

The complaint

Mr C complains that he was given unsuitable investment advice by FinAnalysis from 2015 to 2022.

In summary, he says:

- FinAnalysis hasn't managed his investment in line with his agreed risk profile, which has resulted in financial loss;
- It has carried out excessive trading within his portfolio, which included too much exposure in equities and overall, the portfolio lacked diversification;
- It hasn't provided annual reviews.

What happened

In January 2015, Mr C was advised to invest £200 a month into an ISA, invested in the Fundsmith Equity Fund ('the fund').

There was further ongoing advice, and as of March 2022, FinAnalysis was responsible for the suitability and management of the following portfolio, comprised of the following:

- General Investment:
 - Cash - £234.15
 - Individual company shares in the following:
 - Apple Inc shares worth £4,187.98
 - Ferrari NV - £5,782.37
 - Porsche A Porsche Automobile individual shares - £7,881.50
- ISA:
 - Cash - £1,068.08
 - The fund - £27,432.01
 - Porsche A Porsche Automobile individual shares - £31,600.37
- Personal Pension:
 - Cash £409.26
 - The fund - £18,987

Following a conversation with his new financial adviser, in February 2023 Mr C complained to FinAnalysis about his personal investment account. He felt that the advice was unsuitable as the level of risk in managing his investments were excessive and not in line with his attitude to investment risk.

FinAnalysis didn't uphold the complaint. In summary it said the advice was suitable and in line with his assessed risk rating, namely 10 out of 10. Mr C wanted to invest in the car companies and when they weren't doing as well, he asked for the relevant stocks to be sold and shares returned to the fund.

FinAnalysis was happy to review Mr C's situation as only a small portion (namely £30,000) of

his investable wealth was invested this way. His wealth included £5M in properties (with £2M mortgages) along with other assets in pensions.

Mr C also had accumulated £200,000 in a cash account from a commercial rental unit which he'd set up with a different adviser. He also had £15,000 on the mortgage which he hoped to clear. Previously some money in the region of £140,000 had also been invested for himself and his ex-wife. And there was some challenging work arranging for her share.

In any case, there was frequent communication via telephone, email, and face to face meetings because the adviser and Mr C were neighbours. In addition, there were formal meetings in the office usually every six months during which the investments would be reviewed in detail. The meetings included a meeting with Mr C's tax adviser. But despite all this no changes were requested, and Mr C never expressed a wish to change advisers, because he was happy with the portfolios and how they'd performed over the previous years.

In conclusion, it's satisfied that:

- The investments fell within Mr C's risk tolerance, which was the highest possible, so this isn't inappropriate in the circumstances.
- The level of trading was discussed and agreed with Mr C at all stages. His equity exposure would need to be viewed in the context of his overall asset position, which was reasonable.
- Mr C's objectives were for 'aggressive growth' which justified the equity exposure he had.
- Mr C's investments were managed appropriately in line with his risk profile, capacity for loss and objectives all of which were routinely taken into consideration.
- He received routine reviews of his position.

The investigator initially enquired if FinAnalysis consented to our service considering the merits of this complaint. There was some correspondence between him and FinAnalysis and eventually the matter came to me for a jurisdiction decision.

Having considered the issue, I found that Mr C knew or ought reasonably to have known he had cause for complaint, in February 2023, following a meeting with his new financial adviser. I'm aware that prior to this, in December 2022, he made enquiries about his risk questionnaire. In the circumstances I'm satisfied that he had until February 2026 to complain, and by doing so in 2023, his complaint is made in time.

I also said that I'd seen no evidence that prior to December 2022 Mr C was unhappy with the advice he received in 2015. Otherwise, he would've complained sooner.

One of our investigators went on to consider the complaint, having done so he thought this complaint should be upheld. In summary, he said:

- He doesn't think FinAnalysis acted fairly.
- He's not persuaded that it acted in accordance with the Conduct of Business Sourcebook (COBS) - in particular COBS 9.2.1 and 9.2.2
- The 2015 fact find recorded that:
 - Mr C was in his late 40's, single and in good health. He owned his own business and was a company director.
 - He had five dependent children.
 - He had a combined annual salary of £500,000.
- For some reason it wasn't recorded that he had a number of buy-to-let mortgages,

pensions, and SIPPS.

- It was noted that Mr C was prepared to invest £200 a month for the long term. So, he was advised to contribute £200 a month into the fund which he was happy with.
- Given his financial circumstances – namely that he had a large cash balance, large monthly income, and no planned expenditures – Mr C had the capacity to invest his money for the medium to long term. He was in a position to invest some of his monthly disposable income in risk-based assets.
- On the face of the evidence, Mr C had a high-risk ATR.
- His contributions into the fund were suitable, and in line with the advice he received, even though it was recorded he had no previous investment experience.
- The contributions represented a small portion of Mr C's overall savings pot, and he could tolerate the risk without the need to access money even if the market was performing badly.
- It's likely that Mr C would've invested further monies in funds that were in line with his agreed risk profile such as the fund, so he can't say that FinAnalysis did anything wrong by advising him to invest more money.
- However, advising Mr C to invest his money into assets that didn't meet his needs and objectives (which hadn't changed) was unsuitable.
- FinAnalysis transacted a number of times after the advice that resulted in a large portion of his portfolio being invested in individual company shares in Apple, Porsche, and Ferrari.
- The large asset allocation of individual company shares fell outside the agreed risk parameter that Mr C agreed to – within 'managed funds' – so these don't fall within the agreed mandate or overall attitude to risk. FinAnalysis acted unfairly by advising/arranging the purchase of these shares. There's no evidence these were within Mr C's risk tolerance.
- FinAnalysis hasn't provided any evidence that Mr C's risk profile changed from managed funds to individual company shares.
- Any further investments should've been made in the fund.
- In terms of ongoing advice, it was agreed on 16 January 2015, that Mr C would pay 1% of the fund value to FinAnalysis for ongoing advice fees (OAF) and management of his portfolio. However, there's no evidence that this was done or that annual meetings took place. Therefore, FinAnalysis should refund the fees with 8% simple interest from the date of payment to the date of settlement.
- In conclusion, the initial advice to invest in the fund was suitable, however the follow up advice was unsuitable. There's no evidence to explain why the follow up advice was suitable. It was unsuitable because it fell outside Mr C's risk profile.
- FinAnalysis should compare the value of Mr C's portfolio on the basis of him leaving his money in the fund with what he received by investing in the company shares. If there's a difference FinAnalysis should refund the loss.

FinAnalysis disagreed with the investigator's view and asked for an ombudsman's decision. Since then, there's been much correspondence between it and our investigator, but in summary, it made the following key points:

- FinAnalysis provided emails from Mr C, following his decision to take his investments elsewhere. This clearly shows he wasn't unhappy and has been put up to making a complaint by the new adviser.
- To date, Mr C hasn't set out what his concerns are about the advice he received.
- It's unclear on what basis the investigator found that the individual company shares fell 'outside of the agreed risk parameter'.
- Mr C is a high-net-worth individual who scored 10/10 on his risk assessment, which the investigator hasn't taken an issue with. It therefore fails to understand how the investment can be out of Mr C's risk profile.

- It might have some sympathy if it placed 50% of his asset base into a single company share, but these company shares represent a tiny portion of his available assets and as such are reasonable.
- If the asset investments aren't appropriate for a 10/10 ATR then under what circumstances are they appropriate?
- The ATR documents completed by Mr C specifically listed investments in shares as an acceptable form of investment.
- The investigator's decision focuses on the investments made within the ISA and the Fundsmith Equity Fund and the individual company shares purchased therein. The investigator notes Mr C's income and that he did possess rental properties, various buy to let, pensions, SIPPs, and other assets. The view doesn't detail Mr C's full financial position sufficient to assess this one investment as part of the overall portfolio.
- Mr C's asset base is well into six figures in net terms and on a personal wealth level the fact find records he had £5M in cash and his net worth was substantially higher due to his other investments such that the investments complained about are less than 1% of his overall wealth.
- From an ATR point of view, the fund is only a 6/10 risk which means if it fully invested in this fund it would be under risking his portfolio given his accepted portfolio.
- With the individual company shares, this would still place him at a 8/10, so still within a reasonable tolerance. It's unclear how the investigator has arrived at his conclusion.
- The investigator's view is that FinAnalysis hasn't provided all the documentation therefore the advice was unsuitable. It doesn't understand what more it has to provide.
- The investigator divided the complaint from Mr C in a personal capacity and his business which has in excess of £5M, which are fundamentally managed for the benefit of Mr C. The assets are sheltered within a company for valuable tax benefits. And setting these aside for the purposes of a separate complaint feels extremely unfair.
- Mr C suggested to our service that he's lost a great deal of money that he can't afford. Based on the redress calculation Mr C would be due less than £5,000 for the difference in performance. He has an investment portfolio in the millions and the benchmark index suggested by the investigator is always going to fluctuate and have a degree of variance given that the portfolios are exposed to different parts of the stock market which are medium risk or above.
- In the context of the 'loss' suffered by Mr C it's nowhere outside of the reasonable risk margin that a high risk investor such as himself should expect to be protected from.
- Whilst unfortunate that these investments didn't perform better, this doesn't mean that the recommendation made – when taken in the round with the rest of his portfolio – was unsuitable and this complaint appears to be an opportunistic one.
- Mr C's net gain with FinAnalysis is in the region of hundreds of thousands of pounds.
- On inspection, the investigator will see that it has been providing detailed service to Mr C throughout its relationship with him.
- It's not true that Mr C had no prior investment experience, as he held significant assets prior to becoming its client.
- Mr C holds a Suffolk Life SIPP containing commercial property worth around £750,000 since 2009. He also held an Aviva unit trust set up by another adviser. He also held Fidelity unit trusts through Fisher Investments arranged through a different adviser prior to 2018. So, he was not an inexperienced investor.
- In terms of reviews, the investigator should ask Mr C about how many times they spoke about Mr C's investments, his portfolios, and his personal and financial life because he was his neighbour and he couldn't leave or return to his house without

Mr C waiting to discuss his arrangements. Sometimes these would last an hour on their shared driveway in addition to the daily phone calls, emails and meeting at his office. They also had meetings at his home, the local pub and with Mr C's tax adviser.

- Just to reiterate, he referred all the arrangements to his accountant, his tax adviser and his friend who worked for 'SJP'. Not once did he raise any concerns from any parties over the seven years.
- Mr C knew everything about the investments that went from 2015 to 2022, so FinAnalysis fails to see how reviews weren't conducted or the opportunity wasn't taken to discuss investment selection, risk management or any concerns the parties had.
- Its opportunistic of Mr C to look back over seven years and see if he would've been better off in the fund.
- He has nothing to lose by asking us to look into this complaint. It's a 'win win' situation.

The investigator having considered the additional points wasn't persuaded to change his mind. In summary, he said:

- In his previous view he upheld the complaint on the basis that the advice was unsuitable as there was no evidence that the follow up advice met Mr C's agreed risk profile.
- He also saw no evidence that FinAnalysis offered any follow up reviews, which consisted of a detailed review of Mr C's circumstances on an annual basis.
- To put things right, the investigator said that FinAnalysis should reconstruct Mr C's portfolio as if he remained invested in the fund – which was suitable as it met Mr C's initial needs, objectives, and attitude to investment risk.
- Despite providing additional evidence – which includes: email exchange between FinAnalysis and Mr C (which FinAnalysis believes demonstrates ongoing reviews, advice and contact); pension commercial investment and commercial property details (which FinAnalysis believes shows Mr C has investment experience), and; Barclays Wealth Portfolio Finance facility documents – the investigator isn't satisfied that ongoing advice/reviews were provided.
- He'd like to see evidence of detailed reviews about Mr C's financial circumstances and why the advice was suitable by providing follow up fact finds and suitability letters.
- Despite what FinAnalysis says, the investigator isn't persuaded that the advice to invest in the individual company shares was suitable.

FinAnalysis also responded and disagreed with the investigator's latest view. In summary, it said:

- It disagrees with the investigator's comments about the need for an annual review in the way the investigator described.
- It should be clear from the file that contact was on a daily basis. If it had proposed a formal review, Mr C would've refused it.
- Its relationship with Mr C was extremely close.
- Having reviewed the loss calculation previously proposed by the investigator, it shows a gain of almost £4,000, against the Transact holdings meaning this is a 'no loss' case.
- It believes this case should be dismissed.

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

In late September 2024, I issued my provisional decision, a copy of which is stated below and forms part of my final decision. In the decision I said:

“subject to any further submissions, provisionally I’m going to partially uphold this complaint.

On the face of the evidence, and on balance, despite what Mr C says, I’m unable to safely say that the investment advice was unsuitable. I’m persuaded that Mr C wanted to take a greater risk. It’s unfortunate that the returns weren’t as he expected but that doesn’t mean the recommendation was unsuitable.

However, I’m not persuaded that FinAnalysis provided ongoing advice in the way that it was obliged to – namely to conduct six month/annual reviews – therefore it should refund the fees charged pertaining to its failure to do so, with 8% simple interest. In other words, a portion of the 1% - I’m minded to say 50% of the fees charged should be refunded.

Before I explain why this is the case, I think it’s important for me to note I recognise Mr C’s strength of feeling about this matter. He has provided 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, relevant to this specific complaint, and not in as much detail, as a discourtesy.

The purpose of my decision isn’t to address every single point raised. My role is to consider the evidence presented by Mr C and FinAnalysis, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case.

On the face of the evidence and on balance, despite what Mr C says, I’m persuaded that the 2015 advice to invest in the fund was suitable for the reasons set out by the investigator.

Based on Mr C’s assessment, I’m persuaded that his attitude to risk was 10/10 (the highest risk) and that he was content to invest his money on this basis – I note Mr C doesn’t raise any concerns in relation to that specific point.

I’m also satisfied that he was in a good position to invest and had access to funds in case of emergency. In other words, he had capacity for loss and the investment was clearly affordable.

Like the investigator, I also agree that it wasn’t unsuitable for Mr C to be advised to invest more money. And given his 10/10 risk rating – which remained unchanged – I can’t say that the advice to invest in the individual shares, rather than more into the fund, was unsuitable in the circumstances. Unlike the investigator, I think the subsequent advice still met his needs.

In my opinion the April 2021 financial report – which is an updated version of the 2015 financial report – at page 11, makes clear that Mr C wished to get more out of his money.

I note in the 2015 financial report it was recorded that 6.16% a year was the ‘estimated annual growth rate’ for the target portfolio with a 10/10 risk profile. In 2021, I note it was recorded that under the same risk profile Mr C “would like more towards 10% to 15%”, which is probably what led to him being advised to invest in the company shares, seven years on from the initial advice and risk assessment.

In the circumstances I’m persuaded that Mr C had a change in his needs and objectives. In other words, he wanted more out of his investments and was willing to invest differently to achieve this. It’s also likely that FinAnalysis and Mr C thought it was unlikely that he could’ve achieved more than what he did by remaining with the fund, which is why – more likely than not – he was advised to invest in company shares.

I'm aware it's suggested by the investigator that Mr C ought to have invested in managed funds – in other words, invest in 'pooled investment funds' which was the basis upon which he was advised to invest in the fund in the first instance in 2015 – but I'm not persuaded by this argument. I think it's also arguable that his wants and needs changed in 2021, which led to him subsequently being advised to invest away from pooled investments.

By virtue of the information on page 11 of the financial report for both 2015 and 2021, I think Mr C knew, or ought reasonably to have known that whilst there was still a risk that investments in the fund might fluctuate, and he wasn't guaranteed to receive back the original amount invested, the risk of loss was less than for an investment made in the stock market. So, in the circumstances, and on balance, I think Mr C was aware of the general risks involved in purchasing company shares. I'm mindful that he was a successful business owner, he wasn't without investment experience, and had speculative attitude to risk, so this investment was within his 10/10 risk tolerance.

In other words, in 2022, I think Mr C knew, or ought reasonably to have known that he was taking a greater risk by investing directly in shares and I think he was ok with this despite his 2015 position seven years previously.

I'm mindful that FinAnalysis in correspondence described Mr C as having an 'aggressive growth' objective which generally chimes with him wanting a lot more out of his investments, leading him to invest in the shares. Given Mr C's need for better returns I can't say that this advice fell outside of his agreed mandate in 2022. In other words, given Mr C's circumstances in 2021/2022 I can't say that the advice to invest in the company shares was inherently unsuitable for him.

I note FinAnalysis maintains that the fund was a 6/10 risk rating, therefore investing only in the fund would be under risking Mr C. Furthermore, the company shares were probably closer to 8/10 and therefore overall and on balance, he was well within his risk appetite.

Despite what Mr C says about diversification, I'm mindful that these investments in the shares represent a very small portion of his investable assets, so I can't say that this negatively impacted his portfolio. I'm mindful that Mr C had investments rental properties, various buy to let, pensions, SIPPs, as well as unit shares in the past, so it's likely that the company shares represented less than 1% of his shares, as suggested by FinAnalysis.

In any case, I note he was advised to invest in the fund and various shares, and not just one company which arguably also supports a mix of the company shares invested in.

It's unfortunate that the company shares didn't do better at the time, however this doesn't mean that the advice to invest in them was unsuitable. Mr C will be aware that this wasn't something that FinAnalysis could guarantee and certainly not predict, therefore it's not something it's responsible for.

Despite what FinAnalysis says, I'm not satisfied that it carried out the formal reviews in the way that it said it would and was therefore obliged to. I appreciate that it was available to answer Mr C's questions and queries as and when, and sometimes on a daily basis. I've no criticism of the level of contact it had with Mr C overall through various methods. However, this didn't excuse it from having to carry out formal reviews – every six months or a year as agreed with Mr C – therefore I think it's fair that FinAnalysis should refund the fees pertaining to its failure to officially carry out these reviews over the relevant period, with 8% simple interest.

In other words, FinAnalysis should refund the fees charged for the reviews that didn't

happen. I note that 1% of the investment value was charged for ongoing advice and guidance. In my view the portion of that cost that would've gone towards the reviews – which I estimate to be 50% - should be refunded with 8% simple interest.

I appreciate Mr C will probably be unhappy that I've not awarded redress for the losses claimed. I realise my decision isn't what he wants to hear. But on the face of the available evidence, and on balance, whilst I have upheld his complaint in part, I'm unable to give him what he wants."

I gave the parties an opportunity to respond to my provisional decision and provide any further submissions they wished me to consider before I considered my final decision, if appropriate to do so.

Mr C responded and agreed with my provisional decision. In summary, he said:

"There are no more points I need to make or information I need you to see.

I will accept the final decision made by the ombudsman".

FinAnalysis also responded and accepted my provisional decision for the purposes of bringing the matter to a close. In summary, it said:

- It was pleased that I hadn't considered an award for 'investment loss' as appropriate.
- It was providing in depth reviews so earned its fees, even if formal reviews weren't provided.
- It was in regular contact with Mr C, and given the frequency of these meetings, it wouldn't have been feasible to write a suitability report for each of these, as this would've amounted to a daily task.
- Mr C also didn't make a financial loss. Instead, he made a gain of £3,864.
- It's particularly frustrating that the investment wasn't found to be unsuitable, and Mr C made money, only to find it shouldn't be paid all the fees.
- However, in an effort to bring this complaint to a close, it will make Mr C a goodwill – without admission of liability – offer of settlement of the fees taken, as follows:
 - Total GIA fees = £1,213.48
 - Total ISA fees = £591.54
 - Total fees = £1,805.02
 - 50% of the fees is £902.51, plus 8% interest on the above, is £974.17
- If Mr C accepts, he should sign the acceptance form and return it as full and final settlement of the matter.

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, in light of the responses from Mr C and FinAnalysis, my decision to uphold this complaint remains the same, for the same reasons as set out in my provisional decision.

In other words, despite the parties being given time to respond to my provisional decision, they accepted my decision. So, no new material points have been made that persuade me I should change my decision.

On the face of the evidence, and on balance, I'm still unable to safely say that the investment advice was unsuitable. I still think that Mr C wanted to take a greater risk. It's unfortunate that the returns weren't as he expected but that doesn't mean the recommendation was unsuitable.

The above notwithstanding, I'm still not persuaded that FinAnalysis provided ongoing advice in the way that it was obliged to – namely to conduct six month/annual reviews – therefore it should refund 50% of the fees charged pertaining to its failure to do so, with 8% simple interest.

I'm grateful to FinAnalysis for its brief calculation. If the methodology and figure is correct, that's what Mr C can expect to receive.

As I mentioned in my provisional decision, I'm not satisfied that FinAnalysis carried out the formal reviews in the way that it said it would and was therefore obliged to. I appreciate that it was available to answer Mr C's questions and queries as and when, and sometimes on a daily basis. I've no criticism of the level of contact it had with Mr C overall through various methods.

However, despite what FinAnalysis says in response to my provisional decision, this still didn't excuse it from having to carry out formal reviews – every six months or a year as agreed with Mr C – therefore I think it's fair that FinAnalysis should refund the fees pertaining to its failure to officially carry out these reviews over the relevant period, with 8% simple interest.

In other words, I still think FinAnalysis should refund the fees charged for the reviews that didn't happen. I think it's a fair and reasonable basis upon which to partially uphold this complaint and award redress.

Putting things right

FinAnalysis Limited should refund 50% the ongoing advice fees charged, from 2015 to 2022, along with 8% simple interest, from the date of payment to the date of settlement.

My final decision

For the reasons set out above, and in my provisional decision, I partially uphold this complaint.

FinAnalysis Limited should calculate and pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 November 2024.

Dara Islam
Ombudsman