DRN-5567911

The complaint

Mr H and his wife submitted complaints about investment advice they received from Phil Anderson Financial Services Ltd ('PA'). They received the advice jointly (for a jointly held General Investment Account), and individually (for their respective Retirement Accounts ('RAs') and his Individual Savings Account ('ISA')).

Their complaints have been separated. This decision is only about Mr H and the recommendations he received from PA to set up and invest the RA and to transfer and invest the ISA. He says the advice was unsuitable. In addition, he says – he was not provided with a Suitability Letter ('SL') at the time of advice; the copy of the SL issued in response to his complaint is inaccurate; there is no evidence that a risk profile questionnaire was completed for him; using his existing Standard Life ('SLife') personal pension for the pension investment was not considered; and he was misled by the adviser's assurance that the RA's performance in the first year would match/cover the fees he paid.

PA disputes the complaint.

What happened

I issued a Provisional Decision ('PD') for the complaint on 6 May 2025. In it, a summary of the background was set out as follows –

"*Based on information shared with us, the following happened –*

- *In an email from Mr H to PA dated 29 July 2021, he briefly referred to circumstances in which he and his wife were shortly due to receive a significant amount of capital, and he sought help on 'where to put it'. Both sides corresponded further, and on 30 August 2021 PA asked him to give an idea of the area he wanted advice on. On the same date he elaborated further, with – "We need help with how to make the best use of that money long term, earn from it and keep it protected. Pension help too …". He also referred to a need to safeguard their son's future.*

- *Between September and October 2021 both sides discussed and agreed fees (1.5% Initial Advice Charge ('IAC') and 0.75% per year Ongoing Advice Charge ('OAC'), they also executed onboarding related documents. There is correspondence that shows PA's service agreement, data protection, investment process and attitude to risk documentation was issued to Mr H and his wife, in an 'initial meeting client pack', on 8 September.*

- *Copies of SLs, all dated 24 November 2021, have been shared with us. Three of them concern Mr H (the SL addressed to him and his wife with regards to the joint General Investment Account recommendation, the SL addressed to him regarding the RA recommendation, and the SL addressed to him for the ISA transfer recommendation).*

- *A pension illustration document for the RA, dated 23 November 2021, preceded the RA SL. We have also been given a completed but unsigned joint fact-find document*

for Mr H and his wife. An email was sent by PA to them on 24 November with the following attachments – charges forms, portfolio acceptance forms, and PA's client agreement forms.

- *The RA SL – summarised his circumstances at the time and his objectives to review his pension arrangement and build up a retirement fund (based on his intention to retire at age 65); confirmed that he was "… quite risk adverse [sic] and had no major aspirations for growth. However, would like a better return than the rate of inflation"; concluded his risk profile as being 'cautious to moderate' and said his capacity for loss was based on the notion that any loss "… above 10% would be a cause for concern"; confirmed the IAC and OAC; noted the existing SLife personal pension (valued at £93,125) and confirmed that he was also a member of his Workplace Pension Scheme ('WPS'); recommended, with reasons, an Advance by Embark RA and a lump sum contribution of £54,400 (gross up to £68,000); and recommended an investment portfolio for the RA.*

- *The following funds and allocations were recommended for the RA portfolio – the Brewin Dolphin MPS Cautious fund (40%), the Vanguard LifeStrategy 40% Equity fund (40%) and the Liontrust SF Defensive Managed fund (20%) [or, 'the BD fund, the Vanguard fund and the Liontrust fund'].*

- *The ISA SL followed a similar format, and referred to the same IAC and OAC. A review of Mr H's existing Virgin Money ('VM') Cash ISA and considering its transfer into a Stock and Shares ISA (and its use for capital growth over the medium to long term) were stated as his objectives. The same statement about him being risk averse was repeated, and the same determination, for him, of a cautious to moderate risk profile was made. PA recommended, with reasons, the transfer of the VM Cash ISA into an Advance by Embark Stocks and Shares ISA, and investment in the same type of portfolio recommended for the RA (that is, 40% in the BD fund, 40% in the Vanguard fund and 20% in the Liontrust fund).*

- *The recommendations were implemented in December 2021. By February 2022 he and his wife expressed, to PA, performance and service delivery concerns. They said they were unhappy about losses in their portfolio and the lack of contact and service from PA at the time (including the absence of notice from PA about the losses). Their expressions included –*

  "Right now were not sure what we've paid for as we've been the ones logging in and checking the Performance which I know you told us not to do. It's the 2lst Feb and you've not been in touch once, yet our account is now sitting at -£25,307 81."

  "You are very aware of our risk profile. Even a £1 ,000 dip is a lot to us"

  "… we knew things could go up and down given all the presentations you've taken us through, but the lack of contact is what has really worried us. £25,307 81 is a lot of money We were worried we wouldn't recover the £8k fees let alone go into -££25,3O7 81 [sic] negative"

  "Should a 6% drop not be something that alerts you or prompts you to contact us?"

  PA's responses included references to the Liontrust fund performing the worst, to the hold or switch options the couple could consider in response to this, to its inclination towards a fund switch, and to clarification that no fees would be associated with a fund switch. Its responses also included the following –

"With regards to fund valuations these change daily and while I'm happy to check in with you more regularly than our annual/6 monthly review its not realistic to expect contact every time there is a £1000 movement or 0.2% of the initial investment amount."

"Our fees cover the time I have spent with you, the advice and analysing of your circumstances providing recommendations and the implementation of the advice."

"… our normal trigger point is drops of more than 10% in one year but if you wish to set a figure that you are both comfortable with then I can adapt our model"

- *Correspondence on the same matters continued into March 2022. Then in May 2022 Mr H and his wife disclosed that they were considering moving their portfolio away from PA, due to the dissatisfactions they had expressed. PA responded to this and proposed a meeting. In June 2022 they terminated PA's services. They say their investments have since remained on the Embark platform, but they have been rebalanced/reinvested to match their risk profiles*."

The PD explained –

"*I recently issued a separate PD for Mr H's wife's complaint. I mention this because the parties will notice that most of my provisional findings below, especially in relation to the RA recommendation, mirror those in the other PD. This is due to both cases sharing, in the main, identical complaint grounds/submissions, and due to both complainants receiving essentially the same RA recommendation*."

then made the following provisional findings –

"*The Principles for Businesses section of the regulator's Handbook, at Principle 6, required PA to pay due regard to Mr H's interests and treat him fairly. A comparable responsibility is in the Conduct of Business ('COBS') section of the Handbook, at COBS 2.1.1R, which requires a firm to act honestly, fairly and professionally in accordance with the best interests of its clients. Furthermore, and with relevance to upholding a client's best interests, the regulator's 2016 guidance on 'assessing suitability' confirmed an expectation upon firms to objectively consider their clients' needs and goals.*

Overall, PA was obliged to provide suitable advice to Mr H in his best interests, and it should have done so with an objective approach towards his needs and goals.

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 find it necessary in this complaint to set them out in detail, and I expect that PA will be familiar with them. However, it is worth mentioning that a key message in both COBS 9 and COBS 9A is that the responsibility for suitability of a recommendation belongs, completely, to the advising firm. The firm is the expert in the relationship. Its clients are entitled to rely upon its recommendations, and are entitled to expect that the recommendations have been properly assessed, by the firm, as being suitable for them.

A number of key elements relate to the suitability of a 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.

The evidence I mentioned above confirms that Mr H sought advice on using the lump sum capital he and his wife were shortly due to receive at the time. It also confirms that his pension was a matter he wanted advice on. Therefore, I am satisfied that Mr H initiated the process that culminated in PA's advice on the RA and the ISA transfer. The same applies to the pension and ISA related objectives, they too were his initiative (the former expressly so, and the latter connected to the advice he sought on how to use the lump sum capital he was due to receive). This finding is made to establish that he asked for PA's advice in both respects. It also provides a helpful viewpoint for the secondary issues raised by Mr H about documentation of the advice and about the assessment process leading to the advice.

He says he did not receive the SL, that the copy produced by PA in response to the complaint has factual errors and omissions, and that a risk profile questionnaire was not properly executed in the assessment process.

For the reasons I address later, my provisional conclusion, on balance, is that the RA and ISA based recommendations were unsuitable for Mr H. His claim in these respects appears to be the main complaint issue, and I am persuaded to uphold it. I recognise that the aforementioned secondary issues have been important enough to him to be included in his submissions, but I deal with them quite briefly because they are not pivotal to the particular findings I will be making about unsuitability, and because they do not create a distinct claim beyond the matter of suitability. Instead, they appear to have been raised as additional arguments in support of his allegation of unsuitability.

On balance, I am not persuaded that Mr H did not receive the SL at the time of advice. His initiation of the advice from PA (and of the associated objectives) should be noted. They provide a reason for which he would have expected to receive the SL as part of PA's service. Its advice (in the SL) was what he and his wife approached and appointed PA for, so it seems unlikely that he would not have noticed that he was deprived an SL at the time and that he would not have questioned such an omission at the time. I have not seen evidence, from the period of advice, showing any query from him about not receiving an SL.

As I said earlier, I have seen evidence of the initial client pack (with PA's service agreement, data protection, investment process and attitude to risk documentation) issued to him on 8 September 2021; and the email sent to him/his wife on 24 November 2021 with the charges forms, portfolio acceptance forms, and client agreement forms attached. The recommendation in the SL was implemented in December 2021 and there is an associated 'Adviser renumeration declaration' signed by him and his wife on 6 December 2021. On the same date, they also signed tax status declaration documents for the recommended Advance portfolio. On balance, I consider it unlikely that PA would have omitted to issue the SL despite issuing these other documents, and equally unlikely that Mr H would have received these other documents without being prompted to question the absence of the SL that contained the recommendations, if one had not been sent to him.

I cannot be absolutely certain in this matter, and I acknowledge his assertion that he did not receive the SL, but on the evidence mentioned above, I find it more likely (than not) that the SL was issued to him.

I note and agree with the inaccuracy Mr H has identified in the copy of the SL that has been produced, and the fact that it does not address the part of his and his wife's objective about safeguarding their son's future. There is wider evidence, in an internal email within PA, that shows it was aware of the circumstances related to his son. Furthermore, he mentioned this part of his (and his wife's) objective to PA at the outset. These show that the SL was poorly put together, but the main issue remains the suitability (or otherwise) of the recommendations within it, which I will deal with below.

A similar finding applies to his allegation about a risk profile questionnaire not being properly executed for him. The main issue is whether (or not) the recommendations suitably matched his risk profile. There is enough evidence to show common ground between the parties on the fact that Mr H presented a cautious risk profile. Therefore, it does not appear that there is more to be gained from treating the allegation about the questionnaire.

PA had to know enough about Mr H in order to give him suitable advice that was in his best interests. He had a cautious risk profile. This is what he asserts in his complaint, and it is essentially, and primarily, what PA recorded in the SL. I repeat the quote, from the SL, I used in the previous section – "… quite risk adverse [sic] and had no major aspirations for growth. However, would like a better return than the rate of inflation". Being risk averse, having no major aspirations for growth but looking for returns that at least offset the effect of inflation depicts a low and cautious risk profile, where no more than maintaining real value, despite the effect of inflation, is the desired outcome. There is also evidence of an internal PA email, dated 9 May 2022, in which the upcoming review (in June) was mentioned and in which it referred to Mr H and his wife's risk profiles at the point of initial advice in the following terms – "They were cautious investors 2 out of 5 …" [my emphasis].

In light of the above, it is not clear why PA wrongly used a 'cautious to moderate' risk profile for the RA and ISA portfolio recommendations. This went beyond the cautious risk profile he was comfortable with, that PA knew he was comfortable with, and that PA itself acknowledged. The recommended portfolios each had a total of at least 60% exposure to funds presented as having moderate associated risks – the Vanguard and Liontrust funds – so this was each portfolio's majority exposure and it mismatched Mr H's cautious risk profile.

Determination of his capacity for loss also appears to have been mishandled, leading to PA's use of another erroneous profile for its recommendations. When Mr H and his wife began to query losses in their portfolios, their capacity for loss featured in their discussions with PA. Drawing from the email correspondence in those discussions, I find grounds to conclude that the proper assessment of his capacity for loss took place in early 2022 (in the face of losses that were already happening), instead of said capacity having been properly addressed before the November 2021 recommendation.

I accept that the SL refers to a 10% portfolio loss as the basis for Mr H's capacity for loss, but I do not consider that this reference was meaningful.

In the previous section, I quoted some of the dissatisfaction expressed by Mr H in February 2022, and some of PA's response. Part of its response was – "… our normal trigger point is drops of more than 10% in one year but if you wish to set a figure that you are both comfortable with then I can adapt our model". This explanation of the 10% level and option to agree something different should have been part of the discussions between the parties before the recommendations, not three months after the recommendation (in February 2022) when Mr H was already facing losses that he did not consider he had capacity for. I have not seen evidence that they were part of the discussions and agreement before the recommendations. There is no mention, from PA, in the February correspondence (or thereafter) about any such previous discussion and agreement. Instead, the correspondence appears to be the first time the default 10% level and the option to adapt it were explained.

At the initial point of advice, it could not have been reasonably assumed that the default 10% capacity would be suitable for Mr H. PA's advice was supposed to be tailored to his circumstances and in his best interest. Those circumstances included a distinctly cautious risk profile (one with a risk averse backdrop), so it ought reasonably to have been contemplated that his capacity for loss needed to be properly and explicitly discussed and agreed, prior to the recommendation.

Overall and on balance, I do not consider that Mr H had the default 10% based capacity for loss stated in the SL. He and his wife expressed dissatisfaction when their portfolios were facing a 6% loss in value, so it stands to reason that his capacity was not only at a level below 10% it was at a level lower than 6%. His wife's email to PA on 9 March 2022 confirmed – "I would say a 5% drop to us is bad and would warrant a call to chat it through". Had PA properly addressed this aspect before its recommendation, the correct capacity for loss level (5%) would probably have been determined at the outset, and would have been material to the portfolios recommended for the RA and ISA.

Mr H's capacity for loss was not isolated to the matter of risk of loss, it related to volatility too. It could be said that volatility is mainly what he experienced and objected to when he complained about his portfolio's 6% loss in value. Again, had all aspects of his capacity for loss (including volatility) been properly assessed at the outset, a suitable portfolio would have been one that matched his cautious risk profile and had minimal, low or lower than average (or any specific level agreed with him) potential for volatility.

Thus far, I have established grounds to find that the RA and ISA portfolio recommendations were unsuitable for Mr H. In addition, I am also concerned about the lack of evidence in support of the recommended Advance by Embark RA.

The SL confirms PA knew about the pre-existing SLife personal pension, and its awareness that Mr H was already a member of his WPS. As far as its advice on his pension arrangement/pension contribution is concerned there is no evidence that it properly considered the SLife pension or WPS as potential solutions/destinations for the contribution. I do not have enough information to determine whether (or not) either would have been a viable option for him at the time. PA does not appear to have properly looked into this, and there is no evidence that meaningful and informed comparisons were conducted between the RA and these alternatives at the time (which ought reasonably to have happened).

Where it is a viable option, and depending on the circumstances, a WPS contribution can provide product and/or fund costs/fees savings whilst achieving the same pension contribution goal. In some cases, the savings might even extend to advice costs/fees where there is less implementation involved, and therefore lower implementation fees. The same potential benefits might have been possible from a contribution into the SLife pension. PA did not properly consider either of these options. I find that unsuitable, and not in Mr H's best interest. If I am wrong in any part of this finding, I invite PA to use its response to this PD to correct me, and to do so with supporting evidence.

Having said the above, I am mindful that Mr H appears to have retained the Advance by Embark RA and ISA since leaving PA, electing only to rebalance their underlying portfolios. My assumption, supported by these retentions, is that his new adviser reviewed the matter as a whole and he (Mr H) then made the informed decision to keep the RA and ISA products as they were. Therefore, for the purpose of my draft redress provisions below, I focus only on redress for the unsuitable portfolios, not for the wrapper products. With regards to his pension, I am not persuaded to award redress for the RA recommendation itself because, on balance and even though I consider that the SLife pension and WPS should have been properly considered (but were not), I am satisfied that Mr H would probably have proceeded with the Advance by Embark RA in any case.

Before I set out my draft redress provisions, I briefly address his claims about a performance guarantee from the adviser and about PA's failure to deliver the OAS.

The adviser denies giving him any performance guarantee or assurance, and PA does the same, so his claim about being told performance would match fees in the first year is disputed. There is no documentary evidence of a performance guarantee or assurance in his

case, and firms rarely give such guarantees. For these reasons, and on balance, I am not persuaded that the alleged guarantee was given.

With regards to the OAS, Mr H was due his first review in June 2022. He terminated PA's service in the same month. He had given an indication that he intended to do so a month before. In these circumstances I do not consider that there was any OAS failure on PA's part. I mentioned, earlier, email evidence showing its considerations ahead of the June review, and the meeting it suggested in May when he expressed his dissatisfactions, so I am persuaded that it would have conducted the review, but for the service termination. It is also noteworthy that it engaged meaningfully with him in the February and March 2022 correspondence. Even though that was about addressing matters it should have dealt with at the point of initial advice, it nevertheless shows delivery of an ongoing service by PA. Overall, on balance and for these reasons, I do not find that PA failed to deliver the OAS."

As mentioned in the quote above, I also shared with the parties the draft redress provisions I intended to use in the final decision if the PD's findings and conclusions were retained.

Both parties were invited to comment on the PD. Mr H acknowledged it. PA disagreed with it. In terms of merit, it mainly said –

"… *you believe the recommended funds were unsuitable for a cautious investor … In respect of the Vanguard life strategy 40% fund, I can confirm that both the funds hold less than 40% equity, with the remainder of the fund being made up from bonds and mutual funds (as outlined within the suitability report). As there is no property involved with either fund, I fail to understand how the fund could be deemed unsuitable for a cautious investor*."

"*In relation to the Brewin Dolphin Passive plus cautious the mps is also in this less than 40% equity hold category and is appropriate for a cautious investor … we use the eValue risk profiler which is on the intelligent office fact find. The eValuer risk profiler uses a scale of 1-5, noting 1 is cautious and 2 is cautious to moderate*."

"*Furthermore, no additional comments have been provided regarding any alternative investments or funds the claimant should have been advised to invest in, which would have deemed suitable for the given their recorded ATR*."

"… *your assessment regarding the* [sic] *Mr H has solely focused on the fall in value of the fund, (6%) and has failed to provide any comments in relation to Mr H personal/financial circumstances at the time of the advice … the portfolio was facing a 6%, I fail to see how a fall in value (1% below your noted capacity for loss 5%) would deem the capacity for loss has been mishandled*."

"*Given the long term nature of the investments which you have acknowledged, it would be hard to have been able to predict the falls in value of the portfolio (volatility as you have noted) …*"

"*Given the long term nature of the investments, no comments have been provided in regards to possibility of the funds recovering throughout the duration of the investment*."

"*Having received some further advice and review of published ombudsman decisions, I note the assessment of a client financial circumstances is often reviewed and considered when assessing a client capacity for loss, rather than the focus being on the fall in value. No focus has been given on this regard, which I believe is a main factor in assessing capacity for loss as show in other FOS decisions*."

"*The drop in value figure of 10% was discussed during the attitude to risk, recorded in the*

suitability report and also referred to in subsequent emails."

In relation to the draft redress provisions, PA said –

"*Whilst I have no specific issues with the FTSE private investor's index, I would like to highlight the BoE average term deposit rate does not reflect how multi asset investment funds are constructed. I would like to note that no multi asset funds include term deposits, as they all use fixed interest product to provide the low volatility element to multi asset portfolios. I believe using the UK gilts index would give a true reflection of how cautious portfolios performed over the period of time, thus giving a true reflection of how these funds performed*."

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, including a review of the complaint and consideration of PA's comments, I am not persuaded to depart from the findings and conclusions in the PD. I retain those findings and conclusions, and I incorporate them into this decision.

I have noted PA's comments. I address them directly below, but I have not found them to be persuasive. I retain the reasons given in the PD for upholding Mr H's complaint.

I understand PA's argument about the funds recommended for his portfolios, but it is unsupported by available evidence. It has not addressed the Key Investor Information Documents ('KIIDs') for the two funds I am concerned about (the Vanguard and Liontrust funds). February 2021 versions of the KIIDs for these two funds have been shared with us. They both confirm risk ratings for the funds and both funds are risk rated '4' out of '7', which places them in the middle of the risk spectrum (with '1' being the lowest and '7' being the highest). In this context, I am satisfied that the PD was correct to find them as "*funds presented as having moderate associated risks*". Exposing 60% of Mr H's portfolios to such funds clearly mismatched his distinctly cautious risk profile, as I explained in the PD. Furthermore, it is noted that the performance benchmark for both funds, as stated in their KIIDs, is the *IA* (Investment Association) *Mixed Investments 20-60 Shares* sector, which is commonly considered to be a moderate risk profile sector.

My role is limited to determining the complaint, it does not extend to making alternative investment *recommendations*. Contrary to PA's suggestion, I do not consider the absence of reference to what would have been a suitable alternative portfolio to be a flaw in the PD. In some cases, depending on the circumstances, there might be definitive grounds on which to make findings on specific aspects of what a suitable recommendation could or should have included. I do not find such circumstances in the present case. Instead, in terms of merit and in the main, I consider it enough to highlight Mr H's cautious risk profile and to find, for the reasons explained in the PD (and quoted above), that the recommended portfolio unsuitably mismatched it.

Mr H's capacity for loss related to both his financial circumstances and the amount of loss (including the effects of volatility) he considered he could cope with. The notion, if this is what PA suggests, that a wealthy client can *automatically* and *reasonably* be assumed to have a higher capacity for loss is arguably unfounded. Individuals and circumstances differ. Despite what PA has said about Mr H's financial circumstances, the facts are that he complained at the point of experiencing a 6% loss of value in the portfolios, in response PA addressed his capacity for loss, then both parties agreed to set it at the 5% loss of value mark. This happened regardless of the high value of his wider assets, which PA has cited in

support of its argument about his financial circumstances.

The point made in the PD was that reference to the 10% capacity was largely superficial, the facts show that Mr H's capacity for loss had not been properly discussed and addressed at the point of advice. They also show that proper treatment of the matter only happened after the points of advice and implementation. It happened when there was already a loss of value in the portfolios that breached his capacity for loss. This could and probably would have been avoided if the discussion and proper assessment had happened at the time of advice, in which case it would probably have influenced the recommended portfolio.

I did not find in the PD that PA was expected to predict volatility. Instead, and amongst other things, I said – "… *had all aspects of his capacity for loss (including volatility) been properly assessed at the outset, a suitable portfolio would have been one that matched his cautious risk profile and had minimal, low or lower than average (or any specific level agreed with him) potential for volatility*."

My reference, in the PD, to volatility implicitly covered the recovery point that PA has made, losses and recoveries 'on paper' are part of volatility. My finding was essentially that a proper assessment of Mr H's capacity for loss at the outset would have included a discussion about his attitude towards volatility (as part of the overall assessment). That did not happen. Instead, PA appears to have found out about his attitude towards volatility months after the recommendation, in the middle of a *real* volatility event that was at a level he did not want and that he does not appear to have been prepared for (because the matter had not been meaningfully discussed with him as part of the advice).

PA objects to one of the redress benchmarks I used in the PD's draft redress provisions. I refer it to our website and to information on our service's approach to redress in investment cases at the following link – https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-investment-complaints.

PA will find that the average return for one year fixed rate BoE bond benchmark is a part of our usual, and reasoned, approach and, as stated in the above link page, "*This doesn't mean that we necessarily think the customer would have invested only in this type of bond. Rather, the benchmark's intended broadly to reflect the sort of return a customer could have obtained with little or no risk to their capital.*" The page proceeds to explain our reasoning behind a 50/50 pairing of this benchmark with the FTSE related benchmark, as I did in the PD and have done below.

I do not consider PA has said anything that defeats our reasoning behind use of the above BoE bond benchmark or anything that shows our reasoning and/or approach does not apply to Mr H's case. I am not persuaded to alter the draft redress provisions or those set out below.

Putting things right

Fair compensation

My aim is that Mr H should be put as closely as possible into the position he would probably now be in if he had been recommended suitable portfolios for his RA and ISA.

I take the view that Mr H would have invested the RA and ISA differently at the outset. It is not possible to say precisely how they would have been suitably invested at the time. However, I am satisfied that what I have set out below is fair and reasonable given his cautious risk profile.

The start date for the calculation of redress is the date on which the RA's and ISA's portfolios were invested. The primary end date for the calculation would be the date on which they were rebalanced after PA's agency was terminated. However, any loss up to the end date will be relevant to the portfolios thereafter. Such loss is value that would otherwise have existed in the portfolios, but for the unsuitable initial advice, and it is value that would thereafter have had ongoing performance. Therefore, any such lost value is distinct, and Mr H is entitled to compensation for lost performance on it from the end date to the date of settlement.

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 firm's wrongdoing has caused a complainant some distress, inconvenience and/or disappointment. I consider this range applicable to the personal impact of PA's unsuitable advice upon Mr H for around six months before he had his portfolios rebalanced by his new adviser. In the circumstances, I am persuaded that an award of £250 is fair and reasonable.

Mr H is ordered to engage meaningfully and co-operatively with PA to provide it with all information and documentation, relevant to its calculation of redress, that it does not already have.

what must PA do?

To compensate Mr H fairly, PA must:

- Compare the performance of the investments in the table below with the benchmarks in the table below. If the actual value is greater than the fair value, no compensation is payable. If the fair value is greater than the actual value, there is a loss and the difference is the compensation payable to Mr H. In addition, calculate and add the additional payment set out in the table below.

- For the ISA, pay the total compensation into Mr H's ISA, otherwise, if that is not possible, pay it directly to him.

- For the RA/pension, pay the total compensation into Mr H's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If PA is unable to pay the total amount into the pension plan, it should pay that amount direct to Mr H. Had it been possible to pay it into the plan, it would have provided a taxable income. Therefore, the total amount should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount, it is not a payment of tax to HMRC, so Mr H would not be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using his actual or expected marginal rate of tax at his selected retirement age. If he would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

- Provide the details of the calculation to Mr H in a clear and simple format.
- Pay Mr H £250 for trouble and inconvenience.

Income tax may be payable on any interest paid.

Investment	Status	Benchmark	From ("start date")	To ("end date")	Additional payment
The Advance by Embark Retirement Account Portfolio	Still exists	For half the investment – FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return Index); for the other half – the Bank of England average return from fixed rate bonds.	Date of investment	Date on which the Portfolio was rebalanced by Mr H's new adviser.	Calculate performance of any total financial loss, from the end date to the date of settlement, using the same benchmark.
The Advance by Embark Individual Savings Account Portfolio	Still exists	For half the investment – FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return Index); for the other half – the Bank of England average return from fixed rate bonds.	Date of investment	Date on which the Portfolio was rebalanced by Mr H's new adviser.	Calculate performance of any total financial loss, from the end date to the date of settlement, using the same benchmark.

actual value

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

fair value

This is what each investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the fair value when using the fixed rate bonds as the benchmark, PA should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. PA should apply those rates to the investment on an annually compounded basis.

Any additional sum paid into each investment should be added to the fair value calculation from the point in time when it was actually paid in.

Any withdrawal from the investment should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that

point on. If there is a large number of regular payments, to keep calculations simpler, I will accept if PA totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

why is this remedy suitable?

- Mr H had a low/cautious risk profile.

- The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It is a fair measure for someone who was prepared to take some risk to get a higher return.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to capital.

- I consider that Mr H's profile was in between these benchmarks, in the sense that he was prepared to take a small level of risk to attain his objective. The 50/50 combination above would reasonably put him into a position that broadly reflects the sort of return he could have obtained from portfolios suited to his profile.

compensation limit

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £170,000, £190,000, £195,000, £200,000, £350,000, £355,000, £375,000, £415,000, £430,000 or £445,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In Mr H's case, the complaint event occurred after 1 April 2019 and the complaint was referred to us after 1 April 2023 but before 1 April 2024, so the applicable compensation limit would be £415,000.

decision and award

I uphold Mr H's complaint on the basis set out above. Fair compensation should be calculated as I have also stated above. My decision is that Phil Anderson Financial Services Ltd must pay him the amount produced by that calculation, up to the relevant maximum.

recommendation

If the amount produced by the calculation of fair compensation is more than the relevant maximum, I recommend that Phil Anderson Financial Services Ltd pay him the balance. This recommendation is not part of my determination or award. Phil Anderson Financial Services Ltd does not have to do what I recommend.

My final decision

For the reasons given above, I uphold Mr H's complaint, and I order Phil Anderson Financial Services Ltd to pay her redress and compensation as stated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 16 June 2025.

Roy Kuku
Ombudsman