

The complaint

Mrs D complains about an agreement she says she had with Mr H from Eighteen Wealth Planning Ltd ("EWPL") – an appointed representative of Vision Independent Financial Planning Ltd ("Vision") – that Vision refused to honour.

In summary, she says that Mr H agreed to discuss fees in the event of a negative fund performance. However, EWPL subsequently refused to refund any fees, despite a negative fund performance.

Mrs D says that the fees charged are disproportionate based on the poor performance of the investment. So, to put things right, she'd like a refund of the fees paid.

She's being assisted by her partner Mr S, who has a separate complaint against Vision.

What happened

Vision didn't uphold the complaint. In summary, it said that in 2020 and 2021 Mr H of EWPL advised Mrs D to invest with Rathbones in their managed portfolio service (MPS). The advice was suitable given her circumstances at the time and risk profile.

Vision said that although Mrs D paid £6,000 in fees for a growth of £1,500, the fees were made reasonably clear to her, and no guarantees were given as to what she might get back – Mrs D agreed to proceed on this basis. This doesn't of itself mean that the advice was unsuitable.

The above notwithstanding Vision refunded £1,300 to Mrs D for a different error linked to fees which is not the subject of this complaint.

Unhappy with Vision's response, Mrs D referred the complaint to our service. One of our investigators considered the complaint but didn't think it should be upheld. In summary, he said:

- EWPL is an appointed representative of Vision - which is a wholly owned subsidiary of Rathbones Group Plc – but Vision was responsible for the advice. Castle Investments Solutions Ltd ("Castle") - established by Vision to provide services related to the selection of discretionary fund managers (DIMs) such as Rathbones – is wholly owned by Vision.
- This type of vertical integration isn't uncommon and doesn't change the investigator's view that Vision is responsible for the advice in this instance.
- Mrs D was charged the following fees:
 - 0.68% by Rathbones for the MPS Balanced Strategy.
 - 0.08% transaction cost.
 - 0.24% (including VAT) by Caste.
 - 0.72% by EWPL for ongoing adviser charge.
- Mrs D signed the 'Our Services and Client Agreement' on 10 July 2020. The document explains the charges as well as service levels available which in this case was for an annual review charged at 0.75%.

- There was a discrepancy in that the 'Adviser Charges and Ongoing Service Agreement' dated 10 July 2020 stated the ongoing adviser fee was 0.75% however the suitability report dated 2 July 2020 (as well as other documents) stated that figure for the Rathbones investment would be 0.6%. Vision went with the latter.
- By way of redress, it asked Rathbones to calculate the impact on Mrs D's portfolio. As the fees were paid from the General Investment Account (GIA), Rathbones confirmed that the value of the GIA would've increased by £1,044.62 on November 2023. With 8% a year simple interest added (from the date of encashment to the date of its final response) it calculated a figure of £1,062.92. To this, it added £250 compensation for the distress and inconvenience caused.
- Mrs D agreed to an annual review, her agreement appears to be under 'service level 2', which provided amongst other things the following service (for which she had to pay):
 - One meeting a year with an independent financial adviser (IFA).
 - Quarterly due diligence service by a DIM, Provider, or Platform from the Castle panel.
- From the 2021 annual review it's apparent that Mrs D topped up the Rathbones portfolio by £58,531. Her investment objective, attitude to risk and capacity for loss remained the same. All charges were disclosed to her.
- From the 2022 annual review the Rathbones ISA was worth £102,715 and the GIA worth £94,039 making a combined value of £196,754. Her circumstances remained the same and all charges had once again been made clear to her.
- In mid-2023 the encashment instructions were given, which is why there was no review at that point.
- Mrs S accepted that there was no written agreement to refund the fees in the event of poor performance. She says the subject was verbally raised with Mr H in the presence of Mr S (her partner).
- Mr S says that the question put to Mr H was that in the event of continued loss making funds, fees would seem inappropriate, what did he (Mr H) propose? Mr S says that Mr H's response was that if the situation wasn't a temporary blip, 'the fees' would be a conversation that they would need to have.
- Mrs D says these assurances were material in her decision to invest and continue to invest for both her and Mr S. In other words, this skewed their attitude to risk and they wouldn't have taken a greater risk had they been told they wouldn't get any of their fees back in the event of poor performance.
- However, without corroborative evidence, it's difficult to place any material weight on Mrs D's account.
- Castle was appointed by Vision to provide services related to the selection of DIMs such as Rathbones. The aim was to centralise the research function to improve consistency, reduce repetition and offer lower adviser fees.
- Castle has a set criterion for quarterly due diligence of DIMs. Whilst it considers performance it focuses more on investment process used by it, and Rathbones has been on its panel throughout this process.
- Castle usually charges 0.3% plus VAT a year for this service for investments under £1M – charges then tier down to 0.2% for funds over £1M. Mrs D was charged 0.2% plus VAT.
- Castle aims to negotiate lower charges from DIMs and has access to Rathbones at a 0.25% discount. There's an option to cancel, which is explained within the documentation, but this will come at a cost of the discount itself meaning there'll be no benefit for doing so.
- Vision explained that Castle's charges were confirmed in the "Our Services and Client Agreement" document, that was provided to Mrs D with the suitability report on 3 July 2020, and which was signed by him on 10 July 2020.
- A selection of the due diligence reports carried out by Castle between 2020 and

2021, in particular quarter two and three from the 2023 reports shows performance reviews, due diligence executive summary, a manager performance summary, meeting agenda and actions list. This would suggest that these were tasks that were carried out.

- The following was also made clear: *“Rathbone Brothers PLC (Rathbones) ownership of both Vision Independent Financial Planning Ltd and Castle Investment Solutions Ltd will in no way influence the independent advice and recommendations given to clients with regard to provision of a suitable product, provider or service.”*
- EWPL are responsible for the advice to invest with a discretionary investment manager but aren't responsible for the performance, which lies with Rathbones.
- In terms of the suitability to invest with a DIM, the suitability report dated 3 July 2020 states that Mrs D's objective was investing £100,000 for the long term – future growth – for a period of five to ten years.
- Mrs D wanted to invest in a tax efficient way to help protect against inflation. This was in line with the MPS balanced portfolio's objective of delivering consumer price index 'CPI + 2%' – made up of cash and ISA transfers from two separate providers.
- Mrs D's circumstances were such that she was in a suitable place to invest. She could afford to invest and maintain her standard of living. Her income and outgoings were balanced but she had access to a large amount of cash for any additional spending. She had capacity for loss without it having a significant impact on her standard of living.
- Mrs D classified herself as having a 'medium' attitude to risk. Whilst she said she had no investment experience she had appetite to accept some risk and had previous experience of investing with Hargreaves Lansdown. Her agreed attitude to risk as 'Balanced' which was described as follows:
 - *“While you are likely to be concerned with not getting as much back from your investments as you put in, you also probably want to make higher returns on your investments.*
 - *Your preferred investment solution is likely to include a balanced mix of lower-risk investments such as cash and bonds, and higher-risk investments such as shares*
 - *You are willing to accept a moderate amount of investment risk with your money and accept a greater risk of losses for the benefit of potential gains over the longer term.”*
- Despite what Mrs D says about risk, her attitude to risk was balanced and the advised investment was the Rathbones MPS balanced strategy.
- The Discretionary Fund Manager isn't a full discretionary service where the manager actively buys and sells assets based on the individual investors remit and preferences. The solution offered is a model portfolio service, which is a centrally run investment strategy, tailored to attitude to risk, but not as a DFM portfolio. In this instance, the Rathbones Balanced Strategy provided a diverse range of assets, so the advice was suitable.
- Whilst there was a cost saving, as compared to Hargreaves Lansdown, the majority of funds invested were from cash.
- Overall, and on balance, the advice was suitable therefore this complaint shouldn't be upheld.
- EWPL delivered what was agreed for the charges Mrs D paid and doesn't need to refund any fees based on the poor performance.
- Mrs D invested for a period of three years despite undertaking to invest between five and ten years and in that period we had the Covid-19 global pandemic followed by high inflation and interest rate rises.

Mrs D disagreed with the investigator's view and asked for an ombudsman's decision. Mr S, on behalf of Mrs D (and himself), provided the following response:

- She's grateful for the very comprehensive investigation undertaken by the investigator.
- Whilst the documentation (and the terms contained therein) aren't denied, the fact remained that Mr H provided assurances to the effect that fees would be a topic for discussion – "*in the event of a fund that continually lost money*"- but no such discussion took place.
- If this had been known beforehand, the suitability of the investment might have been questioned. Hence this was misleading.
- Mr H now denies what he said, such a denial would amount to perjury in a court of law. Perhaps he should be asked directly whether or not he agrees that he made such assurances.
- The denial that such an assurance was given is dishonest.
- There's little alternative but to refer the matter to an ombudsman for a decision.

The investigator having considered the additional points wasn't persuaded to change his mind.

As no agreement has been reached by the parties, the matter has been passed to me for review.

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 agree with the investigator's conclusion for much the same reasons. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Mrs D says, I'm unable to safely say that she was told or led to believe that the fees would be reduced/returned if the investment didn't perform well. Despite what Mrs D says, I've seen no persuasive evidence that that this was the case.

In the circumstances, and on balance, Vision hasn't done anything wrong by not returning some or all of the fees based on what Mr S calls poor investment performance. This also doesn't mean that the investment was unsuitable or that Mrs D was made to take more risk than she was prepared to, in the first place.

But before I explain why this is the case, I'd like to thank the parties for their considerable patience whilst this matter has awaited review by an ombudsman, given the current demand for our service.

I also think it's important for me to note I very much recognise Mrs D's strength of feeling about this matter. Mr S has provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope Mrs D (and Mr S) won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by Mr S and Vision, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case.

In deciding what's fair and reasonable, I must consider the relevant law, regulation, and best industry practice at the time, but I'm not bound by this. It's for me to decide, based on the information I've been given, what's more likely than not to have happened.

In the circumstances and on balance I don't uphold this complaint, in summary for the following reasons:

- I note that in the investigator's view the overall advice to invest some capital in the MPS (in the balanced strategy) was suitable. I'm aware that Mr S makes no objection to this general conclusion, save for the point that Vision refusing to refund some of the fees has resulted in Mrs D perhaps taking greater risk than she would've otherwise done thereby rendering the advice unsuitable.
- Notwithstanding what Mr S says, on the face of the evidence, and on balance, I'm satisfied that the above advice was suitable for much the same reasons.
- Mrs D was happy and able to take a risk-based investment with the appropriate controls and safeguards of a discretionary fund manager that would operate within her (balanced) risk remit. I note it was recorded that she didn't wish to be involved in the day to day running of her investment, preferring that a suitably qualified investment professional to do this on her behalf.
- I note that Mrs D had little or no material previous investment experience, but this didn't of itself mean that she couldn't take a (balanced) risk-based approach with her money.
- Despite what Mr S says, I've seen no persuasive evidence to suggest that Mrs D was a no risk or low risk investor, or that she was given the impression that this investment was.
- I note Mrs D scored 14, placing her in the lower end of the balanced category (with a score range of '14-17'). I also note balanced is in the middle of the following options which chimes with her saying she's a 'medium' risk investor:
 - 'Conservative' (score '6-9').
 - 'Cautious' (score '10-13').
 - 'Balanced' (score '14-17').
 - 'Adventurous' (score 18-21).
 - 'Speculative' (score 22-15).
- Even if Mrs D was told or led to believe that she and Vision would discuss (effectively re-negotiate) the fees if the investment didn't perform well – which I don't think was the case – it was still established and agreed that she was a balanced risk investor and that the recommendation was suitable given her risk appetite.
- In the circumstances, and on balance, I can't say that a switch to the MPS balanced strategy was unsuitable given that it was still aligned to a lower-end balanced risk profile.
- In other words, I've seen nothing to suggest that she was a low-risk or no-risk investor but was persuaded to take a balanced risk on the basis that she might get back some of the fees paid if the investment didn't do well. There's simply no persuasive evidence that this was the case.
- I'm satisfied that given her circumstances Mrs D could afford to invest for a period of five to ten years and had capacity for loss. Although her income and outgoing offset each other, I note she had access to a large amount of cash with no specific planned expenditure. In the circumstances, and on balance, I can't say that a balanced attitude to risk was unsuitable for Mrs D, given her aims and objectives for future growth. I note it was recorded in the suitability report that she wanted to build her assets in a tax efficient way and to help protect them against inflation.
- Given that there were no guarantees as to what she might get back – and it was made reasonably clear that she might get back less than she put in – Vision can't be held responsible for the performance of the investment, which is dependent on

numerous other factors such as the global geopolitical situation, the global Covid-19 pandemic, and the financial markets. In general terms, it's not something that Vision could predict or control, therefore isn't something that it's directly responsible for.

- It's also arguable that encashing or moving an investment away after three or so years when it was taken out for a period of five to ten years (and possibly longer) probably didn't allow the investment to reach its full potential. That's also not something I can blame Vision for.
- Whilst I agree with Vision that the advice was suitable, I don't think this is what is at the heart of the complaint.
- At the heart of this complaint is whether or not Mrs D was told, or led to believe, that her fees would be reduced (in other words some of the fees returned) if the investment didn't perform well, which I think is, in the main, the reason for the referral for an ombudsman decision.
- Despite what Mr S says, I've seen no evidence – other than his and Mrs D's (oral) account – that she was given any kind of assurance that the fees would be reduced if the investment didn't perform well. I note Vision having contacted Mr H maintains that this didn't happen.
- Despite what Mr S says, the proposition itself is uncommon and unusual within industry practice. It's certainly not one that I've heard of in this context, and not a part of industry practice that I'm aware of. Incidentally, Vision also didn't say that if the investment performed well all the fees would be increased.
- It's unclear upon what basis it might've been said. I'm aware that no guarantees were given, and I've seen no evidence of what might constitute an investment not doing well - for example, what the minimum performance after which a refund of fees is triggered. As I mentioned above, Vision can't predict or control how the investment will perform, therefore this is not something that I can say it's responsible for. And, if such an agreement was made, I would expect to see some documentary evidence, which hasn't been provided in this case.
- On the face of the evidence, and on balance, despite what Mr S says, I'm satisfied that the charges and fees were made clear to Mrs D within the key policy documentation provided (which Mr S doesn't disagree with and I also note Mrs D signed the relevant documentation) and that she got what she paid for. I note Mrs D concedes that there isn't any documentation relating to what she says Mr H told her. However, Mr S maintains this was at the core of why Mrs D went ahead with the recommendation with a balanced risk attitude.
- If that was the case, I would expect Mrs D (or even Mr S on her behalf) to have questioned why there was no mention of the refund of fees in the documents she received. On her case she went ahead with matters despite there being no mention of the very point she says persuaded her to go ahead with the recommendation, which I think is unlikely.
- I note Mr S thinks that Vision should share some of the losses and that Mrs D shouldn't have to shoulder it all but that's not how fees work.
- Moreover, regardless of the findings I have already made, even if Mrs D was told by Mr H that that the fees would be discussed in the event of a fund performing poorly - which I can't say was the case - there was no agreement this would lead to fees being reduced. In short, even on Mrs D's case, no undertakings were given that following such discussion fees would be reduced if the investment didn't perform well. So, even on Mrs D's account, if the investment didn't perform well, there was no obligation on Vision to reduce fees.

I appreciate Mrs D will be unhappy I've reached the same conclusion as the investigator. Furthermore, I realise my decision isn't what she wants to hear. But on the face of the available evidence, and on balance, I'm unable to uphold this complaint and give her what she wants.

My final decision

For the reasons set out above, I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 12 December 2024.

Dara Islam
Ombudsman