DRN-5243199

The complaint

Mr A has complained to Yodelar Investments Limited (Yodelar) that the portfolio performance documented in the factsheets doesn't reflect the performance of the portfolios within which he's invested.

What happened

Mr A transferred pension funds of approximately £500,000 from True Potential to Aviva, on 29 September 2021. This transfer was made following advice given by Yodelar. It also recommended that Mr A invest in the Yodelar Investment Portfolio 5 which was in line with his documented risk profile, but that initially, due to market volatility, the funds should be invested in the Yodelar Safeguard portfolio.

Discussions were held in November 2020, when it was agreed that the funds should be moved from the Yodelar Safeguard portfolio into 50% Yodelar 4 and 50% Yodelar 5 portfolios.

Yodelar produced a suitability report dated 7 August 2020 in which a recommendation was made to transfer Mr A's pension from Transact to Aviva. The Transact pension was held in cash and Yodelar recommended that Mr A invest in the Yodelar Investment Portfolio 5 which was documented as having generated around 73% growth over the previous five year period.

Mr A's risk profile was documented as "five out of ten" where "one" was lowest risk and "ten" was highest risk and it was recorded that the Yodelar Investment Portfolio 5 was in line with this profile.

Once transferred, Mr A's pension was invested in the Yodelar Safeguard portfolio, the reason for this being due to market turbulence as a result of Covid.

A call occurred between the adviser and Mr A on 26 November 2020 regarding moving the funds from the Safeguard portfolio to 50% Yodelar Investment Portfolio 4 and 50% Yodelar Investment Portfolio 5. This change to the investment strategy wasn't documented by way of a suitability report or revised risk profile, but was accepted by Mr A via email on 26 November 2020.

Mr A later reviewed the value of his pension on the Aviva platform and noted that the fund had fallen in value between December 2021 and December 2022. However, the quarterly model portfolio factsheets he received documented that the two portfolios he invested in grew within that same period. Mr A asked for an explanation and wasn't happy with the response, so he raised a complaint.

Yodelar replied with its final response letter dated, 7 September 2023, not upholding Mr A's complaint on the basis that performance cannot be presented in the same way as it was on the Aviva platform and the difference in performance may be due to the investments with Aviva including variables such as return over time, fees, rebalances and other product changes.

Yodelar also said that, as Mr A invested in two portfolios the weight between each portfolio would shift over time and that the fund changes recommended in the quarterly portfolio reviews weren't applied as at the quarterly reviews, but instead were carried out on a half-yearly basis.

Mr A then referred his complaint to this service.

Having assessed the complaint, our investigator thought that it should be upheld, saying the following in summary:

- With regard firstly to portfolio rebalances, the discrepancy between the performance of Mr A's portfolios and that documented in the factsheets was a lot more than could be covered by covered by the explanation provided by Yodelar.

- The investigator considered that the issue may have come about due to the frequency of the rebalances not being in line with Mr A expectations. It was clear that Mr A expected the rebalances to be carried out each quarter, in line with the portfolio reviews, but instead the portfolio rebalances were only carried out on a half-yearly basis, starting six months from the start date of investment.

- Mr A's pension switch completed on 29 September 2020, and the first rebalance was carried out on 31 March 2021. This meant that if changes were recommended as part of the review in Q4 2020 and Q2 2021, they weren't carried out within Mr A's portfolio until 28 September 2021.

- The next rebalance was carried out on 28 September 2021, which was just days before the Q4 2021 review was carried out. This meant that the recommended changes weren't carried out within Mr A's portfolio until the next rebalance on 26 March 2022. The Q1 2022 portfolio review didn't recommend any changes.

- A further rebalance was carried out on 26 September 2022, again just days before the Q3 2022 portfolio review, meaning that the recommended changes weren't carried out until the next rebalance on 24 March 2023.

- It was, however, clear that Mr A expected his portfolios to be invested in line with the portfolios documented in both the investment reviews and the factsheets simultaneously.

- The investigator considered whether it had been made clear to Mr A that his portfolios would only be rebalanced half-yearly and, in her opinion, this wasn't the case.

- In reaching this conclusion, the investigator had reviewed the disclosure documents provided to Mr A, including the suitability report, portfolio factsheets and also Yodelar's terms and conditions.

- The suitability report dated 7 August 2020 set out that Mr A had an objective to invest in an investment portfolio that was rebalanced on an agreed regular basis, with his risk profile reassessed at least once a year. However, the agreed basis wasn't recorded in the suitability report.

- The recommendation to transfer from Transact to Aviva was purely to allow Mr A to access Yodelar's central investment proposition and one of the reasons for recommending the Yodelar portfolio was that the recommended portfolio would be regularly reviewed and rebalanced.

- Further, the recommended provider section described active investment management with the portfolio being reviewed quarterly as being one of the reasons for the suitability of the recommendation. But nowhere in the suitability report did it outline that Mr A's rebalances would only be undertaken on a half-yearly basis from the start date of the investment.

- A factsheet for the recommended Yodelar portfolio said, in the important information section, that *"Yodelar Investments Limited is responsible for managing the Low Balanced model portfolio in accordance with the stated investment objectives and risk profile for the Low Balanced model portfolio. The professional adviser is responsible for advising the clients as to the selection of a Yodelar model portfolio and for assessing the suitability of the chosen Yodelar model portfolio for the client on an ongoing basis. Please note that changes made within each risk portfolio will affect all clients within that profile simultaneously".*

- The last sentence was the most important as it would have indicated to Mr A that the quarterly rebalances would be carried out automatically and simultaneously within all the Yodelar portfolios.

- Yodelar's Terms of Business also said that *"we will quarterly review the underlying investment funds within your portfolio. Should we advise on changes to the funds within your investment portfolio we will inform you at least 48 hours before we implement changes. Twice per year, we will rebalance the assets in your portfolio to suit your risk profile".*

- This again would suggest that any changes recommended in the quarterly portfolio review would be advised to Mr A 48 hours before any changes made and then implemented as a result of the quarterly review. However, the changes recommended in the quarterly portfolios weren't carried out until each half-yearly risk profile rebalance, which in most cases was a considerable length of time after the quarterly reviews.

- Taking the above into account, the investigator said that she understood why Mr A expected his portfolios to be rebalanced automatically on a quarterly basis as it was documented in the suitability report, portfolio factsheet and also Yodelar's terms and conditions.

- In addition, none of the documentation which the investigator had reviewed explicitly said that re-balances would be carried out on a half-yearly basis from the start date of the investment, apart from an annual review letter which was a considerable time after the portfolios had been invested in.

- The investigator said that it was therefore her opinion that it was reasonable for Mr A to expect the portfolios he invested in to be rebalanced quarterly.

- The investigator acknowledged that, in providing evidence to our service, Yodelar said that its only responsibility was to rebalance the portfolios half-yearly to ensure consistency with the selected risk profile. However, this hadn't been fully disclosed to Mr A from the outset of the advice process, and so the investigator could understand why Mr A thought he was investing into portfolios which would be rebalanced quarterly. The only mention of the portfolio being reviewed every six months was within the annual review reports, but this was after the presentation of, and Mr A's acceptance of, the suitability report.

- The investigator said that, taking all of the above into account, she didn't think it was made clear to Mr A that his portfolios wouldn't be rebalanced quarterly in line with the published portfolio reviews. It was therefore her view that the advice given to Mr A at the outset was unsuitable for him - if he'd been made fully aware that re-balances wouldn't be carried out automatically every quarter, he would have invested differently.

To put Mr A in the position he would otherwise have been, the investigator recommended that Yodelar compare the performance of Mr A's investment with that of the FTSE UK Private Investors Income Total Return Index. If the notional value was greater than the actual value, there would be a loss and compensation would be payable.

If there was a loss, Yodelar should in the first instance pay into Mr A's pension plan, to increase its value by the amount of the compensation and any interest, the investigator said. That payment should allow for the effect of charges and any available tax relief. Yodelar shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

If Yodelar was unable to pay the compensation into Mr A's pension plan, the investigator said that it should be paid directly to him, with a 15% deduction for the (post tax free cash) deduction which should be made for the income tax which Mr A would otherwise pay on the pension benefits.

Mr A accepted the investigator's assessment, but Yodelar didn't, saying the following in summary:

- The portfolios held by Mr A didn't have any relationship to the booklets (not factsheets) referred to by the investigator until the point of rebalancing, but there were other variables such as fund charges which might mean that the actual performance was at variance.

- Its terms of business, emailed to Mr A on 24 July 2020, clearly set out that it would rebalance a client's portfolio twice per year rather than four times per year. Mr A agreed to these terms and also receive various communications which were consistent with this. These terms of business were then revised in September 2021 and Mr A agreed to them again.

- For example, an email sent to Mr A on 7 October 2020, thanking Mr A for choosing to invest with Yodelar, cited two dates for him to diarise, the first of which was the next portfolio rebalance date, which was six months hence in March 2021.

- The first email regarding the rebalance was then sent to Mr A on 31 March 2021, and it said in the first line *that "As part of our ongoing service and to ensure your portfolio maintains the suitable balance of assets, we will provide a full rebalance of your portfolio every 6 months".* This was then re-emphasised in the Frequently Asked Questions section of the email. Further emails including the same information were then sent on 27 September 2021, 28 March 2022, 26 September 2022, 23 March 2023 and 27 September 2023.

- Further, the suitability report said, in the section entitled "Payment for Ongoing Services" that *"The advice you have received in this report is not a one off and we* *agreed to provide an ongoing advice service, set out in our advice proposition. The next review will be in 12 months. We will rebalance your portfolio in 6 months' time".*

- The portfolio would be assessed for suitability quarterly and Mr A would be informed if Yodelar recommended that changes be made. But the rebalancing in line with any recommended changes would be undertaken on a six monthly basis. And the timing of the six monthly rebalancing would depend upon the date at which Mr A became a client of Yodelar.

- It couldn't reasonably therefore be the case that Mr A expected his portfolio to be rebalanced quarterly rather than every six months. Nor had Mr A ever indicated to Yodelar that he expected this to be the case. However, in line with his objectives, the portfolio was assessed and rebalanced on a regular basis.

- There was no logic to the proposed alternative comparator benchmark – this wouldn't have been suitable for Mr A. But notwithstanding this, Mr A was always provided with suitable advice to meet his risk profile, and his portfolio was always rebalanced at the agreed times.

The investigator wasn't persuaded to change her view, however, and as agreement couldn't be reached on the matter, it was referred to me for review.

I issued a provisional decision on the matter on 3 December 2024, in which I set out my reasons for not upholding the complaint. The following is an extract from that decision.

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done so, whist I'm sorry to disappoint Mr A, I've reached different conclusions to the investigator.

I think the body of evidence which Yodelar has submitted relating to the rebalancing taking place on a six monthly basis is compelling and persuasive. And as the parties seem to accept that this would be one of the main reasons as to why Mr A's portfolio performance may not have matched the performance recorded in the portfolio booklets, I think this presents a plausible explanation.

I also think that Yodelar did enough to make Mr A aware that the rebalancing would occur every six months rather than quarterly, the latter of which referred to the portfolio suitability assessments. My understanding is that if changes needed to be made, then this would occur at the next "rebalancing" point, i.e. every six months.

And I think that Yodelar has a point in asserting that, given the number of communications which referred to six monthly rebalancing, Mr A was unlikely to reasonably be under the impression that rebalancing would occur every quarter. And if, despite the initial references to rebalancing occurring every six months, Mr A was nevertheless under the impression that rebalancing would occur quarterly, then the follow up communications relating to the rebalancing every six months as referred to by Yodelar ought reasonably to have disabused Mr A of this notion.

The investigator noted that Mr A agreed to invest with Yodelar on the basis of regular reviews and rebalancing of his portfolios. But I'm satisfied that this is what's happened here and that this has been in line with the frequency as set out by Yodelar to Mr A.

There's little else which I think I can meaningfully add at this stage. If Mr A would like copies *of the communications referred to by Yodelar, in which the references are made to the six monthly rebalancing, then the investigator will be able to provide this.*

As such, and as I've said above, although I accept that this will disappoint Mr A, I don't currently think that the complaint should be upheld."

Yodelar submitted no further comments, but Mr A said the following in response:

- In order to rely on its arguments, Yodelar would need to demonstrate that it tended to his pension funds differently from the rest of the investors in the portfolios.

- The two portfolios made healthy gains in the year in question, and his pension funds would form part of the mass transactions which ebbed and flowed daily. But he lost 25% of his pension pot when Yodelar returned 8% growth to everyone else who was invested in the portfolios.

- Either his money was part of the portfolios, or it wasn't – and if the portfolios in question had made a gain or loss, then so should his.

- Yodelar's explanations must indicate that either it was producing misleading information or it had mismanaged or misappropriated some of his pension funds.

- He'd lost a huge chunk of his savings and he'd like them to be restored to reflect the sums which would be represented by the portfolios' performance.

At my request, the investigator then sent to Mr A a letter from Yodelar dated 10 April 2024, in which it provided a further explanation as to why Mr A's actual fund performance had varied from that of the portfolios in which he'd been invested. The investigator enquired of Mr A as to what he considered Yodelar had done wrong in the explanation provided.

Mr A replied as follows:

- He couldn't compete with the documents such as that provided by Yodelar as he had no access to its internal workings, nor those of Aviva. But his complaint was simple, in that Yodelar had claimed that its portfolios had made gains or lost nothing during the 12 months in question. But his pension fund, invested in those portfolios, had lost 25% in the same period.

- He'd chosen to invest with Yodelar due it its representation of the performance of its model portfolio and claimed investment skills. He didn't ask to be invested in the worst performing stocks on the market. There'd been no claim that he had interfered with Yodelar's investment choices and so Yodelar needed to explain how he'd lost 25% of his investment when the portfolios in which he'd been invested had either broken even or made significant gains. If the fund management claims were correct, his investment should be worth more, but if the claims of fund growth were misleading, then this should be set out.

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.

I do understand Mr A's disappointment with my provisional decision. There are two separate, but related, matters here, the first of which is whether the disparity between the performance of Mrs A' pension funds and that of the portfolios in which he was invested could reasonably be explained by the way in which rebalancing occurred to bring an individual's investments in line with those portfolios, and then whether Mr A was made aware of the manner in which that would happen.

My previous decision noted that neither party seemed to disagree that it was the manner and timing of the rebalancing which would account for the divergence between Mr A's own pension funds and the stated performance of the portfolios. But that decision varied from the investigator's conclusion that Mr A hadn't reasonably been made aware that this would happen.

My understanding from the reading of Mr A's response to my provisional decision, which set out my view that Mr A ought reasonably to have been aware of the six monthly rebalancing process, is that he may not now accept that this adequately explains the disparity between the performance of his pension funds and the portfolios – or at least that this shouldn't be accepted as justification for the disparity.

Mr A's fundamental point remains that his pension funds should have more closely mirrored the performance of the portfolios. And I think that might be a perfectly reasonable expectation, *except* in circumstances such as have been explained here about the manner in which his pension funds would be aligned to the portfolios in question.

And this was the reason why I asked the investigator to send Mr A Yodelar's quite detailed explanation as to how and why – due to the six monthly rebalancing, rather than the immediate adjustment – his actual holdings hadn't precisely mirrored those held within the portfolios. And then why certain stocks still held within Mr A's pension funds may have underperformed those which were held in the portfolios.

And although I accept what Mr A has said about not having access to Yodelar's internal workings and so being unable to refute the content of the letter from Yodelar, my view of the letter in question is that it provides a credible explanation as to why the disparity exists, with focus being placed on the performance of some individual holdings as examples of how the divergence occurred.

Had Mr A been unaware that Yodelar provided a service whereby the six monthly rebalancing occurred, and had instead been led to believe that a more immediately reactive system was in place, it's possible that I would have upheld the complaint. But for the reasons set out in my provisional decision, I don't think that this could fairly or reasonably be concluded here.

I also don't think that the available evidence supports the position that Yodelar has mismanaged the portfolios in question. It actively managed holdings within the portfolios, to which Mr A's individual pension funds would be aligned on the six monthly basis, and the type and weightings of the assets held within the portfolios wouldn't be at variance with those which might typically be expected for "high cautious" or "low balanced" portfolios.

And so, although as set out above, I understand Mr A's disappointment with the outcome, I don't think I can fairly or reasonably uphold the complaint.

In closing, I've noted that Mr A has suggested that his funds alone would have experienced different performance from that of the portfolios in which he invested. But that wouldn't be the case. All investors subject to the same terms as Mr A would have experienced rebalancing on a six monthly basis, and so the performance of their pension funds also wouldn't have been exactly mirroring the portfolios' performance.

My final decision

My final decision is that I don’t uphold the complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr A to accept or reject my decision before 14 February 2025.

Philip Miller
Ombudsman