

The complaint

Mr M says IWP Financial Planning Limited trading as Alexander Grace ('AG') is responsible for the mismanagement of his portfolios since 2016, leading to their underperformance and a financial loss that he seeks to recover.

What happened

His complaint relates to his pension and Individual Savings Account ('ISA') portfolios. It also relates to a Financial Adviser ('the FA') who serviced his portfolios and advised their investment under AG and, previously, under a predecessor firm that AG acquired in late 2020 ('the acquisition'). The predecessor firm was called Bishop Armstrong Financial Planning Ltd ('BA'), and it was an Appointed Representative of a separate third-party firm, to whom AG has no connection.

Mr M's account passed from BA to AG as part of the acquisition, but AG says it did not undertake BA's past liabilities.

He has explained to us how BA advised and arranged the transfer of his personal pension into a Self-Invested Personal Pension ('SIPP') in 2016; in 2017, BA advised and arranged the opening of his ISA; and in 2018 BA advised and arranged the transfer of his Defined Benefit Pension into the SIPP.

His 2024 complaint to AG alleged negligent mismanagement of his portfolios. The complaint coupled his claims with those of his wife's (for her portfolios), but this decision is only about his complaint. His key submissions (in the complaint, in the referral of the complaint to us and in more recent correspondence with us) can be summarised as follows –

- A total of around £1.75 million was transferred into the SIPP, and he made a total of seven contributions into the ISA (all amounting to £135,000). He estimates that, over a period of around seven years a financial loss caused by AG of around £460,000 was incurred in the SIPP and a loss of around £35,000 was incurred in the ISA. These are the losses he seeks to recover, along with separate compensation for distress. He also notes that, over the same period, his portfolios were adversely affected by total fees to BA/AG of around £103,000, and a total of around £120,000 in fund and platform charges.
- The FA had his trust and confidence until around 2023, when he (Mr M) dedicated considerable time and effort into determining the true state (and history) of his portfolios, and when he discovered they had been mismanaged. Prior to this, and at the outset, the FA gained his confidence through his promises and assurances of top tier advice (initial and ongoing) and service which he said justified the associated costs and which, despite the associated costs, he said would deliver him around 4% annual growth after fees. Thereafter, the FA routinely gave him the impression that his portfolios were, overall, performing well.
- In the November 2022 annual review, losses were explained away by reference to

geopolitical and economic events that he was led to believe were the reasons for the underperformance. The idea of reducing risk exposure in his ISA was discounted by the FA on the grounds that he expected a rebound in the stock market and because fund switches were being applied to the portfolios to address performance. By the time of the November 2023 annual review, and despite the market upturn in that year, there was still substantial underperformance in the portfolios. The FA's reactions to his queries and challenges were questionable, hence the personal time and effort he was prompted to dedicate into determining the truths about his portfolios. There were revelations in two main areas – the management of the portfolios and their performances.

- In terms of management, the risk profiles for the SIPP and ISA had been altered (increased) in conflict with his risk profile, in conflict with what they previously were and without his knowledge or consent; fund switches had been negligently conducted; and the fund switches had happened without his knowledge or approval.
- Up to November 2021 his risk profile for the SIPP (scored as 2 out of 5) was defined as a 'moderate' investor who was "... *sensitive to short term losses which could compel them to sell their investment and hold a zero-risk investment instead if losses occur*" and who was "... *prepared to accept lower long-term returns in exchange for smaller and less frequent changes in portfolio value*". Thereafter, based on a new profiling and scoring approach (and on the score of 4 out of 10), his profile was changed to 'lowest medium', based on a portfolio that would "*Most likely contain mainly low and medium risk investments ...*".
- Up to December 2021 his SIPP portfolio held approximately 20% in bonds, 16% in property funds, 24% in equities, 25% in multi asset funds and 14% in specialist funds, and amongst these holdings the portfolio's exposure to high-risk equities was no more than 11%. Fund switches thereafter, made without his knowledge or consent, increased, unsuitably, the portfolio's high-risk equities exposure to 41%.
- Similar circumstances applied to his ISA portfolio. Up to the end of 2021 he had a slightly higher risk profile for this portfolio – 'balanced', scored as 3 out of 5 – which was then changed to 'highest medium' (scored as 7 out of 10). However, up to the end of 2021 his ISA portfolio's exposure to high-risk equities was no more than 24%. Then subsequent fund switches, also made without his knowledge or consent, increased, and more than tripled, this exposure to around 84%.
- The pattern of fund switches also displays recklessness – some bought and sold unnecessarily, some bought and sold with avoidable poor timing, and, overall, fund switch transactions carried out on poor decision making.
- For context, before he first met the FA his investment experience and attitude towards risk was limited to very low risk fixed rate accounts, with profit bonds and a small stakeholder pension (with no equities investments, 10% invested in fixed rate assets and 90% in money market assets). The FA, with some pressure, persuaded him to extend his risk profile for the investments that followed. However, he never agreed or expected to have his profile(s) extended in the ways that were applied to the SIPP and ISA portfolios after 2021.
- In terms of performance, and over the period between 2019 and 2024, his analysis – as shared with AG – shows that his SIPP underperformed reasonable comparators in the market by around 25% and that whilst the comparators achieved around 20% to 30% growth over this period, his SIPP failed to meet the lower end of this

benchmark. His analysis for the ISA, over the period between late 2018 and 2024, shows even worse results – his ISA being the only one with negative growth when judged against reasonable comparators in the market, where those comparators enjoyed growth of between 20% to 40% over the period.

One of our investigators looked into the complaint, but he was not persuaded by Mr M's claims of mismanagement, so he did not uphold the complaint in this respect.

However, in applying our inquisitorial remit, he identified that AG had not delivered annual reviews to Mr M at the rate of twice per year, as set out in the client agreement settled with him in November 2020 following the acquisition. It had conducted reviews only once per year. He concluded that compensation for some of the ongoing service charges paid by Mr M (deducted from his portfolio(s)) should be made to him for the undelivered parts of the ongoing service, along with redress for lost performance on the charges deducted.

The investigator noted that, in the absence of evidence that AG undertook liabilities prior to the acquisition, only issues arising thereafter (after the client agreement settled with Mr M) can be addressed in the complaint. Meaning that the scope of the complaint is limited to events from November 2020 onwards.

On the mismanagement allegation, he mainly found that – given its unpredictable nature and given that it is never guaranteed, investment performance alone will not usually be enough to uphold a complaint about mismanagement; furthermore, the complaint's scope relates to a period in which notable events like the pandemic and the 2022 mini budget, amongst others, impacted adversely on the markets; instead we would consider whether (or not) an investment has been suitably managed for the client; this includes considerations about the investment's management being in line with the client's risk profile and capacity for loss; in Mr M's case, available evidence shows his risk profiles for the SIPP and ISA were appropriately assessed, as was the capacity for loss associated with those profiles; and the SIPP and ISA portfolios matched his risk profile for each.

The investigator also addressed the examples of fund switches that Mr M posed, questioned and alleged to be reckless. Overall and in the main, he considered that there were plausible explanations for them, they remained in line with the relevant risk profiles, they mainly arose from portfolio reviews (which was part of the purpose of the reviews) and that, for some, it could be unfair to criticise them with the benefit of hindsight. In addition, and whilst acknowledging the distress any underperformance considered by Mr M could have caused him, the investigator said in the absence of mismanagement by AG there is no ground to make an award to him in this respect.

Both parties disagreed with aspects of the investigator's view. AG contended that Mr M had not complained about the rate of annual reviews, so there is no basis for a finding in this respect. Mr M maintained his mismanagement allegation, and made representations that, in the main, featured the key complaint submissions summarised above.

The matter was referred to an Ombudsman.

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.

Scope

My approach to Mr M's complaint is limited to the events after his client agreement with AG was settled in November 2020.

Transfers of clients (and their portfolios) between firms – initiated by firms – are not uncommon in the industry. Sometimes individual clients are transferred across, and sometimes entire client books are transferred. In doing so, the transfer of rights and responsibilities in the original service contract needs to be addressed actively. Legal and contractual considerations, and documents, arise in this respect.

A firm can potentially assign its rights in a service contract (for example, its client's account and the fee revenue from the account) to another firm as part of a business sale (or acquisition) transaction. However, such rights will usually sit next to obligations/liabilities, past and future. The assignment could cover future liabilities, but not past liabilities. Without express agreement between the firms and the client to whom the past liabilities are owed, their transfer does not take place. To achieve this, a *novation* is needed.

Novation requires consent across the three relevant parties – the transferor firm, the transferee firm and the client whose account is being transferred. In other words, the first has to wilfully agree to transfer its past client liabilities to the second, the second has to wilfully agree to accept those liabilities and the client has to wilfully agree that the former's past responsibility towards him/her can be passed on to the latter. In the absence of such tripartite express agreement, novation would not have been properly executed.

There is no evidence of this in Mr M's case, so it appears that past liabilities (from any service provided by the FA under BA, prior to the acquisition) did not transfer to AG. Therefore, AG's responsibility towards him is limited to the period beginning from the November 2020 client agreement settled between them.

Mismanagement Allegation

Mr M's mismanagement allegation is clearly based on his analysis of his portfolios' performance over the periods mentioned above.

Our service does not determine complaints solely on the basis of a portfolio's performance. In general terms, investment performance is dependent on various factors, including market forces and socio-economic conditions (both of which are beyond any investment adviser's or manager's control). For this reason, and in the absence of performance guarantees in a case, we do not ordinarily hold firms responsible for underperformance on its own.

No performance guarantee was given by AG to Mr M.

Where investments are advised, we can consider suitability, and where they are managed we can consider whether (or not) they have been suitably or properly managed in line with the relevant management mandate.

In Mr M's case AG's service in managing his portfolio was advisory. The management mandate was essentially defined by and subject to the ongoing advice he received and his agreement(s) to have said advice implemented. This makes it necessary to consider the relevant portfolio reviews, in which the state of his portfolios was considered, discussed and advised upon. AG took over his account in late 2020. Based on his submissions, the main harm in his mismanagement allegation relates to fund switches after the November 2021 review.

Before going into the reviews, it might be worth noting that the objective for the portfolios –

growth – was automatically a part of the mandate. However, growth (either coupled with income or on its own) is usually the ultimate aim of many (if not most) investment-based portfolios, so Mr M's case was/is not unique in this respect. In the absence of guarantees, growth can be a mainly unpredictable aspiration that is inherently dependent on other factors – the wider factors I mentioned above (which are beyond control) and the suitability of advice and/or management (which a firm can be held responsible for).

Although I have read and noted the growth performance analysis Mr M has presented in his complaint, I will not be addressing it. No specific level of growth was guaranteed to him, so his complaint cannot reasonably rise or fall on the analysis. Even if he can prove that other comparable portfolios or funds in the market outperformed his, that alone does not establish his case. There are always portfolio or fund outperformers and underperformers to compare to in the markets. Even if he considers that another firm could have done better than AG, that does not automatically mean that AG mismanaged his portfolios.

I have instead focused on the suitability of AG's ongoing advisory management of his portfolios.

The November 2021 review exercise – and the annual reviews that followed – included a financial review report, a risk profile assessment document and a post-review letter. I have considered all three documents, from 2021 to 2023.

The 20 December 2021 post-review letter confirms the risk profile assessment's results as a 4 out of 10 score (lowest medium) for the SIPP and a 7 out of 10 score (highest medium) for the ISA. It also reflects that Mr M's previous score, for both assets, was 5 out of 10 and it refers to discussions between the parties during the review with regards to the revision.

It does not appear that Mr M disputed the accuracy of these scores/profiles, or the assessment exercise and discussions, or the letter's contents, at the time (or thereafter). I consider the 2021 post-review letter (and those that followed) to be reliable. The same applies to the financial review reports sent to him.

As I said above, I have also read the risk profile assessment document itself. Overall, I am satisfied that the assessment reasonably led to the revised risk profiles/scores, and that the revisions were agreed between the parties for use in the portfolios going forward.

Mr M's capacity for loss were an unavoidable consideration associated with his risk profile(s). I have considered evidence related to this. On balance, I am satisfied that his capacity for loss was, overall, robust and significant.

The financial review report confirms his SIPP was worth almost £2 million at the time, and his ISA over £100,000. He had other assets beyond these, and his wife had assets of her own. A letter the FA sent to him on 17 November 2021 includes the following comment – "*You really have built up a tremendous financial foundation*". The letter refers to buy-to-let investments in his wider assets and to his *considerable* savings. With regards to savings, there is a 16 November 2021 fact find note, written by the FA, that mentions cash holdings held by Mr M and his wife at the time. The figure mentioned is in the hundreds of thousands.

For the sake of clarity, I have not considered the above with the simple assumptions that his high value assets automatically meant he could afford to lose money and/or meant it was not an issue for him to lose money. They would be the wrong assumptions and the wrong approach. By looking into his capacity for loss what I have done is question whether (or not) he had the financial capacity, in his SIPP, ISA and wider assets, to cope and/or recover, should the risks of losses associated with his risk profiles materialise. Based on what I have considered, including information about Mr M's assets after 2021, I am satisfied that he had

such capacity as of 2021 and thereafter.

The next element of the mandate addressed in the post-review letter was *asset allocation* for the portfolios. A graph-based analysis, using risk, return and volatility to chart the recommended approach was presented, along with the following –

“The recommended allocation could therefore enable your investments to maintain the potential to generate long-term return while keeping to a level of risk that is appropriate to your circumstances and tolerance for risk. Please note that the graph above is for illustration only and there is no guarantee what returns will be achieved.”

The asset allocation recommended to Mr M for his SIPP and ISA are broadly similar to those he has objected to in his submissions. AG’s recommendation for the SIPP included around 47% in equities, around 45% in fixed interest assets, and around 8% in cash; and for the ISA, around 91% in equities, 4% in fixed interest assets and around 4.5% in cash.

I repeat that I have not seen evidence that the letter and its contents were disputed at the time. Those contents presented matters that had been agreed between the parties. Relevant to the asset allocation, there is additional evidence in the 17 November 2021 letter, which included notice about repopulation of Mr M’s portfolios. It said – *“We also talked about re-jigging the portfolios over to recipes from my parent company, IWP.”* This is consistent with what AG has told us, about having to reconstitute his portfolios after the acquisition, in order to apply its own investment committee’s approach (distinct from the approach previously applied by BA).

I do not say or suggest that, on its own, Mr M’s agreement with the changes made them suitable. It did not, but it addresses the need, in an advisory service, for a firm’s advice to be agreed by a client before being implemented. On balance, and based on available evidence, I am satisfied that Mr M agreed the recommended asset allocation approach (just as he agreed the revised risk profiles), so I do not accept that they were applied without his knowledge or consent.

In terms of suitability, it is evident that the revised risk profiles are what led to the asset allocation approach recommended to him in 2021. Both of his portfolios were in the medium risk profile range, with the SIPP at the lower end and the ISA at the higher end. A prominent equities component in a medium risk portfolio is not unusual. In such a portfolio there is usually a pursuit for more growth than will be likely with a low risk profile and, based on the risk and reward principle, the trade-off is the exposure to more risks. Equities are commonly viewed as assets that provide potential for better growth, whilst also presenting relatively more exposure to risks than, for example, bonds and/or fixed interest assets.

The recommendation for the SIPP kept the equities and fixed interest assets components broadly on par with each other, almost around a 50/50 basis. Given that the SIPP was to follow a ‘lowest medium’ profile, where the balance to be struck was between *low* and *medium*, I understand such an approach and I do not consider it unsuitable for the profile.

The recommendation for the ISA had an overwhelming majority equities component. However, this portfolio was agreed to be at the highest level of the medium risk profile, or ‘highest medium’, and the score of 7 out of 10 depicted this. The balance to be struck in this respect was between *medium* and *high*. In this context, I do not consider that a 91% equities content in the portfolio amounted to a mismatch or was unsuitable.

Overall, at the point of the November/December 2021 review, Mr M’s risk profiles were revised; evidence of the assessment conducted for the revisions shows the new profiles were suitable; he agreed the new profiles; he had the capacity for loss to match them; he

agreed the new approach towards asset allocation in his portfolios; the new approach broadly matched his revised risk profiles; and the new approach, with its prominent equities components, was geared towards giving his portfolios a chance to achieve their growth objectives. On balance, I consider that at this point the management of his portfolios was suitably aligned with the mandate for doing so. This review set up the portfolios for the period ahead, so my finding extends to that period too.

The 24 November 2022 post-review letter confirms that the same risk profiles for the SIPP and ISA were maintained. With regards to asset allocation, a broadly similar approach was applied, with only a few changes – the cash allocation in the SIPP portfolio was slightly increased (to around 13%), but equities and fixed interest assets remained closely matched at around 45% and 42% respectively; and for the ISA portfolio, the recommendation was to slightly decrease equities exposure to around 84%, slightly decrease cash and fixed interest assets (to around 3% and 4% respectively) and then invest around 10% in property funds.

In the 2021 review there had been a very low 0.65% allocation to property funds in the ISA portfolio recommendation, so the change to 10% in 2022 is notable. However, in terms of alignment with the highest medium (7 out of 10) risk profile for the ISA, I consider this change to have been somewhat complementary overall.

On the one hand some market views regard property funds to be somewhat less risky than equities in terms of volatility, however, on the other hand they are commonly viewed as sometimes having higher illiquidity risks (compared to mainstream shares that are usually liquid and traded daily) – so the net effect could be viewed as the former offsetting the latter. On balance, I do not consider that the new property allocation in 2022 adversely affected the ISA portfolio's alignment with its risk profile.

For the same reasons given in my consideration of the 2021 asset allocation, I consider that asset allocations in the SIPP and ISA portfolios in the 2022 review did not mismatch their respective risk profiles. As of November 2022, both portfolios were suitably aligned with the mandate for their management. The review at the time set them up for the period ahead, so this finding extends to that period too.

The same risk profiles for the SIPP and ISA were maintained again in the November 2023 review. This time AG's operations appear to have included the use of model portfolios defined by the specific risk profile scores. The factsheet for the risk score 4 model portfolio shows that its asset allocation included equities at 45%, fixed income assets at 51% and 3% in cash. The factsheet for the risk score 7 model portfolio shows asset allocation that included 92% in equities, 3% in fixed income securities and 5% in cash. The 2023 post-review letter confirmed as follows –

“In summary, the recommendations outlined in this letter include:

- A rebalance of your portfolio within the agreed levels*
- No changes to your Standard Life ISA portfolios”*

For broadly the same reasons given in my consideration of the 2021 and 2022 reviews, I consider that the asset allocations in the SIPP and ISA portfolios in the 2023 review did not mismatch their respective risk profiles; and that, as of the 2023 review, they were suitably aligned with the mandate for their management at the time and going forward.

The period going forward appears to have been limited to March 2024, just four months after the November 2023 review. By March 2024 Mr M had concluded his analysis of the portfolios and their performance, he had submitted his complaint (dated 8 March 2024) and he had transferred his SIPP away from AG. The last meaningful point of AG's ongoing

advisory management of his portfolios therefore appears to have been the November 2023 review.

It should also be noted that the annual reviews were coupled with mid-year rebalancing exercises which, where advised/agreed, were applied to the portfolios. Both parties have referred to some of these mid-year rebalancing in their submissions. Therefore, the portfolios received attention in between the annual reviews.

Mr M's complaint highlights the particular types of funds used in his portfolios, some of which he considers to have been high or higher risk equities funds that mismatched the portfolios' risk profiles, and rendered them unsuitable. I have looked into this.

His examples of the unsuitable high/higher risk funds are – *“CFP Buffetology, Royal London Sustainable Trust, Bailie Gifford America, Bailie Gifford Europe, JPM Asia Growth, JPM US Small Cap, Liontrust SF Global, Premier Miton Europe, TM Natixis Harris Global Equity, FP Foresight and Polar Capital Global Technology”*.

I will not engage in risk rating these funds. In terms of dealing with Mr M's complaint, I do not consider it necessary to do so. I have considered them, in the context of the overall mandate for the advisory management of his portfolios, and I have not found anything within them that stands out as an unsuitable element(s). They played their roles in the balance that had to be struck to achieve alignment(s) with the relevant risk profile(s), and I have not seen evidence that they (and/or their weightings in the portfolio(s)) disrupted the required alignment(s).

Furthermore, it should be noted that the financial review reports issued to him were detailed and informative documents. They set out the full details of the portfolios' components and the post-review letters did something similar. They informed him about the funds his portfolios were invested in. As established above, AG's recommendations were implemented with his agreement. In the absence of unsuitability in the invested funds and in the presence of his agreement to invest in them, I do not find ground to say the funds in the quote above should not have been part of his portfolios.

Another aspect of Mr M's complaint relates to what he considers to be reckless fund switching by AG in the portfolios. I find it worthwhile to quote some of what he has said, and some of what AG has said in response.

Mr M referred to his review of the portfolios for the period between 2021 and 2023. He says, in relation to the SIPP, –

“... concerns arose regarding fund selection and portfolio rebalancing:

- *A significant amount of funds were switched during this period;*
 - *In November 2021, we held 22 funds ... by November 2022, only 4 of these original funds remained.*
 - *Over the subsequent period from November 2022 to November 2023, 5 of these newly added funds were quickly sold ...*

Example 1: Premier Mitton

... bought high and sold low in less than a year with a loss of 21% ...

Example 2 and 3, Baillie Gifford

... The purchase and subsequent sale of the Baillie Gifford American fund within a mere two-month period, resulted in losses amounting to 34% ...

Furthermore, the Baillie Gifford European fund was also bought and sold within the same timeframe ... and incurred losses of 21% ...

Example 4, Allianz

... held this bond fund for a longer duration, spanning 18 months: result was a loss of 24% ...

In hindsight, these four examples of fund choices appear to have been poor decisions, especially considering the volatility of the market and the relatively cautious approach to pensions of [his and his wife's]."

In its complaint response to Mr M (and his wife) AG's comments included –

"The firm Bishop Armstrong was sold to Alexander Grace as part of Independent Wealth Planners (IWP) in 2020 and you were invested into a Bishop Armstrong portfolio during your time with Bishop Armstrong. You were switched over to an Alexander Grace portfolio after your annual review in 2021. Your adviser has confirmed that this is why there was a big overhaul of funds, there was also very little fund overlap between the two portfolios."

"... the funds held in portfolios in late 2021 had performed well during the covid economic environment of low inflation and low interest rates, did not dovetail with a market environment characterised by high inflation, commodity supply shocks, rising interest rates and extreme market volatility."

Given this change in market environment, portfolios needed to be reviewed with a high level of urgency. This prompted fund research projects into virtually every sector of portfolios throughout 2022, to ensure the funds selected within portfolios were appropriate for the complex market environment we were encountering. This led to a large number of fund changes, as alluded to in your complaint."

"We chose to replace several of these funds rather than holding on to them even though they were now trading a lower price than their purchase price. The funds highlighted (Baillie Gifford American and Baillie Gifford European and then Premier Miton European Opportunities 6 months later) subsequently returned less than the replacement funds in the following 12 months (GAM Star Continental European Equity, AB American Growth Portfolio). Similarly, this was the case for other fund changes made in February and November 2022."

Other funds were held on to where it was felt there was an opportunity for a recovery in performance or where the fund offered correlation benefits to the portfolio (thus reducing overall portfolio volatility), this included the Allianz Strategic Bond on both factors, but was subsequently removed in 2023 when we lost belief that the fund could recover."

There seems to be common ground between the parties on the facts concerning the fund switches themselves. The fund switches mentioned and questioned by Mr M are not, it seems, particularly in dispute. However, AG has answered his questions. My objective consideration of its answers, in the context of the information about the portfolios that I have become familiar with, is that, on balance, they are reasonable.

The outcomes cited in Mr M's examples are of course unfortunate, but the approaches explained by AG are not uncommon in the sector and markets, and in general terms they are not unreasonable. It is not generally uncommon or unreasonable for a new firm undertaking

a portfolio to rebalance it (through suitable fund switches) in line with its investment approach, or for a change in wider market circumstances to affect the prospects of existing investments and warrant suitable action to stem and crystallise losses in order to fund replacements, or for a different view to be taken on some of those investments where they are considered to have prospects of recovery which support their retention.

Mr M considers the decisions to have been poorly made, but by his own admission he has taken this view 'in hindsight'. Hindsight that AG did not have at the relevant times. Furthermore, if he considers that another adviser/manager could or would have made different or better decisions, that does not automatically mean that AG's decisions were reckless or negligent. On balance, and with the above considerations, I do not find them to have been either.

Overall, I do not uphold Mr M's mismanagement allegation.

Based on all my conclusions, and given that I have not upheld his mismanagement allegation, there is no ground to uphold Mr M's claim for compensation for distress caused by the alleged mismanagement.

The Ongoing Advisory Service

I understand AG's point with regards to this matter. Mr M's complaint was made about the alleged mismanagement. However, the inquisitorial remit the investigator mentioned does indeed allow us to identify matters directly associated with a complaint's subject, in which a wrongdoing(s) appears to have been committed.

Our inquisitorial role was supported by Irwin J in R (Williams) v Financial Ombudsman Service [2008] EWHC 2142: "*The ombudsman is dealing with complaints, not causes of action. His jurisdiction is inquisitorial not adversarial. There is a wide latitude within which the ombudsman can operate.*"

It is a part of the inquisitorial role to look at the substance beneath, or underlying grounds for, a complaint, and that is not limited, strictly, to the way a complainant expresses the complaint.

Mr M's complaint features the portfolio reviews and his claims about the things done (or not done) by AG during and around those reviews. Therefore, his entitlement to, and the conduct of, those reviews are inherently part of his complaint. A service delivery shortcoming, by AG, in meeting his entitlement is what the investigator identified, and is what I have identified too.

Overall and on balance, I am satisfied that, in applying our inquisitorial approach to the matter, there is sufficient nexus between our consideration of whether (or not) the portfolio reviews were delivered as they should have been delivered, and our consideration of the mismanagement alleged within and around those reviews.

As I concluded above, on balance I am not persuaded that Mr M's portfolios were mismanaged. Nevertheless, the fact, as explicitly confirmed in the client agreement, is that he was entitled to (and was paying for) an ongoing service that was supposed to deliver two reviews per year. Another fact is that he was instead given reviews only once per year. AG has mentioned other forms of contact in between the annual reviews, but they did not amount to the formal reviews he was entitled to, and they did not substitute for those reviews. The terms of the client agreement make clear that the reviews were distinct from any interim contacts between the parties. The terms said Mr M was entitled to –

“Two Full Financial Reviews each year: At each 6-monthly review with your Adviser, we will review the suitability of your existing policies and plans. We will also review your risk profile, re-assess your financial circumstances and current financial plans. We will also provide a report of our recommendations.”

and, separately –

“Interim Financial Assessments: Three months after each Full Financial Review we will provide you with an Interim Assessment, by post or secure email, on the performance of your investments.”

and every six months he was entitled to –

“Rebalancing: We will review how your portfolio is invested and make recommendations for changes to maintain the risk profile of your portfolio with regard to your attitude to risk.”

These terms show that the two annual reviews per year were distinct, and were a major part of the ongoing service. I am persuaded that depriving Mr M of one of them, every year throughout the service, amounted to a tangible service delivery failure that meant he was not receiving all the ongoing service he paid for.

On the above grounds, I agree with the investigator’s finding in this matter. There must be redress for Mr M in relation to this specific ongoing service delivery shortcoming, and I agree that this should be based on a refund of half the total annual ongoing service fees (or six months’ worth of fees) for each year between 23 November 2020 (when the client agreement was signed) and when the service was concluded. The additional elements of the service (the interim assessments and rebalancing) revolved around the formal reviews, so I am satisfied that there is justification in a refund of half the total annual fees, given that only half of the two annual reviews were delivered each year.

I also find that, where the fees were deducted from the portfolios, there is a need to calculate and compensate for any lost performance on the fee amounts deducted.

Putting things right

fair compensation

As set out above, the only matter upheld in favour of Mr M is AG’s delivery failure in its ongoing service. Fair compensation to him in this matter is the refund of fees/charges (and compensation for any lost performance on any fees/charges deducted from his portfolios).

what must AG do?

To compensate Mr M fairly, AG must –

- Calculate the total of all ongoing service charges it applied to Mr M’s account between 23 November 2020 and the date on which the ongoing service concluded; then divide the total amount by two; the result is the ‘total charges refund’.
- Calculate how much of the total charges refund relates to Mr M’s SIPP and how much of it relates to his ISA.
- Where the ongoing service charges have been applied to and deducted from Mr M’s

SIPP portfolio, calculate how each full deduction would have performed, from when they were deducted to the date of settlement, had the deducted amounts remained in the portfolio.

[For this purpose, Mr M is ordered to provide AG with information it reasonably requires on how the SIPP portfolio has performed since its withdrawal from AG's service and to date.]

If the result shows a total gain, calculate half of the total gain amount. The result is the 'SIPP charges gain'.

- Where the ongoing service charges have been applied to and deducted from Mr M's ISA portfolio, calculate how each full deduction would have performed, from when they were deducted to the date of settlement, had the deducted amounts remained in the portfolio.

[For this purpose, Mr M is ordered to provide AG with information it reasonably requires on how the ISA portfolio has performed since its withdrawal from AG's service and to date.]

If the result shows a total gain, calculate half of the total gain amount. The result is the 'ISA charges gain'.

- If and where the ongoing service charges were not deducted from the portfolios, pay directly to Mr M the total charges refund (or any part of it to which this applies) plus interest on that refund at the rate of 8% simple per year from the date on which the ongoing service concluded to the date of settlement. The interest is to compensate him for being deprived of the total charges refund during this period.
- If and where ongoing service charges were deducted from Mr M's ISA, pay directly to him the total charges refund related to the ISA plus the ISA charges gain.
- If and where ongoing service charges were deducted from Mr M's SIPP, pay the total charges refund related to the SIPP plus the SIPP charges gain into his pension plan to increase its value by the total of both payments. The amount paid should allow for the effect of charges and any available tax relief. They should not be paid into the pension plan if it would conflict with any existing protection or allowance. If they cannot be paid into his pension plan for this reason, they must be paid directly to him as a lump sum. Had it been possible to pay 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 M would not be able to reclaim any of the reduction after the payment. 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 calculations to Mr M in a clear and simple format.

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 might 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 might therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In Mr M's case, the complaint events occurred after 1 April 2019 and the complaint was referred to us after 1 April 2024 but before 1 April 2025, so the applicable compensation limit would be £430,000.

My final decision

I partly uphold Mr M's complaint on the grounds set out above. I order IWP Financial Planning Limited trading as Alexander Grace to calculate and pay him compensation as I have also set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 August 2025.

Roy Kuku
Ombudsman