DRN-5583059

The complaint

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

Their complaints have been separated. This decision is only about the recommendation they jointly received from PA to set up and invest the GIA. They say the advice was unsuitable. In addition, they say – they were not provided with a Suitability Letter ('SL') at the time of advice; the copy of the SL issued in response to their complaint is inaccurate; there is no evidence that risk profile questionnaires were completed for them; and they were misled by the adviser's assurance that performance in the first year would match/cover the fees they paid.

PA disputes the complaint.

What happened

I issued a Provisional Decision ('PD') for the complaint on 12 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 their 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 the complainants, in an 'initial meeting client pack', on 8 September.*

- *Copies of SLs (all dated 24 November 2021) have been shared with us, one of which relates to the joint GIA recommendation. We have also been given a completed but unsigned joint fact-find document for the complainants. 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 GIA SL – summarised their circumstances at the time and their objectives to have a financial review and to commit part of their lump sum to financial planning (including investment over five to 10 years and the facility, within said investment, to*

transfer funds for the use of their annual ISA allowances); confirmed that they were "… quite risk adverse [sic] and had no major aspirations for growth. However, would like a better return than the rate of inflation"; concluded their risk profile as being 'cautious to moderate' and said their capacity for loss was based on the notion that any loss "… above 10% would be a cause for concern"; confirmed the IAC and OAC; recommended, with reasons, an Advance by Embark GIA and a lump sum investment of £436,000 in it; confirmed the facility within the GIA to use it as a feeder for their ISAs; and recommended an investment portfolio for the GIA.

- *The following funds and allocations were recommended for the GIA's 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 recommendation was implemented in December 2021. By February 2022 the complainants 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 the complainants 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.*

One of our investigators looked into the complaint. He was not persuaded to uphold it. He issued a detailed view addressing each complaint issue, and concluded as follows –

"… in summary, I think:

- *PA provided the recommendation letter.*
- *PA completed a fact find and, although there were some inaccuracies, there were no errors which would materially have impacted the advice.*
- *The advice given was suitable for [the complainants'] circumstances.*
- *There is no evidence to suggest PA were misleading about the performance of the investments in relation to the initial advice fee.*
- *PA provided the service they agreed to provide."*

The complainants disagreed with this outcome and asked for an Ombudsman's decision."

The PD explained –

"*I recently issued separate PDs for the complainants' individual complaints. The parties will notice that my provisional findings below mirror many or most of those in the other PDs. This is due to the three cases sharing, in the main, identical complaint grounds/submissions and broadly the same core circumstances*."

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 the complainants' interests and treat them 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 the complainants in their 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 Mrs H were shortly due to receive at the time. Therefore, I am satisfied that the complainants initiated the process, and the objectives, that culminated in PA's advice. This finding is relevant to the secondary issues raised by the complainants about documentation of the advice and about the assessment process leading to the advice.

They say they did not receive the SL, that the copy produced by PA in response to their complaint has factual errors and omissions, and that risk profile questionnaires were not properly executed in the assessment process.

For the reasons I address later, my provisional conclusion, on balance, is that the GIA portfolio recommendation was unsuitable for them. Their claim in this regard appears to be the main complaint issue, and I am persuaded to uphold it. I appreciate that they have deemed the secondary issues important enough to be included in their submissions, but I deal with them quite briefly because they are not pivotal to the 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 be additional arguments raised in support of their allegation of unsuitability.

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

As I said earlier, the initial client pack (with PA's service agreement, data protection, investment process and attitude to risk documentation) was issued to them on 8 September 2021; and the email sent to them on 24 November 2021 attached the charges forms, portfolio acceptance forms, and client agreement forms attached. The recommendation in the SL was implemented in December, and they signed an associated 'Adviser renumeration declaration' on 6 December. 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 the complainants 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 issued.

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

I agree with their points about the inaccuracy they have identified in the copy of the SL that has been produced, and the fact that it does not address the part of their objectives about safeguarding their son's future. There is wider evidence, in an internal PA email, that shows it was aware of the circumstances related to their son. Furthermore, Mr H mentioned this part of their objectives 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 recommendation within it, which I will deal with below.

A similar finding applies to the allegation about risk profile questionnaires not being properly executed in the process. The main issue is whether (or not) the GIA recommendation suitably matched their risk profile. There is enough evidence to show common ground

between the parties on the fact that they presented a cautious risk profile. Therefore, it does not appear that there is more to be gained from treating the allegation about the questionnaires.

PA was obliged to know enough about the complainants in order to give them suitable advice that was in their best interests. They had a cautious risk profile. This is what they assert in their 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, against the effect of inflation, is the desired outcome. There is also evidence of another internal PA email, dated 9 May 2022, in which the upcoming review (in June) was mentioned and in which it referred to the complainants' 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 GIA portfolio recommendation. This went beyond the cautious risk profile the complainants had and were comfortable with, that PA knew they were comfortable with, and that PA itself acknowledged. Part of the cautious to moderate profile's definition refers to exposing the majority of its associated portfolio to higher risks in equities and property, but such exposure was not what the complainants wanted. The portfolio recommended for their GIA had a total of at least 60% in funds presented as having moderate associated risks – the Vanguard and Liontrust funds. This was the portfolio's majority exposure, and it mismatched the complainants' cautious risk profile.

Determination of their capacity for loss also appears to have been mishandled, leading to PA's use of another erroneous profile for its recommendation. When the complainants began to query losses in their portfolio, 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 their 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 their capacity for loss, but I do not consider that this reference was meaningful.

In the previous section, I quoted some of the dissatisfaction they expressed 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 recommendation, not three months after the recommendation (in February 2022) when the complainants were already facing losses that they did not consider they had capacity for. I have not seen evidence that they were part of the discussions and agreement before the recommendation. 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 them. PA's advice was supposed to be tailored to their circumstances and in their 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 their 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 the complainants had the default 10% based capacity for loss stated in the SL. They expressed dissatisfaction when their portfolios were facing a 6% loss in value, so it stands to reason that their capacity was not only at a level below 10% it was at a level lower than 6%. Mrs H'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 portfolio recommended for the GIA.

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

For all the above reasons, I provisionally conclude that the GIA portfolio recommendation was unsuitable for the complainants. Before I set out my draft redress provisions, I briefly address their claims about a performance guarantee from the adviser and about PA's failure to deliver the OAS.

The adviser denies giving them any performance guarantee or assurance, and PA does the same, so their 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 the 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, the complainants were due their first review in June 2022. They terminated PA's service in the same month, and had given an indication that they 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 the complainants expressed their dissatisfactions, so I am persuaded that it would have conducted the June 2022 review, but for the service termination. It is also noteworthy that it engaged meaningfully with them in the February and March 2022 correspondence. Even though that was about something 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.

The parties were invited to comment on the PD. Mr H acknowledged it, and 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*."

"… *the overall portfolio only reflected a small proportion of Mr H overall assets, noting his recorded financial/personal circumstances at the time of the recommendation. 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*."

PA also quoted a statement from the adviser who dealt with the complainants. The statement included –

"*With regards to the financial position at the time of the investment, the clients … had just over £1m in reserves over and above the investment amount. In addition they both had regular income … Funds weren't required to maintain their standard of living. As for the 10% capacity for loss other than it being discussed when we were assessing the attitude to risk and then referring to it in the SR and in subsequent emails I'm not sure what else I can add. With the capacity for loss there is also the fact that if the funds drop by more that* [sic] *10% will this have an impact on their standard of living and the answer to that is no, they have invested for the medium to long term they were not using the funds to generate an income and the funds were invested into pension products that can't be accessed until 10 years before state pension age*."

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 understand PA's argument about the funds recommended for the portfolio, 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 rating spectrum used in the KIIDs (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 the portfolio to such funds clearly mismatched the complainants' 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* to complainants. 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 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 the complainants' cautious risk profile and to find, for the reasons explained in the PD (and quoted above), that the recommended portfolio unsuitably mismatched it.

Their capacity for loss related to their financial circumstances and the amount of loss (including the effects of volatility) they considered they could cope with. The notion, if this is what PA suggests, that wealthy clients 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 the complainants' financial circumstances, and despite the same being essentially said in the adviser statement it referred to, the facts are that the complainants complained at the point of experiencing a 6% loss of value in the GIA portfolio. In response, PA addressed their 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 their wider assets, which PA has cited in support of its argument about their financial circumstances. The meaningful capacity of loss discussion and assessment in this respect also appears to have happened at this point for the first time. As I said in the PD – "… *the proper assessment of their 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*".

The point made in the PD was that reference to the 10% capacity was largely superficial.

The facts show that the complainants' capacity for loss had not been properly discussed and addressed at the point of advice. They also show that the main 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 portfolio that breached the complainants' capacity for loss. This could and probably would have been avoided if it 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 their capacity for loss (including volatility) been properly assessed at the outset, a suitable portfolio would have been one that matched their cautious risk profile and had minimal, low or lower than average (or any specific agreed level) 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 the complainants' capacity for loss at the outset would have included a discussion about their attitude towards volatility (as part of the overall assessment). That did not happen. Instead, PA appears to have found out about their attitude towards volatility months after the recommendation, in the middle of a *real* volatility event that was at a level they did not like and that they do not appear to have been prepared for (because the matter had not been meaningfully discussed 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. 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 am also aware that the investigator has echoed a similar explanation to PA following its comments on the PD.

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 the present case. I am not persuaded to alter the draft redress provisions, which is the basis for the orders I set out below.

Putting things right

Fair compensation

My aim is that the complainants should be put as closely as possible into the position they would probably now be in if they had been recommended a suitable portfolio for their GIA. I take the view that they would have invested the GIA differently at the outset. It is not possible to say precisely how it would have been suitably invested at the time. However, I am satisfied that what I have set out below is fair and reasonable given the complainants' cautious risk profile.

The start date for the calculation of redress is the date on which the GIA portfolio was invested. The primary end date for the calculation would be the date on which it was rebalanced after PA's agency was terminated. However, any loss up to this end date will be

relevant to the portfolio thereafter. Such lost value, as of the end date, is value that would otherwise have existed in the portfolio, 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 the complainants are entitled to compensation for lost performance on it from the end date to the date of settlement. The 'additional payment' in the table below is for this purpose.

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 GIA portfolio advice upon the complainants for around six months before they had the portfolio rebalanced by their new adviser. In the circumstances, I am persuaded that an award of £250 is fair and reasonable.

The complainants are 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 the complainants fairly, PA must:

- Compare the performance of the investment 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 the complainants.

- In addition, calculate and add the additional payment set out in the table below.

- Pay the total compensation amount to the complainants.

- Provide details of the calculation to the complainants in a clear and simple format.

- Pay the complainants £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 Joint General Investment Account	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	Date of investment	Date on which the portfolio was rebalanced by the complainants' new adviser.	Calculate performance on any total financial loss, from the end date to the date of settlement, using the same benchmark.

		average return from fixed rate bonds.			

actual value

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

fair value

This is what the 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 the 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?

- The complainants 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 the complainants' profile was in between these benchmarks, in the sense that they were prepared to take a small level of risk to attain their objectives. The 50/50 combination above would reasonably put them into a position that broadly reflects the sort of return they could have obtained from a GIA portfolio suited to their 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 the complainants' 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 the complainants' 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 them 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 them 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 Mrs H's and Mr H's complaint, and I order Phil Anderson Financial Services Ltd to pay them redress and compensation as stated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 24 June 2025.

Roy Kuku
Ombudsman