

The complaint

Mrs M had a discretionary managed investment account with Fogwill & Jones Asset Management Ltd (“Fogwill & Jones”). Her complaint is that Fogwill & Jones did not manage the portfolio in accordance with her agreement with it as it bought and sold all her investments – exiting and re-entering the market - causing her investment loss and increased charges

What happened

Mrs M is assisted in this complaint by her daughter Mrs N.

Mrs M and her husband had a discretionary management agreement with Fogwill & Jones from around 2005. An updated discretionary management agreement was signed in 2016. Mr and Mrs M’s investment objective was recorded as “growth” and their attitude to risk was recorded as “Medium”.

Mr & Mrs M held general investment and ISA accounts which Fogwill & Jones managed.

Mr M died in 2017, and Mrs M continued with the arrangement with Fogwill & Jones. There was a meeting between Mrs M and Mrs N and Fogwill & Jones in 2017, and Mrs M and Mrs N did not consider a full formal review was necessary.

In 2018 Fogwill & Jones wrote to Mrs M to say as it had not reviewed matters with her recently it was unable to say whether her discretionary portfolio continued to meet her needs and objectives and whether the investments held accorded with her attitude to risk. It said as it had not been able to discuss these matters with Mrs M it would:

“...continue to manage your Discretionary Portfolio investments in accordance with your previously agreed attitude to investment risk of Medium; a High Capacity for Loss, an objective of Growth and an investment term of 5 to 10 years.”

DEFINITION OF ATTITUDE TO RISK

A Medium Risk Investor is looking for a balance of risk and reward, and whilst seeking higher returns than might be obtained from a deposit account, recognises that this brings with it a higher level of risk. This is obtained by investing in up to 85% equities and with more exposure to overseas markets currently in the range of 40% - 60%. They realise that the value of their investments may fluctuate in the short term. They would feel uncomfortable if the overall value of their investments were to fall significantly over a short period and would not be happy to see their capital eroded over the medium term. On a risk scale of 1 – 10 this would be risk level of mainly 5 to 6.5.

DEFINITION OF CAPACITY FOR LOSS

High Capacity for Loss

You can afford to take the risks associated with your chosen attitude and can withstand any under-performance.

If any of the above is incorrect you should contact us immediately so that we can reassess your needs and objectives and review your investments to ensure that they are suitable.”

A review was carried out in 2019. An attitude to risk and capacity for loss questionnaire was completed with Mrs M. This showed that Mrs M's attitude to risk seemed to have reduced but, after discussion, it was agreed that her risk rating and objectives would remain unchanged.

There is no complaint about the management of Mrs M's portfolio by Fogwill & Jones up to around the end of 2021.

This complaint was prompted by concerns in 2023 about recent investment performance. This led to a review meeting in 2023, and Fogwill & Jones prepared a written commentary on its recent key investment decisions and the reasons for them. After considering that response with her own financial adviser Mrs N asked Fogwill & Jones some further questions in December 2023 which it answered in January 2024.

Mrs N was not content with Fogwill & Jones' answers and she made a complaint to it in May 2024.

Fogwill & Jones provided its final response in answer to that complaint on 11 June 2024. And Mrs N referred Mrs M's complaint to the Financial Ombudsman Service in August 2024.

Mrs M has since (in March 2025) withdrawn her portfolio from Fogwill & Jones and has transferred her funds to a different investment manager.

Both parties have made a number of points but in summary their positions are as follows:

Mrs N's points include:

- Mrs M is a cautious/medium risk investor.
- The portfolio was intended to be invested for the medium to long term.
- Mrs M and Mrs N are both inexperienced investors. Mrs M is in her mid-80s and is unable to bear considerable loss of capital she might need to rely on for care costs in the future.
- The portfolio has lost considerable value since 2021 compared to average performance since then. Between January 2022 and May 2023 the portfolio lost 24% when most investment portfolios saw growth or broke even.
- The poor performance is due to the investment decisions made by Fogwill & Jones.
- Fogwill & Jones have bought and sold investments frequently which has caused investment loss and increased costs.
- Instead of investing for the long term Fogwill & Jones have speculated on market timings at Mrs M's expense.

Fogwill & Jones' points include:

- It was authorised by Mrs M to manage her portfolio on a discretionary basis. This means its role was to manage the portfolio in accordance with the agreed mandate and it could make investment decisions without her prior approval.
- Mrs M was a medium risk investor. This risk rating was discussed and reassessed a

number of times. In 2019 it was suggested that Mrs M should be categorised as a defensive investor but Mrs M and Mrs N preferred to stay with the medium risk rating.

- It managed the portfolio in accordance with the agreed risk rating.
- It pursued an active in-and-out investment strategy. This had been successful in March 2020 during the Covid pandemic. When the same approach was applied in 2022 onwards in response to very challenging investment conditions the results were not as successful, and performance has been disappointing. Some of its decisions have had a negative impact on performance. But the decisions made should not be judged with hindsight. The decisions were taken in the client's best interest and were reasonable at the time.
- The charges made were as agreed and not unreasonable.
- The portfolio was fully invested on a medium risk basis from 9 December 2022 until Mrs M withdrew her funds in March 2025.

I will set out here, in broad terms, the approach followed by Fogwill & Jones between 1 January 2022 and 3 September 2024 when it received Mrs M's complaint. This is based on Fogwill & Jones' description of events:

- At the end of January 2022 Mrs M's portfolio was valued at £248,500 which was all invested in funds.
- In February 2022 Fogwill & Jones decided the Russian invasion of Ukraine was likely to have "*huge ramifications*" and decided to sell out of the majority of the investments and shift to cash.
- By the end of February 2022 the portfolio was valued at £236,000 with £36,000 invested and £200,000 in cash.
- Following the invasion and the fall in financial markets Fogwill & Jones decided to re-enter the market.
- At the beginning of April 2022 the portfolio was valued at £242,500 with £241,500 invested and £1,000 in cash.
- However, the global economy became further strained as a result of supply chain issues. Also inflation was increasing. Interest rates started to rise. Both the equity and bond markets were impacted.
- Fogwill & Jones decided it would be in its clients' best interest to sell out of a number of funds in order to move to cash whilst retaining some funds in some favored and/or more resilient areas. When those sales were completed in June 2022 Mrs M's portfolio was valued at £207,000 with £38,000 invested and £169,000 in cash.
- Leaving the majority of the portfolio in cash was successful to a degree as it helped mitigate the losses suffered in some areas. However, the portfolio did not fully benefit from unexpected positive market movements during September and October 2022.
- Fogwill & Jones decided to reinvest a proportion of the cash held in clients' portfolios to benefit from any potential global equity upturn. But the decision was made to do this by investing in defensive and market neutral funds. Some investments were successful some were not which resulted in fairly neutral performance.
- At the end of December 2022 the portfolio was valued at £196,000 with £19,000 in cash and £177,000 invested.
- By 1 June 2023 (ie shortly before the final response letter in reply to the complaint) the portfolio was worth £208,500.

One of our investigators considered Mrs M's complaint. She thought the complaint should be upheld. She did not think that Fogwill & Jones had warned Mrs M that it might adopt its active in-and-out strategy which she thought speculative in nature and not in line with Mrs M's agreed long term investment objective. She also thought Fogwill & Jones had not done enough to advise Mrs M about what was suitable for her and that if it had done so she

would have agreed to revise her risk rating to a more cautious level in 2019. She also thought Fogwill & Jones should refund some of its charges as the 2022 review did not take place.

Fogwill & Jones did not agree with the investigator. It has made a number of points in response including:

- Mrs M was aware of its approach in 2022 as it had used the same approach in 2020 at the start of the Covid epidemic when it had been effective in protecting clients' portfolios.
- The discretionary management mandate gave it authority to act in the same way in 2022 without prior approval.
- It was not practical to seek approval before implementing the strategy given the circumstances in 2022 in which it acted.
- It was a reasonable exercise of its discretion to act as it did.
- Its approach has been considered in other complaints to the Financial Ombudsman Service and none have been upheld.
- It disputes that it did not do enough to make Mrs M aware that it did not think a medium risk portfolio was suitable for her. Its records show the matter was discussed in detail with Mrs M and Mrs N in 2019. It was discussed again in subsequent reviews.
- To suggest that Mrs M would have agreed to be categorised as cautious if the matter was discussed further is baseless speculation.
- It used the same active in-and-out strategy with its Defensive Portfolio clients in any event.

The complaint was referred to me and I issued a provisional decision on 10 October 2025. I explained why I thought the complaint should be upheld and what I thought Fogwill & Jones should do to put things right.

In summary it was my view that:

- Mrs M's attitude to risk was medium with an investment objective of growth over a term of five to ten years and her capacity for loss was high. These points had all been discussed and agreed with Mrs M and Mrs N.
- Fogwill & Jones was obliged to manage Mrs M's portfolio in accordance with her agreed attitude to risk and objectives.
- Mrs M had appointed Fogwill & Jones to manage her investments and so would reasonably expect it to use its skill and professional expertise. But the general presumption would be that her portfolio would be exposed to market risk.
- The timing of individual investment decisions is part of the normal risk of investing but complete exits from and re-entering the market were on a different scale. Trying to time the market is inherently risky and not normally what a medium risk longer term investor expects.
- Fogwill & Jones had said in a newsletter in 2022 that investors should resist the urge to sell in response to stock market corrections, and that markets tend to recover over time.
- Exiting the market in response to the extraordinary circumstance of the Covid pandemic does not mean the active in-and-out strategy was appropriate in other circumstances when Fogwill & Jones had agreed a medium risk longer term approach and it had checked with her that she understood and could afford to take the risks involved with investing in that way.
- Although Fogwill & Jones thought it was acting in its client's best interests, it was acting in a way that was not consistent with the mandate it had agreed with Mrs M.

- So if Mrs M had been caused a loss Fogwill & Jones should compensate her.
- Fogwill & Jones should calculate whether a loss had been caused by comparing the performance of Mrs M's portfolio with the agreed benchmark for the portfolio – the FTSE WMA Stockmarket Growth index.

Mrs M agreed with my provisional decision. Fogwill & Jones did not.

Fogwill & Jones has made a number of points including the following:

- In 2022 it believed its investment decisions were suitable for its client given its knowledge of her circumstances. It was trying to ensure that she did not suffer greater financial loss bearing in mind the turbulent market conditions at the time. It is only with hindsight that the decisions it made did not benefit the client as intended.
- Mrs M only agreed to some equity market risk as a medium risk investor. It was reasonable to expect the non-equity parts of the portfolio, in normal circumstances, to be negatively correlated to equities and to some extent protect the portfolio. However in 2022, for the first year since 1969, bond and equity markets became positively correlated and fell simultaneously with the result that "cautious investments" fell as much as equities.
- From December 2022 until Mrs M moved her portfolio in 2025, she was fully invested in the "Low Medium risk Dynamic Planner Risk Rated 5 (out of 10)" and there was no further trading of the portfolio into cash during that period. So during that period the portfolio was managed in accordance with the mandate and compensation should not be payable for this period.
- The Growth Index should not be used for calculating loss. Although it was the agreed benchmark index in 2016 it was later changed to the MSCI PIMFA Private Investor Balanced Index as that is more appropriate for a medium risk portfolio. That index or the Income Index is more appropriate in the circumstances.

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.

I've considered all the points made by the parties. I have not however responded to all of them below; I have concentrated on what I consider to be the main issues.

Relevant considerations:

I'm required to determine this complaint by reference to what I consider to be fair and reasonable in all the circumstances of the case. When considering what is fair and reasonable in the circumstances, I need to take account of relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time.

The agreement between Mrs M and Fogwill & Jones and the Conduct of Business rules relating to such agreements are clearly relevant here.

Mrs M had an agreement with Fogwill & Jones under which it agreed to manage investments for her on a discretionary basis. This meant Fogwill & Jones could buy and sell investments on Mrs M's behalf and it did not need to obtain her further agreement before doing so.

When providing this service Fogwill & Jones was subject to the Financial Conduct Authority's rules which include the Conduct of Business Sourcebook ("COBS").

COBS 2.1.1(1)R provides that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

COBS 9.2.1(1)R provides that where a firm is managing investments it must take reasonable steps to ensure that a decision to trade is suitable for its client.

COBS 9.2.1(2)R provides that when managing investments a firm must obtain the necessary information regarding the clients:

- knowledge and experience in the investment field relevant to the specific type of investment or service
- financial situation, and
- investment objectives

so as to enable the firm to take the decision which is suitable for the client.

COBS 9.2.2(1)R provides that a firm must obtain from the client such information as is necessary for the firm to understand the essential facts about her and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:

- meets her investment objectives;
- is such that she is able financially to bear any related investment risks consistent with her investment objectives; and
- is such that she has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of her portfolio.

COBS 9.2.2(2)R provides that information regarding the investment objectives of a client must include, where relevant, information on the length of time for which she wishes to hold the investment, her preferences regarding risk taking, her risk profile, and the purposes of the investment.

Accordingly, Fogwill & Jones did not have complete discretion to manage Mrs M's investment in any way it wished. It was required to manage the investment in a way that was suitable for Mrs M – and it's clear that Fogwill & Jones knew about the obligations on it.

The agreement between Mrs M and Fogwill & Jones included:

“Any investment management proposals or recommendations that we make will only be made after we have assessed your needs and considered your financial objectives and attitude to any risks that may be involved.

We will manage your portfolio at our discretion subject to Schedule 1 – Your Objectives, Restrictions, and Limits. ... This schedule sets out our understanding of your specific investment objectives, and any restrictions or particular instructions you may have given us in respect of the ongoing management of your portfolio. The schedule will make particular reference to our understanding of the investment risks that you are prepared to take in order to achieve your objectives.

In Schedule 1 Mrs M's relevant details were recorded as follows:

Investment objective: Growth

Agreed risk profile: Medium

Benchmarks: FTSE WMA Stockmarket Growth Index

No restrictions were recorded.

Medium risk was defined in the agreement in the way set out in the 2018 letter I have quoted above.

The COBS rules also contain guidance about assessing suitability at COBS 9.3.1G and COBS 9.3.2G as follows:

COBS 9.3.1G

“(1) A transaction may be unsuitable for a *client* because of the risks of the *designated investments* involved, the type of transaction, the characteristics of the order or the frequency of the trading.

(2) In the case of *managing investments*, a transaction might also be unsuitable if it would result in an unsuitable portfolio.”

COBS 9.3.2G

“(1) A series of transactions that are each suitable when viewed in isolation may be unsuitable if the recommendation or the decisions to trade are made with a frequency that is not in the best interests of the *client*.

(2) A *firm* should have regard to the *client's* agreed investment strategy in determining the frequency of transactions...”

I cannot see that the discretionary management agreement defined Mrs M's investment time frame but the letter from 2018 referred to above refers to five to ten years. This was referred to in other reviews and is not in dispute.

I note the discretionary agreement also includes the following point in relation to charges:

“Extraordinary charge:

In extraordinary circumstances (and this has only occurred once in the last 6 years) 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 of up to 0.5% of your portfolio value. 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. This is due to the extremely time consuming work that would be required.”

What was Mrs M's attitude to risk?

It is not in dispute that Mrs M's attitude to risk was medium before 2017 when she was investing with her husband.

In 2017 or 2018, after Mr M had died, Fogwill & Jones wanted to carry out a review with Mrs M to assess her situation and assess whether the portfolio was still suitable for her. She had been a client of Fogwill & Jones for over ten years by that time but her circumstances had recently changed so such a review would have been reasonable. In the event Mrs M and Mrs N preferred not have a full review at that time. They wanted to carry on with things as before.

I do not consider that Fogwill & Jones was at fault in proceeding on that agreed basis, including on the basis that Mrs M's attitude to risk remained unchanged at medium.

In December 2018 Fogwill & Jones wrote to Mrs M (as I have quoted above). Again, I do not consider that Fogwill & Jones was acting unreasonably in proceeding in the way it did.

There then came the review in 2019. This is the point at which it is argued Mrs M should have been re-categorised as a more cautious investor.

In April 2019 Fogwill & Jones completed a questionnaire with Mrs M relating to attitude to risk and capacity for loss. At this time Mrs M was in her early 80s. She was accompanied at the meeting by Mrs N. The assessment involved asking a series of questions. According to Fogwill & Jones' scoring system Mrs M's answers gave a total of 27 which then fitted on to the following scale:

RISK SCORE RESULT – ATTITUDE TO RISK					
<19	20-27	28-35	36-44	45-52	53+
Risk Averse	Defensive	Cautious	Medium	Moderately Adventurous	Adventurous

So Mrs M's score was rated as Defensive rather than either Cautious or Medium on the questionnaire.

The form also recorded a number of other relevant points, including the following questions and the following answers chosen from those available:

<i>How long do you intend to hold this investment before you start drawing income/taking capital from it?</i>	<i>Between 5 and 10 years.</i>
<i>How much would you expect your standard of living to be affected if the income from this investment were to fall below your expectations?</i>	<i>Not much as I have alternative investments/pensions to maintain my lifestyle.</i>
<i>If you needed emergency funds, would you consider taking them from this investment?</i>	<i>No I have other savings for emergencies.</i>

The form also recorded that Mrs M had cash reserves that would cover her outgoings for more than 12 months.

Fogwill & Jones, Mrs M and Mrs N discussed the new risk rating indicated by the questionnaire. Fogwill & Jones kept a file note of those discussions, and it followed things up with a letter on 10 April 2019 which repeats some of the points recorded by Fogwill & Jones in its file note.

In its file note Fogwill & Jones recorded:

“New ATR [attituded to risk] completed. She scored very top of Defensive. Client considered this carefully. She read the risk category descriptions (in particular Defensive, Cautious and Medium), discussed with her daughter and said that, although she scored defensive, she considers Medium to be an accurate reflection of

her current investment risk tolerance. She considers medium to be an appropriate level of risk to achieve her medium term objectives.

[We] explained that a review was a good opportunity to give consideration to investment risk tolerance and the future strategy and that the discretionary portfolio can be remodelled to a different strategy to reflect change to client's agreed risk tolerance. Discussed the fact that a number of the client's responses in the questionnaire do suggest a lower risk tolerance than medium but client and her daughter both insisted that she remains medium and that the portfolio should continue to be managed to a medium risk strategy.

[Mrs M] confirms that she is comfortable taking a medium term view with her investment and is happy to remain invested for at least a further 5 years. Her age, health and capacity for loss support this strategy.

Having said this she does not have a targeted objective or any plans to use any of the investment funds in the foreseeable future. Ultimately, she is happy for any residual value to form part of her estate. She may call upon funds if necessary in the event of any shortfall in potential care fees, should they ever arise.

Client confirms that she is very aware that the value of her investments can fall as well as rise and accepts that this is an unavoidable feature of holding asset-backed investments. She has been an investor for many years and has seen the value of her investments fall as well as rise. She takes a pragmatic view of risk.

...

Mrs M is happy to maintain a Medium risk investment strategy for her personal portfolio. She understands that this involves a high level of exposure to equities and understands the risk that this represents. She confirms that this is the level of risk that she feels comfortable with and considers that this has the potential to meet her objectives.

Client understands the downside risk of her strategy. She enjoys a comfortable £250 pm surplus of income over expenditure and her accessible cash deposits sit at a healthy £65,000 to provide a financial cushion in the event of emergencies. She has a high capacity for loss with no target investment objectives and a sharp fall in the value of the portfolio would not have an adverse impact on her standard of living."

In its letter to Mrs M of 10 April 2019 Fogwill & Jones said:

"Your Attitude to Investment Risk and Capacity for Loss

During our meeting on 1 April 2019 you completed a new Attitude to Risk/Capacity for loss questionnaire. This suggested your Attitude to Risk has changed to Defensive. You considered this carefully, read through the Attitude to Risk descriptions and discussed it with your daughter. You confirmed that although the result of the Questionnaire was Defensive, you consider Medium to be an accurate reflection of your current investment risk tolerance.

I explained that your Discretionary Portfolio can be remodelled to a different strategy to reflect any possible change in your risk tolerance, however both you and your daughter confirmed that your portfolio should continue to be managed on a Medium strategy.

Your Capacity for Loss is still high and you agreed with this.”

I note that Fogwill & Jones did not record what it thought Mrs M's attitude to risk should be. I do not consider that it was at fault in not doing so. Attitude to risk is largely subjective – it involves issues around how the client feels about risk.

That does not however mean that the adviser has no role to play. Suitability links in with other factors such as capacity for loss, investment objectives and the need to take risk to meet those objectives.

Bearing these points in mind I cannot see that Fogwill & Jones was bound to come to the view that Mrs M wanting to take a medium risk approach was unsuitable for her, notwithstanding, for example, her age. She had a number of years of investment experience with Fogwill & Jones and she was financially secure. She was reasonably assessed as being in the financial position of being able to afford to take the level of risk she wanted to take. And her objective was to achieve investment growth over the medium to longer term without any specific investment goal.

Mrs M and Mrs N had the opportunity to consider the lower risk rating but chose to continue on the same basis that Mrs M had previously been investing on. I do not consider that Fogwill & Jones was obliged to advise her that this was not suitable for her. Mrs M and Mrs N were aware that the questionnaire-based assessment had concluded that a lower risk rating was more appropriate and they chose to proceed with a medium risk approach in that knowledge. The level of risk was not conspicuously out of line with Mrs M's financial situation, her objectives and her past experience. She could afford to take that level of risk if she wanted to and there was no reason to think Mrs M was acting against her best interests either by mistake or because of undue influence.

The decision Mrs M and Mrs N made, that Mrs M wanted to invest on a medium risk basis, was not obviously unreasonable in the circumstances and I do not consider Fogwill & Jones was acting unreasonably in either not expressly advising Mrs M to do otherwise or in not refusing to accept the instruction it was given.

Was the portfolio managed in accordance with the agreed attitude to risk and investment objectives?

As is clear from the above, Fogwill & Jones was obliged to manage Mrs M's portfolio in a way that was suitable for her taking into account her agreed medium attitude to risk and her objectives. It is also clear from the above that Mrs M agreed to accept the risks associated with the portfolio being managed for her by Fogwill & Jones on that basis.

As mentioned, Mrs M does not complain about the way her portfolio was managed up to 2022. The period in issue is from February 2022 when Fogwill & Jones decided to exit (and later re-enter, re-exit and re-enter again) the market.

In my view, given Mrs M's agreement with Fogwill & Jones, the general presumption is that her portfolio would be exposed to the risks of the financial markets. Mrs M chose to take that level of risk in the hope of achieving a return greater than deposit rates but in the knowledge the return was not guaranteed and that her portfolio could go down in value. Fogwill & Jones discussed this with Mrs M in 2019, as noted above, when it satisfied itself that Mrs M did understand that her portfolio could go down in value.

That said, Mrs M did choose to use a discretionary fund manager, and she will reasonably have expected it to use its skill and professional expertise and be active in its management to a degree. She would most likely think that her investment manager would do something

to protect her position if something extraordinary was happening and not just sit on the sidelines and watch her investments lose all their value. So Mrs M would most likely consider that Fogwill & Jones could take extraordinary action in extraordinary circumstances as mentioned in relation to charges in the agreement.

However, as a general position, given that Mrs M had accepted market risk and wanted to achieve capital growth there was an obligation on Fogwill & Jones to expose her investments to that risk, and there was little or no *obligation* on Fogwill & Jones to protect her portfolio from that risk. And if it chose to do so it was taking a risk in relation to timing the market which was not really an expected feature of the agreement between them – except perhaps in extraordinary circumstances. The timing of individual investment decisions was part of what it meant to accept the risk of investing. But the timing of (more or less) complete exits and re-entering the market is on a different scale. Fogwill & Jones decided to try to time the market which was inherently risky and not ordinarily what a medium risk, medium to longer term, investor expects. Mrs M's agreed attitude to risk and objectives mean she was the sort of investor for whom the saying '*time in the market, not timing the market*' would generally apply.

Mrs M would seem to be the sort of investor the following comment from Fogwill & Jones March/April 2022 newsletter entitled "Invest your way out of inflation" might be aimed at. The quote is from the article titled Time is Money – five principles of investing everyone should know:

"5. RESIST THE URGE TO PANIC SELL

What this means is that your ability to cope with short-term volatility in your investment is just as important as the choices you make at the outset of your investment journey. But if, say, there is a stock market correction, resist the urge to sell up immediately; instead sit tight and ride out any downward movement before looking for opportunities to exploit if they arise later.

The fear of incurring major losses could make it extremely tempting to sell your investments. Yet while this may temporarily alleviate your nerves, doing so could put a significant dent in your long-term gains. Investment trends show that leaving your money invested increases the chances of it growing and building your wealth pot.

If you invest for the long-term, any short-term volatility shouldn't affect your ability to reach your investment goals over time. Keep calm and carry on building up your investments. History has shown that over long enough time periods, no matter what challenges the global economy has faced, markets recover from significant downturns."

Although these comments slightly post-date some of the events in this case, they set out a view that was already widely held and not, for example, new thinking based on some newly published research. I have no reason to think these comments were a new approach for Fogwill & Jones or a change to what it had previously, generally, thought. And Mrs M's complaint is essentially that Fogwill & Jones did not follow this standard approach to investing in her case.

Fogwill & Jones has made the point that its decisions can only be judged with the benefit of hindsight, implying it is unfair to do so. While it is correct that the *results* of its decisions can only be seen after the event, the risks of such a strategy were known to Fogwill & Jones before it implemented it. Fogwill & Jones thought its active in-and-out approach would work, but it also knew that its decisions might not be as successful as the alternative course it recommends in the article quoted above - an approach which would have been well known

to it at the time it decided to adopt its active in-and-out approach in Mrs M's case. So while the results of its decisions may only be identified after the event this does not mean that it is unfair to consider the reasonableness of the approach taken in the circumstances of Mrs M's case.

Fogwill & Jones has not provided any evidence to show it held itself out as providing an active in-and-out service. Or to show it expressly agreed with Mrs M that it would act in that way. It only mentioned in its terms and conditions – in relation to charges – that it would exit the market in “extraordinary circumstances”. It is, however, difficult to say that single, broad terms, mention of the point *obliged* Fogwill & Jones to exit the market in any given set of circumstances. Investment managers frequently do not do so in response to events (as alluded to in the above quoted article) and it is not difficult to imagine Fogwill & Jones arguing in any case where it had not so reacted that it was not obliged to do so.

Fogwill & Jones says it had discretion to act as it did. But it only had discretion to manage the portfolio in accordance with the agreed mandate.

And it says it made the decisions it made in accordance with Mrs M's best interests. But on this point acting in the client's best interests must be interpreted within the context of the agreement between the parties. That agreement was for discretionary portfolio management with a medium risk profile with a capital growth objective and five to ten year investment time period.

And Mrs M did not have any near-term need for the money she had invested that would have meant that she would not be able to ride out likely periods of market disturbance.

Bearing all this in mind, if Fogwill & Jones was not *obliged* to act as it did, was it nevertheless reasonable to do so? Is it fair and reasonable for the risks of those decisions, to take Mrs M out of the market contrary to her reasonable expectations that she would be invested in the market, to be borne by Mrs M? Or should Fogwill & Jones be responsible for the market exiting and re-entering decisions if those decisions have caused her loss compared to not exiting the market.

Fogwill & Jones' position is essentially that it only acted as it did because the circumstances were extraordinary. It decided to exit the market in February 2022 because of the Russian invasion of Ukraine. This was clearly a major event. But there have been other wars including in Europe. And conflict between Russia and Ukraine has occurred before in recent times. I do not say this to downplay the seriousness of the present war or how it reasonably seemed in 2022. I only make the point that *in financial terms* the situation in February 2022 was not an unprecedented market event for an investor who was willingly and reasonably exposed to market risk.

In my view the same can be said for the other issues in 2022 that Fogwill & Jones reacted to. They were challenging financial markets. But they were not so exceptional as to mean that an investor who had agreed to be exposed to the markets should obviously have been exited from the market. Certainly, many investors did not do so. Many investors rode out the storm.

Fogwill & Jones have argued that the conditions in 2022 were extraordinary – and more serious than the Covid pandemic – because the combined effect of several factors was that bond and equities became positively correlated rather than negatively correlated which is more normal. Put in more plain language, Fogwill & Jones means that both equities and bonds lost value at the same time when it is more normal for bonds to hold or gain value when equities fall. It says this was the first year this happened since 1969.

I note Fogwill & Jones' point but my understanding is that it is not unprecedented for bonds and equities to be positively correlated. It can occur over shorter time periods from time to time and is not unusual in periods of higher inflation as has occurred since the Covid epidemic but also occurred in the UK in the 1970s, 80s and early 90s. The point that inflation was relatively low for most of the time from 2000-2020 does not mean that higher inflation and higher interest rates are extraordinary circumstances.

I also note the above quoted article was entitled "*Invest your way out of inflation*", so the points made in it were intended to be relevant in a context in which inflation had become an issue.

Mrs M did not ask Fogwill & Jones to protect her from short term volatility and I cannot see that it was reasonable to repeatedly try to protect her from those risks when the obvious risk of doing so was in mis-timing reinvestment – a risk that was not really part of the medium risk five to ten year investment period mandate. The issues in 2022 were real and serious, but they were not issues on the same scale as the global Covid pandemic as that *seemed* in early 2020 even if in the event its effect on financial markets was not as great as it was feared it might have been.

It is my view that Mrs M had given Fogwill & Jones clear instructions about how it was to manage her portfolio – medium risk with a five to ten year term, with the clear (and carefully checked) acceptance of the risk that the value of investments might go down. These were risks Fogwill & Jones had satisfied itself that Mrs M understood and could afford to take. She did not ask for her losses to be limited. She did not ask for an active in-and-out strategy. And she did not agree to accept the losses such a strategy might cause.

But what about the active in-and-out strategy and Covid? Doesn't that show the strategy was reasonable?

It is important to note that I accept that Fogwill & Jones was motivated by a wish to act in Mrs M's best interests. And it did what it thought was right in 2020 and my understanding is that this decision did not cause Mrs M loss and it is not challenged by her.

I cannot see that Fogwill & Jones was obliged to act as it did. But given that it did act in that way in the extraordinary circumstances of the outbreak of the Covid epidemic I do not consider that this created an obligation on Fogwill & Jones to do the same in situations that reasonably did not seem as extreme. Nor do I consider that Mrs M accepting this strategy in 2020 means that she agreed that Fogwill & Jones could act in the same way in situations that would reasonably be perceived as less extreme. And in particular I do not consider that it means Mrs M agreed to Fogwill & Jones acting as it did in the circumstances in 2022 or that it is unreasonable for her to complain about the active in-and-out way Fogwill & Jones have managed her portfolio since Covid.

It is also important to note that I do not say that an active in-and-out strategy can never be suitable, I only make the point that it was not suitable in the circumstances of Mrs M's case in the period about which she complains.

My view in summary:

It is my view that while Fogwill & Jones thought it was acting in Mrs M's best interests, it did not, in the event, act in a way that was consistent with the mandate agreed with Mrs M. And/or it made investment decisions that were not suitable for Mrs M in exiting the market in 2022. And if Fogwill & Jones has, as a result, caused Mrs M loss it should compensate her for that loss.

Putting things right

Fogwill & Jones has argued that from December 2022 to the time Mrs M closed her portfolio with it, the portfolio was fully invested in its Low Medium risk Dynamic Planner 5 portfolio and that there was no further trading of the portfolio into cash during that period. It says that it is unfair to compensate Mrs M for any difference between the performance of the portfolio when fully invested and that of the relevant benchmark during that period because the portfolio was suitable for Mrs M as a medium risk investor.

In response, Mrs N argues that Mrs M's portfolio should have been managed as a medium risk portfolio in accordance with the agreed medium risk definition which included:

"...This is obtained by investing in up to 85% equities and with more exposure to overseas markets currently in the range of 40% - 60%...."

I consider that Fogwill & Jones have a reasonable point in that it was not part of the deal between it and Mrs M that it would track a particular index. So it is not appropriate to award compensation only for failing to perform in line with a given index if the portfolio is otherwise managed in accordance with the agreed mandate.

Fogwill & Jones says the asset allocation of the Low Medium Dynamic Planner 5 portfolio was:

Global equity	47.16%
Corporate bond	16.00%
UK equity	12.50%
Cash/Money market	07.00%
UK Gilts	06.00%
Infrastructure	05.17%
Absolute return	03.67%
Property	<u>02.50%</u>
	100.00%

I also note Fogwill & Jones' point that although the agreed benchmark for the portfolio was originally the FTSE WMA Stockmarket Growth Index it was later changed because its platform provider uses the MSCI PIMFA indices, and it was thought the MSCI PIMFA Private Investor Balanced Index was more appropriate for a medium risk portfolio. Although it has not given the date of that change the change does seem reasonable and Mrs M is aware of the point made by Fogwill & Jones and has not disputed it.

On reflection, and in broad terms, I do not think it was unreasonable for Fogwill & Jones to manage Mrs M's portfolio on the above asset allocation from the point it returned to fully investing Mr M's portfolio from late 2022 onwards (which I will call the final re-entry date).

So in order to work out whether Mrs M has suffered a loss as a result of Fogwill & Jones error Mrs M's actual portfolio, as at the final re-entry date, should be compared to the notional value it would have had if instead of exiting the market in February 2022 (and subsequently) the portfolio had remained invested at the same level of risk until the final re-entry date.

It is not possible to say exactly what suitable investment decisions would have been made in those alternative circumstances and so the performance of the notional portfolio should be based on the performance of a suitable benchmark. Although I had said in my provisional decision that a suitable benchmark would be the FTSE WMA Stockmarket Growth Index, on

reflection I consider that the MSCI PIMFA Private Investor Balanced (total return) Index – the benchmark index for the portfolio by that time – is more appropriate.

If this calculation shows a loss as at the final re-entry date, that loss should be adjusted to reflect any loss suffered in respect of that sum from the final re-entry date to the date the portfolio was closed. That loss figure would have performed in line with the rest of the portfolio during that period. The loss figure should therefore be adjusted to reflect the performance (positive or negative) that the loss figure would have experienced had it been invested on the basis of the Low Medium Dynamic Planner 5 portfolio. This will then show the loss (if any) as at the date the portfolio was closed with Fogwill & Jones.

Since any loss as at the date of closure is likely to have remained invested, that loss figure should be further adjusted to reflect the performance (positive or negative) that the loss figure would have experienced since the portfolio was moved. That adjustment is to be from the date the portfolio was closed to the date of this decision. It should be based on the MSCI PIMFA Private Investor Balanced (total return) Index which is a proxy for the level of performance Mrs M would reasonably have been able to achieve on that loss figure during that period.

When carrying out this calculation a fair comparison should be made so any additions to or withdrawals from the actual portfolio should also be accounted for in the calculation of the notional value.

Given the way in which loss is to be calculated no further compensation is due in respect of a refund of charges. This is because the compensation is intended to put Mrs M in the position she would have been in if things had not gone wrong – and that investment position would have involved paying normal costs. I do not therefore consider that an additional refund of any costs is appropriate.

Fogwill & Jones should provide a clear and straightforward breakdown of its calculations to Mrs M and Mrs N.

I also consider that Mrs M has suffered distress and inconvenience as a result of the errors on the part of Fogwill & Jones – although some of that has been mitigated by the help of Mrs N. I do however consider that Mrs M will have been concerned, and frustrated by the handling of her portfolio by Fogwill & Jones and that she has suffered some distress and inconvenience notwithstanding the help she has had from her daughter. I consider a payment of £250 is an appropriate sum in the circumstances.

(For the avoidance of doubt, I do also realise that Mrs N will also have suffered some distress and inconvenience in this matter but I only have the power to award compensation to the eligible complainant who is Mrs M. I cannot award such compensation to the representative of the complainant.)

Fogwill & Jones should pay the compensation within 28 days of the date when we tell Fogwill & Jones that Mrs M has accepted this decision. If it does not, interest is to be paid on the compensation at the rate of 8% simple interest per year from the date of my final decision until the date of payment of the compensation.

Tax may be payable on this interest. If Fogwill & Jones considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs M how much it's taken off. It should also give Mrs M a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I have set out above I uphold Mrs M's complaint and direct Fogwill & Jones Asset Management Ltd to pay fair compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 11 December 2025.

Philip Roberts
Ombudsman