DRN-5463796

The complaint

Mr U complains he was caused losses by Fogwill & Jones Asset Management Ltd trading as Fogwill & Jones Wealth Management ("Fogwill") investing in high risk stocks unsuited to his assessed risk attitude of *"moderately adventurous".* He also says Fogwill's advice to be *"moderately adventurous"* wasn't suitable for him given his overall personal circumstances.

What happened

My 11 May 2025 provisional decision summarised the background to and circumstances of Mr U's complaint. I won't repeat all of those here.

I explained I didn't think Fogwill acted inappropriately in 2020 when it advised Mr U to invest £150,000 of an inheritance into a portfolio. But I thought this became unsuitable in 2021 when Fogwill advised him to reduce his emergency cash funds further and invest more.

I said, in summary:

The inheritance was a very significant element of Mr U's financial wealth. To put it in context, its value was not dissimilar to that of Mr U's home which was his only other significant asset. Mr U wanted to use this to benefit his children in future – with educational costs or even housing costs which would arise at least ten or fifteen years in the future. These were not unreasonable or invalid objectives.

Fogill's internal notes said: *"…he is taking a long term view with any form of investment arrangement that he might consider. He is very comfortable investing for a minimum of 10 years and said that he has no need for the money in the short term. He and his wife will be keeping over £25,000 in accessible cash deposits, which will act as a financial cushion and provide funds for any shorter term spending that may arise and for potential emergencies."*

Also: *"He does not expect to use the invested funds at all in the short term and will not be reliant on any investment for capital or income. He has a comfortable surplus of income over expenditure and says that he and his wife/family 'do not live a lavish lifestyle'. He also maintains healthy balances in accessible cash deposits. Any sharp fall in the value of investment would not have any immediate detrimental effect on [Mr U's] lifestyle or that of his family."*

The notes also said Mr U *"…wants to be able to withdraw funds whenever they might be required, either for his children of for any needs of his own that may arise."* But he'd told Fogwill he'd ideally prefer to not touch the money and leave it to grow.

Making the choice that the money would be used for his children increased the extent to which Mr U would need to build funds in future to support himself in retirement. He would need either increased family earnings or more resources from other sources. He mentioned he might receive further family funds in future, by way in inheritance, although the precise sums weren't discussed or investigated by Fogwill. The timing of this couldn't be known and it seems to me it might have been some way off. But I'm satisfied Mr U did not wish to use the inheritance as a pension contribution. It seems he was content to leave pension planning as something to address in future. He was in his mid-thirties at the time of the advice. In my view Mr U was entitled to decide, as it seems to me he did, that he wanted to prioritise making provision for his children at that time.

Mr U's earnings and tax credits covered his spending, leaving a £400 surplus. He had been able to get by, and own his own home, before he got the inheritance. So it was possible he could continue to get by without using the inheritance money in future. But he expected within five years there'd be changes that would lose him his tax credits. He said: "*if/when that happens it is likely I may need to change my strategy from pure growth to a mixture of growth and take a little income as well (perhaps about £300 a month)".* He said *"this is a bridge we can cross if and when we get to it."*

So there were risks to Mr U's income and reason to believe he might need more resources at some point in future. Mere cost of living increases could also make things tighter in the short term. It was conceivable too that Mr U's costs might increase as his children grew. His £400 of spare income in a 'normal' month could be accounted for by expenditure in other months on holidays or seasonal spending. A change to tax credits could wipe it out entirely.

Mr U's emergency cash was £20,000 jointly - to which he chose to add from the inheritance. Fogwill said he was keeping more than £25,000. If he drew £6000 a year to make up for lost tax credits, this would reduce this to almost zero after four years. This would hardly protect his position on an ongoing basis, but it would give him some time to adjust his finances. He could also reduce his pension payments to increase his income, but this would reduce his retirement savings which were inadequate.

Overall it wasn't unreasonable for Fogwill to give advice to Mr U on the basis of his objective of investing £150,000 for the future with the expectation that the large bulk of this would likely remain invested for the longer term, barring significant unexpected changes to Mr U's circumstances. Also making the investment did not in any case mean Mr U would be unable to benefit from income from the portfolio if a need unexpectedly arose in years ahead. But it seems to me the emergency funds did help make it viable to invest the £150,000 with the aim of not touching that sum in a substantial way for many years.

In considering what level of risk could Fogwill suitably advise Mr U to take with that money, I note that Mr U's desired investment term was between ten and fifteen years at a minimum – but with the possibility that in a few years monthly income of £300 (around 2.5% of the sum being invested) might be drawn too. With longer investment terms, a higher allocation to risk assets like shares can be suitably taken, all other things being equal.

Mr U had no meaningful experience of investing in risk assets, and none of investing sums of any significance in risky assets. But in his risk questionnaire he expressed a desire for higher levels of return and a willingness to accept higher levels of risk and the investment highs and lows that would come with this. This was reinforced by Mr U having taken some practical steps to find out about this sort of investment approach – by starting his own trading account. This suggests he had a certain level of commitment to the idea of using stock market or risk investing to try to grow the capital he was going to receive. It also shows that this notion was his and arose before he was introduced to Fogwill.

In 2020 Mr U's risk attitude was assessed as *"Moderately Adventurous"*, defined as:

"A Moderately Adventurous Investor is generally market aware and understands and is willing to accept a higher level of risk. This is obtained by investing up to 100% in equities, including an exposure to overseas markets of up to 85%, Commodity Funds and Exchange Traded Funds (ETF's) in return for the potential for higher returns in the longer term. They recognise that this may result in the value of their portfolio fluctuating, possibly significantly,

in the short term. On a risk scale of 1-10 this would be risk level of mainly 6 to 8."

When agreeing to be assessed as a moderately adventurous investor, Mr U was likely aware that this was more than half-way up Fogwill's risk scale. Fogwill's letter told him the portfolio would mainly have investments risk rated 6 to 8 where 10 was highest risk. I think it likely Mr U knew the profile was the second highest Fogwill offered and that there were other profiles it had offering lower risk including a *"medium"* and a *"cautious"* profile.

In my view Mr U presented as someone willing to take a degree of adventure and risk with his investments to try to get higher returns. It would've been plain to him this is how Fogwill was assessing him when it assessed him as moderately adventurous.

I don't overlook that Mr U's risk answers said he would be willing to place 21% to 40% in an investment with possible high returns but an equal element of risk. While I don't know exactly what Mr U had in mind when he answered each of the risk questions, I do think Fogwill made clear the risk Mr U was being recommended would arise within a portfolio that could be entirely invested in shares. Fogwill also gave Mr U details of the funds to be bought and I think Mr U knew these were investments in shares. Mr U's £150,000 was invested entirely in equity funds. What was in the portfolio matched, broadly, the description Fogwill gave Mr U of what might be in it.

Given Mr U's inexperience, I'm don't think knowing the detail of the portfolio's investments would've informed him of the sort of investment risk he was taking with his money. But I do think Fogwill did make clear to him that the investment carried risk, that this was a risk of loss and a higher degree of risk than other routes that Fogwill could offer him, including a *"medium"* one, and Mr U was happy to proceed on this basis.

Fogwill's advice report said any fall in the investment value wouldn't immediately impact Mr U's standard of living because he did not have a high cost of living, had surplus income, had cash savings for emergencies, didn't expect to access the investment in the short term and wouldn't be reliant on it for investment for income. It stated: *"Any sharp fall in the value of the investment would not have any detrimental effect on your lifestyle or that of your family".* But if losses on the sum didn't affect his standard of living, this would only be because the money was to be used on his children instead.

I've thought carefully about whether Mr U's overall circumstances meant Fogwill ought to have advised him against taking the degree of risk involved here, on the basis that he lacked the financial capacity to withstand the losses. But it seems to me Mr U had taken a decision that he would try to do without the funds and invest for the future to help his children. This wasn't an aim with a specific target figure that might dictate the level of risk that could be taken. Losses would reduce how much help he could give and gains would increase it. Mr U wanted to try to maximise returns. I don't think this was an unreasonable or foolish aim and I don't think the investments selected were unsuitable for him in this context given the long investment horizon that was contemplated.

In July 2021, a year after investing in his own portfolio, Fogwill advised Mr U to invest £18000 into junior ISAs for his two children. Fogwill said this left Mr U and his wife with £12,000 in readily accessible funds for emergencies or discretionary spending.

For the Junior ISAs, Mr U was assessed as having an *"adventurous"* risk attitude. I don't see that taking an adventurous risk attitude for smaller investments like this, which plainly were investments with long investment terms, was unsuitable.

But my view that the 2020 investment advice was suitable, took into account that Mr U was left with what I consider to have been sufficient emergency funds to deal with any changes in his circumstances in the short term. The 2021 investment of a further £18,000 reduced those funds. Given Mr U was the sole family earner and had two young children to support, and all I've said above about how his income situation could change, I don't think Fogwill ought to have recommended Mr U increase his investments and reduce his cash at that time.

So if Mr U wished to take out ISAs for his children at that time - which I think was a sensible idea given that the 2020 investment was made largely with his children in mind - Fogwill ought to have advised him to use funds from his own existing investments rather than investing more cash. This would've allowed him to preserve a sufficient emergency fund.

So in my view Fogwill ought to compensate Mr U for unsuitable advice to increase his investments and reduce his cash holdings in 2021. It should aim to put him back into the position he'd be in if he'd moved money from his existing investments into the ISAs for his children rather than funding the ISAs with fresh cash from deposits.

Mr U replied to my provisional decision saying he had nothing new to add. Fogwill replied with further points, disagreeing with my provisional conclusion. Fogwill said, in brief:

On 9 June 2021 Fogwill contacted Mr U saying: *"…I currently have a record of £18,000 in accessible cash deposits. I believe that you said that this has increased during recent months to around £20,000? I specifically ask because if you move £18,000 into the Junior ISAs it is important that there is still a balance remaining for you to be able to use for any short term spending or emergencies that may arise. Would you mind updating me with the details of you cash deposits please."*

Mr U replied: *"Thank you for checking, we have plenty of cash available should we need cash in an emergency. I currently have about £10k in my bank account, £8k in stocks that I could access in an emergency and my wife has about £20k in her bank account. Most of the money will be coming from my wife's bank account...about 75% of the £18k with the remaining 25% from myself. I've also asked my mother if she would like to contribute a little too so she may put in as well."*

Fogwill's notes of 22 June 2021 show the junior ISAs were funded by £15,000 from Mr U's wife and £3,000 from his mother. In both cases the funds were paid to Mr U first.

Iin light of all this, Fogwill doesn't think it should compensate Mr U – bearing in mind it wasn't his cash that was invested in 2021. Also he could access his Investment Portfolio if required, with payment usually being made within 10 working days of a request.

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 still think Mr U's complaint should be upheld in part – for broadly similar reasons to those I gave in my provisional decision. I'll explain my conclusion.

In essence I still find, for the reasons outlined above, the 2020 investment advice suitable and the advice to invest more cash in 2021 unsuitable - as it left Mr U with inadequate liquid funds for emergencies and other contingencies.

It is apparent Mr and Mrs U's finances were managed on a joint basis. This was necessarily so given Mr U was the sole family wage earner supporting their young family at the time. So a reduction in Mrs U's deposits would be a reduction in the family emergency funds just like a reduction in Mr U's deposits would be. So the fact the reduction in cash holdings came from Mrs U's deposits rather than Mr U's, doesn't change my conclusion.

Fogwill directed me to notes that say Mr U and his wife had £30,000 in cash between them. From what it has pointed out, the 2021 investment halved this to £15,000. This is £3000 more than my provisional decision stated – but it is still a very large reduction. In my view what was left was insufficient.

I say this because Mr U's large investment portfolio was invested in a relatively adventurous way such that it was prudent to have cash funds that would enable him to avoid accessing it in the short term. By short term I mean the next three to five years. The cash funds Mr U needed were not only for unforeseen emergencies that might happen at any time, but also to accommodate changes likely or expected to occur in the coming years – bearing in mind Mr U's situation was one that was likely to evolve during that period.

So my view remains that on suitable advice Mr U wouldn't have increased the amount of investments held by reducing cash deposits. But the junior ISAs could've been funded by moving funds from the existing portfolio instead.

I note £3000 for the junior ISAs was paid by Mr U's mother. My provisional decision was that Mr U shouldn't have been advised to reduce the cash reserves he held with his wife. His mother funding the junior ISAs didn't reduce Mr U's household cash reserves – so this part of the ISA funding can be disregarded for redress purposes.

But what Fogwill has sent shows Mrs U's cash deposits were reduced by £15,000. So I find loss should be assessed by comparing the performance £15,000 achieved within Mr U's existing portfolio with what this sum would've been worth had it remained in a bank account – with the comparison period running from the date the junior ISAs started until the date Mr U's portfolio ended.

This sum was paid into the investment by Mr U based on advice given to him by Fogwill. So I find Fogwill should pay Mr U any redress due under the above formula.

I'm also still of the view that Fogwill should compensate Mr U for the inconvenience caused to him by Fogwill's advice to reduce his cash reserves in 2021.

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

Putting things right

Fogwill was wrong to advise Mr U to fund £15000 of the junior ISAs from household cash rather than using his existing investments. So Fogwill should compensate him for this.

To do this Fogwill should work out what value Mr U would've had if he'd kept £15000 in a deposit account from the date the junior ISAs started until the date his own portfolio was transferred out. This is the fair value. For simplicity the deposit interest rate used should be the Bank of England's monthly average rate for one-year fixed-rate bonds. The rate for each month is shown as at the end of the previous month. This should be compounded annually.

Fogwill should compare this fair value with the actual value.

The actual value is what £15000 in Mr U's own portfolio at the date the junior ISAs started, was worth on the date Mr U's portfolio was transferred from Fogwill.

If the fair value is higher than the actual value, Fogwill should pay Mr U the difference and simple interest on the difference at the gross rate of 8% from the date the portfolio was transferred out until the date the redress is paid.

The actual value above should be worked out pro-rata based on the change in value of Mr U's Fogwill portfolio (excluding the junior ISAs). Any capital sums or net income paid out to Mr U from his portfolio since the junior ISA start date can be added back to the value of Mr U's Fogwill portfolio at the transfer date when working out its value for the purposes of determining how £15,000 within the portfolio changed in value over that time.

I gather Mr U moved his investments elsewhere and out of the Fogwill portfolio. The transfer date above should be the date the last of Mr U's investments or money moved from the Fogwill portfolio rather than the date Fogwill's authority ended – as it is reasonable to allow Mr U a little time to reorganise things and Fogwill's advice continued to be responsible for losses (or gains) on his Fogwill portfolio (or the remains of it) until that happened.

In addition, Fogwill should pay Mr U £250 for inconvenience he suffered as a result of its unsuitable advice to invest more of the household cash in 2021.

My final decision

For the reasons I've given, 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 24 June 2025.

Richard Sheridan
Ombudsman