DRN-5020460

Financial Ombudsman Service

The complaint

Mr U complains Fogwill & Jones Asset Management Ltd trading as Fogwill & Jones Wealth Management ("Fogwill") gave unsuitable investment advice and conducted an inappropriate trading pattern causing him loss.

What happened

Mr U sought advice from Fogwill in September 2020 after receiving an inheritance of £155,000. He was in his thirties and about to start three years of study to change career. He intended to work part time to supplement loans he'd taken to support himself in that period.

According to notes made by Fogwill in September 2020:

- Mr U was willing to invest £135,000 and wanted £10,000 for emergencies, £3,000 for home repairs and £10,000 to help fund himself for the next three years.
- He was thinking of investing in a buy to let at some point. But he had decided against doing this for the time being. He had been saving £100 a month into a cash ISA.
- He thought income from any investment would be useful to help fund himself over the next three years or so. But he later decided he wouldn't need this because of the £10,000 he was keeping back from his inheritance.
- He was using other funds to pay off his mortgage and buy his house outright – which was costing £125,000 in total. This would reduce his outgoings by £540 per month (presumably due to the reduction in the mortgage). The house value was £160,000.
- He could expect a material inheritance from his mother's estate eventually on her death.
- He was thinking of investing the money beyond the medium term and he expected to remain invested for more than ten years.
- Fogwill discussed risk with Mr U in detail. He scored at the very lowest end of "defensive" on Fogwill's risk scale. This result surprised him as he and his mum had thought he'd be comfortable with cautious or medium risk. This was discussed and Fogwill asked Mr U to think about this carefully before their next meeting. The discussion included explanation of the certainty of the value of asset backed investments falling in value as well as rising.
- Fogwill explained that Mr U could choose to invest less and keep some of the money in cash where the value would be protected, albeit with very low interest.

Fogwill wrote to Mr U in September 2020 in the following terms:

"…I explained that your Attitude to Investment Risk score has suggested that you would be described as a very Defensive investor, almost risk averse. You said that you did not think this was accurate and that you may have been too cautious with your responses to the risk questions. It is very important for you to take your time to consider this before confirming a level of investment risk that you feel comfortable with. I would encourage you to speak with someone else that you trust, such as your mother, to help you reach a conclusion on this that you are happy with. It is important to understand though, that even cautious investment arrangements into asset-backed portfolios will go down in value as well as up.

You have said that the overall amount you are considering for investment is £135,000. During our conversation today we spoke about the option to keep more of your money in cash deposits where the absolute value is not at risk, so it would be good to give this your consideration before you confirm how much you would like to invest in long term, asset-backed investments."

In October 2020 Mr U said he had spoken to his family but *"I am still a bit confused as best ways of investing etc as I don't have much knowledge on stocks and shares/pensions etc. I was wondering if you could send me some information and advice or suggestions. Even though the questionnaire came back as cautious I would probably be somewhere in the middle with terms of risk."*

Fogwill sent Mr U some more generic information. Mr U replied asking for more information about the portfolio investments. In reply Fogwill provided *"some new data for some of our discretionary managed portfolios that you may find interesting"* including *"two graphs and some numerical data about 2 of our cautious risk models (along with some numerical data about a Defensive model)."* Fogwill noted: *"We have not concluded our discussions about your agreed investment risk tolerance, so this data is purely for your information and we really do need to discuss this further."*

According to notes made by Fogwill in November 2020:

- Mr U confirmed he had discussed his investment with various family members and done his own online research about investing and shares. He said he had completed his risk questionnaire without appreciating the nuances of investment risk. After more discussion he confirmed he now did appreciate investment risk and the implications of taking it and was happy to invest with a medium risk strategy. He confirmed he had read the risk category descriptions.
- Fogwill explained capacity for loss in the context of a sharp fall in the value of investments, giving an example of his investment falling from £145,000 to £100,000.
- Mr U had previously indicated an investment term of 10 years plus but he revised this down to the medium term, defined as 5 to 10 years by Fogwill. He understood the portfolio was only suitable if being considered for a minimum of five years.
- Mr U made reference to the possibility of moving home at some point during the next few years but said he would prefer not to use any of the investment for this. Fogwill reminded him he could elect to keep more of the money in cash if he felt that would be prudent but he said that he did not want to do that.
- Mr U decided to invest £145,000 rather than £135,000. He said he was working two days a week, so didn't expect to need his savings to fund monthly expenditure. He was happy that keeping £10,000 from his inheritance would be enough for his medium term needs. Fogwill reiterated the importance of investing an affordable sum and told Mr U he could amend the amount invested at any point up to the investment date.

Fogwill wrote to Mr U in November 2020. It said:

"…you confirmed that your key concern is the suitable investment of the greater proportion of your recent inheritance. Specifically, you confirmed that you are happy to commit £145,000 to medium term investment planning.

Although you initially said that you would be comfortable taking an overall long term (10 years plus) view with any new investment that might be recommended, you explained during our meeting… that you would prefer to take a medium term view of at least 5 years and that you would like to be able to access your investment if necessary, as and when required. You confirmed that you would not expect to access any new investment arrangement during the *next 5 years...*

"You confirmed that you wish to invest the sum of £145,000 in a personal investment portfolio arrangement, making use of your annual capital gains tax and ISA allowances each tax year wherever possible and suitable.

After extensive discussions, including consultation with close family members, you confirmed that you are happy to adopt a Medium risk strategy with your investment…

As mentioned above, this is just a broad summary of our discussions and it is important that you contact me if you wish to clarify any points mentioned here or that we have discussed previously."

Fogwill also made fact find notes covering points above. With regard to Mr U's attitude to risk it said he had scored as "defensive" risk but:

"after further discussion and careful consideration [Mr U] said that he considers Medium to be an appropriate level of risk for him to adopt for any new medium term investment arrangement… Before completing the questionnaire he said that he would have described himself as cautious to medium."

It also said: *"Our discussions about risk took place over a period of time and across more than one meeting, giving [Mr U] the opportunity to think about this and discuss it with more experienced family members before he reached a conclusion. [Mr U] confirmed that he has read the risk category descriptions and confirmed that he is comfortable with his decision."*

As regard risk of loss, it said:

"[Mr U] is fully aware and accepts that his capital will be at risk. [Fogwill] explained that the value of his investment WILL go down as well as up. This was discussed in the context of 2020 market volatility during the outbreak of Covid-19 and [Fogwill] explained that a Medium risk investment would have fallen in value by more than 20% earlier this year. During our discussion about capacity for loss [Fogwill] used the example of an investment of £145,000 falling to £100,000 and the impact that this might have on [Mr U's] lifestyle. Mr U said that he does not expect to be reliant on his investment for capital or income and said that he does understand that the value of his investment can go down.

[Mr U] is happy to adopt a Medium risk strategy for any new investment arrangement, understanding that this will involve a high degree of exposure to global equities with commensurate volatility."

The fact find also said: *"[Mr U] is a first time investor… he would clearly be described as a novice, inexperienced investor."*

The fact find recorded Mr U's total assets at the time, including all savings and investments, as £316,000. His house was valued at £160,000 – which he owned outright – and his bank account was recorded as having £156,000. These two figures added up are £316,000. It said he had recently inherited over £150,000 (the figure in the bank account).

But the fact find also said Mr U had an amount put aside for emergencies of £281,000 and said he needed £136,000 as an emergency fund which left £145,000 available. It said: *"He is retaining over £130,000 in accessible cash deposits which acts as a cushion for any short term capital spending needs and any unforeseen emergencies. He does not expect to be reliant on any new investment for capital or income and as such even a sharp fall in value, say 30%, would not have any immediate detrimental impact on his standard of living or* *lifestyle. His capacity for loss responses on his questionnaire score High and I would say that he has a medium to high capacity for loss."*

Investment reports were sent to Mr U in January 2021. The delay was due to Mr U taking time to do administration that was needed to get the investment started.

The report said it was limited to matters concerned with the investment of £145,000 into a new discretionary portfolio. Its *"Summary of Your Existing Cash Deposits to be Invested"* said Mr U had £156,000 in a bank account. It said he had inherited £155,000 and wanted to invest £145,000 and *"retain £10,000 for your personal use and you feel your part time income along with this sum in reserve will be sufficient to cover your required level of income for the next few years whilst you are studying for your degree".* It said it had discussed the idea of him investing less, but Mr U was happy with investing this sum and intended to keep it invested for a minimum of five years. It said Mr U knew he could withdraw from it but did not expect to need to do so for the next five years.

The report said it had been agreed that Mr U had a high capacity for loss. It said any fall in the value of the investments would not have an immediate impact on Mr U's standard of living because:

- *"Your cost of living is modest and you earn enough from part time work to cover your day to day expenditure.*
- *You have accessible cash savings of £10,000 which you could use to maintain your lifestyle or for emergencies.*
- *You do not have any outstanding mortgage liability.*
- *You do not expect to access your investments in the short term and would not be reliant on any investment for income.*
- *Any sharp fall in the value of the investment would not have any detrimental effect on your lifestyle."*

With regard to Mr U's risk tolerance it said:

"You completed our Attitude to Risk Questionnaire… and from this we concluded that your attitude to risk could realistically be described as Defensive but after further discussion and careful consideration and reading the risk category descriptions you said that you consider Medium to be an appropriate level of risk that you would feel comfortable with. You felt that you completed your questionnaire before you really appreciated and properly understood the implications of the questions and therefore consider that Defensive does not accurately reflect how you feel about investment risk."

Details of the risk level descriptions were contained in a supplementary document.

Defensive investor was rated 3-4 on a 10 point scale (1-2 was risk averse) and described as:

"Looking for an investment where the value of their capital should not fall in the short term and produces returns that are comparable with those from a high street deposit account, but have the potential for some long-term growth by investing predominantly in Fixed Interest Corporate Bonds, Government Bonds, Commercial Property and some UK Equity Funds. The total equity content would not normally exceed 40%. They would feel very uncomfortable if their investment rose and fell in value very quickly."

Next on the risk scale was "Cautious" where up to 60% could be invested in equities. Medium was next, being 5-6 out of 10 and described as:

“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, with more exposure to overseas markets currently in the range 40% - 60% and also by investing up to 10% in specialist funds e.g. commodities, technology. Their investment may also be diversified by investing in alternative assets such as Infrastructure and Renewable Energy equities. They realise that the value of their investment 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.”

Our investigator considered Mr U’s complaint and thought Fogwill ought to do something to put things right. In brief summary, she thought:

- Fogwill’s trading pattern wasn’t inappropriate given its mandate.
- An emergency fund of £10,000 was kept back. Investing the remaining £145,000 meant investing a very large proportion of Mr U’s cash inheritance. It was too much for him to invest as a first-time investor, given his lack of other cash.
- Mr U’s risk questionnaire indicated a *“defensive”* risk attitude, but the investment Fogwill advised was 81% invested in equities. This was an excessive weighting to risk assets given his risk attitude, as disclosed by his questionnaire answers, and his lack of investment experience.
- His questionnaire answers included that he strongly agreed with preferring a lower risk portfolio even if it means lower growth and that he would prefer low risk with guaranteed lower returns and was uneasy with the idea of large losses.
- After discussing the matter with family members Mr U expressed a preference for a *“medium”* risk attitude and asked to invest in a *“medium risk”* fund. If Mr U told Fogwill what risk level he wanted, this would make him an insistent client. But Mr U didn’t have the experience or knowledge to insist on the level of risk he wanted. It was for Fogwill to advise him on this. Also there was insufficient reasoning in Fogwill’s notes to show why a higher risk strategy was being used than the risk questionnaire outcome had suggested.
- Fogwill’s suitability report referred to Mr U having a high capacity for loss, but this didn’t seem right given he had no cash besides the inheritance, no job or regular income and a potential income shortfall if the part time work he was expecting didn’t materialise.
- Mr U shouldn’t have been advised to invest as much as he did. Fogwill ought to have advised him against investing at the level of risk he asked to invest at. So what he got back from his investment should be compared to a benchmark return made up equally of the return on fixed rate bonds and the return of the FTSE Private Investors Index. The former reflects a risk-free return and the latter reflects an investment with moderate risk. In combination it reflects the sort of return Mr U might’ve got had he invested less and at a lower level of risk.

Fogwill didn’t agree. It said, in brief summary:

- It was wrong to say 93% of Mr U’s assets had been invested. It was only 50%. The fact said he was retaining over £130,000 in accessible cash for any short term spending needs and unforeseen emergencies. It recorded his emergency funds as £281,000, comprising £136,000 of existing cash deposits and the £145,000 inheritance. He then received a further £10,000 of inheritance making £155,000 in total. He wanted to retain £10,000 of the inheritance to pay for work on his house.

- He would've had £136,000 to fall back on and his annual expenditure exceeded his loan income by only £178. He later sold his house, which was unencumbered, for £179,000 in February 2022.

- The risk questionnaire is just the start of the advice process. This answers are then discussed and the level of risk recommended could differ to that on the questionnaire. For example if there is a low capacity for loss, a lower risk might be recommended. But if there is a high capacity for loss and their objectives require them to take a higher level of risk, this would be discussed before an appropriate level of risk is recommended to help them meet their objective.

- In Mr U's case, given his capital growth objective, Fogwill wouldn't have recommended a defensive portfolio as this would generally only produce returns slightly above those available from high street deposit accounts. This initial result was discussed in detail and Mr U said he hadn't fully appreciated the implications of the risk questions and having discussed it with his relatives and read the risk description his view was that he was medium risk. Mr U did not tell Fogwill he wanted medium risk, he said he thought he was medium risk.

- Given his objective of capital growth over at least 5 to 10 years and his high capacity for loss, Fogwill recommended he adopt a medium risk for his portfolio as the most appropriate level of risk in his circumstances, with which he agreed.

- Mr U was also fully aware of the capital risk as an example of his investment falling to £100,000 was given.

- Mr U was provided with Fogwill's description of a medium risk investor and portfolio – as well as the other descriptions. The overall asset allocation of Mr U's portfolio at the outset was within that in the Medium Risk Investor description given to Mr U and had a weighted risk level of 5.85 which was within the 5 to 6 range given for that description. So the portfolio reflected the medium attitude to risk Fogwill recommended to Mr U.

- In 2022 Mr U confirmed he was happy to continue with the medium risk approach.

- In late 2022 Fogwill used a new tool and amended its portfolio descriptions and risk ratings. On this basis Mr U's portfolio was called "*High Medium risk*" and described as "*a riskier alternative to a Medium portfolio, with an increased bias to capital appreciation by investing in a diversified portfolio of asset classes over the long-term… [It] is suitable for those whose financial situation can tolerate an above moderate level of volatility in performance. It will contain mainly medium and higher risk investments including sterling corporate bonds and global bonds, UK shares and overseas shares. It may also contain property and/or infrastructure… for diversification. There can be big one year falls in value. It is expected that 95% of the time this investment would fall by no more than -19.13% over one year.*"

- In 2023 Mr U completed a new risk questionnaire which rated him as 6 out of 10 or *"High Medium"* and he agreed he was still happy with this, even though the portfolio had fallen in value over the previous 12 months.

- The complaint has been made since solely due to the investment performance and not the suitability of the advice.

Our investigator's view didn't change. So, as the 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 to uphold Mr U's complaint. I'll explain why.

When Mr U first approached Fogwill, his risk answers indicated he'd be comfortable only with very limited risk. In my view this indicated that if risk was going to be taken, it would be sensible to start with a relatively low level of risk. Mr U's previous experience of cash ISA savings and his lack of experience with risk investments, also tend to support this.

I'm not persuaded that Mr U's objective of capital growth meant it was necessary for Fogwill to recommend he take at least a medium degree of risk of the kind represented by the portfolio Fogwill arranged for him. In my view his objective of seeking higher returns than a deposit account, and accepting there would be extra risk as a result, could have been achieved with a more conservative asset allocation and a lower allocation to shares.

Fogwill says it wouldn't have recommended anything to Mr U if his risk attitude had stayed defensive, as such an investment wouldn't have been worth it in terms of beating deposit returns. But in my view a 40% allocation to shares (as indicated by the defensive risk definition) could allow a portfolio to outperform deposits. I accept the feasibility of this would depend on the level of management costs. Supporting discretionary management costs might not have been feasible – particularly if the sum invested was small - but there are other ways to get some access to risk investments. Fogwill might not have had anything to offer Mr U at this risk level, but that doesn't mean there wasn't anything in the market for him. If Fogwill had advised Mr U to take a cautious investment approach, I think it likely he would've agreed to this and I think this would've been suitable for him.

I acknowledge that as Mr U didn't have investment experience, he didn't have experience of filling in investment risk questionnaires. So I can understand that Fogwill might have wanted Mr U to reflect and be sure he understood what was being asked and what the implications of his answers could be. Mr U then did do online research and spoke to family members. But such research wasn't a substitute for practical investment experience. He wasn't an investment adviser and nor were the family members he consulted.

I accept Mr U was willing to take at least some risk with his inheritance and was aware that the value of investments would rise and fall. The issue is what degree of risk was suitable for him. In my view the idea that an inexperienced investor who was defensive or almost risk averse but then reflects on things, could then be properly assessed as cautious is much more plausible than the idea that he could be properly assessed as having become medium risk in his attitudes. This is particularly so where medium risk involves up to 85% equity exposure and what was being invested represents almost all the investible capital available.

It is apparent that in reaching the view that he might be medium risk, Mr U was guided by the descriptions he was given of the risk categories. What was said about the proportions that might be held in different asset types, would only have been instructive for a person with an understanding of those different asset types. So in my view Mr U would've been particularly reliant on what else was said there, given he had no experience of investment in risk assets. But I'm not satisfied that what else was said would've given Mr U sufficient warning of and insight into the risks to which his money would be subject once it was invested.

The medium risk description said his investment might fluctuate in the short term but it said it was suited to someone who would feel uncomfortable if the overall value of their investments were to fall significantly over a short period. It also said it was for someone who wouldn't want their capital eroded over the medium term.

But in my view the portfolio Fogwill recommended to Mr U manifestly carried the risk that significant falls in value could occur within short periods of time. I say this given the high exposure to equity funds. I also say this given the lack of meaningful exposure to lower risk assets such as government or corporate bonds - the balance of the investment not in equity funds was invested in the shares of property investment trusts. I appreciate the reference to avoiding medium term erosion probably alluded to the protection that risk investment might provide against inflation. But while saying that medium risk might be good to avoid such capital erosion, the description didn't say very much about the risk of capital loss.

I do not overlook the discussion Fogwill refers to in its November 2020 note, which was also recorded in its fact find, which says it discussed with Mr U the possibility of his investment falling from £145,000 to £100,000. The conversation referred to in these internal notes is not documented elsewhere in what was sent to Mr U. So what exactly was said and conveyed to Mr U is not entirely clear. But the notes say the point was made during a discussion of Mr U's capacity for loss. It doesn't say this was put forward to illustrate the likely volatility or risk of loss of taking a medium risk investment approach.

The fact find does say that risk of loss was covered *"in the context of 2020 market volatility"* and it was explained that a *"Medium risk investment would have fallen in value by more than 20% earlier this year"*. Again, whatever was explained about risk in that conversation was not set out in the letters sent to Mr U. But the sharp fall in 2020 was linked to an exceptional and historic event, rather than factors that one might ordinarily expect to affect share prices, and this sharp fall had been just as sharply reversed by the time of this conversation.

I've thought carefully about whether from these notes I ought to conclude Fogwill properly conveyed to Mr U, as an inexperienced investor, the risk of loss that might reasonably be said to be involved in its medium risk approach, such that when Mr U expressed the view that this would be right for him it was reasonable for Fogwill to take that into account and reach the same conclusion.

But on balance these notes aren't sufficient to persuade me to reach this conclusion. They aren't sufficient to make me think Mr U more likely than not, when telling Fogwill he thought he was medium risk, did so properly aware of the degree of risk of loss and volatility this would subject his investment to - given the high level of equity exposure within Fogwill's corresponding portfolio and its lack of other safer balancing assets.

In reaching this view I take into account that other material I've referred to and discussed above - which was set out in writing by Fogwill for Mr U - doesn't properly convey that risk. So to conclude it was covered in conversations of which there are only brief notes, and whose contents are therefore not clear, wouldn't be fair and reasonable in my view.

In short that evidence doesn't persuade me that it was reasonable for Fogwill to accept the idea that Mr U was a medium risk investor - based on his own assessment of this - or to advise Mr U as a result to invest in a portfolio that could invest up to 85% in equity funds.

I note what Fogwill says about Mr U's portfolio description being changed to "High Medium" later. But the benchmark allocation for this profile contains 12% in bonds and 8% in cash – which is a level of cash and fixed interest exposure absent from the portfolio recommended to and arranged for him at the outset. So this tends to reinforce my view that the original medium risk portfolio was too risky for an inexperienced investor like Mr U whose risk answers had initially rated him as almost risk averse.

In saying this I bear in mind that even in October 2020, after the September 2020 meeting, Mr U was telling Fogwill he was still confused as to what best to do and was emphasising his lack of knowledge and asking Fogwill for its advice. In my view the right advice at that point, as it had been in September, would've been that Mr U's risk appetite, as well as his knowledge and experience of investments, was insufficient to support a recommendation of a medium risk portfolio and that what ought to have been considered by Fogwill for him was something much more cautious.

Also I note that when Mr U told Fogwill he was willing to take more risk, he did so at a time he was also telling Fogwill the investment term he was considering was now shorter than he had suggested at the start. A potentially shorter time horizon in itself, all other things being equal, in my view reduced the degree of risk Fogwill could suitably recommend to Mr U. This is not only due to the shorter investment horizon available for volatility to work out, but also because the request for a shorter investment horizon indicated a more proximate potential need for, and so greater reliance on, the monies being invested.

In this regard I note also that Mr U at that time told Fogwill he wanted to be able to access the investment if needed. He did agree he didn't expect this to be within five years, but the fact he was asking for access in case of a need, suggests he did foresee a possible need and it isn't obvious that this need was bound to be more than five years away.

For example his study was expected to end in three years so his circumstances would change then. He'd also spoken of possibly moving house, and although he said he'd prefer not to use his capital for this, the need to do so couldn't be ruled out and he hadn't said such a move was bound to be more than five years off. (I mention in passing that if when moving he took a loan rather than using invested capital, he'd effectively be keeping his investment going by borrowing more. I note when he did move he did take on more borrowing).

I note also that Mr U was in his thirties with a partner and no dependents but lived alone and separate from his partner. It was conceivable this situation might change within five years – indeed it wasn't recorded that he didn't expect this to change within that timeframe, whether in terms of his living arrangements or otherwise. My point here is that Mr U's circumstances weren't characterised by a routine that was persistent and well established and not likely to change. Rather his future was more uncertain not least as he was trying to change career.

I note that despite all this when Mr U told Fogwill he wanted to take more risk, he also increased the sum he was asking to invest. Fogwill's notes say it suggested Mr U think about investing less – as it had apparently done on other occasions too – but ultimately Fogwill did not recommend that Mr U keep more back, it recommended he invest the most he had suggested, which was almost all the available liquid capital under consideration.

Fogwill has said Mr U had lots more capital available to him. But I'm not persuaded there was £136,000 remaining in spare cash for Mr U to rely on after investing his £145,000. I'm not persuaded Mr U had a high capacity for loss, as assessed by Fogwill at the time.

I do note a figure of £281,000 was recorded as emergency funds in the fact find. In my view the £136,000 figure was arrived at by the adviser by deducting £145,000 from this £281,000 figure. But I think by the time of the investment and advice, Mr U no longer had that £281,000 as he'd spent it on buying his house outright, redeeming his mortgage and with a little on house repairs.

I say this firstly because of the other figures in the same fact find. The fact find records £156,000 in Mr U's bank account. But it doesn't record any other cash funds. There is no reference to £136,000 being held in a bank account anywhere – the location and ownership of such an account is not specified.

Also the idea Mr U had £136,000 of extra cash somewhere contradicts what the fact find records about his total assets. These were calculated as £316,000 which is equal to his £160,000 house plus the £156,000 he was recorded as having in his bank account.

Also the investment report contains no mention of any other deposits or funds aside from the £156,000 recorded there, and doesn't mention Mr U having £136,000 elsewhere to fall back on or say this sum was the reason he could invest almost all the inheritance. It specifically says that what he would fall back on was the £10,000 he kept and that this would be enough with his part time income.

There were two notes made for September 2020. I think the £281,000 figure was noted at the first meeting at which point Mr U had not yet cleared his mortgage or bought the rest of his house. At that time it said he was going to spend £125,000 on doing that in the following week or so. If this is deducted from £281,000, it leaves £156,000. This is what was recorded in his bank account and made up the £145,000 invested plus the £10,000 kept back.

So I believe that at one point Mr U did have £281,000 but this had reduced to £155,000 being discussed by the time of the advice. The only reference to £136,000 is in the fact find, the adviser's internal notes, and I think it was arrived at there by the adviser deducting the investment from an out of date £281,000 cash figure. If Mr U had actually had an extra £136,000 available to him, then this surely would've been put to him in the investment report as a reason to invest as much as £145,000. But it was not.

So I agree with our investigator's analysis of the figures and the situation. The investment did represent the bulk of Mr U's liquid and investible assets. So Mr U had more reason to take a conservative approach to investment risk. I accept Mr U owned his own home and could realise funds by selling his house, but I don't think this makes a difference to what I've said above about the suitability of Fogwill's advice.

I note Fogwill's fact find considered Mr U to have a medium high capacity for loss on the basis that he had £281,000 in spare cash. Its report said it considered him to have a high capacity for loss. But if what he had in cash after investing was only £10,000 and not £281,000, Fogwill presumably ought to have assessed Mr U as having a materially lower capacity for loss. All other things being equal this would imply that less rather than more risk would be suitable, making it harder to justify a move to medium risk for an inexperienced investor whose risk answers had previously indicated a defensive or risk averse attitude.

So in light of all I've said, and for each of the reasons I've given, I'm not persuaded that the investment portfolio Fogwill recommended was suitable for Mr U at the outset. I note what Fogwill has said about reviews that happened later, but this doesn't change my view. Also as the portfolio wasn't suitable from the start, I need not consider what Mr U has said about how Fogwill managed the portfolio – although I share our investigator's view that Fogwill's trading patterns wouldn't in themselves provide grounds to uphold Mr U's complaint.

In conclusion, my view is the Fogwill medium risk portfolio wasn't suitable for Mr U. Fogwill ought to have advised him to invest on a more cautious basis, keeping more funds in safer investments or cash. So he shouldn't have been advised to invest at the risk level Fogwill recommended he invest at or to invest much as he did. So I agree that what Mr U got back should be compared to a benchmark return made up equally of the return on fixed rate bonds and the return of the FTSE Private Investors Index. The former reflects a risk-free return and the latter reflects an investment with moderate risk. In combination it reflects the sort of return Mr U might've got had he invested less and at a lower level of risk.

I uphold Mr U's complaint to the extent and on the basis I've outlined above.

Putting things right

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr U as close to the position he would probably now be in if he had not been given unsuitable advice.

I take the view that Mr U would have invested differently. It is not possible to say *precisely* what he would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr U's circumstances and objectives when he invested.

What must Fogwill do?

To compensate Mr U fairly, Fogwill must:

- Compare the performance of Mr U's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.

- Fogwill should also add any interest set out below to the compensation payable.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
the Fogwill portfolio	No longer in force	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement

Actual value

This means the actual amount paid from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Fogwill should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the Fogwill portfolio should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Fogwill totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr U wanted capital growth and a cautious risk to his capital was appropriate.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income Total Return index is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr U was in between, in the sense that he was prepared to take some risk to attain his investment objectives, but this risk needed to be relatively cautious with more in cash and safer investments than Fogwill recommended. So, the return on the 50/50 combination above would reasonably put Mr U into that position. It does not mean Mr U would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr U could have obtained from investments suited to his objective and risk attitude.

My final decision

For the reasons I've given and in light of all I've said above, I uphold this complaint.

Fogwill & Jones Asset Management Ltd trading as Fogwill & Jones Wealth Management must put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 28 April 2025.

Richard Sheridan
Ombudsman