

The complaint

Mrs K complains that her portfolio was mismanaged by Dowgate Capital Limited.

In summary, she says:

- She wasn't included in any decisions to manage her funds, in July 2020 she was moved from 'cautious' to 'moderately high risk' based funds, without her knowledge.
- The adviser should've taken a lesser risk with her investments in light of the Russia Ukraine conflict but didn't.
- She was never asked about her risk profile, instead – a higher risk profile (also known as an 'opportunistic' attitude to risk) was agreed with her husband without her knowledge.
- The last valuation she received was in January 2022, but she couldn't check on the portal to view the state of her portfolio because she didn't know how to.
- She received no warning when her investments dropped in value by 10%. Between January 2022 and October 2022, they dropped by 33%.
- Dowgate's offer to refund the management fees of £15,201.61 is not enough to cover the losses she suffered.
- This matter has caused her significant distress and inconvenience.

To put things right, she'd like compensation for losses claimed.

What happened

Mrs K and her husband held investment accounts with a previous business. But when their adviser moved to Dowgate (in 2020), they moved their accounts with him.

A brief chronology of events is as follows:

- In November 2019, prior to the move, Mrs K had a meeting with her adviser. She'd become increasingly cautious, and they agreed a defensive asset allocation.
- In March 2020, her husband retired, and she and her husband relied on income from their investments.
- Around this time, the adviser moved to Dowgate but Mrs K and her husband had little contact with him as he was on leave prior to the move.
- In July 2020 Mrs K (and her husband) applied for discretionary accounts with Dowgate, and welcome letters were sent to them in September 2020.
- In August 2020, over a phone call with Dowgate Mrs K's husband discussed the type of risk levels that the account should be managed on. Mrs K's husband agreed that their GIA, ISA and SIPP accounts should be managed on a moderately-high risk basis for a capital growth objective. Mrs K wasn't included in this discussion, nor the email exchange that followed.
- In 2021, Mrs K's asset allocation changed radically from her agreed cautious stance, and this happened without her knowledge. Based on what she says, most of the cash and defensive investments that they agreed in November 2019 were invested in small cap UK companies and (volatile) tech companies.

- In February 2022, the Russia-Ukraine war broke out and the markets dropped sharply. Mrs K and her husband's portfolios dropped by 11% but she didn't receive an alert.
- In October 2022, Mrs K and her husband were invited to look at their secure online portal but neither of them knew how to use it. Following a phone call with Dowgate, Mrs K was shown how to do this – that's when she discovered that the state of her current portfolio was very different to what she expected.
- In October 2022, Mrs K and her husband spoke to the adviser, and she expressed her outrage about what had happened. She says she had no idea that her portfolio had deviated so drastically from the cautious strategy agreed with the adviser.
- In due course, Mrs K (and her husband) decided to move all their assets to a new business.
- Only Mrs K complained to Dowgate about her portfolio, which is why this complaint is only in relation to her.

Dowgate partially upheld the complaint. In summary it said that as Mrs K's husband didn't have third-party authority on her account it shouldn't have allowed him to take the suitability questionnaire on her behalf, or to sign a mandate agreeing to a moderately-high risk level for her account. However, given Mrs K's attitude to risk, it's reasonable to believe that she would've continued to invest in the equity market. On this basis, it offered to refund the full management fees amounting to £15,201.

One of our investigators considered the complaint and thought it should be upheld. In summary, he said:

- Prior to the move, Mrs K had become increasingly cautious about the markets, consequently she agreed a defensive asset allocation with the adviser comprised of the following:
 - Small cap: 10%
 - US/Global Large Cap: 25%
 - UK Large Cap: 10%
 - Gold: 10%
 - Equity Hedge: 10%
 - Index linked: 5%
 - Alternatives: 10%
 - Cash: 20%
- On 27 July 2020, Mrs K applied for a discretionary account.
- On 27 August 2020, her husband spoke to Dowgate about 'risk' which was followed up by a series of emails.
- Mrs K wasn't a party to that exchange. However, instructions were taken only from her husband in relation to both his and her account.
- Dowgate confirmed that Mrs K's husband didn't have authority to complete a suitability assessment on her behalf.
- Following his retirement in March 2020, Mrs K's husband became interested in US High Tech stocks and appears to have invested in these through both his and her portfolios. Mrs K wasn't aware of this either.
- There were no phone calls or meetings with Mrs K in 2020 or 2021, and it wasn't until she spoke with the adviser on the phone in October 2022 that she became aware of the change in strategy. Dowgate has confirmed in the final response letter that the account was being managed on a 'moderate-high risk' basis aiming for capital growth.
- Following the telephone conversation Mrs K decided to move her investment elsewhere.
- She maintains that at no time since 2019, has she considered increasing the risk in

her portfolio and had no idea that it had been increased. In other words, it had been done so, without her knowledge or consent.

- She thought her investments were in a more cautious portfolio than the high-risk funds they were invested in, which resulted in financial loss.
- In other words, Mrs K's portfolio was switched to higher funds without her permission. Dowgate accepted this to be the case and upheld the complaint on this basis.
- Mrs K wants compensation for her losses from 12 January 2022, as she feels this is last date that she could've voiced her opinion with regards to managing her portfolio. This is a reasonable presumption.
- The investigator agrees with Dowgate that it was reasonable to believe that Mrs K would've continued to invest in the equity markets. However, it's more likely than not, she would've continued to invest in a lower risk portfolio, in line with what she'd (previously) agreed with the adviser.
- To put things right, Dowgate can compare the value of her portfolio with the value of her previous portfolio if things hadn't changed, between 12 January 2022 and when the portfolio was transferred out. But in this instance the FTSE UK Private Investors Income Total Return should be used as an appropriate benchmark.
- If there's a loss the new business should be contacted and asked if it will accept the loss amount, back dated to the actual transfer. If not, a further calculation should be carried out on the loss using the same benchmark.

Mrs K made following key submissions in response to the investigator's view:

- Their portfolios were designated moderately high risk – so not the highest.
- Many women in this situation suffer a loss of agency, like she did. Despite her qualification and experience, the adviser only spoke to her husband.
- The adviser and her husband called the shots, based on his experience of managing big companies. But once her husband retired, he subscribed to "*The Motley Fool*" and made suggestions to the adviser from this newsletter.
- She wasn't more proactive following the performance of her funds because she was organising her daughter's wedding for the summer of 2022.
- She wonders if her response could be forwarded to a senior woman in our organisation to see if her concerns resonate with the senior female members of our organisation, and whether there is a more strategic point that could be made to safeguard a greater number of people.
- The minimum compensation she's hoping for is the difference in value of the funds in her name between the last valuation she received from Dowgate by email in January 2022 and her conversation with her adviser in October 2022, adjusted according to the performance of the FT PII multi asset index.
- However, she could argue that (as her husband's spouse) she is entitled to 50% of their combined portfolio which would be a higher figure.
- These lost assets haven't been invested in the market since October 2022 when they moved to the new business. Since then, the FT PII multi asset index shows a significant increase. Therefore, 'the opportunity cost of the 2022 catastrophe' continues until the present day. Dowgate should be held responsible for the whole period until the date the new business receives the assets. Dowgate should reimburse her for the downturn to October 2022, as well as the uplift to the present day.

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

On 1 November 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:

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

On the face of the evidence, and on balance, I’m persuaded that Dowgate behaved unreasonably by increasing Mrs K’s risk profile without her authority or consent. Whilst I appreciate Dowgate concedes this specific point, I don’t think the redress offered by it – to only refund management fees – is fair or reasonable.

To put things right, I think it should refund the management fees for the period between August 2020 and October 2022, with 8% simple interest from the date of payment to the date of settlement.

In addition, I think it should also compensate her for any losses is suffered as a result of the higher risk investments she was made to take without her authority, again with 8% simple interest. I will explain this point further below.

But before I explain why this is the case, I think it’s important for me to note I very much recognise Mrs K’s strength of feeling about this matter. She has provided detailed submissions to support the complaint, which I’ve read and considered carefully. However, I hope she won’t take the fact my findings focus on what I consider to be the central issues, 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 Mrs K and Dowgate, and reach what I think is an independent, fair and reasonable decision based on the facts of the case.

In deciding what’s fair and reasonable, I must consider the relevant law, regulation and best industry practice at the time, but I’m not bound by this. It’s for me to decide, based on the information I’ve been given, what’s more likely than not to have happened.

I uphold this complaint, in summary, for the following reasons:

- *I’ve seen no persuasive evidence to suggest that Mrs K changed, or was likely to change, her previous cautious attitude to risk.*
- *Because a risk assessment wasn’t carried out – other than the one with her husband which she wasn’t involved with – Dowgate has no justification for doing what it did with her investments.*
- *In the circumstances, and on balance, based on what Mrs K says, I think her attitude to risk was unlikely to change, particularly given the geopolitical situation at the time.*
- *In other words, I think it’s arguable that if a risk assessment was carried out, it would – more likely (than not) – have found that she still had a cautious attitude to risk and was unlikely to want to take more risk.*
- *Whilst I appreciate Mrs K was in a discretionary management arrangement with Dowgate – allowing it to make some investment decisions on her behalf – I don’t think it was permitted to make decisions that were outside of her risk tolerance. In other words, as a cautious risk investor, I don’t think Mrs K ought to have been invested in a higher risk investment.*
- *The above notwithstanding, I note that key investment decisions were made by her husband (in conjunction with the adviser) and that a risk assessment had taken place in relation to his and her investments, but without her consent.*
- *I also note Mrs K’s husband was emailed with the outcome of the discussions, but Mrs K wasn’t a party to this, even though her portfolio was in her name only, and Dowgate had her email address. This behaviour is inexcusable on the part of Dowgate.*

- *Notwithstanding what Mrs K alludes to about gender, it's completely unreasonable that Dowgate would take instructions from an investor, in respect of investments that didn't belong to it, without checking that it had authority to do so.*
- *I note that Mrs K's husband had no authority to make decisions on her behalf, regardless of whether it be to invest or carry out a risk assessment. I'm mindful Dowgate conceded this point at the outset, and I've seen no persuasive evidence that Mrs K was aware of what her husband was doing or that she allowed him behave the way he did. This may explain why the complaint is only from Mrs K and not also her husband. In any case, Dowgate accepts that it acted without authority, which it shouldn't have done.*
- *On balance, I think it's likely that Dowgate thought Mrs K's husband was authorised to act on her behalf (but failed to confirm this) which is why it carried out his instructions. In other words, if it didn't think Mrs K's husband had authority, it's unlikely that it would've acted. So, in the circumstances, and on balance, I can't say that it was generally acting in good faith when it carried out her husband's instructions.*
- *The above notwithstanding, and despite what Mrs K says, I've seen no persuasive evidence to suggest that Dowgate only spoke to her husband (and not her) directly out of any malice or disregard towards her.*
- *I'm aware that Mrs K, based on what she says, is an educated and experienced woman, so it's likely she would've raised an issue had she been aware. I'm also mindful that she was busy organizing her daughter's wedding in the summer of 2022 and didn't know how to access her secure online portal which is why it took her until fairly recently to raise the alarm.*
- *On the face of the evidence, and on balance, I think it's unlikely that Mrs K would've allowed her husband and/or the adviser to invest in higher risk funds if she was made aware of what was going on.*
- *Although Mrs K would've invested in equities, I think she still would've taken a cautious approach. I'm unable to say for sure what she would've done which is why I think the investigator's proposal to compare her portfolio against the FTSE UK Private Investors Income Total Return Index is a fair and reasonable comparison.*
- *I don't think an offer to refund of the management fees alone is fair and reasonable in the circumstances, because I don't think it fairly reflects the financial loss she may have suffered.*
- *Because Dowgate acted without authority, I think it should be responsible for any losses that occurred from when it started to invest in medium-high risk funds (in July 2020) until she moved her portfolio to another business in October 2022*
- *I appreciate investment performance is subject to a number of factors, including the global geopolitical situation for which Dowgate isn't responsible. However, in this instance, it made changes to Mrs K's portfolio without authority, increasing her risk, so, if there's a loss, it's responsible for that.*
- *In the circumstances, and on balance, I'm not persuaded that this depends on when she ought to have been aware of what Dowgate was doing. In other words, I don't think in this instance Mrs K's inability to discover this sooner mitigates the actions of Dowgate or the consequences of its actions.*
- *The above notwithstanding, I'm not persuaded to consider what may have happened once Mrs K moved her portfolio. It's a matter for her what she did with her portfolio – possibly subject to financial advice from elsewhere – and not something that I can hold Dowgate responsible for.*
- *So, to put things right, in addition to offering to refund the management fees which it should do with 8% simple interest, I think Dowgate should do the following:*
 - *Compare the performance of Mrs K's portfolio against the performance of the FTSE UK Private Investors Income Total Return Index – from when it started to invest in medium to high risk funds (in August 2020) – to when she moved*

her investments out in October 2022. If there's a negative difference, it should pay the loss with 8% simple interest, from the date of payment to the date of settlement."

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.

Mrs K responded and accepted my provisional decision. She said she was grateful for the attention given to her complaint but had no further points to add. She hoped for a speedy resolution.

Dowgate didn't respond to my provisional decision. At my request the investigator made enquires and Dowgate confirmed that it hadn't received my provisional decision - even though it had been sent to the same email address that our service had on file. It provided an alternative email address, following which the investigator resent a copy of my provisional decision.

Dowgate then asked for additional time which I granted till the end of the week, but I received no response.

Dowgate subsequently said that the time granted wasn't enough, so it requested another extension to consider the investigator's view, my provisional decision and Mrs K's response. I granted additional time but thorough the investigator also enquired exactly how much (more) time it would need but I received no further response.

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 Mrs K and Dowgate, 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, and Dowgate failing to provide any further points, 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 still think that Dowgate behaved unreasonably by increasing Mrs K's risk profile without her authority or consent. Whilst I still appreciate Dowgate concedes this specific point, I don't think the redress offered by it – to only refund management fees – is fair or reasonable.

So, to put things right, I still think Dowgate should refund the management fees for the period between August 2020 and October 2022, with 8% simple interest from the date of payment to the date of settlement.

In addition, I think it should also compensate her for any losses she suffered as a result of the higher risk investments she was made to take without her authority, again with 8% simple interest.

Putting things right

To put things right, Dowgate Capital Limited should do the following:

1. Refund the management fees charged for the period between August 2020 and October 2023, with 8% simple interest from the date of payment to the date of settlement.

2. Compare the performance of Mrs K's portfolio against the performance of the FTSE UK Private Investors Income Total Return index, from when it started to invest in medium to high-risk funds in August 2020, to when she moved her portfolio to another business in October 2022. If there's a negative difference, it should pay the loss with 8% simple interest.

My final decision

For the reasons set out above, and in my provisional decision, I uphold this complaint. Dowgate Capital Limited should calculate and pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 3 February 2025.

Dara Islam
Ombudsman