DRN-3853151

The complaint

Mrs D complains Fogwill & Jones Asset Management Ltd ("Fogwill") failed to remodel her investment portfolio appropriately, causing financial loss.

Mrs D's husband assisted her in bringing the complaint. For simplicity I've referred below to Mrs D when referring to things said or done by her or by her husband on her behalf.

What happened

Mrs D raised concerns that falls in the value of her discretionary managed portfolio between November 2021 and June 2022 were more rapid and dramatic than she expected and not in keeping with her 'Medium' risk attitude but reflective of a much higher risk attitude.

Mrs D had held her portfolio with Fogwill since 2010. Fogwill started to remodel it after she requested in May 2020 that it reflect a 'Medium' risk attitude, a reduction in risk from her previously 'Moderately Adventurous' risk attitude. Fogwill says the remodelling started on 12 May 2020 and was complete by 5 June 2020 at which time Mrs D was sent a valuation.

Discussions in January or February 2020 had concluded with Mrs D deciding to remain as a 'Moderately Adventurous' investor. A questionnaire she signed in March 2020 was stamped as received on 2 June 2020. Fogwill's notes say: *"received [Mrs D's] ATR questionnaire back, which indicated she was a Cautious risk investor however they are happy with the Medium risk profile for this time."*

Fogwill says when constructing a model portfolio it assesses each element and rates its risk on a scale of 1 to 10 with 10 being the highest risk. Its investor risk attitude document sets out the risk levels it has determined for different assets. The portfolio risk is the aggregate of the risk (the risk level multiplied by the allocation weighting) of each element. Fogwill says it then makes sure this total will be within the risk range of the chosen risk profile.

There are six risk profiles described. From lowest to higher risk, the third up is 'Cautious', of which Fogwill's investor attitude to risk guide says: *"On a risk scale of 1-10 this would be risk level of mainly 4 to 5"*. It would be invested up to 60% in shares which can include overseas shares and also infrastructure or renewable energy shares.

'Medium' is the next risk profile up. The guide says this could be invested up to 85% in shares - up to 60% in overseas shares and 10% in specialist funds like commodities or technology. It says: *"On a risk scale of 1-10 this would be risk level of mainly 5 to 6.5."*

As well as the indication it gives as to asset allocation, the guide also describes the investor each profile is describing or is suited to. According to Fogwill's description, a 'Medium' risk investor would be looking for a balance of risk and reward. They would be seeking higher returns than might be obtained from a deposit account but would recognise this brings a higher level of risk. They would realise the value of their investment may fluctuate in the short term and would feel uncomfortable if the overall value of their investments were to fall significantly over a short period. They would not be happy to see their capital eroded over the medium term.

The next, and fifth, profile up is ‘Moderately Adventurous’, Mrs D’s previous profile. It would invest up to 100% in shares of which up to 85% could be like overseas shares or commodity funds. The guide says: *“On a risk scale of 1-10 this would be risk level of mainly 6 to 8.”* The description says a ‘Moderately Adventurous’ investor would be generally market aware and understand and be willing to accept a higher level of risk. They would recognise this may result in their portfolio value fluctuating, possibly significantly, in the short term.

So ‘Medium’ was profile number four out of six and Fogwill says the aim would be for the aggregate risk of such a portfolio to be rated between 5/10 and 6.5/10. It says the score for Mrs D’s portfolio was 5.35 immediately after the remodel.

Fogwill has explained its reports made clear the portfolio as a whole was designed to meet Mrs D’s stated risk attitude, but individual holdings might carry more or less risk than this. It says 21% of Mrs D’s portfolio’s assets had risk ratings above this range after the remodel. It says on 5 June 2020 after remodelling to ‘Medium’ Mrs D’s portfolio was 83% in what Fogwill described as equities, with 30% UK based, 31.5% in Europe or the US, 15.5% in Asia (but not Japan) and 6% in emerging market or specialist technology funds. The last two groups make up the 21% Fogwill considers was above the 5 to 6.5 range. The portfolio also had 1% cash, 8% in UK governments bonds and 8% in property, in the form of a property company listed on the UK stock market. These were rated by Fogwill as below the 5 to 6.5 range.

Fogwill has told us Mrs D’s portfolio before remodelling was, on 31 March 2020, 100% equities of which 34% were UK based, 45% were in Europe, the US or Japan, 12% were in Asia excluding Japan and 9% were in emerging market or specialist technology funds.

Fogwill says that at the review in February 2021 that followed the remodelling to ‘Medium’, Mrs D was pleased with her portfolio’s growth and was comfortable with the ‘Medium’ risk profile and happy to continue with it and this was confirmed in a letter of 11 March 2021. A similar letter in March 2022 followed the review that year and confirmed the objectives included to better the returns from deposit accounts and achieve real returns to keep pace with inflation. Fogwill points out that in February 2022 falls in the portfolio’s value were discussed, but Mrs D was comfortable to remain with the ‘Medium’ risk profile.

Fogwill points out performance was very positive before the falls Mrs D refers to, and the portfolio recovered markedly afterwards too, with what she transferred away on 26 July 2022 being 4.96% less than her investment net of charges and withdrawals, when measured from the start of the remodel on 13 May 2020.

Fogwill’s July 2022 reply to Mrs D said her portfolio, when considered jointly with her husband’s, when invested fully at the end of March 2022 *“suggests an approximate score of 6.5 out of 10 which is consistent with our medium risk profile”*. It said results also *“indicate that they would expect that 95% of the time the investment value would fall by no more than -19.12% to -22.65% over one year”*. It said that allowing for charges of 3%, the reduction that had been experienced by Mrs D (when considered jointly with her husband) fell within these parameters (i.e. about 25%).

Fogwill points out there aren’t industry standard asset allocations for given risk profiles. It says it constructs its portfolios having regard to the portfolio risk definitions it gives customers. But it says it has looked at the wider market and doesn’t believe its asset allocation is out of line for a Medium/Balanced Risk portfolio. It gives an example and says a portfolio elsewhere, described as ‘Balanced’, has 29% of the portfolio in “higher” risk funds.

The example it gives has an overall equity holding of 61% with 6% in absolute return or infrastructure. Of the equity, 16% is UK, 16% Europe, US or consumer staples and the 29% Fogwill says is higher risk is made up of 6% in Japan, 5% in Asia excluding Japan, 11% in emerging markets including China and 7% in specialist equity in health care or energy. The rest of the fund is 3% UK government bonds, 9% UK corporate bonds, 19% international bonds and 2% cash. Fogwill says its overall risk comes out at around 5.5.

Our investigator considered the complaint and thought it ought to be upheld – on the basis that after it was remodelled to 'Medium', the portfolio still carried too much risk for Mrs D. In brief summary, he noted the 'Moderately Adventurous' and 'Medium' risk descriptions. He agreed Fogwill reduced the risk in May and June 2020 and noted it had before then been invested entirely in equities and it was moved to include 1% cash, 8% gilts and 8% property. He said this meant 83% of Mrs D's invested funds were still exposed to the stock market, which in his view was too much for her as a medium risk investor.

In reaching this view he noted Mrs D's 2020 risk questionnaire answers had rated her as 'Cautious' rather than 'Medium'. He noted that when asked how much she was prepared to invest in something *"with possible high returns but an equal element of risk"* when investing money, she answered 41-60%. He didn't think this matched well with the 83% exposure to equities he had identified. He also noted other answers where Mrs D expressed caution or less risk appetite (there were of course such answers, given that the overall outcome was 'Cautious' not 'Medium').

In our investigator's view, the attitude to risk document did say that for a 'Medium' risk investor 85% of the portfolio might be invested into equities, but he still wasn't persuaded Mrs D wanted the level of risk the portfolio was exposed to. He thought it excessive.

In reply Fogwill said the level of risk was fully discussed with Mrs D and confirmed in writing and she was fully aware of the equity content and did want that level of risk. It noted that in the contact leading up to the complaint, Mrs D referred to its investor risk attitude document. Fogwill pointed out this disclosed the equity exposure and how things would be invested, as I've noted above. It pointed out Mrs D had seen this many times and discussed it with the adviser many times, so she was fully aware a 'Medium' risk portfolio could contain up to 85% in equities.

Also Fogwill considered it wrong to focus on just three of the 13 risk questionnaire questions. It pointed out the questionnaire's purpose was to establish Mrs D's views on a range of questions, to come out with an overall score to determine her risk attitude, so one question cannot be taken in isolation to do this. It pointed out the questionnaire result was followed by a discussion with the adviser to ensure understanding of and comfort with the risk level, as well as capacity to take that level of risk. It noted in this regard Mrs D was comfortable with a higher level of risk than indicated by the completed questionnaire. Fogwill said the question about how much to invest for high returns (to which Mrs D said 40-60%) referred to Mrs D's total investable assets not just the assets in the portfolio itself like the investigator thought.

Fogwill also pointed out that when asked for her *"typical attitude when making important financial decisions"*, Mrs D had answered 'Medium', which it said matched the agreed risk profile, not 'Fairly Cautious' which it said would've matched a 'Cautious' portfolio.

Overall Fogwill considered it had acted fairly and reasonably when advising Mrs D and investing for her, and it considered that the portfolio had been suitable for her.

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 arrived at the same conclusion as our investigator, for broadly the same reasons. I'll explain my reasons briefly.

I accept Fogwill's point that there aren't standard industry asset allocation prescriptions for portfolios carrying particular risk profile titles like 'Medium' or standard industry definitions for such descriptions. So when considering Mrs D's complaint I've considered how her portfolio was invested and whether the results likely to flow from that were in line with what Mrs D would've expected from what Fogwill had told her about that profile. In doing so, I take into account also the previous experience Mrs D had and of which Fogwill was aware.

In terms of that experience, I note Mrs D had for the previous ten years had a portfolio that Fogwill invested largely or entirely in shares. So she had experience of the fluctuations that could arise from such an asset allocation. This was in line with what Fogwill had described as suitable for someone willing to recognise, without reservation, that their portfolio value could fluctuate, possibly significantly, in the short term. So Mrs D did have experience of that. But what is also relevant is she no longer wished to take that level of risk. She wanted something safer.

In that context she agreed to an approach where the value might fluctuate in the short term but would be suited to someone who would feel uncomfortable if the overall value of their investments were to fall significantly over a short period.

Having given all that Fogwill has said careful consideration, I find it hard to see how a portfolio that would invest up to 85% in shares could be suited to Mrs D as someone who would feel uncomfortable if her investments were to fall in value significantly over a short period – because in my view that is an investment approach that manifestly carried the risk of very significant falls in value that could occur within very short periods of time.

I accept entirely that Mrs D was told and aware that the portfolio would invest up to 85% in shares. But Mrs D wasn't someone with expertise in assessing whether such an asset allocation was likely to produce an investment in line with the risk profile description Fogwill had given and which she had selected. I don't see that she ought to have been able to, or did, arrive independently at the view that to invest so heavily in equities in the way that Fogwill would, was quite likely to run the risk of producing volatility and losses that would not be in keeping with those suited to someone was had decided they would be uncomfortable with falls in value in the manner described in the 'Medium' risk investor description.

In reaching the view that a portfolio invested in that way might suffer such falls, I note Fogwill itself suggested that in the vast majority of situations reductions in a single year would be restricted to "*no more than -19.12% to -22.65%*" plus charges of 3%. But even if annual falls in value were restricted to such falls, I don't see how this is consistent with a portfolio suited to someone expressing discomfort with significant short term falls in value in the way set out in the risk attitude description Mrs D selected. Also I don't overlook that Fogwill points out Mrs D was happy with the increases she saw in her investment following the changes, and that the situation was revisited at reviews, but this doesn't change my views set out above.

I note what Fogwill says about having looked at the wider market and the asset allocations used for portfolios described as Medium or Balanced Risk. But I emphasise that what I am considering here is the suitability of the approach Fogwill took for Mrs D, taking into account what it knew about her and what it told her. I'm not deciding whether Fogwill's approach might fairly match with others elsewhere that are termed 'Medium' or 'Balanced'. Indeed it seems to me a variety of approaches are taken under those headings. Still I don't ignore that Fogwill in support of its position has pointed out what it says is a balanced fund elsewhere that it says shows how such a fund might invest in some assets that carry a higher level of risk as part of a balanced portfolio. I note that the fund Fogwill chose was 61% invested in equity with another 6% in absolute return funds or infrastructure. But this means around 33% was invested in cash and fixed interest instruments such as international and UK bonds. On the face of it this would seem to have more in common with how Fogwill described its 'Cautious' profile than the 'Medium' profile used for Mrs D. So I don't think this comparison helps Fogwill's case, and it doesn't persuade me the approach it took was suitable for Mrs D.

I note the risk questionnaire Mrs D returned to Fogwill indicated a 'Cautious' rather than 'Medium' risk profile. But I note too Mrs D expressed a willingness to take its 'Medium' risk approach. So in arriving at the view that Fogwill's approach wasn't suitable for Mrs D I do so on the basis that the approach taken wasn't suitable given the 'Medium' risk approach she had agreed to, and what Fogwill had told her about that approach. But clearly the fact that Mrs D's questionnaire indicated she perhaps had an even more Cautious attitude, doesn't help to add any weight to the idea that that approach Fogwill took was suitable for her.

Similarly, and although it isn't what persuades me to uphold Mrs D's complaint, I note that the property element Fogwill introduced into the portfolio was introduced by way of the purchase of shares in a single company listed on the UK stock exchange whose business was to invest in property – apparently properties used in a particular business sector. It was not a mutual fund investing the pooled savings of its investors – it had its own borrowings as well. I accept this holding may have provided diversification in how it increased the exposure of the portfolio to property. I express no concluded view here on whether the purchase of shares in single company like this would've increased or reduced the risk of the portfolio overall, when compared to investing in a fund or funds holding the shares of many dozens of companies. But this was a shareholding nevertheless, so I note Mrs D's exposure to equities or shares in fact exceeded 85% with all but the 8% holding in UK gilts being shares.

But even if the exposure to property had been provided through a mutual fund or without borrowing, or even allowing for and accepting what Fogwill says about how this holding would, as part of the portfolio, have helped reduce the portfolio risk, my view is that the high target allocation to equities wasn't in keeping with the degree of short-term volatility and risk to her capital that Mrs D was looking for and led to expect that the 'Medium' approach would carry, as I've already outlined above. This view is apparent in the comparator that our investigator suggested ought to be used to assess loss, and I share the view that that comparator is appropriate here given what I've said above about Mrs D's objectives.

Fogwill didn't make submissions on the topic of the comparator our investigator proposed, so I've none to discuss here, but I'm satisfied it is appropriate in light of all I've said above. Our investigator noted that Mrs D's portfolio was still in force and Fogwill did not address that in its responses specifically, but it has made clear that Mrs D did transfer her capital or account away on 26 July 2022 and it would plainly be unfair for Fogwill to take responsibility for any losses Mrs D may have suffered after that time, so the comparison should cease at the point that Mrs D's capital and the account was transferred elsewhere. Interest should therefore be added to any loss found at that point at 8% simple in accordance with our usual approach. Guidance on that, and on our approach to redress generally, is available on our website.

I should point out here to Mrs D that I do not know whether the result of the comparison I am ordering will in fact identify any loss. Fogwill has pointed out there was a distinct recovery in the value of Mrs D's portfolio after the falls that caused her concern. It may be that the higher allocation to equities was ultimately favourable to the portfolio in that regard. I note Fogwill at times also moved larger parts of Mrs D's portfolio into cash, exercising the discretion and judgment it was permitted to exercise for Mrs D. If such investment decisions benefited the portfolio overall, Fogwill will of course in effect receive credit for that within the comparison.

So, in light of what I've said above and for the reasons I've given, I uphold this complaint.

Putting things right

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mrs D as close to the position she would probably now be in if Fogwill had given suitable advice and invested her portfolio suitably.

I take the view Mrs D's portfolio would've been invested differently. It is not possible to say *precisely* what she would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mrs D's circumstances and objectives when she invested.

What must Fogwill do?

To compensate Mrs D fairly, Fogwill must:

- Compare the performance of Mrs D'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
portfolio	Transferred away from Fogwill so no longer in force there.	FTSE UK Private Investors Income Total Return Index	Date of the completion of the remodelling to 'Medium' -05-06-2020	Date ceased to be held with Fogwill - 26/07/2022	8% simple per year on any loss from the end date to the date of settlement

Actual value

This means the actual value of the investment paid or transferred 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.

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 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:

- Mrs D wanted Income with some growth and was willing to accept some investment risk.

- 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.

- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mrs D's circumstances and risk attitude.

My final decision

I uphold the complaint. My decision is that Fogwill & Jones Asset Management Ltd should pay the amount calculated as set out above.

Fogwill & Jones Asset Management Ltd should provide details of its calculation to Mrs D in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs D to accept or reject my decision before 8 March 2024.

Richard Sheridan
Ombudsman