DRN-4428959

The complaint

Mr and Mrs D complain Gerald Pepper Financial Management Limited ("GPFM") advised them to make investments that were too risky and didn't match their attitude to risk. They also complain GPFM's charges were excessive.

What happened

I set out the complaint background in my provisional decision of 15 September 2023, in the following terms:

> Mr and Mrs D invested £600,000 in an investment bond and £400,000 on an investment platform on the advice of GFPM given in November 2018. GPFM charged £10,000 for this advice. GPFM later, in May 2019, advised them to invest around £5 million (£5m), including transferring the funds of around £400,000 from the earlier investment platform, into an investment account ("the investment account") on a new platform.
> Mr and Mrs D's complaint about risk relates to the investment account and this later advice for which GPFM charged them £5000. Their complaint about charges relates to both sets of advice.
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> In early November 2018, to assess Mr and Mrs D's attitude to investment risk, GPFM used a risk questionnaire. The file copy is in Mr D's name. According to its answers, Mr and Mrs D strongly disagreed with *"investing a very significant amount in a high-risk investment"* and with the idea they would get a *"thrill"* or *"excitement"* from risky investments and with the idea that the level of risk didn't matter compared to getting higher returns. They strongly agreed they would *"worry a great deal"* if they thought they would lose money in an investment.
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> On the same questionnaire, Mr and Mrs D agreed (but not strongly) they would worry about losing money on, and the instability and volatility of, the stock market. They disagreed (but not strongly) with being happy to accept large short-term falls to maximise long-term returns and with being happy to risk losses to get potentially greater long-term gains and with being prepared to take an investment risk if there were a chance of making better long-term returns and with the idea that they took bigger risks with money than others or that risks were needed to make money or that they expected high investment growth and were willing to accept the consequent possibility of large losses.
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> Finally Mr and Mrs D's answer was *"neither agree nor disagree"* to statements that *"The idea that the value of my investments can be variable makes me feel anxious"* and to *"I would be anxious if I saw my investments had gone down in value"* and to being *"happy putting my money into the stock market".*
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> Mr and Mrs D's risk attitude was assessed on the questionnaire as being three out of ten - described as *"Low Medium"* - based on these answers. It was recorded in GPFM's 'fact find' notes at that time in that way too. GPFM's risk report from that time indicates it arrived at an overall risk level of three for Mr and Mrs D and that they chose to stay with this level when asked whether they wished to change it.

But GPFM's risk report has a note that says: *"Agreed with client portfolio using funds that match a risk profile 3 and 4."* An email GPFM sent Mr and Mrs D at the time confirms they met at the time of the risk report and goes on to say:

"Just to summarise we will recommend and construct an investment portfolio for £1m, investing in funds that match a risk profile of 3 or a risk profile of 4. We agreed you do not need to invest into anything [higher] than that to meet your objectives".

The idea was to invest for capital growth initially but with a view to income being taken in future. GPFM presented recommendations to Mr and Mrs D towards the end of November. Its note of that meeting says: *"Having completed the risk profiling questionnaire and looking at potential income needs, the answers indicate that [Mr and Mrs D] would be happy to take a low-medium risk approach, the answers indicating a risk profile of 3."* But it then also says:

"Looking at the monetary gain and loss figures on page 9, [Mr and Mrs D] were happy with the parameters of a risk level 3 and risk level 4, feeling they could afford to take risk in terms of assets, they would not be comfortable taking high levels of risk. They have capacity for loss but only need to generate a fairly modest level of return, mainly just beating inflation, so we agreed a risk level of 3 and a risk level of 4 would be appropriate for the £1m…"

The reference to page nine refers to where the risk report shows best and worst one year losses and gains in the previous 20 years for different risk levels. For level three the loss is £72,100 and the gain £134,500. For level four the loss is £152,300 and the gain £217,400 (based on a £1m investment). The report stated losses could exceed the examples shown.

The November 2018 investment report presented to Mr and Mrs D with GPFM's specific recommendations said their risk questionnaire answers indicated *"you are low medium risk investors with a risk profile of 3"* but *"Having discussed the associated potential gains and losses you stated that the risk parameters of 3, low medium to 4, low medium, is the most accurate reflection of your current attitude to risk."* It also said: *"Your ability to cope with a loss in relation to the capital invested was considered during our discussions. Specifically, we discussed the effect the loss of any capital invested would have on your standard of living and we have taken this into account in our recommendations."*

According to GPFM's meeting notes, Mr and Mrs D had received substantial cash sums due to the sale of a business interest and the £1m they were preparing to invest at that time was a small part of their total cash. It recorded cash deposits at the time of around £10m. They also had various residential and commercial property assets.

Risk level three and risk level four, although different risk levels, had the same name of *"Low Medium"* and the same description as follows:

"People in this category have a low-medium risk tolerance and are likely to be concerned about the possibility of losing money, but do not want to completely ignore the possibility of making higher returns. You may have some experience of investment products or may value capital security over high returns. You probably want greater returns than are offered by bank accounts and other low risk investments, and therefore are prepared to accept some fluctuation in return for potential growth in products such as Fixed Interest Securities, Property, UK Equity or International Equity and realise that they are likely to be better for longer-term returns. You could get back less than you invested."

The risk report contains asset allocation bar charts showing example asset allocations for the different risk levels. This shows, broadly, for level three 17.5% cash, 35% fixed interest bonds and 37.5% shares with the remainder in property. Comparable figures for level four are 10% cash, 25% fixed interest bonds and 55% shares (the remainder in property). For level five, on the same broad basis, it was 5% cash, 22% fixed interest bonds and 67.5% shares (and the remainder property). Small amounts of emerging market assets are added from level four onwards. Level five is called *"Medium"* and is described as follows:

"People in this category have a medium risk tolerance and would probably prefer investments to fluctuate less and make more modest returns than risk losing money for higher returns. It is likely that you are looking for a balance of risk and reward, with the potential for higher returns in the longer term, and you may have some experience of investment, including investing in products containing riskier assets such as equities and bonds or may be willing to take some risks with your capital. You are probably prepared to accept some fluctuation in order to make higher returns than exclusively low risk investments and are aware that the value of your investment will rise and fall. Examples of investments may include Fixed Interest Securities, Property, UK Equities, and International Equities. You could get back less than you invested."

The funds GPFM recommended for the £400,000 investment were considered by GPFM in its notes at the time to be at risk level three overall. For the £600,000 bond the fund risk levels were considered by GPFM in its notes to be riskier and at level four overall and with *"a higher equity content"* because the bond was *"likely to stay invested for longer so, potentially, can tolerate more volatility…"*

After investing the £1m, there followed exchanges in March and April 2019 in which Mr and Mrs D asked GPFM about the feasibility of funding their spending using the cash they would have left if they spent a certain amount buying a house. Their spending need estimate was £250,000 a year, with existing rental income covering around £100,000 of this.

A meeting note of 1 May 2019 explains that GPFM and Mr and Mrs D looked at figures for potential returns on their money and Mr and Mrs D as a result at that time had *"a degree of comfort"* that *"they can withdraw the £170,000 a year allowing for inflation…"* which is what they needed and that *"they will not run out of money for a considerable period… which may not be during their lifetime…"* The note says: *"…as a result of that they are happy to proceed and they would welcome an investment recommendation from us formally"*. This would be based on investing £5m into an investment account within *"a portfolio which will yield 5.5% net of any management charges".*

GPFM's recommendations for the £5m investment were set out in a 9 May 2019 investment report. This stated Mr and Mrs D's objective as investing for growth with a 5.5% yearly return and the ability to *"draw £170,000 in today's terms from 2024"*. When referring to their attitude to risk and capacity for loss, it referred to their 2018 risk questionnaire and said this indicated they were *"low medium risk investors with a risk profile of 3"*. It also said: *"Having discussed the associated potential gains and losses you stated that the risk parameters of 4, low medium would be most suitable. However, we also discussed potential gains and you stated that achieving an annual gain of 5.5% was your objective."*

The report then set out the description of risk profile level four (which as noted above was the same as for level three) but also the target return and historical one year loss figures for level four (which are higher than for level three). The report highlighted the historical loss figure and said the advice *"takes into account our discussions around* *capacity for loss and your indication of how much you could afford to lose"*. The report also said Mr and Mrs D understood there was the possibility this loss figure could be exceeded.

A GPFM meeting note says it went through the report with Mr and Mrs D that day. This says:

"I did, however, highlight that the risk profiling that we use looks at volatility, and whilst previously agreed as risk level 4 as investors at low-medium, the funds for this investment will be medium risk, risk level 5, due to the increased equity exposure but the clients acknowledged that they could afford to take this higher level of risk as they are not looking to draw from the funds for 5 years and could ride out any short term fluctuations in values. The clients understand the risks associated and that their overriding objective is to achieve 5.5% and therefore they are happy that if they sit at medium risk, risk level 5, they are comfortable with this. Their original risk profile is not of course set in stone. I explained that as part of our research we did try and find suitable funds at a slightly lower risk level but there were none that have achieved 5.5% historically hence the need to increase the equity content slightly and therefore a portfolio at risk level 5 based upon volatility." It went on to say Mr and Mrs D were also happy to have their existing bond moved to risk profile five and that this is something GPFM would look into for them.

When asked for comment on the increase in the risk profile of their investments from level three to level five, Mr and Mrs D told us: *"We did have discussion about [other investments including the bond] being invested at a higher level of risk than the one we had profiled at, because we were not drawing on any of these; the [bond] being put in place for one-off purchases if necessary and therefore used very occasionally."* But they say: *"It was not explained to us that we were increasing the level of risk on [the investment account] to such an extent. If we had understood this completely, we would never have accepted it."*

Returning to the May 2019 report, the section headed *"Investment strategy"* said: *"I have recommended the following investment strategy as it reflects your overall risk profile and investment objective for capital growth potential".* It went on to set out a fund mix which it said had a risk profile of *"5, Medium"*. It added:

"You will see from the above that the proposed investment strategy is currently rated as having a risk profile of 5, medium risk, which is higher than your stated risk profile of 4, low medium risk. As discussed, our risk profiling is based upon the past 3 years' volatility. However, as mentioned previously you are looking to achieve returns of 5.5% per annum and as such, we based our research primarily on past performance and funds which had achieved these returns. Therefore, on this occasion, I free comfortable in recommending an investment strategy for your investment which currently falls just outside of your stated risk profile of 5". GPFM confirms this was meant to say *"outside your stated risk profile of 4"*. It says the system it used analysed the volatility of the funds over the previous three years and the volatility of the funds selected were within the volatility band for a risk profile five investor.

Mr and Mrs D have said: *"We were surprised… when we realised later that the [investment account], which had been put in place to provide safe, steady regular income, was invested at risk level of 5 or above."* They have said: *"What we now know is that the level of risk… was increased to accommodate our expenditure estimate. Had it been explained in these terms it would have prompted a re-assessment of expenditure for us."* They say there was some 'frivolous' leisure spending on which they could have readily economised if need be *"in order to maintain the risk profile at one with which we* *felt comfortable"*.

According to M and Mrs D: *"Rather than discussing expenditure being reduced to keep the risk reasonable, we were encouraged to keep expenditure high with no discussion of the management of it, just increase the level of risk in [the investment account]"* and *"it seemed to be along the lines of predicting the most that we might ever spend in a year and then increasing the level of risk of the investment in order to accommodate the expenditure [GPFM had] encouraged us to estimate."*

The investment account was invested in five funds, split equally between them. I note four of these funds were, according to their fact sheets, in the mixed investment sector for funds with between 40% to 85% invested shares, with 40% being the minimum amount allowed in shares and with no equivalent minimum for fixed interest bond investments. The other fund was in the flexible investment sector, for funds with no minimum or maximum requirements for shares or fixed interest bond investments, so such funds could invest 100% in shares if the manager so desired. Our investigator calculated the asset allocation of the investment account overall was 65% shares of which 45% were overseas shares. A report from GPFM for April 2019 supports this 65% figure. Incidentally, this is also in line with the allocation anticipated by the example bar chart in the risk report for a level five investment.

Our investigator considered Mr and Mrs D's complaint. She thought GPFM had made its charges clear enough and it was entitled to charge what it had charged Mr and Mrs D and they had agreed to those charges. She also thought Mr and Mrs D could afford to invest the sums they invested and had sufficient capital elsewhere for any short-term needs.

But our investigator didn't think GPFM's advice to take a higher level of risk with the £5m investment account was suitable for Mr and Mrs D in the circumstances. She noted it was rated as *"medium risk"* and five out of ten - higher than the level the risk questionnaire had arrived at and higher than the level four profile set out earlier in the 2019 investment report.

Our investigator said Mr and Mrs D had wanted risk at level three, so to go to level four and then five was beyond what they wanted – and she thought they would've invested differently upon appropriate advice, even if this meant accepting less income. She said GPFM had noted and informed Mr and Mrs D that to generate the level of income they required, it was necessary that they take more risk to achieve higher returns – and Mr and Mrs D agreed to this. But she thought Mr and Mrs D had little experience of investment market risk, and kept their funds largely in deposit savings, and so would've relied to a large extent on GFPM's expertise in this area. She didn't think GPFM explained clearly the risk carried by the funds that would be used. She thought Mr and Mrs D understood the funds to be lower risk than they actually were.

Our investigator suggested that Mr and Mrs D wanted growth and income with a small risk to capital, and that the performance of the £5m investment account, including the reinvestment of the earlier £400,000 investment, be compared with what they would've got instead if their money had achieved a return half like the FTSE UK Private Investors Income Total Return Index ("the Income Index") and half like the average return on fixed rate savings bonds. Redress would be any shortfall at the comparison date plus interest from that date.

The Income Index is designed to represent the performance of a mixed asset benchmark with lower than average levels of historical volatility. Its asset allocation varies but I note that in March 2023 its share content was around 45% - in between the

37.5% and 55% the risk report showed for risk levels three and four (but with a little more emphasis on international rather than UK shares than shown for those levels). So using this to model 50% of the return would imply an allocation to shares of around 22%. For reference, the Balanced version of the index had a 58% allocation to shares on the same date and is described as modelling a mixed asset benchmark with above average levels of historical volatility.

On the understanding that the investment was no longer in force, our investigator suggested that the comparison date be the date Mr and Mrs D stopped holding the investment. GPFM's view on the comparison date (although not accepting that there ought to be a comparison) was that it should be the date Mr and Mrs D switched out of all five funds. Also it said the investment had done better than the suggested benchmark by April 2022 (a gain of more than £750,000 compared to around £500,000 for the benchmark), so there was no loss.

Mr and Mrs D's view was that, based on expert advice, the comparison should be done on the date they changed advisers, which they initially said was 20 March 2020 but then said was 24 March 2020 as this was when the investment platform recorded the adviser change. They said what they did after that, on the advice of their new adviser, wasn't relevant and any claim after that date was a potential claim against their new adviser.

Our investigator noted that it might take a new adviser time to assess, advise and implement changes and so if changes were made by the new adviser the date of these changes could still be relevant, so she asked for details of what had happened to the investment after the new adviser took over. Mr and Mrs D said the investment was changed significantly to reduce risk on 30 April 2020, by selling two funds and reducing the equity exposure from between 40% and 85% to between 25% and 52%. They said this revised allocation fitted their agreed risk profile. They sent contract notes to show the position of the investment account at that time following those sales.

Our investigator agreed that 30 April 2020 was the correct date and said the value at this time was £4,750,046. She said the actual June 2019 start date should be used and the actual amount invested, which she understood as £5,005,000. Any additions or withdrawals needed to be accounted for. Mr and Mrs D have said there weren't any before 30 April 2020.

The FTSE 100 index reached 5190 on 20 March 2020 and 5446 on 24 March 2020 and 5901 on 30 April 2020. So, using that as a broad proxy for the performance of shares, losses caused by extra exposure to shares were likely lower by 30 April 2020 than they were on 20 or 24 March 2020. Mr and Mrs D agreed to the proposed 30 April 2020 calculation date. GPFM didn't agree. In brief summary GPFM said:

- In March 2020 when the funds were falling and Mr and Mrs D were getting anxious, they spoke only of charges and not of their funds being invested at the wrong risk level. They asked GPFM for a refund of fees in return for not complaining. GPFM refused, most importantly because it stood by its advice. Mr and Mrs D had investment experience, holding unit linked investments and pensions at the outset, and arranged access to better than next-day unit price updates so they could monitor these closely. Their cash was mostly in deposit accounts but that is because they had just sold their business.

- It wasn't GPFM but the new adviser that advised the 30 April 2020 sale of the two funds, crystallising the loss and turning a paper loss into an actual loss. That advice was wrong and negligent. The investment report shows Mr and Mrs D were happy to invest in funds at risk level five and at the time of the surrender the drawdown was six or seven percent and well within the ten percent tolerance mark. They didn't need money until 2024.The pandemic was a once in a lifetime event. Mr and Mrs D panicked and made the wrong decision to sell. GPFM wasn't responsible for that decision. All five funds were managed by well-known groups. As GPFM's previous calculation had shown, the funds recovered. GPFM's strategy was right and met Mr and Mrs D's needs and objectives, which they had spent much time agreeing on.

- If it is considered that the calculation end date should be when two of the funds were sold, then to be fair to all parties the dates and values at which all five funds were sold should be considered.

I also note in particular the following points made by GPFM in its final response letter, in brief summary:

- Mr and Mrs D asked GPFM in March 2019 whether their net funds could provide an income of £150,000 a year after tax. After more discussion they decided to commit £5m to this and the objective was to achieve growth of 5.5% net of costs to cover their income requirement and allow for capital growth to keep up with inflation. GPFM made clear in 2018 it was working on the basis of a risk profile of three or four. In 2019 a risk profile of five was agreed for ISAs and pensions. The idea of a £1m equity only portfolio was also discussed in February 2019, which is significant as it indicates some detailed discussion on and understanding of risk. Its notes on this say: *"We had a fairly detailed conversation about asset classes and how asset classes are used to construct a portfolio and what that may look like with regards to their current portfolios, which are risk profile 3 and 4 and how this differs to an equity-only situation, whereby he will not be invested in funds."*

- GPFM's May 2019 report made clear and left no doubt about the risk rating of the recommended funds. Mr D's pension fund (of around £350,000) and Mr and Mrs D's ISAs were switched to risk level five before the May 2019 advice and the discussion in May 2019 led to the same thing for their bond after that. It seems Mr and Mrs D were comfortable investing at this risk level and understood the increased level of potential volatility associated with it.

In my provisional decision I said I thought Mr and Mrs D's complaint should be upheld. I set out my provisional findings in the following terms:

From what I've seen, GPFM disclosed its charges and I haven't identified grounds for saying it wasn't entitled to charge or shouldn't have charged Mr and Mrs D at the rates it did for the services it was offering. I don't find the charges excessive in nature or see grounds to uphold that part of Mr and Mrs D's complaint.

Turning to the May 2019 advice, GPFM assessed Mr and Mrs D in its risk report six months earlier as having a level three risk attitude on its ten-point scale. This led GPFM to conclude then that it might be suitable, based on recent historic volatility scores, for Mr and Mrs D to invest in a way that, according to its bar charts, could involve around 37% being put into shares. It made that assessment taking into account their risk questionnaire answers.

Looking at those answers, there are none in which Mr and Mrs D gave a positive answer about being willing to take risk or wanting risk. So the extent to which GPFM concluded Mr and Mrs D were willing to take investment risk, appears to have arisen from neutral answers they gave - so neither agreeing nor disagreeing with the question about risk – and from answers they gave that were negative about risk but weren't the most negative answer available – so disagreeing with risk or agreeing to its opposite, but not doing so *"strongly"*.

With this in mind, there is little in the questionnaire in my view to suggest Mr and Mrs D were willing or wanting at the time to take more risk than the questionnaire suggested or that it was suitable to recommend Mr and Mrs D take more risk or that Mr and Mrs D's appetite for risk might be somewhat higher than it had been assessed as being. In this regard I note also that Mr and Mrs D were asked in November 2018 whether they wished to change from the level three risk attitude GPFM had assessed them as having, and they did not wish to do so.

Still, in November 2018 GPFM's investment report recommended 40% of their investment at that time be invested at GPFM's level four - at which level more than half might be in shares. I've seen nothing in GPFM's notes or reports to suggest Mr and Mrs D initiated this change. But they don't dispute that they agreed to it and were willing to take more risk with that part of their money at the time. The investment report at the time said Mr and Mrs D said the range of three to four was *"the most accurate reflection"* of their *"current attitude to risk"*. From what they have said, Mr and Mrs D appear to accept that this was so, which also gives support to the approach GPFM took at the time. The investment recommendation matched what GPFM set out for Mr and Mrs D about their risk attitude in the 2018 investment report.

In explaining why Mr and Mrs D were comfortable taking this level of risk, GPFM noted they *"could afford to take risk in terms of assets"* and had *"capacity for loss"*. The amount put into the bond with the higher risk level of four was less than half the total, which itself was a small part of a much larger cash sum Mr and Mrs D had available. So Mr and Mrs D agreed in 2018 to depart partly from their general risk attitude and take a higher level of risk with what was a relatively small sum. Also GPFM's own notes said – and Mr and Mrs D have agreed – that more shares were included in the bond because it was the part of their investment that was *"likely to stay invested for longer so, potentially, can tolerate more volatility…"* So it had a potentially longer investment horizon.

There were, then, specific reasons why part of the investment in 2018 was invested at a higher risk level than the level three Mr and Mrs D had been assessed as - and had declared themselves to be - comfortable with at that time.

GPFM has pointed out that in the months that followed between November 2018 and the May 2019 advice, Mr and Mrs D agreed to make other investments at risk level five, like Mr D's pension. But this doesn't make me think Mr and Mrs D's risk attitude had increased in general to that higher level. I say this bearing in mind that there were specific reasons for them being willing to take more risk with the bond, and the investments GPFM has referred to were, like the bond, small parts of Mr and Mrs D's overall investible assets. Also the pension, like the bond, will have had a longer anticipated investment time horizon. So I don't see that it follows from these other investments that the level of risk GPFM recommended in May 2019 for the investment account was suitable.

In saying this I note no new assessment of Mr and Mrs D's general risk attitude had been undertaken by May 2019 to replace the 2018 level three assessment. The investment report in May 2019 referred back to that risk profile. If instead more recent investments at level five represented Mr and Mrs D's new general risk attitude, the report could have said so. But it did not. It did say, though, that after a discussion Mr and Mrs D expressed the view that risk level four would be *"most suitable"*. So, on the face of it, their risk attitude at the time was level four or level three.

But GPFM recommended investments at a higher risk level – its risk level five. Its report acknowledged this was *"just outside"* Mr and Mrs D's stated risk profile. At this level investments could, from the bar chart description, have around 67% in shares. The funds recommended by GPFM could hold an even higher amount in shares if the managers chose.

Based on the risk appetite GPFM had assessed Mr and Mrs D as having in May 2019, the investments GPFM recommended for the investment account were not suitable and carried too much risk. The fact GPFM pointed out both the risk level of the recommended investments and their mismatch with Mr and Mrs D's risk appetite, doesn't change the fact that there was a mismatch. Giving information is not the same as giving suitable advice.

Also I don't think Mr and Mrs D's acceptance of the recommendation is evidence their risk appetite was in fact higher than GPFM assessed in the report. I say this firstly because I don't see why GPFM wouldn't have recorded Mr and Mrs D as having a higher risk appetite, and one in line with its recommendation, if it had grounds for doing so. Secondly it appears from GPFM's own notes that placing the funds at a higher risk level was driven by the potential returns and the possibility that these could produce, and sustain over the longer term, the income Mr and Mrs D wanted – rather than being driven by consideration of the particular risk appetite Mr and Mrs D had at the time. Thirdly, unlike with the November 2018 advice and the smaller investments that followed, Mr and Mrs D don't accept that they had or agreed to having this higher appetite for risk when it came to the May 2019 investments.

Also I note Mr and Mrs D's capacity to afford potential losses was a key consideration when GPFM recommended, and Mr and Mrs D agreed to, a higher level of risk for the bond at the November 2018 advice. I don't see that this consideration could apply in the same way for the very much more substantial sum they were being advised on in May 2019, given also that the risk level being recommended was, and so the potential losses were, higher.

According to GPFM's notes, the £5m being invested was the cash Mr and Mrs D deemed available to them to invest for their income, after allowing for other expenditure such as a house purchase. GPFM suggests that the level of risk it recommended was the level needed to generate the income Mr and Mrs D wanted. If there had been other funds readily available to Mr and Mrs D that they had been willing to commit to this objective, it would follow that the same income objective could've been pursued at a lower level of risk. So GPFM's view that the level of risk it recommended was necessary to meet Mr and Mrs D's income objective, seems to me to imply that Mr and Mrs D didn't have other funds they could or were willing to readily commit to this objective. This being so, it follows that they could not readily afford to suffer significant losses on the invested sum, as such losses couldn't be readily replaced. So this reinforces my view that the situation was not at all like the earlier instances in which a higher degree of risk was taken on smaller sums that kept the losses being risked well within Mr and Mrs D's capacity for loss.

If Mr and Mrs D's income objective could not be achieved at a suitable risk level, GPFM should have advised them to manage their expenditure within the available income budget. Encouraging them instead to gamble on achieving higher returns by taking more risk than was suitable for them, was not appropriate. Whether GPFM encouraged Mr and Mrs D to inflate their income objective or whether the objective was one they approached GPFM with, makes no difference to my view on this point. Higher risk may lead to higher returns, but this isn't guaranteed. Losses would increase the rate of return needed to maintain an income, and so could reduce the income that could be taken. The evidence shows GPFM made clear to Mr and Mrs D the potential the riskier investment had to achieve higher returns and their desired income. But there is no equivalent evidence of a discussion of what Mr and Mrs D might do to replace losses or reduce spending if taking a higher risk led to significant losses.

In saying this, I don't overlook GPFM's meeting note that says Mr and Mrs D understood the risks and expressed the view that they could afford to take the higher level of risk. It says they said this on the basis that they were not looking to access the funds within five years and could ride out any short-term fluctuations in values. But losses aren't always reversed by the passage of time or within the short term. In my view this note doesn't persuade me that due consideration was given to the risk of loss posed by taking the higher level of risk.

I note also that the written report Mr and Mrs D were given says the advice *"takes into account our discussions around capacity for loss and your indication of how much you could afford to lose"*. But this is on a page that sets out Mr and Mrs D's risk profile as level four, gives the risk description for level four and quotes the one-year loss figure for level four – not for the level five risk that was being recommended.

The report also refers to the investment at level five as being *"just outside"* Mr and Mrs D's risk profile. In my view this doesn't give a fair and balanced account of the extra risk being taken – it plays it down instead. In my view the extra risk of the higher risk profile was significant and not something to be dismissed in this way. I note also that the risk description for a level five investment isn't set out at all in the investment report.

All this tends to reinforce my view that the extent of the risk being taken wasn't properly drawn to Mr and Mrs D attention at the time, even if GPFM did at some point discuss with them the figures for or description of a level five investment.

To the extent that the information GPFM gave Mr and Mrs D was flawed in the ways I've touched upon above, it tends to reinforce my view that Mr and Mrs D's decision to accept GPFM's advice to invest in the level five investment is not in itself good evidence that they had a higher risk attitude than the level four attitude GPFM's report said they agreed they had. I'd add that even if GPFM hadn't played down the difference in the risk levels and had included the correct description and figures in its report, this wouldn't in itself mean that its advice was suitable. Nor would this persuade me, given all the other points I've already noted above, that Mr and Mrs D had an appetite for risk that matched the recommended investment and exceeded the risk appetite the report had stated that they had.

I accept that the reason Mr and Mrs D's funds were in cash when they met with GPFM was because they had just sold a business and not because they had built these up within cash accounts over a period of time, avoiding risk investments. But this still means Mr and Mrs D did not have experience of investing those funds in risk investments in financial markets. So in my view Mr and Mrs D would've relied on what GPFM told them and its guidance when considering the differences between different levels of risk and the potential for losses.

In saying this, I don't overlook what GPFM says about Mr and Mrs D already having a pension and unit linked investments. But I've not seen anything to make me think that putting relatively small sums into a pension over time or into an ISA made Mr and Mrs D in November 2018, or six months later in May 2019, experienced risk takers in financial markets. I note again their answers to the risk questionnaire in 2018 tend to indicate a very limited appetite for risk-taking in financial markets, particularly for larger sums.

So, in light of what I've said above, I find GPFM's recommendation in May 2019 wasn't suitable and placed Mr and Mrs D's investment in the investment account at too much risk. Mr and Mrs D were seeking GPFM's advice. I see no persuasive reason to suppose that they wouldn't have followed GPFM's advice had GPFM given them suitable advice to take an appropriate amount of risk. This is also what they say they would've done.

So I find GPFM's advice was unsuitable and caused Mr and Mrs D to invest in a way they wouldn't have done otherwise. GPFM charged them £5000 for this unsuitable advice. In my view it is fair for GPFM to refund that to Mr and Mrs D. I say this bearing in mind they took fresh advice later (and acted on it) with a view to correcting and reducing the risk to which the investment account was exposed. In my view it is fair to regard the refunded fee as a fair contribution from GPFM towards costs associated with that new advice.

Turning to what Mr and Mrs D might've done differently, in my view the Income Index is a reasonable benchmark for the return Mr and Mrs D might have achieved upon suitable advice. I say this taking into account what I've said about its asset allocation and how its allocation to shares is within the range of that for GPFM's risk levels three and four. I bear in mind that level three was the profile Mr and Mrs D were assessed by GPFM as having in general and level four is the level to which they agreed to increase this at the May 2019 advice. The Income Index is designed for below average volatility, which in my view matches the approach Mr and Mrs D were seeking in a way the equivalent Balanced Index would not.

I'm satisfied that 30 April 2020 is the right date on which to make the comparison. I say this because at that time Mr and Mrs D sold two of the five funds within the investment account, acting on advice they had recently taken from another adviser. In my view, having chosen to retain certain funds and to sell others on the advice of the new adviser, any losses or gains made by Mr and Mrs D from that point on are properly viewed as gains or losses resulting from the advice given by the new adviser and are no longer the responsibility of GPFM. The effect of GPFM's advice, and the fault in that advice, therefore stopped on 30 April 2020. Any loss found on that date is loss caused by the fault in GPFM's advice, which led to the investment account losing more at that point than if it had been invested in a suitable and less risky investment mix.

Mr and Mrs D weren't unreasonable to choose not to carry on with the unsuitable investment mix - which could otherwise have caused greater loss - and to change it when they did and take and act on new advice. The fact Mr and Mrs D would have made a gain at some later date by holding on to the original investments, isn't something they could've known at the time. Also it doesn't change the fact that GPFM caused Mr and Mrs D loss, as they didn't hold onto those funds, so they did in fact suffer a loss caused by GPFM.

I'd add that consumers selling a risky investment after it falls in value, is a common and entirely foreseeable result of advice to take too much investment risk. So what GPFM says about Mr and Mrs D having panicked doesn't change my view that GPFM is at fault and responsible for Mr and Mrs D's loss in the way and to the extent I've described above.

I make no judgement about the merits of the particular steps Mr and Mrs D took to address the excess risk as a result of the new advice they received, because I'm considering here GPFM's advice and not that of the new adviser. But I note that the index I've proposed has an exposure to shares that falls within the range Mr and Mrs D say the new advice brought about in April 2020. So my proposal isn't on the face of it inconsistent with how they chose to proceed after taking fresh advice.

I've considered all of GPFM's other points but none of these change my view that GPFM is at fault and is responsible if it caused Mr and Mrs D loss. I've arrived at that view for the reasons I've already set out above.

Mr and Mrs D have said the fall in value was stressful. I've found Mr and Mrs D were willing to take some risk with their investment, so it seems to me they would've suffered some falls in value and resulting stress in any event. But I'm satisfied the riskier portfolio meant higher value fluctuations which would've increased this stress. Also they had the inconvenience of having to seek alternative advice to put things right. With these things in mind, my view is GPFM should pay Mr and Mrs D £350 to compensate for this distress and inconvenience.

So I'm minded at present to uphold Mr and Mrs D's complaint on the basis and to the extent that I've outlined above, for the reasons I've given above.

Mr and Mrs D indicated that they were willing to accept my provisional decision. GPFM rejected my provisional decision but made an offer of redress, without admission of liability, on a different basis. In summary GPFM said:

- The decision to date has arisen mainly on the basis of the risk questionnaire on file when really this is only a starting point. The regulator even states in their assessing suitability finalised guidance that tools and questionnaires can help to provide structure and are useful to support discussions with a customer. GPFM's discussions with its clients went way beyond the answers on the questionnaire and they moved on to discuss in detail their lifestyle and income needs following their sale of the business and GPFM demonstrated how the lifestyle they wanted was achievable over the longer term.

- Mr and Mrs D's statement that *"we were encouraged to keep expenditure high"* is a complete fabrication. They completed the expenditure sheet outside of the meeting room and emailed it over, with no input from GPFM.

- GPFM rejects what the provisional decision says about Mr and Mrs D spending less and this not being fully discussed. There wasn't a need for Mr and Mrs D to spend less or to discuss them doing so.

- GPFM undertook a very professional and thorough financial planning exercise with Mr and Mrs D and it had not just 'sold them an investment product at the wrong risk level'. It is clear Mr and Mrs D panicked during the pandemic.

- The provisional decision proposed a loss calculation based on a hypothetical index. GPFM understands this is often used when it is not possible to determine where the client would likely have alternatively invested. But had GPFM advised Mr and Mrs D to invest more cautiously, as suggested in the provisional decision, it would have advised them to invest in the risk level four portfolio product ("portfolio 4") of [a named provider]. As such, using portfolio 4 to calculate loss is more appropriate and reflects the position Mr and Mrs D would now be in had GPFM advised them to invest at a lower level of risk. (GPFM's redress offer was based on this portfolio 4).

- Portfolio 4 is an investment strategy GPFM uses and used at the time. The provisional decision notes risk profiles three and four as where Mr and Mrs D should have been invested, making portfolio 4 a fairer method. Its current asset allocation is 44% bonds and 41% equity, so it also complies with Mr and Mrs D's comment that they sold funds and reduced their equity to between 25% and 52% exposure and that this revised allocation fitted their agreed risk profile.

- To resolve the matter quickly, GPFM's offer uses an 8% growth rate from April 2020 onwards, although it assumes Mr and Mrs D's investments didn't return that amount since then and this growth rate doesn't appear fair and could be subject to challenge.

Mr and Mrs D didn't wish to accept GPFM's offer, so I informed the parties that as the complaint couldn't be resolved informally it was one that I would need to decide.

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, I've arrived at the same conclusions as those I reached in my provisional decision and for the same reasons.

In short, I don't agree with what Mr and Mrs D said about GPFM's charges being excessive. But I do think GPFM's advice was unsuitable because it led to the investment account being invested in funds carrying more investment risk than was suitable for Mr and Mrs D's risk appetite in their circumstances. I note what GPFM says about the risk questionnaire being only a starting point. My conclusion is based not only on the questionnaire but on the other discussions and factors which my provisional decision discussed and gave weight.

I've considered what GPFM has said about using portfolio 4 as a benchmark, but I'm not persuaded that this is most likely what GPFM would've recommended to Mr and Mrs D. I say this because when giving advice to Mr and Mrs D, GPFM didn't in either 2019 or 2018 use a portfolio product from this range with this product provider. Instead GPFM recommended a variety of funds managed by a variety of different managers. So although I have no reason to doubt GPFM when it says it does use portfolio 4, I'm not persuaded this is most likely what it would've recommended to Mr and Mrs D upon appropriate advice in 2019.

To use portfolio 4 now rather than any of the other specific ways in which GPFM might have achieved an appropriate risk exposure, risks selecting a comparator influenced by hindsight. Also portfolio 4 was an investment exposed to the risk of one manager underperforming in a way GPFM's actual advice wasn't. The Income Index is based on allocations to various very broad-based underlying investment indices – and it isn't biased towards the performance or asset (or fund) selection of one particular manager.

With all this in mind, I remain of the view that it is fair and reasonable to use the Income Index in this case – for the reasons I gave in my provisional decision as set out above. My view that this is fair is reinforced by the fact that GPFM's alternative has an asset allocation, from what GPFM has highlighted, that isn't very far from the nature and asset allocation my provisional decision discussed the Income Index as having.

GPFM says the portfolio wouldn't have returned 8% a year since April 2020, but losses or gains since then - which in my view is when loss caused by GPFM's advice crystallised - weren't caused by GPFM's advice but by advice of a new adviser, so I haven't adjusted the loss for that performance. In my view interest at the rate of 8% simple is a fair way in these circumstances to revalue loss to allow for the time that has passed since loss crystallised.

So I uphold Mr and Mrs D's complaint on the basis above and for the reasons I've given.

Putting things right

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr and Mrs D as close to the position they would probably now be in if they had not been given unsuitable advice.

I take the view that Mr and Mrs D would have invested differently. It is not possible to say *precisely* what they would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr and Mrs D's circumstances and objectives when they invested.

What must GPFM do?

To compensate Mr and Mrs D fairly, GPFM must:

- Compare the performance of Mr and Mrs D's investment (the investment account) with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable. GPFM should also add any interest set out below to the compensation payable.

- Pay to Mr and Mrs D £350 for distress caused by the value of the investment account falling by more than it would have done otherwise, and for the inconvenience of having to reorganise the investment account, including seeking fresh advice.

- Repay the advisor's £5000 fee together with simple interest at 8% a year, from the date the fee was paid to the date of this final decision. If the above comparison shows that no compensation is payable, the difference between the *actual value* and the *fair value* can be offset against the fee with interest.

Income tax may be payable on any interest paid.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
The investment account	In force but altered on 30-04-2020	FTSE UK Private Investors Income Total Return Index	Date of investment	30-04-2020 after the alterations made on that date	8% simple per year on any loss from the end date to the date of this final decision

Actual value

This means the actual value of the investment account at the end date above.

Fair value

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

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 account 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. I understand from Mr and Mrs D that there weren't any withdrawals but if instead there were a large number of regular withdrawals, to keep calculations simpler, I'll accept if GPFM totals all such payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr and Mrs D wanted Capital growth initially, with a view to taking income later, and were willing to accept some investment risk.

- The FTSE UK Private Investors Income Total Return index is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return than that available from an investment with less investment risk.

- I've explained above in my findings in detail why the investment mix within the index makes it a reasonable measure of what Mr and Mrs D might have got from a suitable investment given their circumstances and risk attitude.

I have set out above the calculation of fair compensation. The interest that may also be due is only what falls due if settlement takes more than 28 days, as set out below.

Interest on my award

If GPFM takes more than 28 days to pay my award to Mr and Mrs D after receiving from us notification of their acceptance of my final decision, GPFM should pay simple interest to Mr and Mrs D on my award at the rate of 8% a year from the date of my final decision until the date GPFM pays the redress to Mr and Mrs D.

My final decision

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £355,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £355,000, I may recommend the business to pay the balance.

Gerald Pepper Financial Management Limited should provide details of its calculation to Mr and Mrs D in a clear, simple format.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £355,000, I recommend that Gerald Pepper Financial Management Limited pays Mr and Mrs D the balance plus any interest on that amount as set out above.

This recommendation is not part of my determination or award. It does not bind Gerald Pepper Financial Management Limited. It is unlikely that Mr and Mrs D can accept my decision and go to court to ask for the balance. Mr and Mrs D may want to consider getting independent legal advice before deciding whether to accept this decision.

Determination and award: I uphold the complaint. I consider fair compensation should be calculated as set out above. My decision is Gerald Pepper Financial Management Limited should pay Mr and Mrs D the amount produced by that calculation – up to a maximum of £355,000 (including distress or inconvenience) plus any interest set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 8 January 2024.

Richard Sheridan
Ombudsman