DRN-5548779

The complaint

Mr M says The Private Office Limited ('TPO') mismanaged his Self-Invested Personal Pension ('SIPP') and Individual Savings Account ('ISA') portfolios – they were not actively managed; unknown to him, they were not re-balanced despite concerns he repeatedly raised about underperformance and despite TPO's promise to do so; and TPO's late re-balancing proposal was rushed, illogical and unsuitable, plus it mismatched his changed risk profile.

He also says "*The TPO wealth portal did not at any stage work properly. I made repeated requests that the issues were addressed but nothing was done. Different reasons were given which were contradictory. The main theme was to blame third parties*."

Mr M wants to be compensated for financial loss and for all fees paid to TPO (on the grounds that it did not deliver the services it received payment for).

TPO disputes the complaint.

What happened

Mr M's engagement with TPO began in 2022. He explained the following to us – "*I contacted them after a web search for a new financial adviser I was persuaded by their online claims of top financial returns / performance , unbiased advice , a reliable platform to have constant sight of my investments and a flexible approach to clients*".

In September 2022 TPO issued its financial planning discussion document to him, in November his risk profile assessment confirmed he had a higher than average attitude to risk (his score was in risk group '5' out of '7'), in the same month it issued its Pension Switch Report and then in December it issued its Suitability Report ('SR') to him, with investment recommendations.

The September document mainly summarised and illustrated aspects of the financial planning discussion the parties held.

The copy of the risk profile assessment that has been shared with us includes the following contents about Mr M's responses in the risk profile questionnaire –

- He considered himself to be a 'high risk taker' with a history of taking 'large' risks, but in more recent times he had taken less risks.
- He saw risk as 'opportunity', he made financial decisions reasonably confidently and felt 'somewhat optimistic' thereafter, and he was usually more concerned about possible gains than possible losses, but he would adapt 'somewhat uneasily' when things go wrong financially and he wanted to take a 'medium' degree of risk with his financial decisions.
- He selected "20%" in response to this question – "By how much could the total value of all your investments go down before you would begin to feel uncomfortable?"
- His preference in terms of risk diversification in a portfolio was – 50% high risk/return, 40% medium risk/return and 10% low risk/return.

The SR is a detailed document (38 pages). It refers to Mr M's objectives – mainly pension/retirement planning (the report mentions his desire to slightly reduce his work commitments in 2023 and likelihood that his earnings would significantly decrease after age 65, he was in his late 50s at the time but there is no confirmation of a planned retirement age), and active portfolio management aimed at outperforming the market. The report also mentions that he planned to repay his mortgage in the following two years.

Mr M had three pensions, a Prudential Retirement Account, an Advance by Embark Personal Pension ('PP') with a crystallised pot and an uncrystallised pot, and a NEST Employer Occupational Pension. The report confirms that pension advice was limited to the PP (both pots) only, with consideration of the other two to be addressed under separate cover. It also summarises all of Mr M's wider assets (and their values) at the time.

Based on the risk profile assessment score/group, the SR explained that he had an 'Adventurous' risk profile which meant he was "… *prepared to take a high level of investment risk as preservation of capital is much less important … than the potential for high levels of growth or income*", that he sought growth/income at a level "… *significantly above the level of inflation …*", and that he accepted fluctuations will be significant and "… *substantial losses may occur*".

The SR recommended, for the PP, "*Transfer to a new InvestAcc Self Invested Personal Pension (SIPP) Lite*". It also recommended that Mr M transfer and consolidate two Stocks & Shares ISAs, held with different providers, into a 'TPO Invest Stocks & Shares ISA', and liquidate a trading account held with another provider then invest the proceeds (along with surplus cash deposits) in a 'TPO Invest General Investment Account (GIA)'. The investment management service recommended by TPO for these assets was an advisory one, Mr M's consent would be required for implementation of all recommended strategies and transactions. The initial recommended investment strategies were as follows:

- After deduction of three years' worth of SIPP administration fees, the SIPP was to have 60% invested in TPO's Managed IV fund and 40% invested in its ESG IV fund (an 'Environmental, Social and Governance' fund). The SIPP (worth roughly around £917,000) was to have a long-term investment horizon.
- The TPO Invest ISA (worth around £70,000) was to be fully invested, for the medium term, in its Passive II fund, and the GIA (worth around £258,000) was to be fully invested, for the medium to long term, in its Passive III fund.
- The Managed IV and ESG IV funds were described as having 'Risk Band 80+', the Passive II fund was 'Risk Band 40-60' and the Passive III fund was 'Risk Band 60-80'.

In addition to the investment recommendations, the SR also advised on retaining a total of £280,000 in cash deposits. Out of the four components – SIPP, ISA, GIA, and Cash – of TPO's advice, Mr M has confirmed in his referral to us that his complaint is about the SIPP and ISA.

In terms of services and fees, the SR confirmed there were initial advice fees for the recommendations made, then there were ongoing annual charges (charges for the ongoing advisory investment management service provided by TPO in addition to charges for the platform service and fixed adviser fees) for the SIPP, ISA (for which no fixed adviser fee applied) and GIA. TPO's ongoing service proposal included use of the TPO Wealth portal, reviews twice a year with an adviser, ongoing telephone support and access to its financial planning team as and when required.

Mr M has confirmed to us that the focus of his complaint is mainly on TPO's ongoing advisory management of the SIPP and ISA, not so much about its initial advice. He said –

"*TPO may have originally assessed my risk rating in line with the right approach , but as soon as the market volatility occurred they were unresponsive to my concerns and have lied to me about the timing of a change to my " managed pension pot " and when I chased them up , came up with a proposal which appeared to be illogical and made up to pacify me*".

He referred to his secure message exchanges with TPO in 2023, beginning a few months after its recommendations were implemented, in which he repeated his concerns about underperformance and losses in value, and in which he referred to problems he was facing in using the portal.

His message to TPO on 4 May said he was disappointed with performance in the SIPP and ISA, citing a 4.8% value downturn in the former since the transfer and a 1.3% value downturn in the latter. He asked for a view from TPO on how both were "… *forecast to perform over the next 12 months and what sort of recovery in value …*" he could expect. He also mentioned that the portal was still not working for him, and set out the issues he was experiencing, concerning an investment value not being updated and pensions (his wife's pension and his Prudential pension) being absent.

TPO responded the next day. It promised a detailed answer on the performance query and, on the portal, it said it had informed the 'tech team who powers the portal' about the issues. It mentioned a possible cause of the problems (possibly related to third party live feeds into the portal).

There is a message from him to TPO dated 31 July, which refers to the same two issues (including an additional problem with the portal concerning missing end of year tax information), amongst other matters, and in which he asked for a catch-up. TPO again responded the next day. On the portal matter it said – "… *the data reported to the portal (from Hargreaves Lansdown and SS&C Hubwise) and portal provider (Moneyinfo) are wholly independent of TPO. We intervene to report issues to those providers however require their resolutions. With SS&C Hubwise, we can provide you with separate login details to live feeds. For Hargreaves Lansdown, if the feeds are wrong, this will be a delay or error in their reporting to third party portals.*" On the performance issue, TPO invited Mr M to give dates and times he was available for a catch-up.

A meeting was arranged for, and held on, 16 August. On 18 August TPO sent a summary of the meeting to Mr M. A copy has been shared with us. It states that three issues were discussed – pension funding, crystallisation options and death benefits – but the letter does not appear to address the specific performance concerns he had raised. However, the concerns remained under discussion in the secure messages. On 20 August Mr M again expressed his dissatisfaction with underperformance in the SIPP and ISA. He asked TPO to inform him about converting his investments to cash if he wished to and about terminating its service if he wished to – also stating that he had not decided to do either, but he remained *nervous* about the underperformance.

TPO responded the next day and answered his questions. In addition, it provided some comments on performance.

In summary, it said – Mr M's concerns were understandable because periods market volatility were uncomfortable for all; his move to TPO might have happened around a time of market downturn, market wide conditions (some of which it mentioned) had resulted in this; such downturns are unavoidable and to be expected over time; however, strategy remains the most important aspect; his portfolio's exposure to the equities market is mainly where volatility is faced, and "*… short-term volatility is often the most visible cost for long-term returns and capital growth*"; the strategy applied to his portfolio ringfenced the ISA for less exposure to equities because it was a medium term investment, whereas the SIPP was mostly in equities, given that it was a long term investment; the SIPP's exposure to geographical areas with prospects of greater long term growth (such as emerging markets) also meant exposure to higher levels of short term market volatility in those areas; but despite the downturns, the SIPP and ISA had still performed slightly better than the previous strategies in the PP and previous ISAs.

TPO offered to discuss further with Mr M. On 31 August, amongst other matters he repeated his discontent with underperformance. The next day TPO addressed the other matters, but not the underperformance. On 7 October he wrote to say the level of underperformance was *unacceptable*. He queried the absence of confirmation of the September portfolio rebalancing he had been promised, and said the portal was still problematic. TPO's response on 9 October, with regards to the performance issue, included –

"*It might be time to revisit our previous discussions around strategy and risk. Your liquid assets are structured in accordance with timescales and your risk profile – cash for the shorter term and greater equity exposure for the longer term … you do have a need to take risk to generate long-term capital growth and volatility accompanies investment risk.*"

"*We can certainly meet, alongside a member of our investment team and/or Chief Investment Officer … We are unconstrained in how we construct a portfolio … however … there is not a diversified portfolio that has generated positive returns during the same period.*"

"*The rebalance was delayed due to the increased market volatility so will go live later this month.*"

"*The financial planning and structuring we have undertaken since our first conversation is designed for moments like this when markets are volatile and we rely on the longer-term expectations from markets to deliver capital growth. Equally, we ensure your short-term plans are met with appropriate tax planning and cash holdings … If this does not align with your expectations, I want to ensure you do not feel disappointed.*"

On the portal matter, it said – "*On the TPO Wealth portal, can you confirm which feed is not aligning? The SS&C Hubwise and InvestAcc feed should be live and aligns although I cannot see the other side for Hargreaves Lansdown who send the feeds through to the portal.*"

Mr M's 12 October reply went further into his concerns. He did not accept that the market wide downturn justified the underperformance he was unhappy about, and he essentially considered that a competent investment manager would have found opportunities, not excuses, in such circumstances. He referred to not being in a position to earn enough to offset the loss of value in the SIPP (of around 5%), and how this affected his retirement planning. The reply mentioned some examples of TPO's management approach that he found questionable and he dismissed what he considered to be its attempt to pacify him with reference to comparable benchmark portfolios that were not performing any better. As far as he was concerned TPO was engaged to grow his portfolio, it was failing to do so and was instead presiding over the devaluation of the portfolio.

His reply concluded with a request for options on how to make "… *fast, pragmatic changes to* [his] *investment which will achieve capital growth even in volatile markets*". In response, TPO proposed another meeting, to discuss his concerns and some analysis it wished to go through with him. Based on the messages, both sides met on 26 October, during which TPO's rebalancing proposals were discussed, a copy of which was sent to Mr M (on 31 October) after the meeting. The letter refers to the meeting date as 25 October, so this might be the correct meeting date.

In November, he declined the proposals, and thereafter terminated TPO's service. Before doing the latter, he countered TPO's rebalancing proposals with a set of his own. TPO initially disagreed with, and refused to implement, his counter proposals. He protested in this respect and asked for TPO's implementation of specific changes (liquidations to hold in cash and, in part, to transfer to his Prudential pension) as an interim measure whilst he looked for a new firm to undertake and invest the portfolio. TPO appears to have agreed.

His complaint to TPO was not upheld, so he referred it to our service.

One of our investigators initially upheld the complaint in full (for the investment and portal related issues). She found herself unsatisfied that TPO's initial investment recommendation was suitable for Mr M. However, she investigated the case further and subsequently revised the outcome. She concluded that an aspect of the portal complaint (related to TPO's customer support role in the matter) should remain upheld, for which she awarded Mr M £100, but the investment complaint should not be upheld.

Overall, and in summary, she was persuaded that – Mr M's adventurous risk profile, capacity for loss, objectives and longer term investment horizon were correctly assessed by TPO at the outset; that its initial recommendations were not unsuitable; that, with regards to ongoing management, rebalancing proposals were made in August and October 2023; and that there is no evidence TPO was obliged to make those proposals any earlier.

The investigator addressed TPO's challenge against her conclusion on the portal complaint. She accepted that the secure messages show that it responded to Mr M's enquiries in a timely manner and invited him to meetings to discuss matters further. However, she found, despite TPO addressing the portal issues in the messages in May and August 2023 he continued to experience problems with the portal up to October, that would have been frustrating for him, and it does not look like TPO followed up on the matter after his October feedback. Given that the portal was a part of TPO's ongoing service package to Mr M, and even though it was not the portal provider, she concluded that the frustration and the lack of follow-up were sufficient grounds to award him £100 for the trouble and inconvenience caused to him.

TPO appears to have accepted the investigator's second view, whilst also reserving its position on the £100 award because it maintains that it could not have done any more than it did to help Mr M in the portal matter.

Mr M strongly disagrees with the investigator's second view. He asked for an Ombudsman's decision, and his main objections were –

- The investigator was wrong to concentrate on the SIPP, given that his complaint includes the ISA. [In response, the investigator explained that broadly the same findings she had made on the SIPP applied to the ISA too.]
- She was also wrong to refer to a rebalancing in August 2023, there was no such rebalancing. Furthermore, her findings ignore evidence of correspondence from TPO in which it refers to a 'delayed' rebalancing, and in which it refused to implement his rebalancing proposal. [In response, she referred to rebalancing documentation in August and October 2023. She also repeated her finding that there is no evidence that TPO should have offered a rebalancing any earlier.]
- Irrespective of his risk profile at the outset, the alarming reality of making paper losses early in his TPO portfolios forced that profile to change. He promptly and repeatedly conveyed his concerns to TPO in this respect and, based on how its service was sold to him, he expected it to be responsive to those concerns. He accepts that pensions are long term investments but in the face of his portfolio clearly

being on the wrong side of the market he expected a prompt review and rebalancing to be part of TPO's responsive management service, but that was never the case. Its terms say the managed fund could be expected to be reviewed at least twice a year, that did not happen for his portfolio. He was promised a review in September that also never happened.

- The portal was an essential part of the portfolio administration that he was promised in TPO's service, there is sufficient evidence that it never properly worked and that he repeatedly informed TPO about its failures. It was never proactive in the matter, instead always reactive and it did not meaningfully addressed the problems.

In the event that the investigator's second view is overturned and his investment related complaint is upheld, Mr M also made submissions about the redress benchmark to consider.

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.

There are three aspects to Mr M's complaint, related to TPO's initial advice, its ongoing service and the portal. In terms of the SIPP and ISA portfolios that he has complained about, there have been some remarks from him which suggest his focus is not on the initial advice, but is instead on the ongoing advisory management of the portfolios. However, it is not clear that he accepts suitability of the initial advice, so that appears to remain a live issue. In addition, that advice set the scene for and is directly connected to the advisory management that followed. For these reasons, I am satisfied that it is the first issue to address.

Initial Advice

The investigator found, in her second view on the SIPP (and then in her conclusion on the ISA), that TPO's initial advice was not unsuitable. Overall and on balance, I agree.

The regulator's Principles for Businesses, at Principle 6, required TPO to pay due regard to Mr M's interests and treat him fairly. The same responsibility was echoed in the regulator's Conduct of Business ('COBS') rules at COBS 2.1.1R, which requires a firm to act honestly, fairly and professionally in accordance with the best interests of its clients.

There are specific provisions under the COBS rules (at COBS 9 and 9A) on a firm's responsibilities in assessing suitability of its recommendations. I do not consider it necessary to set them out in detail. My reading of information in this case and of submissions from TPO is that it was/is acutely aware of these responsibilities, so they are not in dispute. Its position is that it discharged these responsibilities, and that is what Mr M disputes.

A number of key elements arise in terms of considering the suitability of an investment recommendation. The client's profile at the time of the recommendation is one of the most important of these elements, alongside the task of matching the recommendation to that profile. The client's profile mainly relates to the client's objective(s), personal and financial circumstances, attitude to risk (or risk profile), affordability status (including capacity for loss), and investment knowledge/experience.

Mr M wanted new advisers to review and invest his assets. As I stated in the background above, the initial advice in his complaint was limited to the transfer of his PP to the SIPP, transfer of his previous ISAs into the TPO ISA and the investment of cash from his liquidated trading account and from surplus cash deposit in the TPO GIA. His objectives in these pursuits were mainly retirement planning and achieving active investment management that outperformed the markets, and TPO was engaged to assist him in delivering them (through a combination of its initial and ongoing advice).

I noted in the background that he also planned to repay his mortgage, but that appears to have been a personal objective for him, not necessarily one that TPO had a role in delivering.

I am satisfied that Mr M was focused mainly on a high level of growth at the outset. Even before looking into the other parts of his overall profile, the notion of seeking to outperform the markets depicts such a focus. Growth in line with the markets would be considered by some to be sufficient, but he wanted growth that outperformed the markets. As I quoted earlier, he said he was enticed by TPO's claims about *top financial returns*, unbiased advice, a reliable platform and flexible service. I do not say or suggest that the latter three were not important to him, they were, but I also consider that his reference to top financial returns reinforces my finding that high growth was his main focus.

There is further reinforcement for this finding in his adventurous risk profile, and in the assessment conducted for it. As defined, the profile meant he was less concerned with capital preservation, and more concerned about exposure to the opportunity for high levels of growth significantly above the rate of inflation. In other words, he sought to beat the markets and the rate of inflation, and he was less concerned about the risk of losses associated with the pursuit of high rewards.

I am mindful that some of his assessment answers appear to temper his adventurous profile with some elements of balance. For example, even though he had a history of taking high risks, he had taken lower risks in recent times around the point of advice, and despite his preference for taking risks he said he could feel uncomfortable when things went wrong. However, there is still enough in his answers to show that his intention for the investments through TPO was to use a higher risk strategy. The combination he ~~selected~~preferred – 50% high risk, 40% medium risk and 10% low risk – was, overall, distinctly ~~high~~higher risk.

It is not necessary to go into the details of Mr M's net worth. It is enough to say that he had a high net worth with capacity within it to sustain the higher risk strategy he wanted to pursue. The substantial size of the cash holding he was advised to retain is an indication of this. Overall, I have not found any issues in his capacity for loss.

In terms of investment knowledge and experience, I am satisfied by available evidence that Mr M was a reasonably experienced investor. Some of his assets at the time of advice indicate this, for example his trading account. The fact that he declined TPO's rebalancing proposals in October 2023 and issued counter rebalancing proposals of his own also supports this finding. Before that stage, his secure messages to TPO had already made investment strategy points that showed his knowledge and experience. I acknowledge that the late 2023 events were after the initial advice, and I do not say or suggest that they are relevant to what happened in the course of the earlier initial advice. However, they nevertheless show the extent to which Mr M was knowledgeable and experienced in investments.

TPO recommended the Managed IV fund and ESG IV fund, on a 60/40 split, for the SIPP portfolio, and the Passive II fund for the ISA. According to the SR, their risk ratings were on a scale beginning at '0' and benchmarked at '100' to represent a position akin to full FTSE 100 exposure (or a FTSE 100 equities portfolio).

As I said in the background section, both funds in the SIPP were 80+ and the ISA's Passive II fund was 40-60. I am conscious that Mr M has focused on these two assets, but it is clear from the SR that TPO advised his portfolio as a whole, that portfolio being the SIPP, ISA, GIA and cash holding, so it is reasonable to consider suitability in this context too. In doing so, the 60-80 rating for the GIA's Passive fund III is noted, as is the relatively no-risk (other than inflation risk) cash holding.

Overall, and in total, the *invested* portfolio was worth around £1.25 million. Around 73% of it was the SIPP, around 6% was the ISA and around 21% was the GIA. Mr M preferred a 50(high risk)/40(medium risk)/10(low risk) mix in his portfolio. Based on the above fund ratings, about three quarters of the invested portfolio (the SIPP's two 80+ rated funds) was high risk, but not quite to the full extent of the 100 (or FTSE 100) level of the ratings, so it could be viewed as having a high to medium profile. About one fifth (the GIA) had what could be viewed as a medium to high profile, and the remainder (in the ISA) had what could be viewed as a medium to low profile.

I do not consider that this constitution mismatched, in terms of risk exposure, the sort of the invested portfolio Mr M wanted. Addressing each asset individually, the SIPP's long term investment horizon placed it in a position to face its higher risk profile (along with the short-term episodes of volatility, over time, that is commonly associated with such a profile), and a similar thing can reasonably be said about the GIA's medium to long-term investment horizon. The ISA had a shorter investment horizon – at medium – and this was matched by its medium to low risk profile.

An additional point to note is the sizable cash holding recommended by TPO. It was worth £280,000. This provided a meaningful counter balance to the £1.25 million invested portfolio that reflected Mr M's desire to take higher risks for the potential of higher rewards, but to do so without the full extent of the high-risk taker's approach he previously had.

There has been some mention of the above funds having limited past track records at the time of advice. I understand this consideration, but in the present case I am not persuaded that there is anything meaningful to draw from it. Available information shows that they were funds of funds, populated with other third-party funds (many with mainstream names) which had their individual track records, so in this respect they were not without information from which performance *prospects* could be considered (this being one of the main benefits of track records).

The funds were combined to place the portfolio in a position to achieve the high returns Mr M wanted, and that meant significant exposure to higher risks, which he accepted and had the capacity for.

On balance, and for all the above reasons, I find that TPO's initial advice to Mr M was not unsuitable.

<u>*Ongoing Advisory Management*</u>

As I said earlier, "*TPO's ongoing service proposal included use of the portal, reviews twice a year with an adviser, ongoing telephone support and access to its financial planning team as and when required*". This was the "Enhanced" version of the ongoing service, which is what Mr M paid for.

TPO's responsibility for reviews and rebalancing feature in Mr M's complaint about its ongoing service.

Mr M's portfolio was invested in early 2023. As I mentioned in the previous section, both sides met on 16 August and 26 October. In the first meeting they discussed pension funding, crystallisation options and death benefits, and the discussion in the second meeting was about his portfolios, his concerns about their performance and the portal issues.

He was entitled to two reviews of his portfolio per year, but TPO's service was terminated before the portfolio's first anniversary. In this context, on balance, I consider both meetings and the ongoing secure messages exchanged between the parties on the portfolio from May 2023 onwards as evidence of TPO keeping Mr M's portfolio under relatively constant review throughout its service period, and as evidence that it delivered what it was paid to deliver in this respect. I acknowledge that Mr M's contacts and enquiries, in the main, initiated the secure message exchanges and the meetings, but the facts remain that they happened and they had the result of creating an ongoing review of his portfolio, essentially up to the point that he terminated the relationship.

There is no dispute about telephone support and access to the financial planning team, so I need not address these aspects of the ongoing service. Even if these were issues to consider, I am satisfied that the correspondence and meetings between the parties mentioned above show that telephone support and access to the financial planning team were rendered somewhat redundant given that Mr M had direct and ongoing repeated contact with his adviser throughout the period.

With regards to rebalancing, its 'Our Services' brochure (which was enclosed with the SR issued to him) included the following –

"*Both advisory and discretionary are able to make tactical changes to portfolios to address short term changes and opportunities, and to seek to defend portfolios against identified or immediate threats.*

However, by the nature of the relationship the discretionary service will be able to make changes quicker and, if necessary, more frequently.

Portfolios in the advisory service will be rebalanced periodically to keep the asset distribution in line with the targeted allocation for your decided risk profile.

Where no changes are required, we will simply recommend a rebalance of the portfolio, taking profit and reinvesting it back into the originally planned asset allocation."

The August 2023 reference made by the investigator relates to TPO's rebalancing proposal document for all its model funds. This document is indeed dated 'August 2023'. It was a general proposal document. In Mr M's case, concerning his invested assets, and due to the advisory based service he received, nothing could be done with any proposal without his approval. He is correct in saying he referred TPO to rebalancing promised for September. I reflected this in the background section above, alongside TPO's October response explaining the delay in the rebalancing.

My understanding is that the relevant rebalancing concerned the August proposal document. There appears to have been a delay in conveying, to Mr M, the parts of the document relevant to the funds in his portfolio, for the reasons TPO explained. This was done on 26 and 31 October (at the meeting and in the rebalancing document sent to him thereafter). The point, I believe, the investigator sought to make was that there is no evidence of a rebalancing discussion or plan earlier than the period between August and October, and, based on available evidence, I agree.

On balance, I am not satisfied that Mr M's risk profile changed in the manner he has argued in his complaint. I also do not consider that he ever abandoned his objective to prioritise high growth over capital preservation, and to pursue a high level of performance. I note he has submitted, or at least suggested, that the paper losses he experienced forced to him reduce his risk profile, towards preserving value in his assets that had yet to be lost, but the contents of his discussions with TPO do not quite depict this. They show his dissatisfaction with the paper losses he was experiencing, there is no doubt in this respect. However, they also show that, overall and in the main, what he wanted from TPO was a revised plan to pursue the same high risk/high rewards strategy (from the initial advice), to do so successfully and to reverse the paper losses in the process.

An observation that might be worth mentioning is that part of his exchanges with TPO concerned its assistance with/arrangement of a Venture Capital Trust ('VCT') investment he wanted to make during the same period. This is no more than an observation, and I accept that it does not relate to the assets he has complained about. However, VCTs are commonly regarded to be high-risk investments, due to their association with start-up ventures, so this information would suggest that despite the paper losses he was addressing in the portfolio Mr M's appetite for high-risk investments does not appear to have been dampened at the time.

With regards to the portfolio, and as shown in my summary of the secure messages in the previous section, Mr M did broach the subject of liquidating to cash on 20 August, which could be viewed as an indication that he wanted a reduction in risk exposure. However, the same communication made clear that he did not plan to take such a step. It seems likely that the enquiry was raised, alongside his enquiry about terminating the service, to do no more than emphasis to TPO his dissatisfaction with performance, and perhaps to increase pressure on it to find the type of solution he wanted. This view is supported by the fact that TPO answered his liquidation and service termination questions the next day, so he was informed that he could do both, yet he pursued neither thereafter in August, September or October.

In his 12 October message he said –

"*Just because other investment portfolios made similar choices and they are performing badly doesn't make* [his portfolios' paper losses] *right or acceptable. I have selected your Company to grow my investments … I do indeed question your skill in choosing and then fine tuning a winning portfolio for me.*"

"*So I would like to understand what the options are to make some fast, pragmatic changes to my investment which will achieve capital growth <u>even in volatile markets</u>*"

This, including the words I have emphasised, shows that even as of October there was no mention of a reduction of risk exposure, instead Mr M wanted a solution for growth within volatile conditions, as opposed to seeking advice on how to place his portfolio in less volatile circumstances.

In other words, TPO was still faced with the same investor profile it had used in its initial advice. It would arguably have been disingenuous for it to recommend a lower risk strategy that carried potential for lower rewards, when it was clear that Mr M still wanted high rewards. Its rebalancing proposals had to address the same objectives that he had at the outset, so it was not unreasonable for the proposals to be made within the remits of the same funds recommended at the outset.

This is mainly what TPO did in its 31 October rebalancing proposal letter. It is a reasonably detailed letter (10 pages) with reasoned explanations about the background to the proposals and about the proposals themselves.

In the proposals –

- For the Passive III fund (in the GIA, but the proposal letter refers to the ISA), two new sub-funds (a Gilt and a Corporate Bond fund) were added to replace a pre-existing Gilt sub-fund that was removed; investment in three sub-funds was increased (aimed towards growth and some reduction in volatility); and investment in four sub-funds was decreased for seemingly competent reasons (including the reduction of a potential drag on growth).
- For the ESG IV fund (in the SIPP), two new sub-funds replaced two pre-existing sub-funds, for mainly ESG related reasons (both also maintaining potential for growth).
- For the Managed IV fund (in the SIPP), two new sub-funds replaced four pre-existing sub-funds, broadly based on TPO's views of positive prospects for the former and less positive prospects for the latter; investment in five sub-funds was increased (for reasons including outperformance prospects and prospects for some reduction in volatility); and investment in two sub-funds was decreased for broadly strategic reasons.

The letter's reference to the Passive III fund and the ISA is not clear, because the ISA was invested in the Passive II fund. However, I expect this would have been addressed had Mr M gone along with the proposals, which he did not. My expectation is that if this was a mistake TPO would have corrected it by simply referring to the August proposal document where all proposals for all its model funds (including those in Mr M's SIPP, ISA and GIA portfolios) were set out. With regards to the Passive II fund, the document shows that three sub-funds were removed (two for inflation related reasons and one in order to release value for reinvestment elsewhere), investment in six sub-funds was increased (for reasons broadly related to prospects and strategy), and investment in another (one) was decreased mainly to release value to reinvest elsewhere.

Overall and on balance, I have not found anything wrong with the proposals, and as I mentioned earlier it was reasonable for TPO to maintain the rebalancing within the same funds recommended at the outset because nothing had changed in Mr M's profile to warrant a corresponding change to those funds. I have taken on board his submissions about the reasons he declined the proposals and about his experience in trying to get TPO to agree, or at lease implement on an interim basis, his counter proposals.

He was entitled to decline TPO's proposals and to counter with his own. The portfolios were his and he had every right to determine how he wanted them to be managed, especially if he did not like what TPO had proposed. However, TPO was equally entitled to stand by its advice and proposals. Some firms in its position might adopt an 'insistent client' approach, whereby they assist, with warnings, a client in implementing investments insisted upon by the client even though the action goes against their advice. In other cases, some firms might readily assist in implementation on an execution only basis, where the terms of the implementation are defined only by the client's instructions, not by any advice from the firm. These are choices for firms at their discretion. TPO was obliged to do neither, so I do not find anything wrong in its initial stance against implementing Mr M's counter proposals. In any case, available information suggests a form of compromise was reached between the parties in the matter.

Overall, on balance and for all the reasons given above, I do not find that TPO did anything wrong in the investment aspect of its ongoing advisory management service. I will address the TPO Wealth portal service separately, under its own heading, next.

The TPO Wealth Portal

Its description in the Our Services brochure included the following –

"*We have recently introduced TPO Wealth, our very own client portal which enables you to have your entire financial wealth in one place, with information easily accessible when you need it most in a safe and secure location*." [my emphasis]

"*In addition to providing a secure method of communication, TPO Wealth also supports online valuations which means you can obtain an up to date view of your financial wealth on demand via a personal computer or using the TPO Wealth app available on any Android or Apple device*."

Its description in TPO's 'Working with Us' brochure, which was also enclosed with the SR issued to Mr M, led with "*TPO Wealth is our data-secure client portal which gives you a clear, uncomplicated view of your finances in one place*" and then followed with information about the different aspects of the portal service. Those aspects include visibility of and access to asset accounts, updated valuations and documentation, all areas in which Mr M faced, and reported on, repeated difficulties as he tried to use the portal.

He has said he was presented with the portal as one owned and operated by TPO, hence his dissatisfaction with the manner in which it referred to third parties when he repeatedly reported problems in using it. The quotes above support his belief about operation of the portal, at least up to the point he learnt from TPO that the portal was actually operated by a third party.

I have taken on board TPO's explanations to us about the issues he was facing, including its reference to a problem arising from an asset added to the portal independently by Mr M. I have done the same with the evidence it shared with us of the enquiry tickets it raised with the relevant technical team in its ongoing efforts to help resolve the problem. I do not question those efforts. TPO is unhappy that an award to Mr M in this issue suggests there was more it could have done when, it believes, there was nothing more it reasonably could have done.

The £100 award proposed by the investigator, with which I agree, is not punitive. Our awards for trouble and inconvenience to complainants do not serve to punish firms. Instead, they aim to provide a monetary form of compensation to reflect the impact of particular trouble and inconvenience faced by a complainant in a complaint matter. Therefore, my focus is more on the impact of the portal problems on Mr M.

TPO stands ultimately responsible for such impact because the portal was part of the ongoing service it provided to him and received payment for. The reality about the third party operator was subsequently explained to him, but the quotes above previously led him to believe and rely on something else – that the portal was TPO's operation – so there would have been a distinct disappointment on his part to learn that TPO was without the immediate and direct power/control to resolve the problems.

The ongoing nature of the problems, despite TPO's somewhat intermediary efforts to help, would have compounded the impact on him. But for the fact that he happened to have ongoing exchanges and meetings with his adviser throughout the same period of the continuing portal problems – which meant he had an alternative means to attend to his portfolio during the period – and the fact that TPO's efforts to resolve the issues were being reported back to him (so knowing that the issues were being given attention would have mitigated his distress), I might have been persuaded to consider a higher award.

Our service's guidance on how we approach awards for trouble, distress and inconvenience can be found on our website, at the following link – https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-for-distress-or-inconvenience. Under this guidance, awards between £100 and £300 can be considered where a complaint matter has caused a complainant *some* distress, inconvenience and/or disappointment. I consider this range applicable to the personal impact of the portal's ongoing problems on Mr M in the context of the mitigating factors I mentioned above, and I am satisfied that a £100 award is fair and reasonable in the circumstances. I appreciate he seeks a higher award, but due to the same mitigating factors I am not persuaded that will be fair or reasonable.

Putting things right

I order TPO to pay Mr M £100 for the trouble and inconvenience caused to him by the TPO Wealth portal problems he faced.

My final decision

For the reasons given above, I partly uphold Mr M's complaint only in relation to the TPO Wealth portal issue as dealt with above, and I order The Private Office Limited to pay him £100 compensation for the reasons given above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 30 June 2025.

Roy Kuku
Ombudsman