

The complaint

Mr S complains about an agreement he says he 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, Mr S 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 lamentable negative fund performance.

Mr S complains the fees charged are disproportionate based on the poor performance of his investment. So, to put things right, he’d like a refund of the fees paid.

What happened

Vision didn’t uphold the complaint. In summary, it said:

- Mr S has been a client of EWPL since June 2021, when he appointed Mr H to advise him on the investment of some capital.
- Mr S was advised by Mr H to invest with Rathbones, in its Managed Portfolio Service (‘MPS’) in the balanced and the balanced plus strategy which was suitable given his circumstances, aims and objectives.
- Mr S paid £3,000 in fees but lost £5,000 of his original investment. This doesn’t mean the advice was wrong or that the cost was disproportionate. The relevant costs were made clear to him at the outset and based on the documentation signed (namely the suitability report dated 28 May 2021, its likely he understood what they were.
- In any case, it’s not going to consider the performance element of the complaint because that’s outside of its ‘sphere of influence’.

Unhappy with the response from Vision, Mr S referred his complaint to our service. One of our investigators considered the complaint but didn’t think it should be upheld. In summary, he made the following key points:

- Mr H is an appointed representative of Vision, which is a wholly owned subsidiary of Rathbones Group Plc. In this instance, Vision is responsible for the advice Mr S received.
- 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.
- Mr S was charged the following fees:
 - 0.68% for the Rathbones MPS Balanced Strategy.
 - 0.08% for transaction costs.
 - 0.24% (including VAT) by Castle for its services.
 - 0.72% by EWPL for ongoing adviser charge.
- Mr S signed the ‘Our Services and Client Agreement’ on 13 January 2021. The

document explains the charges as well as service levels available. On the basis that Mr S agreed to an annual review, his agreement appears to be under 'service level 2', which provided amongst other things the following service (for which he 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.
- The 2022 annual review showed that the Rathbones ISA was worth £77,287 and GIA worth £18,167 – with a combined value of £88,454. It also showed that the investment objectives, attitude to risk (ATR), capacity for loss, all largely remained the same – except for the sale of a classic car which increased Mr S's liquidity. All costs and charges were also disclosed to him.
- In addition to this, a switch to the Rathbones MPS Balanced Plus portfolio was advised, exposing Mr S to a little more risk without moving from his (agreed) balanced attitude to risk.
- In mid-2023 the encashment instructions were given, which is why there was no review at that point.
- Mr S accepted that there was no written agreement to refund the fees in the event of poor performance. He says the subject was verbally raised with Mr H in the presence of Mrs D (his 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.
- Mr S says these assurances were material in his decision to invest and continue to invest for both him and Mrs D. 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 Mr S'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. Mr S 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 Mr S with the suitability report on 28 May 2021 and which was signed by him on 23 June 2021.
- A selection of the due diligence reports carried out by Castle between 2020 and 2023, 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 21 June 2021 states that Mr S's objective was investing £100,000 for future growth with income for a minimum period of five years. Mr S wanted to invest the proceeds of the sale of his home that wasn't making money in his previous investment. He wanted to invest somewhere where the risk was well controlled and well managed.
- Mr S's circumstances were such that he was in a suitable place to invest. He had a reasonable income from his pension and had access to cash for any additional spending. His income and outgoings were balanced. Although he didn't have a net disposable income as such, he had had access to large cash deposits.
- Mr S classified himself as having a 'medium' attitude to risk, with a large amount of investing experience – having held individual shares in the 90s. His agreed attitude to risk was 'balanced', which was defined 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 Mr S says about risk, his 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 and Balanced Plus Strategy provided a diverse range of assets so the advice was suitable.

Mr S disagreed with the investigator's view and asked for an ombudsman's decision. There's been some correspondence between him and the investigator, but in summary, Mr S made the following key points:

- He'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. Whilst he notes Mr S's argument that there was a verbal agreement to reduce fees in the event of poor performance – which Mr S says was pivotal to his decision to invest – the investigator has seen no evidence that this was the case. In other words, there's no written

record of this, and the fees were agreed for specific services unrelated to investment performance. Vision has already confirmed that no such assurances were given by Mr H.

As no agreement has been reached 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 Mr S says, I'm unable to safely say that he was told or led to believe that the fees would be reduced/returned if the investment didn't perform well. Despite what Mr S 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 he was made to take more risk than he 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 Mr S's strength of feeling about this matter. He has provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope he 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 and balanced plus 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 him perhaps taking greater risk than he 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.
- Mr S 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 his risk remit. I note it was recorded that he didn't wish to be involved in the day to day running of his investment, preferring that a suitably qualified investment professional to do this on his behalf. And he felt that his funds managed by a DIM

provided 'peace of mind'.

- I note Mr S had previous investment experience and despite what he says I've seen no persuasive evidence to suggest that he was a no risk or low risk investor, or that he was given the impression that this investment was.
- Even if he was told or led to believe that he 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 he was a balanced risk investor (with previous investment experience) and that the recommendation was suitable given his risk appetite. In the circumstances, I can't say that a switch to the MPS Balanced Plus Portfolio was unsuitable given that it was still aligned to a balanced risk profile. I'm also mindful that Mr S has invested in more speculative investments in the past.
- In other words, I've seen nothing to suggest that he was a low-risk investor but was persuaded to take a balanced risk on the basis that he 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. On the contrary I note Mr S wanted to ensure that his investments were appropriate in view of his balanced attitude to risk.
- I'm satisfied that given his circumstances Mr S could afford to invest for a minimum period of five years and had capacity for loss (up to 10%). Although his income and outgoing offset each other, I note he 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 Mr S, given his aims and objectives for future growth and income.
- Given that there were no guarantees as to what he might get back – and it was made reasonably clear that he might get back less than he 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 and the financial market. 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 minimum period of five years 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 Mr S was told, or led to believe, that his 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 (oral) account – that he 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 is missing 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 him within the key policy documentation provided (which Mr S doesn't disagree with - I also note he signed the relevant documentation) and that he got what he paid for. I note he concedes that there isn't any documentation relating to what he says Mr H told him. However, Mr S maintains this was at the core of why he went ahead with the recommendation (presumably) with a balanced risk attitude.

- If that was the case, I would expect Mr S to have questioned why there was no mention of the refund of fees point in the documents he received. On his case he went ahead with matters despite there being no mention of the very point he says persuaded him 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 he 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 Mr S 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 Mr S's case, no undertakings were given that following such discussion fees would be reduced if the investment didn't perform well. So, even on Mr S's account, if the investment didn't perform well, there was an obligation on Vision to reduce fees.

I appreciate Mr S will be unhappy I've reached the same conclusion as the investigator. Furthermore, I realise my decision isn't what he wants to hear. But on the face of the available evidence, and on balance, I'm unable to uphold this complaint and give him what he 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 Mr S to accept or reject my decision before 12 December 2024.

Dara Islam
Ombudsman