

## **The complaint**

Mrs G has complained about the actions of FACET Investment Management Limited ('FACET') when, under its discretionary mandate of her account, it invested her pensions into two funds which later failed. Mrs G feels there was a conflict of interest and no action was taken to mitigate her loss. She wants to be compensated for the loss she has suffered.

## **What happened**

Mrs G held her pension with a third-party trading platform which was managed by FACET on a discretionary basis. In late 2016 FACET launched its own discretionary portfolios and Mrs G's pension investments were invested into the EF FACET Cautious Discretionary Portfolio and Balanced Discretionary Portfolio Funds. In 2019 one of the underlying investments held within both Funds – Carpe Valorem LLC – failed to honour its coupon payment. As a result, the value of both Funds was substantially reduced.

The Cautious Fund was suspended by its Authorised Corporate Director – who I shall refer to as 'Company A' in my decision – in an attempt to reduce the Fund's exposure to the illiquid assets, but the Fund was later wound up. The same then happened to the Balanced Fund. The Funds' assets were redeemed which took over a month to be returned to the pension platform.

After discussions with FACET, Mrs G raised a complaint. The response from FACET said;

- It had no way of knowing that Carpe Valorem would be unable to pay its coupon and the subsequent default was going to happen. Due diligence carried out into Carpe Valorem implied a larger level of liquidity in the bond than proved to be case. It was fully approved by Company A to be suitable and relevant to the Funds' mandates. Carpe Valorem was a secured bond with a history of paying its coupon on time. The intention had been to hold the bond until maturity in 2021 and receive the 7% yield in the meantime.
- FACET was aware of the remarks made by the auditors about Carpe Valorem, but the investment was illiquid, and it was unable to liquidate a significant percentage of the holding. It was still waiting to hear from Carpe Valorem as to any residual value.
- Illiquid investments don't imply a greater risk. Carpe Valorem was an unusual situation. At the time of purchase, it was tradable in size. All investments were approved as suitable and relevant by Company A.
- Upon opening her account Mrs G was classified as a Cautious Risk investor – FACET's 'Risk 2 portfolio' – but no investment was without risk. When her portfolio was moved to the Cautious and Balanced Discretionary Portfolios the risk profile of them was matched with her 'Risk 2 portfolio' profile. There was no way of knowing or predicting the events that happened.
- The Cautious Fund had limited exposure to global markets which was a benefit during the winding up within the backdrop of the Coronavirus.

Mrs G wasn't happy with the outcome and brought her complaint to the Financial Ombudsman. She said auditors had raised concerns about the authenticity and valuation of Carpe Valorem in the May 2018 and 2019 Annual Reports. No potential remedy was sought, and Mrs G suffered a financial loss as a result. The constraint in winding up the Funds was because of Carpe Valorem being an illiquid investment without secured debt. It shouldn't have been held within a Cautious Fund. The percentage of illiquid and less liquid assets held within the Cautious Fund posed a high risk and the liquidation assets didn't occur at a good time.

Our investigator who considered the complaint didn't think it should be upheld. She said;

- FACET hadn't acted outside of its discretionary agreement by investing into the two Funds and that agreement set out the risks associated with investing.
- Mrs G's risk profile had been determined as being Cautious-Moderate and considering the risk ratings of both Funds together, investment into them would have been suitable for a Cautious-Moderate investor.
- With regard to whether FACET had taken any action when the 2018 and 2019 Annual Reports raised concerns was difficult to assess as Company A was the manager of both Funds and it was responsible for valuing the underlying assets.
- FACET said that it tried to get further information from Carpe Valorem to satisfy the auditors and it attempted to sell the holding but there weren't any buyers. This illiquidity wasn't within anyone's control.
- When the auditor's remarks were first made in 2018 it was only three years prior to the maturity of the bond and the closer to maturity the more difficult it would be to sell. The investment became illiquid, but this was one of the risks investors faced and the investigator was satisfied FACET attempted to mitigate the unanticipated situation.
- FACET wasn't responsible for the suspension, termination and winding up of the Funds. That was the role of Company A.
- The investigator couldn't agree there was a conflict of interest in FACET's position. It had advised Mrs G in November 2016 that it was launching its own Funds and its investors holding those Funds would not be charged a discretionary management fee. Mrs G was advised to contact FACET if she didn't wish to invest into the new Funds.
- As Mrs G wasn't charged a discretionary management fee for her assets invested into the Funds, there was no indication of churning. And the decision to invest didn't stem from any monetary gain, it didn't create a conflict of interest.

Mrs G didn't agree with the outcome.

- She wanted to see any evidence of investigation into the financial status of Carpe Valorem by either Company A or FACET.
- She said a company that received fees from the FACET Funds had a duty of care to ensure the investments within those Funds were managed in line with regulatory requirements. Company A and FACET said that due diligence on the Carpe Valorem investment had been carried out. She wanted evidence of this.
- She was aware investment into the Funds carried both risk and reward. And she acknowledged receipt of her associated risk profile determination.
- She still believed that to transfer funds from other investments into the FACET Funds which were managed by FACET was a conflict of interest, albeit her agreeing to do

so.

Mrs G requested that her complaint be considered by an ombudsman, so it was passed to me for a decision. I issued my provisional decision explaining that I intended on reaching a different conclusion than the investigator, but I asked both parties to give me anything more they wanted me to consider before I issued my final decision. Here's what I said;

"As background, in November 2016 FACET advised Mrs G that it would be launching its own funds and she would be moved into the appropriate Portfolio Funds depending on her risk profile. It would be waiving its discretionary fund manager fee as the funds themselves would pay the fees. The advantages would be more cost efficiency, better potential returns, and easier access to performance statistics and comparisons. The letter didn't give any indication of the funds Mrs G would be invested into or the types of holdings within those funds. It said, 'In fact very little will change...' and if Mrs G didn't wish for this transfer to take place, she was to contact FACET.

#### Mrs G's circumstances

At the time of the advice Mrs G was 69 years of age and retired with an annual income of £18,550. She jointly owned her home with her husband, and which was valued at £540,000 plus they owned an overseas property valued at £200,000. Mrs G also held a further property in her own name valued at £150,000. Mrs G's assets included £91,000 in an ISA and jointly with her husband she also held an insurance investment bond valued at £152,865.

#### Mrs G's attitude to risk

For any recommendations or investments FACET made on Mrs G's behalf, it had to ensure they met her investment objectives, including her attitude to risk, purpose for investment and how long she wanted to invest. And that she was able to withstand investment risk and had the necessary knowledge or experience to understand the risks. It's clear Mrs G did have some investment knowledge, because of the ISA and bond held, but I've equally borne in mind that she turned to FACET for its investment expertise in investing her pension funds. She was reliant on FACET.

The discretionary portfolio management agreement dated March 2015 classified Mrs G as a 'Cautious-Moderate' investor. In FACET's 'Risk Assessment Report' completed and signed by Mrs G on 30 March 2015 there were 18 questions she needed to answer in order for her risk tolerance to be assessed. The outcome of that was that her Risk Profile was 'Cautiously Balanced' and Mrs G's Chosen Risk Profile was 'Cautious'. A 'Cautious' investor was defined as;

'This investor is seeking low risk growth, with higher returns than a defensively cautious investor. They are looking for conservative, steady returns and may target growth over income. They have a medium term time horizon, with access to savings required in 7-10 years. They are likely to be more experienced than a defensively cautious investor. In terms of attitude to risk, they are willing to accept some short-term volatility, but are aware of the likelihood of short term falls and therefore less prone to react negatively when they occur. They are also aware of the need to access more risky assets in pursuit of growth and would be prepared to consider international investments. They have a satisfactory savings cushion and a longer term horizon, so a higher capacity for risk than a defensively cautious investor.'

The 'Model Asset Allocation' for such an investor was 35% equity, 40% fixed interest, 10% hedge, 10% money market, and 5% property.

The Risk Tolerance Questionnaire records that Mrs G 'strongly disagreed' with the statements 'I would probably invest a very significant amount in a high-risk investment' and 'I would consider investing in a risky investment for the excitement of seeing whether it goes up or down in value'. She 'strongly agreed' with the statement 'I would be anxious if I saw my investment had gone down in value.'

The fact that the outcome of Mrs G's Risk Profile was 'Cautiously Balanced' but her Chosen Risk Profile was 'Cautious' suggests to me that she was looking for exposure to a lower level of risk than was identified by the business. So, Mrs G wasn't willing to take the level of risk that was ascertained by FACET after its assessment of her risk profile.

### The investment

Both of the funds could invest into unregulated collective investment schemes ('UCIS') otherwise known as non-mainstream pooled investments and by their nature, they may be illiquid, have little or no history and be subject to valuation risks as examples. In 2011 the regulator, the Financial Conduct Authority, referred to UCIS as being '...generally considered to be a high risk investment' and that businesses 'should always ensure that clients understand the risk before investing'. And in 2013 it referred to them as 'risky, unusual or complex'.

I note the Key Investor Information for both of the funds does refer to a significant loss of capital in the event of counterparty default, a loss of income if interest payments are missed and increased illiquidity. But this makes me question whether such a level of risk was suitable for a cautious investor.

I note that in its response to Mrs G's complaint FACET said that the issue with the value of the two Funds started in October 2019 when Carpe Valorem was unable to pay its coupon. FACET stated the Carpe Valorem was a secured bond with a history of paying its coupon on time.

But I don't have any evidence to support this. Carpe Valorem's financial statements of December 2017 state that the business was 'organised' in January 2016 and that 'It purchases non-performing HELOCS [home equity lines of credit] and second mortgages and works with the borrowers to restore them to performing status or work out via loan settlements.'

A HELOC is a type of second mortgage that gives the homeowner access to cash based on the value of their home. The fact that the business 'purchases non-performing HELOCS' and 'works with the borrowers to restore them to performing status...' suggests to me that it dealt with homeowners who were already financially distressed in the first instance which would add a layer of risk of default.

And the bond was admitted to the official list in September 2016 so it was a newly formed entity and I can't agree that it had a 'history' of paying its coupon on time – it had only been issued a few years when the problems began. The yield of the bond was 7% which at the time was high in comparison to yields that were available in the stock market. It is generally accepted that higher returns are implicit in taking a higher level of risk.

FACET told us that Mrs G invested across three separate pension pots at three different times – (1) December 2016 £51,618.72, (2) December 2016 £6,723.57, (03) February 2018 £15,000 and (03) May 2019 £6,000 – a total of just over £79,300. This was 100% of Mrs G's pension that was managed by FACET. It told us that outside of her pension Mrs G held an ISA of around £91,000 and a joint insurance investment bond held with his wife of around £155,000 so she had a total of around £168,500.

Consequently, FACET was managing 32% of Mrs G's overall assets which were held within her pension and split between two funds that could have exposure to UCIS.

On the assumption the investment was split equally between the two funds the exposure to Carpe Valorem ranged between 5.75% in 2016 to 11.73% in 2019 – I don't think it is unreasonable to consider this to be quite a high level of exposure to just one investment for a cautious risk investor's pension investment. I can't see that this tallies with FACET's description of a cautious risk investor who was 'looking for conservative, steady returns.'

Mrs G was 69 years of age and retired so I don't think her personal circumstances lent themselves to her being exposed to higher than cautious risk investments which would be implicit in funds which could invest in UCIS. Mrs G wasn't in the financial position to recoup any losses she suffered – she hadn't worked or was earning a salary. While the Key Information Document states that the funds could invest into UCIS it's not clear whether Mrs G understood the potential risks associated with that, particularly bearing in mind her cautious approach to investment. UCIS would not normally be a suitable for an older investor who was reliant upon her pension for an income and wanted their risk exposure to be cautious.

And I also think there is the additional risk of a lack of diversity. All of Mrs G's pension was split between two collective investments and which were managed by the same business. I consider that this added a further layer of risk. If the choices or decisions of the manager were 'wrong' in that they proved to be unsuccessful, then 32% of Mrs G's investable assets were subject to that.

So, for these reasons, and in the particular circumstances of this complaint, I provisionally think Mrs G's complaint should succeed as I don't think the investments made by FACET were right for her. To put the matter right, I need to put Mrs G, as far as possible, in the financial position she would be in if her funds had been suitably invested."

To put the matter right I recommended that FACET should compare the performance of Mrs G's investment half with the FTSE UK Private Investor Income Total Return Index and the other half with the average rate from fixed rate bonds.

In response to my provisional decision Mrs G didn't have anything further to add. FACET didn't agree with my suggested outcome. It concluded that my provisional decision was based on three main factors which I had misunderstood;

- While the EF FACET fund could have exposure to UCIS funds, neither of them did have such exposure while Mrs G was invested.
- My assumption that Mrs G was invested equally between both Balanced and Cautious funds was incorrect. Mrs G was invested 25% into the Balanced fund and 75% into the Cautious fund. Therefore, her Carpe Valorem exposure ranged between 2.89% in 2016 to 6.85% in 2019.
- I had commented on the lack of diversity with Mrs G's pension being split between

two collective investments which were managed by the same business. FACET said that each of the funds was “well diversified, multi-asset funds with many other funds held as sub holdings. Both funds fell into the IA Mixed Investment 20-60% shares sector as defined by FE Fundinfo and as such were not subject to a single fund managers discretion on investment.” So, this was no different from a model portfolio or discretionary fund management.

Because of FACET’s response I reconsidered all of the information I had been given, but I remained of the opinion I had reached so I issued a second provisional decision to allow the parties to respond. This is what I said;

“After reconsidering all of the information and the additional comment from FACET, I remain of the opinion reached in my provisional decision. I shall explain why.

I’ve reviewed the file again and can’t find anything to show that Mrs G would have been made aware of the changes to her investment in November 2016 when she was transferred to the new FACET funds which had recently been launched. I haven’t seen anything to suggest that her investments prior to FACET launching its own funds had been anything other than mainstream regulated investments – the ‘Risk 2 portfolio’. She held an ISA and an investment bond jointly with Mrs G. I can’t see that there was any indication that it was brought to Mrs G’s attention that the new funds would include investments of a non-standard or non-mainstream nature.

In particular I note that for the ‘risk and reward profile’ indicator of the Cautious Fund which was risk rated as three out of seven (one being the lowest risk) the Key Investor Information document said;

‘The indicator above **does not take account** *[my emphasis]* of the following risks of investing in the Fund:

- The Fund invests indirectly in some overseas markets which carry a higher than average risk of investment and the Fund may have problems or delays in getting its investments back.
- Investments may be made in assets denominated in various currencies and the movements of exchange rates may have an effect, unfavourable as well as favourable, on the gains and losses otherwise experienced on such investments.
- All charges and expenses will be charged against capital, which may have the effect of constraining capital growth.
- The Fund may, from time-to-time, invest significant amounts of its assets in bonds issued by companies providing finance for projects, including property development, infrastructure etc. As a result it is possible that there could be:
  - (i) a risk of significant loss of capital should a counterparty to a deal default on repayment, or not deliver its side of the deal;
  - (ii) a loss of income revenue if payments of interest are missed; and
  - (iii) increased illiquidity of that portion of the Fund’s overall portfolio, which can lead to difficulties in selling such assets as and when required to raise liquidity within the Fund.

The Fund aims to minimise concentrations of credit and liquidity risk by undertaking transactions with a large number of counterparties whose firms are listed on markets eligible for investment. The Fund only buys and sells investments through brokers which have been approved as acceptable counterparties.

- The Fund is classed as a NURS and can have wider investment and borrowing powers than a UCITS scheme with higher investment limits in various areas. It can also invest to a greater extent in areas such as property and unregulated schemes and have the option to borrow on a permanent basis. Such additional powers can increase potential reward, but may also increase risk.'

So while Mrs G chose to classify herself as a 'Cautious' investor – rather than the higher risk rating of 'Cautious Balanced' as identified by FACET – and 75% of her funds were invested in the Cautious Fund which was risk rated as three out of seven, that risk rating didn't take account of all the different factors subsequently listed.

The risk rating indicator for the Balanced Fund was rated as four out of seven and the Key Investor Information for that fund also made the same statement as for the Cautious Fund. So that risk rating of four out of seven also didn't take account of the additional risks stated.

Those risks included currency risk, potential exposure to UCIS, the use of complex investment instruments such as warrants and derivatives, overseas market risk and contingent liability investment transactions. This suggests to me that the headline risk rating - being three out of seven for 75% of her pension and four out of seven for the other 25% - gave Mrs G false comfort in the level of risk she was taking which wasn't actually implicit in those investments. This was because of the higher levels of risk the funds could be exposed to at the manager's discretion. And as it turned out – those risks came to fruition and caused Mrs G a significant loss to her pension.

Mrs G turned to FACET for investment advice, she was 69 years of age and already taking her pension. She wasn't working and so wasn't in the position to recoup or replace any capital losses she incurred in her pension. While she did have other assets, the majority of those were held in property. So, I think any losses incurred would have impacted on Mrs G's standard of living during her retirement. And I think those losses came about because of the risks she was exposed to and which I consider were unnecessary for a cautious risk investor like Mrs G.

FACET has said that the liquidity of the Carpe Valorem investments had been underestimated. But I remain of the opinion that such a level of risk is implicit in a non-mainstream investment such as the recently created Carpe Valorem bond. I say this because as mentioned in my provisional decision, I'm not satisfied that Carpe Valorem had a 'history' of paying its coupon. It was a newly formed entity and had no trading or significant operating history. It was also an overseas investment which introduced an element of currency and overseas market risk.

While Mrs G had some investment experience, she clearly wasn't confident enough to make investment decisions on her own. I think it should have been brought to Mrs G's attention of the additional risks she would be taking. And I don't think those additional risks are compatible with FACET's comment in its letter of November 2016 'In fact very little will change....' if Mrs G opted for the new service.

Taking all of the above into account, I remain of the opinion Mrs G's complaint should succeed as I don't think the investments made by FACET were right for her. To put the matter right, I need to put Mrs G, as far as possible, in the financial position she would be in if her funds had been suitably invested.

My role isn't to retrospectively say what the suitable investment would have been. There were many ways Mrs G's pension could have been invested and it's not possible for me to now say precisely what she would have done. So, in line with our long-standing approach, I think it's appropriate to use a benchmark to assess the type of return Mrs G would have been able to achieve with suitable investment."

I reiterated the redress outlined in my initial provisional decision. Mrs G agreed with my second provisional decision.

FACET replied. It said that while it maintained that the advice was suitable it didn't think it could change my proposed outcome of the complaint and it was considering making a commercial settlement without any admission of liability and without prejudice.

It said that it wished to base any calculation of settlement up to the date that Mrs G left its service on 10 March 2020. As it had no further involvement with the portfolio after that date it didn't consider it should be held responsible for the investment advice thereafter. It asked that Mrs G provide a schedule of distribution payments she may have received from the relevant funds since 10 March 2020 so that it could calculate any redress that may be owed.

I didn't agree with this. I thought that it was for both FACET and Mrs G to provide anything further they wanted me to consider. I thought it was only fair to both parties to have the opportunity to respond. And it would ensure that Mrs G received an answer to her complaint in a timely manner.

I said that if my decision remained unchanged, I would ask that Mrs G provide any further information that FACET would need for settlement calculation purposes.

In response FACET said that it disagreed strongly with my provisional decision and confirmed that it had made all of the points it wished to and had nothing further to add. It said that bearing in mind how long this complaint had been with this service Mrs G had been offered ample opportunity to make any further comments. In addition, my provisional decision fell in her favour, so Mrs G's comments and her view had been relied upon.

It also referred to this service's guidance on businesses making an offer and on the presumption I would be making my final decision on the basis of my provisional decision it seemed unfair towards FACET, and for Mrs G to prolong this matter for longer than required. And it didn't appear in line with this service's new approach in trying to settle matters as fairly and as efficiently as possible.

In conclusion FACET said that it wanted its comments shared with me and if I was minded to, to allow it to undertake a calculation for a commercial offer and it would be grateful for the relevant documents to allow it to do so.

### **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.



After doing so, I remain of the conclusion reached in my previous provisional decisions. Mrs G accepted those decisions and FACET didn't have any further comment for me to consider with the exception of its proposed commercial offer which I shall address.

Our website sets out the following about businesses making an offer for proactive settlement – 'You must make an offer – or notify us that you're going to make an offer – within 14 days of us telling you we've moved a complaint to investigation.' Clearly FACET didn't do this. Its proposal for a 'commercial offer' only came about after my second provisional decision.

And I would also say that it is only fair to Mrs G that she receives an outcome to her complaint in a timely manner – Mrs G has waited a long time for an outcome. By issuing a final decision Mrs G will be reassured that she will receive compensation due to her within a set time. Equally if FACET were to make a commercial offer to Mrs G – outside of my issuing a final decision – and she doesn't agree with it, she won't be in the position to enforce settlement. So, I'm satisfied that my issuing a final decision is the correct approach for both parties to the complaint.

FACET has said Mrs G will have received distribution payments from the funds. So, in order for FACET to make an accurate calculation of any redress that may be owed to Mrs G I would ask that Mrs G provide a schedule of any distribution payments she has received.

FACET has also asked that it only be responsible for any redress payments to be calculated up until 10 March 2020 when Mrs G left its service. It had no further involvement with her portfolio after that and cannot be held responsible for the investment advice thereafter.

But I don't agree with this. Mrs G – as far as I am aware – was unable to take any action with the two funds as they were being wound up. If they are still held, FACET should take ownership and calculations should be made up until the date of payment of the redress after taking account of any distribution payments Mrs G has received. If Mrs G no longer holds the funds, then the calculations should be made up until the date of their disposal or final distribution payment Mrs G may have received. I'm also mindful that anything Mrs G has been able to do in her pensions since March 2020 has been heavily impacted by this unsuitable advice. It feels fair and reasonable, and a pragmatic solution to this complaint, to calculate redress up until the date of decision to work out the overall financial loss.

As I've been given nothing further to consider about the merits of Mrs G's complaint since my second provisional decision, I see no reason to depart from my provisional decision. So, I confirm those findings and I uphold Mrs G's complaint. FACET needs to put the matter right.

### **Putting things right**

My aim is that Mrs G should be put as closely as possible into the position she would probably now be in if she had been given suitable advice.

I think Mrs G would have invested differently. It's not possible to say precisely what she would have done, but I'm satisfied that what I've set out below is fair and reasonable given Mrs G's circumstances and objectives when she invested.

### **What must FACET do?**

To compensate Mrs G fairly, FACET must:

- Compare the performance of Mrs G's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.

If the fair value is greater than the actual value, there is a loss and compensation is payable.

- FACET should also add any interest set out below to the compensation payable.
- If there is a loss, FACET should pay the compensation into Mrs G's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If FACET is unable to pay the compensation into Mrs G's pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mrs G won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mrs G's actual or expected marginal rate of tax at her selected retirement age.
- It's reasonable to assume that Mrs G is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mrs G would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- Pay Mrs G £350 for the distress, upset and worry caused to her by the significant fall in value of her investment over a sustained period of time.

Income tax may be payable on any interest paid. If FACET deducts income tax from the interest, it should tell Mrs G how much has been taken off. FACET should give Mrs G a tax deduction certificate in respect of interest if Mrs G asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Pensions	Some liquid/some illiquid	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Dates of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

### **Actual value**

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

It may be difficult to find the actual value of the portfolio. This is complicated where an asset is illiquid (meaning it could not be readily sold on the open market) as in this case.

If appropriate, FACET should take ownership of the illiquid assets by paying a commercial value acceptable to the pension provider. The amount FACET pays should be included in the actual value before compensation is calculated.

If FACET is unable to purchase the portfolio the actual value should be assumed to be nil for the purpose of calculation. FACET may require that Mrs G provides an undertaking to pay FACET any amount she may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan.

FACET will need to meet any costs in drawing up the undertaking.

### ***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, FACET 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 sums that Mrs G paid into the investment should be added to the fair value calculation at the point 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 FACET 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've chosen this method of compensation because:

- Mrs G wanted capital growth with a small risk to her capital.
- 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 her capital.
- The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mrs G's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs G into that position. It does not mean that Mrs G would have invested 50% of her money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mrs G could have obtained from investments suited to her objective and risk attitude.

**My final decision**

For the reasons given, I uphold Mrs G's complaint and FACET Investment Management Limited should put the matter right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 26 July 2023.

Catherine Langley  
**Ombudsman**