

complaint

Mr C complains about a number of investment decisions made by J M Finn & Co Ltd in relation to his discretionary portfolio. In summary, Mr C considers that J M Finn failed to show an appropriate level of competence and care when making these investment decisions.

background

Mr C's complaint relates to six stocks purchased for him by J M Finn in 2011. He contacted J M Finn in May 2012 to say that he did not consider these purchases were consistent with his risk profile, that they had been made without his knowledge, and made without sufficient research being carried out into them. The complaint was rejected by J M Finn.

Mr C's complaint was investigated by an adjudicator, who did not think that it should be upheld. In summary, the adjudicator said:

- Mr C was willing to accept a high level of risk, and had the capacity for this.
- The investment decisions made by J M Finn were in line with Mr C's capital growth objective and high risk profile.
- J M Finn was entitled to use its discretion to select investments it thought suitable.
- There was insufficient evidence to indicate that J M Finn's decisions were below the standard of a reasonably competent manager.
- The evidence shows that Mr C was aware of the investments and was happy to hold them to see how they performed.

Mr C did not accept the adjudicator's findings. He said he thought there was sufficient evidence to conclude that J M Finn had not acted with the care a reasonably competent fund manager should, and made the following points:

- J M Finn invested in natural resource shares without either any knowledge of the industry, or obtaining independent research.
- What he did was pure venture risk capital - yet without the due diligence all venture capitalists undertake.
- J M Finn had absolutely no mandate from him to undertake such investments - it was merely gambling with his money.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Mr C had held a discretionary managed portfolio for a number of years prior to becoming a customer of J M Finn. I therefore consider it reasonable to say that Mr C is likely to have understood the implication of giving J M Finn discretion to manage his investments i.e. that this meant that it was able to make investments on his behalf without seeking his prior

approval. So I am unable to uphold the complaint on the basis that J M Finn ought to have discussed any investments with Mr C before making them – it was entitled to make investments as it saw fit.

I consider it is also reasonable to say that the investments, with the exception of the FTSE100 listed stock, were high risk speculative ones. But when giving J M Finn discretion Mr C agreed that he was willing to accept a high level of risk, which was defined as:

“All types of securities including those of smaller companies, especially those with a short trading history and/or those involved in mineral exploration or technology...”

I consider that this shows Mr C was put on adequate notice that agreeing to a high level of risk meant there would be a degree of speculation when J M Finn made investments on his behalf, and that there would be little restriction on the kind of investments it could make. I also think that that having some latitude to speculate and little restriction is consistent with a high risk approach.

The investments represented a relatively small part (approximately 10% to 15% over the relevant period) of Mr C's portfolio. Taking into account this, and Mr C's stated willingness to accept high risk as defined by J M Finn, I am unable to uphold the complaint on the basis of the investments being inconsistent with Mr C's attitude to risk.

The remaining point to consider is whether appropriate care was taken by J M Finn when selecting the investments. To conclude that appropriate care was not taken, I would need to be satisfied that no other reasonable investment manager would have made the investments.

I have carefully considered this point. Having done so, like the adjudicator, I do not consider there to be sufficient evidence to conclude that J M Finn acted without due care. Whilst J M Finn's manager was not an expert in the natural resources sector in the way that Mr C (who had held a senior corporate banking position in the sector) was, it does not necessarily follow that he should not have made any investments in that sector. What is important was that due consideration was given before the investments were selected. And I am satisfied that it was. J M Finn detailed the reasons for its selecting the stocks other than the FTSE100 one in letters to Mr C. These each show that J M Finn did carry out some research and that consideration was given to the prospects of each stock before an investment was made into it. The letters also in my view make it clear that the investments were relatively speculative - and I have not seen sufficient evidence to conclude that Mr C challenged either the basis of making the investments or their speculative nature at the time.

In summary, I am satisfied that J M Finn was entitled to use its discretion to make the investments, that they were suitable for inclusion in Mr C's portfolio, and that it did not act without due care when it made them.

my final decision

For the reasons given, my decision is that I do not uphold this complaint.

John Pattinson
ombudsman