat' in September 2021 indicates that alongside discussions regarding ongoing objectives and Ms S' risk profile the conversation looked at portfolio performance, the market, and specific stocks. This was followed up a little later by further discussions regarding certain stocks.

Looking at what was documented, I think it can be seen that towards the end of 2021 and into early 2022 Ms S was taking a more detailed interest in how the investment manager was managing her portfolios and was becoming increasingly concerned by his ongoing strategy. And clearly those concerns coalesced around the losses incurred during the first half of 2022, leading up to the formal complaint in September 2022.

I think it's fair to say that the extent of the losses that prompted the complaint was a result of the focus the investment manager placed upon particular stocks. But as I've said, I don't think that focus went beyond what Ms S had initially accepted and continued to be comfortable with. And I think it's important to recognise that it was this same focus and general management of the portfolios that led them to have such a high value by the end of 2021.

The investigator noted this high performance over the first five years, which prompted Ms S to question what she saw as a selective separation of the investment period – saying that it was the whole period, from 2015 to 2023, that should be considered. But looking at that period from a performance perspective does suggest that there was potentially no *overall* loss incurred.

By that I mean that in the event I were to conclude that the investment manager had acted outside the agreed mandate, investing in a manner inconsistent with Ms S' attitude to risk, circumstances and objectives, I would likely direct that she be compensated by way of a comparison with an investment benchmark index commensurate with her attitude to risk, circumstances and objectives.

But such a comparison has already been made. The investment manager, in his defence of how he had managed the portfolios, drew attention to how much their performance had outstripped several relevant indexes, all similar in structure to the index this service uses as a benchmark comparison. And this was also confirmed to Ms S in JMF's final response to her complaint.

I would stress that I don't highlight this issue with the intention of underplaying Ms S' concerns. As I said earlier, I do understand that the significant losses of early 2022 would've been distressing. As such, I've considered whether it could be said that JMF and its investment manager were nevertheless responsible for that distress by placing Ms S in a position such that she encountered an unexpected level volatility.

But as, for the reasons given, I don't think the investment manager acted incorrectly or that he managed the portfolios outside the agreed parameters, I don't think JMF can be held responsible for any distress caused. Ultimately, I'm satisfied that was due to the way the markets performed during the period in question, reacting to various significant global events.

Turning to the other two issues raised by Ms S – the way in which her complaint was handled by JMF, and that it permitted its staff to act as they did, in respect of the former I'm not persuaded that JMF did anything wrong.

I'm satisfied it investigated her concerns thoroughly, in line with its responsibilities as a regulated business and in accordance with the DISP Rules set out in the handbook of the Financial Conduct Authority. While Ms S would clearly disagree, in my view the procedure was transparent and fair, and the conclusions reached based on evidence JMF was entitled to rely upon.

I've not seen that Ms S was disadvantaged in any way by the manner it was conducted and ultimately, while I recognise this part of her complaint is focussed on procedure rather than the merits of the complaint, she was able to refer the complaint to this service for review.

In respect of Ms S' concerns about JMF permitting the investment manager and compliance manager to act as they did, I accept that it was ultimately responsible for the actions of its staff. But as I've not found that the staff acted incorrectly or unfairly, it follows that I'm unable to conclude that JMF itself acted incorrectly.

My final decision

For the reasons given, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 28 January 2025.

James Harris
Ombudsman