

The complaint

Mr L complains Fogwill & Jones Asset Management Ltd ("Fogwill") is at fault for keeping too high a proportion of cash in his portfolio which didn't align with his risk profile. He says his portfolio underperformed as a result and from the start of 2022 until 2023 lost out on around £60,000 of growth. He is also dissatisfied with Fogwill's process for reviewing his complaint.

What happened

Our investigator considered Mr L's complaint but didn't think it ought to be upheld. In brief summary:

- Mr L signed a Discretionary Management Agreement with Fogwill on 8 October 2019 investing £100,000, adding £50,000 in July 2020 and £156,071 in February 2021. After charges, his total amount invested was £298,725
- On 3 January 2022 the portfolio was worth £339,609 of which £67,720 was in cash. On the following day the cash was reduced to £2,587.34. The portfolio then fell in value to £285,377 on 23 February 2022 at which point Fogwill decided to sell funds due to world events – so cash was raised.
- The cash was reinvested on 24 March 2022 and on 28 March the portfolio was worth £286,607 with £1,203 in cash. The portfolio then fell in value to £249,160. In May 2022 Fogwill sold funds and raised cash as a defensive move due to global market conditions. In October 2022 the portfolio value was worth £239,801 and Fogwill reinvested cash but then raised cash again on 4 October 2022 as a defensive move following the UK budget. The value on 11 October 2022 was £235,217.
- Fogwill remodelled the portfolio in the months that followed. On 12 December 2022 the value was £233,193 and there was cash awaiting investment. This had been invested by 16 February 2023 with the portfolio value at £238,043. It fell to £235,806 on 7 March.
- Mr L says if his portfolio had remained in the funds it had been in on 3 January 2022 it would've been worth £280,000 on 7 March 2023, £60,000 more than it was worth. But it didn't stay invested as Fogwill was trying to time the market instead.
- Fogwill says if the funds held at the start of 2022 had been held until March 2023, the portfolio would have dropped from £339,560 to £256,649. It says moves to cash were made for defensive reasons due to world events. It says during the longest period when a lot of cash was held, the index fell by 6.37%. It says its fund selection over the period can be judged as not the most appropriate but only with the benefit of hindsight.
- Mr L's attitude to risk was medium risk. He had a high capacity for loss and was an experienced investor, familiar with market volatility having held shares since the 1980s. In 2019 Mr L expected he would become more cautious as he got older. In 2021 he was still assessed as medium risk, but some of his risk answers indicated some moderation within his risk attitude. In March 2023 his risk attitude was reassessed as low medium.

- A Suitability Report in November 2022 said Mr L's portfolio was 53% cash. His general account worth £94,480 had 74% cash and his ISA worth £143,219 had 39% cash.
- Suitability Reports state: *"Funds are chosen and monitored by... our Investment Director and by our Investment Committee based on quantitative and qualitative criteria"*. Minutes of the meetings of the committee show defensive moves into cash were made following discussions of the investment environment and world events. They had done this in the past in March 2020 in response to the pandemic. They also responded to the invasion of Ukraine, the UK mini-budget, falls in the NASDAQ and concerns interest rates might rise. In May 2022 it was the general economic environment that motivated them to look to reduce equity exposure to protect client portfolios. It was acknowledged this would take portfolios below agreed risk levels, but they justified this on the basis it protected capital.
- The Discretionary Agreement Mr L signed says: *"You are reminded that this agreement gives us discretion to manage investments covered by this agreement on a discretionary basis i.e. to effect transactions without your prior approval"*. It also says: *"In extraordinary circumstances... where we need to exit the market by selling all your investments and temporarily hold the proceeds in cash, there may be an additional charge... If the action taken to preserve your capital results in a gain of less than 1% then the charge will reduce so that it is never more than half the gain made for you..."*

Our investigator didn't think Mr L's complaint should be upheld. In brief summary:

- Although Fogwill hadn't done so here, the agreement Mr L signed gave Fogwill discretion to hold up to 100% of the portfolio in cash.
- When looking at the particular decisions Fogwill had made when it raised cash levels, the committee minutes showed the conversations were detailed, there was rationale given and quantitative data was considered.
- Investment decisions can be viewed differently with the benefit of hindsight and Fogwill admits some decisions didn't work. But Fogwill operated within its remit and made calculated decisions in line with its agreement.
- As regards Mr L's assessment of loss, he complains about the May to October 2022 period when significant amounts of his investment were in cash. But his claim is based on the idea that no changes would've been made to his portfolio from January 2022 to March 2023, which is unlikely under a discretionary mandate.

Mr L didn't agree with our investigator's conclusion. He said, in brief summary:

- If he'd wanted a cash investment, deposits offered guaranteed returns with no charges.
- The investigator's timeline didn't match his experience. On one of his accounts the cash balance from 3 January 2022 to 7 March 2023 averaged £47,255 – as shown on data he'd downloaded to a spreadsheet. This was excessive given his risk profile.
- The investment committee minutes don't match what he was told by his adviser about its composition, including that there were four people on it rather than three.
- Compared to benchmarks for this period, the Fogwill investment performed very poorly. The regulator surely needs to do something to stop this happening in the future.

Our investigator noted the spreadsheet figures Mr L had provided. He noted there had been significant disinvestments in February, May and October 2022 and February 2023 of which

he'd discussed the first three. He remained of the view that Fogwill had discretion to make the decisions it had made and to hold the cash levels it had held during the period. He noted Fogwill had acknowledged this strategy hadn't been successful – but noted Fogwill had been entitled under the agreement to make changes to Mr L's portfolio without consulting him.

So our investigator didn't change his view. As the matter couldn't be resolved informally, it has been passed to me to decide.

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've arrived at the same conclusion as our investigator for broadly the same reasons. I'm grateful to Mr L for his further points, but my comments here will be brief.

Fogwill was granted discretion by Mr L to manage his portfolio. That management was to be in accordance with the mandate agreed and granted by Mr L. Within the bounds of that mandate how Fogwill chose to trade the portfolio was a matter for Fogwill's judgement. I share the view that Fogwill was entitled to make the decisions it made to hold the cash balances it held during the period under discussion here.

Mr L's portfolio did remain invested with exposure to markets throughout. But substantial parts were held in cash. This was not only temporarily during portfolio rebalances. It was also deliberately for longer periods in response to what Fogwill perceived to be potentially negative market conditions. Fogwill has explained why it made moves like this. I've seen nothing to suggest it wasn't acting on its genuine view of future market prospects and trying to benefit the portfolio when it carried out its trading. I don't find it was done without reason or involved decisions Fogwill wasn't entitled to take in the way it did.

Fogwill's medium risk mandate meant it didn't need to react to market falls by disinvesting like it did. But this doesn't mean it wasn't entitled to do this if in its judgement this was the best way to manage the portfolio. This trading resulted in an unusual amount of cash being held, but I don't think the actions it took could only have been undertaken by a negligent or incompetent manager. Fogwill could make poor investment decisions without this amounting to negligence or fault for which it would be fair to award Mr L compensation.

I note that the discretionary agreement made clear provision for Fogwill to disinvest from markets and into cash for periods. It is apparent this provision would allow Fogwill to respond to falling markets. The agreement suggested such a move would be rare – and this wasn't what happened here, as the portfolio wasn't fully disinvested. But I agree with our investigator that this provision does tend to underline the possibility that Fogwill's approach to its mandate might include being underweight the market at certain times.

Fogwill has highlighted that during a period from May to September 2022 a comparator index fell and so underperformed cash over the period. But there were other period during which its approach didn't work – and where the funds it held would've outperformed both cash and this comparator index. But this doesn't mean the management was negligent or couldn't have been done in that way by a competent manager acting properly.

With all this in mind, my view is Fogwill wasn't at fault for trading the portfolio in the way it did. The risk that a discretionary manager might produce poor results or take unsuccessful positions, is a risk inherent in using any discretionary manager.

With regards to Fogwill's complaints handling process, complaint handling is not a financial

service I can consider a complaint about in itself – and I’ve not found any grounds related to this on which I could make an award in Mr L’s favour here.

In light of all I’ve said, I do not uphold this complaint. I’m grateful to Mr L for his patience and I thank him for the courteous and prompt responses he has sent us throughout which have assisted us in our consideration of this complaint.

My final decision

For the reasons I’ve given and in light of all I’ve said above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr L to accept or reject my decision before 27 April 2025.

Richard Sheridan
Ombudsman