

The complaint

Mr and Mrs O complain faults by J M Finn & Co Ltd trading as JM Finn ("Finn") caused them investment losses on a portfolio it managed and also caused them distress as a result.

They have said Finn didn't invest wisely and that its investing and the losses that resulted weren't in accordance with the agreed strategy or their risk appetite or any conversations they had about possible outcomes.

They have also complained Finn didn't provide the service level they agreed – and didn't respond promptly to their concerns - and there was very poor transparency and reporting.

Background

Mr and Mrs O have also complained of suffering extra tax due to faults on the part of Finn. I gather this relates in part to how portfolio income was divided between them and the impact on their tax allowances – but there may be other aspects. Mr and Mrs O have mentioned a tax bill of around £65,000 – but I've not seen their workings and there may be other points too. In this complaint I've considered only Mr and Mrs O's complaint about investment losses on their portfolio. I've not considered whether Mr and Mrs O also paid extra tax due to faults by Finn. Finn has said such matters weren't raised originally in the complaint – and as such our investigator said we wouldn't consider these and that the Finn would respond to these separately first. I see Finn has since written to Mr and Mrs O on this. If Mr and Mrs O still consider faults by Finn caused them to suffer tax losses, they should take this up separately.

Returning to the present complaint. Mr and Mrs O received a substantial sum from the sale of their business. Of this they invested £4m in June and £2m in August 2021. They say they agreed to medium risk and April 2021 documents suggested possible returns of 5.7% to 8.2%. But they lost about 20% fairly quickly – starting in November 2021 – and lost £1m by September 2022. They have said that in calls before signing they were led to believe the worst they might expect was a low yield of 2-3% if the markets underperformed.

They are seeking compensation and have said that a figure of £250,000 might be appropriate but considering the overall FTSE rise from June 2021 to December 2023, they say the figure due could be higher. They have said simple fixed rate products or (medium risk) FTSE Income index products would've produced £6.3m rather than under £5m.

Mr and Mrs O point out that Finn turned over almost half the portfolio in two years, despite what was said about investing for the long term. They say Finn "finally" shifted towards safer assets like gilts from equities at the start of 2023. They also say Finn in conversation has admitted that it shouldn't have invested all the money as quickly as it did at first.

Mr and Mrs O say there were repeated cases of a lack of due care over the choice of what to buy or the timing of selling it. They have given specific examples including investments in gold, an initial public offering and a data centre company. They say they raised concerns about purchases which then went ahead anyway.

Mr and Mrs O say they agreed a strategy was to hold certain stocks for the long term. But a significant number of shares were sold, apparently in panic, after falling in value - resulting in significant losses and without informing them in advance.

Our investigator considered the complaint but didn't think it should be upheld. He thought, in brief summary:

- Mr and Mrs O were in their early fifties with at least 10 years investment experience. Their work income was around £150,000 and £50,000 respectively. Their investments included ISAs and pensions worth around £800,000. They were experienced and knew investing carried a risk of loss. They had sufficient investment experience to understand what medium risk was and sufficient capacity for loss to take that degree of risk with what they invested. The £6m invested was part of what was originally expected to be £10m. The specified investment horizon was fifteen years, although Mr and Mrs O were largely disinvested after two years.
- The portfolio invested heavily in equities but wasn't unsuitable for the balanced medium risk remit and Mr and Mrs O's objective of capital growth with income which required assets that could grow and would carry more risk than low risk investments. Finn had authority to make changes to the discretionary management portfolio to try to mitigate or reverse losses. The changes didn't have the desired effect, but that doesn't mean there was mismanagement.
- Finn responded to Mr and Mrs O's emails and questions. They weren't happy with the answers, but this doesn't mean the firm didn't provide the service as agreed. Overall the service it gave was of the level agreed.

Mr and Mrs O rejected our investigator's conclusion. The points they have made include, in brief summary:

- They weren't seasoned investors – their sums in shares were nominal and the sums in investment funds were from annual ISA allowances. They didn't hold significant sums in 'other investments'. Their assets of £10m were homes and £2m for Mrs O was cash from the business sale. Jointly they had further cash from the recent business sale to be invested on the right advice (after £4m was invested they had £6m more to invest). Not being experienced investors and new to 'wealth management', they sought Finn's help, thinking they could rely on its expertise and that it had expertise of a kind they didn't - but this wasn't so.
- They were mis-sold the portfolio risk level. It wasn't medium risk, it was a high-risk equity-based portfolio. There weren't enough low risk investments. Over 90% was in equities throughout with virtually no bonds and minimal cash. This can't be considered medium risk or balanced. A portfolio of over 90% single-line equities wasn't 'medium risk', especially given the market volatility of the time. Gilts were only added in 2023 after they raised with Finn the lack of these in the economic conditions of the time.
- The cash they held outside the portfolio can't be considered a buffer against losses Finn made. They held this back and didn't invest more after the initial £6m because they lost confidence in Finn.
- Their case primarily concerns a lack of alignment between the risk rating they were assigned and the portfolio Finn purchased for them. Their case is that factors such as the proportion in equities meant Finn was treating their portfolio more riskily than their medium level. It is noteworthy that Finn is changing its risk categorisations now to be more in line with its peers so that *"instead of defining a portfolio objective on the*

percentage of low, medium, and high-risk investments, we will be categorising portfolios into five strategies based on the equity allocation.” It is clearly now recognising the equity weighting has a bearing on risk.

- The 2022 valuations show less than 1% classified as low-risk and around 99% as medium risk. The significant categories were UK equities (33%) and Alternatives (23%), which isn't particularly 'balanced' as so much was in Alternatives which are riskier than other equities. They expressed their concern at the time about some newly listed stocks (in particular, an initial public offering) they felt were more risky.
- Finn mis-represented their risk appetite and ignored their repeated concerns. The portfolio was not aligned to their investment objective of income generation and capital preservation. They have suffered material real losses and could never have sustained a living on the level of income generated.
- Medium risk' wasn't an appropriate label for Finn's portfolio management. Finn suggested it would gradually invest funds. They didn't understand that it would invest such significant amounts into individual stocks and enter the market so quickly in summer 2021. In May 2023 Finn admitted the initial investment into equities was probably too much, too soon. Finn continually cited upside with no real coverage of the risks. When they pressed for a fair view of the stocks they had invested in, Finn provided a list with numerous concerns and issues highlighted.
- Finn sold stocks at low prices having bought at high prices. Many of the stocks still held continued to lose value. They understand the market is volatile but Finn continually performed poorly versus the FTSE and other benchmarks. They now believe Finn has very poor research, only trades infrequently and didn't have client needs in mind. They were left in a very difficult position with the significant losses on their portfolio through the poor choice of shares bought in large volume by JM Finn on their behalf. The continued poor decision-making and make-up of the portfolio meant Finn fell short of all relevant benchmarks. It continued to lose money even when the FTSE was performing well. So they feel the portfolio was mis-managed. Their intention had been to invest with Finn for the long term but they began to move holdings in Spring 2024 because losses continued even with markets on the rise, so they couldn't trust Finn.
- Calls with Finn contained admissions of failings and investment strategy error at the start. They will also highlight how they were assured of good capital growth and higher returns, with very misleading advice on risk. So these calls should be reviewed.
- They did not have the capacity to suffer the continuing losses that were amassing. Finn continually failed to protect their hard-earned capital despite their pleas and grave concerns about ongoing losses. They have been caused profound anxiety and left very uncertain as to who to trust in investment management.

Our investigator didn't change his view. As this 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 decided not to uphold this complaint. I'll explain why.

I agree with Mr and Mrs O that the key issue is whether Finn's management of their portfolio

and its asset allocation was in line with the remit they agreed with Finn. I've considered what that remit was and what it meant by 'medium risk'.

The brochure Mr and Mrs O have sent us from April 2021 shows a *"distribution of 5 year returns"* for medium risk portfolios managed by Finn. This shows there was a range of different outcomes for portfolios within this same remit over the same five year period. This reflected that Finn's service was one where decisions for each portfolio would be made by its own managers rather than being made centrally across all portfolios by Finn. So in looking at Mr and Mrs O's complaint, I've considered what was meant by medium risk in their case.

With this in mind, I've looked at the discretionary portfolio management application forms Mr and Mrs O completed for Finn. Mr and Mrs O each signed a form in May 2021, but their answers were mostly identical and were identical when it came to the remit they gave Finn.

The application form had a risk section which explained how Finn classified the risk of different types of investments. It said risk referred to the chance of the asset suffering *"sharp falls in value"* or *"a permanent and total loss of value"*. So risk was a risk of loss.

In broad terms the form classified cash and investment grade bonds as low risk. It classed most shares in the largest 350 UK companies or their overseas equivalents as medium risk, alongside high yield bonds and most collective investment funds except those that weren't well diversified or that invested in 'high risk areas'. It said anything else was high risk but specifically classified smaller company shares, especially those with a short trading history or in mining or technology, as high risk – together with collective funds investing in these shares or in shares of some single countries with 'known levels of high risk'.

The form allowed Mr and Mrs O to tick for a medium risk portfolio - or a high risk one (for *"a much higher level of investment risk"*). They ticked medium risk. It also said the medium risk portfolio *"may also contain a small percentage of High Risk investment (normally this will not exceed 15% High Risk investments by value)"*. It had a box to tick if Mr and Mrs O didn't want high risk investments included in this way. They didn't tick to exclude such investments.

The description of medium risk said:

"You are prepared to accept a higher level of investment risk particularly in terms of volatility and potential capital and/or income loss, in pursuit of higher investment returns than might be achieved with a Low Risk portfolio You should consider that your portfolio may be worth considerably less than its original value at any point in time You should not invest in a Medium Risk portfolio unless you anticipate investing for at least five years"

Your portfolio will contain Medium Risk investments (see page 7) such as securities issued by the leading 350 UK companies or their equivalents from overseas markets, bonds assessed as medium quality, and the majority of investment trusts, unit trusts, OEICs, asset backed ETFs and similar instruments, other than those which are not well diversified or which invest in areas assessed as high risk. It may also contain a minimum percentage of Low Risk investments by value subject to your specification below".

This last line referred to an option to specify that a minimum amount – the examples given were 10%, 25% or 50% of the portfolio - be held in low risk investments. Mr and Mrs O chose not to specify a minimum percentage to be held in low risk investments. So when invited to rule out more risky assets or ask for more safe ones within the medium risk portfolio, Mr and Mrs O chose not to do this.

Returning to the medium risk description itself, in my view this suggested that a medium risk portfolio would be one that might suffer considerable falls in value. It also suggested the

portfolio would be made up mainly of investments within Finn's medium risk category.

So based on all this, it seems to me what was contemplated for a medium risk portfolio was one largely made up of shares from medium to large UK companies or similar overseas entities or high yield bonds – which were all in Finn's medium risk category - with also a small proportion of investments from within Finn's high risk category, such as firms with limited trading history, smaller companies, mining and technology companies and funds with emerging market exposure.

On 30 April 2021 Finn sent Mr and Mrs O an example portfolio setting out what investments might be bought. This was broadly consistent with the portfolio composition characterised above. In reply Mr and Mrs O in May 2021 queried the heavy weighting towards UK shares and asked whether Finn had access to global stocks too. So their specific concern at that point was with the geographical scope of the shares rather than the share content itself.

On 13 May 2021 Mr and Mrs O emailed Finn to say: *"If we complete and send forms to you this weekend can we invest quickly – ie be in the market next week? I'm conscious of recent drops and it feels right to get in now?"*

On 9 June 2021 Finn sent Mr and Mrs O a list of what it proposed to buy. This was along the lines of what had been shown in the example portfolio. The investments were mostly shares. Finn didn't set out the percentage to be put in each. But of the twenty four names, five were collective funds, around eleven were FTSE 100 companies (the largest on the UK exchange) or large companies elsewhere and five were smaller companies mostly of a size consistent with the FTSE 250 (the next largest 250 companies on the main UK exchange). There were also two property companies. This list was in line with the asset composition outlined above.

On 14 June 2021 Mr and Mrs O said they would send over £4m and made some comments on the names, saying they had invested small sums in some and thought about others.

A 14 June 2021 welcome letter from Finn to Mr and Mrs O set out information of the kind that had been entered onto the application forms, and which I've discussed above. It said Mr and Mrs O's investment risk profile was to be *"Medium Risk with no minimum in low risk investments"*. Also it said of Mr and Mrs O's investment experience: *"The experience that you have had of market downturns is such that you feel sufficiently comfortable that you could cope with high levels of volatility."* I note that very significant, but short lived, market downturns had been experienced in the recent past, associated with the pandemic and so on. So their past experience hadn't only been of positive or non-volatile market conditions.

I note that the portfolio initially went up in value. Looking at Mrs O's holdings as at the end of 2021 (which were the bulk of the portfolio and representative of the whole), they were mostly shares except around 7% in income funds that were mainly high yield in nature. Around 37% was in shares that were mainly in the FTSE 100 or larger companies in the FTSE 250. A US share element of around 16% was in comparable US companies. A European allocation of 6% was likewise also mainly in large names. An alternatives elements included around 9.6% in three property holdings which were also all part of the FTSE 250. It also included mixed funds or hedge funds, one of which (around 2.2% of the total) was also in the FTSE 250.

Turning to holdings outside the FTSE 350 (or similar), for UK shareholdings 1.7% of the portfolio was in a stock listed on AIM rather than the main market. Its valuation, based on the bids made for it towards the end of 2021 and concluded in 2022, would've put amongst the larger of the FTSE 250 companies had it been listed there. But it was not on that main index. There was also one hedge fund accounting for around 2.7% of the portfolio. It was not in the FTSE 350 but was marketed as a cautious fund that, from its website *"aims to protect investors' capital and grow its value in real terms over the long term"* with *"cautious asset*

allocation” and “careful selection of high-quality companies, purchased at fair valuations.”

Within the US part there was 1.25% in a large company listed on the NASDAQ. But it was concerned with developing green power technologies – so it was based on new technology and had also been very volatile in price over the preceding year. Also involved in new technology was a FTSE 250 renewables infrastructure firm which together with a much smaller digital infrastructure firm made up 5.6% of the portfolio in total. By any measure this last holding (which made up 2.6% of the portfolio by itself) was high risk given it was small and involved in new technologies.

There was also investment in Asia, or global shares or emerging markets, mostly by way of collective investment funds and making up around 7% of the total. Of this I note there was 1.2% in a specifically emerging markets fund, 1.6% in an environmental fund and 0.7% in a Chinese car firm.

There was also 1.1% in an initial public offering. The market capitalisation immediately after the offering gave the company a size that would've fallen within the FTSE 250 but at the smaller end. But it was a new offering so there were particular risks including valuation risk.

This is just a snapshot of the portfolio as it was at the end of 2021 – and the weightings to different shares and funds would vary with rises and falls in their values in the market. But it tends to support what I've said above about the medium risk remit being a focus on shares within the FTSE 350 (or similar) but with an allocation to higher risk stocks that shouldn't normally exceed 15%. It seems to me the portfolio holdings from time to time were broadly in line with this remit. Also the portfolio as a whole was along the same lines as the example Finn had given Mr and Mrs O. It was also in line with what Finn had told Mr and Mrs O it was buying at the time, and it sent details of its proposed purchases as it went along.

I note the update from Finn which Mr and Mrs O have sent us saying that in future it will distinguish its strategies according to equity content rather than on *“the percentage of low, medium, and high-risk investments”* held. But this tends to reinforce my view that at the time the portfolio and its remit was agreed, what Finn had proposed as a medium risk portfolio was a portfolio holding what it described as medium risk investments such as shares in companies listed on the FTSE 350 or high yield (“medium quality”) bonds.

In saying this, I don't overlook that the medium risk benchmark against which Finn compared its past performance in its April 2021 proposal for Mr and Mrs O, likely had a significantly higher allocation to fixed interest investments than the portfolio Finn set up for Mr and Mrs O. The split between shares and fixed interest assets (corporate or government bonds) in their portfolio was more in line with what I'd expect in the high risk version of that MPI benchmark. But the presentation didn't detail the asset content of that benchmark – so I can't take from this that what was proposed by Finn or contemplated by Mr and Mrs O at the outset was a much larger allocation to fixed interest investments. Rather what Finn proposed was set out for Mr and Mrs O in the example portfolio and list of proposed investments it gave them, as discussed further above. Also, as I've noted, Finn offered a service where portfolios would be individually managed - so when assessing what the portfolio remit was meant to be, the particulars of what was specifically proposed to Mr and Mrs O carries more weight.

So I understand why Mr and Mrs O's objections to Finn's approach have focussed on the meaning of medium risk and the allocation to shares rather than bonds or safer assets within their portfolio. I accept that the term medium risk when applied to portfolios can often mean a portfolio with a higher fixed interest content than was the case here. But what I've seen doesn't suggest that Mr and Mrs O at the outset expected or thought there would be a higher allocation to fixed interest funds. On balance I'm not persuaded that Finn was at fault for putting together its portfolio for Mr and Mrs O in the way that it did. I note they asked later

about adding more UK government bonds, but in essence as a tactical suggestion in the context of their view of the current market or economic situation.

Overall, I conclude that the portfolio was managed in line with the remit agreed with Finn.

Mr and Mrs O approached Finn looking for an investment manager to invest proceeds from their business sale. Finn didn't approach them or initiate the idea. Mr and Mrs O were in discussions with other managers about making this sort of investment. They had friends or relatives who had used Finn's services in the past and they approached Finn on that basis. It was ultimately for Mr and Mrs O to decide what their portfolio remit should be and the level of risk they were willing to accept. They indicated this to Finn on their application form. Finn made proposals to them based on this. I don't think it was wrong for Finn to make the proposals it made to them or to accept instructions from them for a portfolio with that remit.

I say this bearing in mind the risk was affordable in my view, based on what we've been told by Mr and Mrs O about their level of assets – including on the spreadsheets they have sent us. Also their application forms said they had years of experience of investment funds and individual shares. Given this experience, albeit with smaller sums, I don't see that Finn ought to have concluded Mr and Mrs O wouldn't appreciate the risk of loss involved in the portfolio it was proposing. I say this bearing in mind what the application forms said about how the portfolio could be worth considerably less at any point in time. I also bear in mind what Finn told Mr and Mrs O about how it understood their investment experience meant they felt comfortable with high levels of volatility.

In saying all this, I don't overlook that the portfolio was in essence a new kind of investment enterprise for Mr and Mrs O. Their existing holding of individual shares was small. They had hundreds of thousands of pounds in ISAs and pensions, but these sums in collective funds were also small compared to what they were planning to invest with Finn. Also they were investing funds realised from the sale of their business – in essence a lifetime's work. They hadn't experienced putting these sorts of sums at this sort of risk in financial markets before. Nor had they mandated a firm to manage funds like these for them.

So it was always possible this approach might turn out to be one Mr and Mrs O weren't comfortable with in practice if losses or volatility did occur. But bearing in mind what Finn recorded about Mr and Mrs O's experience of and willingness to accept volatility, and taking everything else I've discussed above into account, I don't think this possibility meant it was wrong for Finn to offer Mr and Mrs O the portfolio it did or to accept their instructions once they agreed to the proposed remit.

Mr and Mrs O have said Finn assured them of good capital growth and higher returns, but I'm satisfied they were aware that investment success can't be guaranteed and investing carries the risk of loss. This was made clear on the application forms they signed.

I have no reason to doubt what Mr and Mrs O have said about Finn later saying in conversation that it was an error to invest so quickly. But this doesn't make me think doing this was negligent at the time. I note here in passing Mr and Mrs O's May 2021 request to invest quickly and be in the market the following week as it felt to them like a good time to get in, due to market falls.

But even putting that comment to one side, I don't see anything untoward in how quickly Finn went about investing the funds – and I don't think it was at fault for investing the funds as quickly as it did. Also, it isn't obvious to me that the speed of investment was a cause of loss, given the portfolio rose initially.

Turning to the ongoing management of the portfolio - and the general level of service and

responsiveness - it seems to me the interactions with Mr and Mrs O by Finn were frequent and also carried out where Mr and Mrs O asked for them. The fact Finn did not take actions, or succeed in the actions it did take, in the way Mr and Mrs O might have wanted, doesn't mean Finn wasn't responsive in my view. I don't find the level of service offered to have been lacking overall. Rather it was the results of the approach that fell short.

With regard to selling stocks that had made losses and keeping stocks that continued to fall, the fact an investment falls rather than rises after it is bought and while it is held, isn't in itself an indication of negligence. Whether it is right to hold on to a losing position is a matter for the judgement of the investment manager. What I've seen and what Mr and Mrs O have said doesn't make me think Finn's judgments in this regard were unreasonable, negligent or evidence that Finn didn't act with reasonable skill and diligence.

As regards how often the holdings were bought and sold, the level of portfolio activity or churn Mr and Mrs O have referred to isn't so high that I would consider it excessive in itself or in contradiction to the general approach that was proposed.

In conclusion, having considered all Mr and Mrs O have said and sent us, I've not identified grounds on which it would be fair and reasonable in my view to make an award against Finn for the portfolio losses Mr and Mrs O suffered. So, in light of what I've said above and for the reasons I've given, I don't uphold this complaint.

I appreciate my conclusion will disappoint Mr and Mrs O. I'm grateful to them for the courteous and prompt responses they have given us throughout as we've considered their 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 O and Mrs O to accept or reject my decision before 28 April 2025.

Richard Sheridan
Ombudsman