

The complaint

Miss P complains that J M Finn & Co Ltd (“JMF”) managed her general investment portfolio in a manner inappropriate to her personal circumstances, resulting in a significant loss in value during early 2022, impacting the level of income the portfolio was able to provide.

Miss P 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, Miss P had been a customer of JMF since 2011 when it began managing her general investment portfolio on a discretionary basis.

In September 2022 Miss P complained to JMF following a significant drop in the value of the portfolio between November 2021 and August 2022. JMF didn’t uphold the complaint as it felt the portfolio had been managed in line with Miss P’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.

As Miss P didn’t accept JMF’s response she 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 Miss P’s portfolio in line with the information provided to it.
- Miss P initially agreed with JMF that the portfolios would be managed with an objective of a balanced return from income and capital growth, but the focus was changed towards income in 2022.
- She selected a medium risk portfolio and JMF’s definition of a such a portfolio explained what it would contain. Miss P also selected that the portfolio could hold up to 10% in higher risk investments.

The investigator went on to consider whether the portfolio was at any point managed in such a way that the level of risk exceeded what had been agreed. She looked at a selection of stocks held in the portfolio during the later period when Miss P felt that too much risk had been taken. The investigator concluded the stocks appeared to fall within JMF’s description of what might be held in a medium risk portfolio – “*the leading 350 UK companies or their equivalents from overseas markets*”. The investigator also looked at some stocks that Miss P considered to be high-risk and agreed that some did meet that definition. But she noted Miss P’s initial agreement that 10% of the portfolio could high-risk and noted that the proportions of the stocks in question fell within that allowance.

The investigator then looked at the income situation and noted what had been documented about Miss P’s income needs and what had been received from the portfolio. She didn’t feel

this showed that the fall in value had impacted the portfolio's ability to provide the income requirements.

In summary, the investigator concluded that the portfolio had been managed in line with the agreed risk profile and with consideration to Miss P's investment objectives and requirements.

In respect of Miss P'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 Miss P'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 Miss P sought, it appeared to have been carried out in an impartial manner based on the evidence held by JMF.

Miss P 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 –

- The investment manager failed to take account of her personal circumstances.
- He invested in high-risk stocks expressly against her wishes and failed to protect against the downside.
- He'd also never explained the level of risk involved.
- He should've invested appropriately for her personal and financial circumstances – he was aware she was unable to work, and most of her assets were held with JMF.
- She had made important financial decisions relying upon his comments about her financial strength.
- While she decided to take the required level of income, so it hadn't reduced, this didn't mean there would be a continuing capacity for the portfolio to produce the income.
- The investigator had failed to take account of basic investment principles around risk, volatility, and diversity and of the need to adequately protect against the downside.
- The investigator had drawn too simplistic an equivalence to FTSE 350 companies and overseas stocks based on solely market capitalisation – there were many other aspects to consider.

The investigator considered Miss P's further submission 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 Miss P 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 Miss P's portfolio 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 she would've voiced concerns and it's clearly document that she did so, and that those concerns escalated in response to the investment manager's explanations and 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 a portfolio with an exposure to risk inconsistent with the mandate agreed at the outset and in a manner inconsistent with Miss P's personal and financial circumstances as they changed, and she began to voice concerns.

The portfolio was originally set up in 2011, prompted by Miss P's father's existing relationship with JMF and with funds, at least in part, provided by him. The value of the portfolio was later enhanced significantly by an inheritance.

As noted, a medium risk profile was selected, described as focussing on "*Most types of securities from the leading 350 UK companies or their equivalents from those overseas markets considered suitable for investment. Also the majority of investment and unit trusts.*" It was also noted that there would be a high-risk element, but this was actively limited to 10%. A balanced return from income and capital growth was selected as an objective.

It appears that the relationship progressed from the outset generally without issue with reviews carried out regularly and ongoing discussions about the portfolio.

I think it can be seen from the documentation available that Miss P began to voice some concerns about the management of the portfolio from as early as 2020. I think that's quite understandable given she was reliant upon it as her primary asset and also the backdrop of the circumstances of the time – particularly the onset of the Covid-19 pandemic. Both she and her partner have health issues, so the impact of that was clearly significant.

But the nature of the communications between Miss P and the investment manager suggest to me that firstly she was reasonably knowledgeable about investments in general and engaged with how the portfolio was being managed. And secondly he was alive to her concerns.

In February 2020 there was email communication between Miss P and the investment manager discussing her holding of Tesla shares, the contents of which suggests an active interest and focus on the actions he was taking on her behalf. She said, among other things,

"I have seen several analysts publishing their thoughts along those lines which, I suppose, is bound to make some shareholders jittery and to precipitate a bit of a sell-off. On the other hand, I have seen some predictions for the shares reaching as much as \$7K by 2024...! I remain to be convinced about that, but Tesla share performance is always 'interesting'!"

Later that month, Miss P requested that income payments be restarted from the portfolio, acknowledging that timing was maybe unfortunate given the situation with the markets – as this was around the onset of the pandemic. As part of that email conversation, she acknowledged that the portfolio had performed well for the year but was concerned about the recent downturn, adding that *"I suspect markets will go quite a bit lower yet, so I guess I/we just have to sit it out..."*.

Miss P and the investment manager spoke on several occasions again during 2020, keeping him updated on her and her partner's situation. In January 2021 the investment manager wrote to Miss P to explain that he had made a sale of Tesla to, in his word, *'trim the holding to avoid concentration risk'*, suggesting an awareness on his part of the need to be aware of diversity within the portfolio.

The following month, February 2021, Miss P emailed the investment manager noting that *"Given the relatively high proportion and value of tech stocks (and Ocado) in my portfolio, I have been concerned to see not only material drops in value but also the changing sentiments about some of these companies lately."* There appears to have been further discussions between Miss P and the investment manager subsequent to this, but no change made to the mandate for investment. The portfolio hit a high point in value shortly after, in September 2021.

As noted, Miss P's concerns appear to have really developed in early 2022 following a significant fall in value of the portfolio. She had a conversation with the investment manager and ultimately changes were made towards the end of February 2022, selling a selection of equities to reduce market exposure and reduce risk.

Ultimately, the issue I must decide is whether the investment manager managed Miss P's portfolio outside the parameters of the agreed mandate. Looking at what was agreed at the outset and the nature of the relationship and communications during the period in question, on balance, I don't think he did. Clearly, this was a portfolio managed with a particularly focus on tech stocks. But I've not seen that there were any restrictions imposed on the investment manager in that respect. Miss P appears to have understood this, and it had been agreed that up to 10% of the portfolio could be held in high-risk stocks and that proportion doesn't appear to have been breached at any point.

I can quite understand why the significant losses that occurred in 2022 would've led Miss P to have concerns and why with hindsight she might have felt that the investment manager's approach was wrong or should've been adjusted sooner. But I think this is a situation where the investment manager *could* have acted differently, but not one where he necessarily *should* have done.

And I should note that looking at the matter from a perspective of overall performance does I think lead to a conclusion that there was potentially no loss incurred, certainly over the investment period as a whole.

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 Miss P's attitude to risk, her 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.

Looking at the return achieved by the portfolio over the entire period of investment, as opposed to the period during which the significant fall in value occurred, it looks to likely to have performed in excess of the benchmark.

I don't highlight this issue with the intention of underplaying Miss P's concerns. As I said earlier, I do understand that the significant fall 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 Miss P 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 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 Miss P – 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 Miss P 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 Miss P 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 Miss P'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 they 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 Miss P to accept or reject my decision before 28 January 2025.

James Harris
Ombudsman