

## The complaint

Mrs R and Mr R ('the complainants') have presented a case related to their respective Individual Savings Accounts ('ISAs') and Mr R's pension. The three accounts had a total value of around £500,000 in August 2021, when they were undertaken by Station Associates Limited ('Station') for the provision of advice and ongoing servicing. The complainants say Station did as follows:

- Recommended unsuitable portfolios for each of their accounts. [issue 1]
- Reneged on its promise to rectify issue 1, by revising each portfolio; and breached their repeated, direct and explicit instructions to rectify issue 1, by revising each portfolio. [issue 2]
- Failed to provide effective performance reviews, as part of the ongoing service they paid for. [issue 3]
- Failed to give support to address investment platform problems. [issue 4]
- Committed a data protection breach. [issue 5]
- Mishandled their complaint between February and June 2022, including dishonest, misleading, secretive and delaying behaviours; continued some of these behaviours even after referral of the complaint to our service. [issue 6]
- Misled them on the charges for the platform on which their investments were held. [issue 7]
- Refused to provide its service (from July 2022 onwards) and forced them to find and appoint new advisors (at additional costs) to assist in rectifying issue 1. [issue 8]

Station disputes the complaint.

## What happened

### Complaint Issues

The complainants were jointly advised by Station. Their main submissions for each of the complaint issues are summarised below.

#### Issue 1

Mr R's profile was based on a medium/high attitude to risk and an objective for better investment performance; he had no interest in ethical investments (for example, his pre-existing ISA portfolio held no ethical funds); he had a limited interest in sustainable investments, so long as they did not compromise the pursuit for performance (the pre-existing ISA portfolio had no more than 3% in a fund that might be termed a sustainable

fund); and that pursuit was paramount.

Station knew he wanted better investment performance and it undertook to help him achieve that. It initially misguided itself in this respect, and referred to ethical and sustainable investments being part of the objective. The complainants corrected this. Station conceded the correction and gave its assurance that performance was the objective to be pursued. It also said it is merely a coincidence that its investment recommendations were also ethical and sustainable.

In August 2021, Station recommended the following ethical and sustainable funds for his ISA (valued at around £80,000) and pension (valued at around £360,000) portfolios –

- Premier Miton Ethical – 14% each portfolio.
- Stewart Investors Asia Pacific and Japan Sustainability (14%)
- Blackrock GF Sustainable Energy (13%)
- EdenTree Responsible and Sustainable UK Equity Opportunities (12%)
- Baillie Gifford Positive Change (9%)
- Liontrust UK Ethical (8%)
- EdenTree Responsible and Sustainable European Equity (6%)
- Liontrust Sustainable Future Managed Growth (5.25%)
- Janus Henderson Global Sustainable Equity (4%)

The above, in total, occupied just over 85% of each portfolio. He accepted the recommendations because Station had assured him that they were made to meet the performance objective, and that their ethical and sustainable characteristics were coincidental.

As Station subsequently conceded, during a meeting in February 2022, there was no such coincidence, the recommendations had been wrongly made with focus on ethical and sustainable investments, that unduly compromised Mr R's objective and limited scope in the portfolios for fund selection, it resulted in unbalanced portfolios lacking in diversification, it over-exposed them to high and concentrated risks, and, overall, it resulted in unsuitable portfolios.

Mrs R's profile was based on the same pursuit for better investment performance; that was the objective for her ISA; she had a low/medium attitude to risk; and she had absolutely no interest in ethical and sustainable investments.

As Station's advice was given to the complainants jointly, the same journey leading to its recommendations to Mr R applied to its recommendations to Mrs R. In her case, despite Station's error having been corrected and despite additional clarifications given to it that ethical and sustainable investments formed no part of her objective, it recommended the following ethical and sustainable funds for her ISA portfolio (valued at around £60,000) –

- ASI Ethical Corporate Bonds (10% of the portfolio)
- Premier Miton Ethical (10%)
- EdenTree Responsible and Sustainable UK Equity Opportunities (8%)
- Baillie Gifford Positive Change (8%)
- Liontrust UK Ethical (8%)
- Rathbone Ethical Bond (7%)
- Stewart Investors Asia Pacific Leaders Sustainability (6%)
- Janus Henderson Global Sustainable Equity (5%)
- EdenTree Responsible and Sustainable European Equity (4%)

This, in total, constituted 66% of her ISA portfolio. Like Mr R, she accepted the recommendations because of Station's assurance that they were made to meet the performance objective, and that their ethical and sustainable characteristics were coincidental. The same concession and conclusions by Station, in February 2022, about the unsuitable aspects of Mr R's portfolios applied to Mrs R's portfolios too, for the same reasons.

### Issue 2

At the meeting with Station in February 2022 the complaint about issue 1 was discussed. Station understood that the complainants wanted the unsuitability of their portfolios to be rectified, and wanted the portfolios to be suitably composed. A conference call was held in March 2022 and the same was made clear to it. It agreed and undertook to put them in the suitable portfolios that they ought to have been in, and to compensate them for any loss/difference. Station nominated a specific official (a Director) to lead this correction.

No corrective action was taken thereafter. The complainants chased Station to uphold their promise and to execute the required portfolio corrections. They coupled this with correspondence expressly instructing the portfolio corrections. They sent the relevant emails to Station in March, April, May and June 2022. Station never acted as instructed. Initially it gave them the impression that the resolution it promised was in progress. Then it reversed its position, disputed the complaint and, in July 2022, confirmed that it could no longer provide service to them.

### Issue 3

Up to May 2022 Station charged them for ongoing financial advice. This included performance reviews, and they were entitled to three such reviews in the first year of service. It was agreed that an initial review would happen in October 2021 to reflect on all the recommendations and investments that had been made at the outset. Then Station's standard review cycles in January and June/July would apply. No meaningful performance reviews – extending to reviews of suitability – ever happened, and Station has been unable to provide documented evidence of one.

The October 2021 meeting took place, but it fell short of a credible review. The adviser was incapable of explaining performance in their portfolios and the summary of the meeting she sent thereafter was inaccurate.

By January 2022 they became frustrated by the underperformance they could see in their portfolios. This was compounded by the lack of a proper performance review up to this point. They asked for one, and asked for the presence of a manager or director at the review meeting. This led into the six months performance review meeting in February 2022, where a director was present and where they made their complaint. The director gave the first and only explanation of performance they received – which Station now denies. No subsequent performance review took place.

Station had the investment platform access and professional capabilities to monitor and make sense of performance in their portfolios. They did not have that. They were significantly deprived by the lack of reviews by Station, despite having paid for an ongoing service that included them.

### Issue 4

During August and September 2021 Mr R was unable to gain access to the investment platform (recommended by Station). He complained, in both months, to the platform provider

about this problem, and Station was copied into the complaint. The matter was discussed with Station during the October 2021 meeting, it said it would help to escalate the complaint but there is no evidence that it took any action at the time.

Complaints continued to be sent to the platform provider (copied to Station) during October, November and December 2021. Mr R had no access to the platform account and no explanation for what he was experiencing. He eventually gained such access in January 2022, but there remained no explanation for the problem he previously experienced. The matter was discussed further in the February 2022 meeting, and Station offered support in reaching a resolution with the platform provider.

Throughout February, March, April, May and June 2022 Mr R maintained his complaint correspondence with the platform provider (copying Station). Eventually, in June, the platform provider explained the problem, and issued an apology and a compensation offer which were accepted in good faith. However, the fact remains that the issue lasted around 11 months, and despite Station's offers of assistance, there is no evidence that it provided any assistance.

#### Issue 5

In June 2021 the Station adviser sent, in an unencrypted email, all the complainants' personal and financial details to a third-party. The third-party was unknown to them, and the data breach was also unknown to them at the time. The adviser does not dispute this and the matter was not acknowledged or admitted by Station until they found out and challenged it. Station tried to hide the matter. In addition to the obvious data protection breach, it also constituted breaches of Station's regulatory obligations and of its terms of service.

#### Issue 6

- Despite Station undertaking to treat any expression of dissatisfaction as a complaint, it failed to do so in response to the dissatisfaction they expressed about issue 5 in June 2021; it failed to do so in July and August 2021 when they expressed dissatisfaction about errors in the adviser's assessments and suitability letter (and the approach she adopted in giving her advice); it failed to do so in response to the dissatisfaction they expressed about the adviser's inaccurate October 2021 meeting summary; and it failed to do so in response to the concern they raised about the adviser's service in January 2021.
- Station did not follow the regulator's complaint handling guidelines. It misled them in February 2022 to believe a formal complaint was not required, as matters would be resolved, but it appears to have initiated a formal complaints process around that time without their knowledge. Subsequently, its investigation outcome was issued on 27 April 2022, outside the eight weeks in which it should have concluded the process. They replied on 30 April 2022 to challenge the outcome. It then withdrew the outcome and reinvestigated the complaint, but the next decision it gave on 30 June 2022 was issued more than eight weeks after their response of 30 April. Overall, their complaint in February 2022 took 18 weeks to address, and Station did not even deal with all the elements of the complaint.
- Station refused to use all the relevant facts and evidence in investigating and determining their complaint.
- As mentioned above, and in the summary for issue 2, Station misled them during the complaints process.

### Issue 7

Station has confirmed that the platform provider – Aegon ARC – misled it (and therefore misled them) about its platform charges. A key point in this issue is that it took a review by their new advisers to identify that the charges were incorrect. Station had not previously noticed this, despite having advised them for a year. Their new advisers are pursuing this issue directly with Aegon ARC.

### Issue 8

Station compounded their wrongdoings in issues 1 to 7 by deciding, in July 2022, to withdraw its service. This meant it had invested their portfolios unsuitably, acknowledged this and promised to rectify it, led them to believe it was working on the rectification, then decided not to do so (without being transparent about this), then mishandled their complaint (which it initially concealed and then misrepresented to them), then rejected their complaint with no action taken to rectify the portfolios, and then left them (on their own) to pursue such rectification elsewhere.

### **Station's Position**

With regards to the complainants' portfolios, Station says it initially considered that an offer should be made to rectify them; however, on closer review, it is evident that the portfolios were suitable for their profiles; the ethical and sustainable funds were reasonably deemed unlikely to have a detrimental effect on performance; the funds had good historical performances; the portfolios remained well diversified despite their inclusion; in the absence of a specified reason or preference not to use them, it was not unreasonable to recommend (and use) them; and the complainants did not specifically ask for anything to be *excluded* from their portfolios, so there was no reason not to include these funds.

Station disputes that its director conceded any wrongdoing in the matter, and it notes that its advice complied with its regulated process, was based on accurate profile assessments for the complainants and was agreed by them. It says it did not mishandle the complaints process and did not mislead the complainants as they allege. It considers that their portfolios were suitable, so it says it was their choice to appoint new advisers (at a cost) to change them, but as a gesture of goodwill it is prepared to refund its initial advice fee to them. It explained to them that the events leading to and including their ongoing complaint meant it could not continue to advise them, and it applied no further ongoing service charges to their accounts thereafter.

Overall, Station does not consider it has done anything wrong in any of the complaint issues, and it views issue 1 as based on the complainants' hindsight and being their reaction to short term portfolio underperformance (caused by global events at the time), despite the portfolios having been invested (as agreed) for the long term. It performed the reviews in issue 3, it did not cause issues 4 and 7, and it resolved issue 5.

### **Our Investigation**

One of our investigators concluded that the complaint, overall, should be upheld. He mainly found as follows:

- There is documentary evidence of a settlement offer from Station that was never presented to the complainants. The contents of the offer letter confirm Station's acceptance that their portfolios had been unsuitably advised and that they should be compensated for that. Wider evidence suggests that the offer was not approved by

Station's PI insurer, this could explain why it was not sent out. There is also evidence that supports the complainants' position on their dealings with the adviser, in terms of problems with her recommendation and their clarification that they were not ethical or sustainable investors. The correlation between the ethical and sustainable funds that formed the majority in all the portfolios led to a concentration of exposure to risks associated with such funds, and it unduly limited them to this particular part of the fund universe. Overall, the recommended portfolios were unsuitable and the complainants should receive redress for financial loss arising from that.

- There is evidence that the complainants agreed with the recommended funds, despite the concerns they raised about them at the time, only because they believed the adviser's claim that they were good, performing funds that just happened to be ethical and sustainable. Their personal notes of the meeting in February 2022 are reliable and they show that Station agreed, in the meeting, to rectify the portfolios. The notes were reflected in the many chasers (asking for the promised rectification) they sent to Station thereafter, and up to June 2022. Overall, Station failed to act on their instructions and left them with unsuitable portfolios.
- Station fulfilled the requirement for review meetings. In addition to the initial sale, it met with the complainants twice thereafter, which matched the agreement between the parties.
- Little more can be added to the data breach matter. The mistake (emailing the complainants' details to the wrong address) was made by the adviser; it was not disclosed to them and they had to find out about it themselves; the adviser has confirmed that the details sent have been deleted; Station was made aware of the matter at Director level; and an apology has been given. However, the complainants deserve more than that; they should receive a total of £500 compensation for the distress this issue has caused them, including the distress caused by issues 1 and 2.
- Based on the amounts invested in their portfolios, on the fact that they were/are a couple, and given that they could combine funds, the platform charge of 0.15% (instead of the standard charge of 0.3%) could be obtained. The complainants learnt the higher charge was applied by Aegon ARC. There is evidence that Station, in the course of setting up the platform account, set it up for the lower charge and formally told Aegon ARC to apply the lower charge. Station did not mislead the complainants in this respect and it was/is not its fault that the incorrect charge was applied.
- After Station's withdrawal of service, the complainants should not have been penalised by having to incur additional costs in appointing new advisers to rectify the unsuitable portfolios created by Station. Station should have fixed those portfolios for them. For this reason, Station should refund to them its initial advice fees (£3,950).

Station retained its position and asked for an Ombudsman's decision.

The complainants considered that some of the complaint issues should be revisited and some of the investigator's findings should be reviewed. They also gave a detailed rebuttal to submissions made by Station, which we noted, and raised queries about our service's process and our relationship with the regulator, which a second investigator addressed separately.

With regards to their portfolios, they said they were essentially trapped in the unsuitable portfolios up to July 2022 when they had to find help elsewhere to reconstitute them; they found a new adviser firm in the following month, and it took another month for the new firm to

conduct its due diligence and give its advice (at the cost of around £4,000); and the portfolio's funds were changed in October and November 2022, by which time their total value had dropped to around £405,000.

The complainants say that, with inflation factored in, their portfolios had lost around £122,000 between August 2021 and October 2022 due to Station's wrongdoings in issues 1 and 2. They consider that most of the financial harm caused by its wrongdoings happened from February 2022 onwards when it persistently refused to act on their instructions to fix the portfolios. The impact, they say, includes a change in Mr R's retirement plans, whereby his retirement is delayed by up to five years (because of the loss), in addition to profound personal ongoing distress caused by the matter.

In addition, the complainants mainly say –

- Issues 3 and 4 – For issue 3, Station has no record or report of a performance review or discussion having been conducted in the October 2021 meeting, in the February 2022 meeting or at any other time during its service. A similar point applies to issue 4, as Station has no evidence that it contacted Aegon ARC to assist in resolving the platform access problem they faced. These issues should be upheld.
- Issue 5 – The distress award of £500 (for this issue and for issues 1 and 2) is insufficient, given the significant impact that all aspects of their case, and all aspects of Station's actions/inactions, have had on them.
- Issue 6 – In addition to evidence of Station's misconduct whilst handling their complaint internally (as summarised above), our service has directly witnessed further misconduct from it since referral of the complaint to us. We have said Station missed some of our communication response deadlines. Furthermore, in their General Data Protection Regulations ('GDPR') related pursuit, Station repeatedly failed to respond, and the Information Commissioner's Office ('ICO') declared it had fallen short of its obligation in this respect (and that it should provide them with the information they asked for). This issue should be upheld.

The complaint 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.

This decision focuses on determining the complaint issues and any redress (and compensation) due to the complainants. For this reason, I do not address their rebuttals to Station's submissions or their comments on our process and our role alongside the regulator's. I consider that these, especially the latter, have been sufficiently addressed between the two investigators that managed the case.

I have considered all the information shared with us and, as much as I can, I have summarised the main components of the case above. My findings, as set out below, are based on all that I have considered.

#### **Issues 1 and 2**

I uphold these issues.

I am satisfied with the balance of documentary evidence showing that the three portfolios

were unsuitably invested (upon Station's advice) in August 2021, and that Station repeatedly and unreasonably failed to execute the complainants' monthly instructions and reminders, between February and June 2022, to reinvest the portfolios suitably. As they have stated, evidence in this respect is broadly undisputable.

The complainants agreed with the funds recommended for their portfolios. They do not deny this and they have explained why, despite their concerns about those funds, they did. Their reason is supported by evidence. There is correspondence between them and their adviser in which they clearly corrected her misdirection on the matter of ethical and sustainable investments, in which she accepted their correction and in which she assured them that her recommendations were purely for performance and coincidentally ethical and sustainable.

Contents of Station's unissued 2022 offer letter to the complainants (sent internally within Station on 30 March 2022) conflict with the adviser's assurance. I note the following –

*"[The adviser] had chosen funds based on her belief, due to conversations had with yourselves, that sustainable funds were your preference, as long as performance was not compromised by investing in such funds. The funds, at the time of recommendation were well reviewed by Morningstar or had a good track record of performance at the time, even against non ethical funds, hence the reason for [the adviser] standing by these funds at the time. Unfortunately due to recent unexpected global geopolitical factors the markets have become extremely volatile. Less ethical stocks have performed better in the time that you have held your investments" [my emphasis]*

*"... I believe that the consistent message from yourselves throughout your dealings with [the adviser] is that you have no particular ethical drivers for your investments, but it would be a nice to have as long as performance was the key driver. The choice of the funds in the portfolios does not seem to reflect this ..."*

The above serves as evidence that the funds the adviser recommended, *based on* the mistaken notion that ethical/sustainable funds determined the complainants' investment objective, remained the funds she stood by. Wider evidence (from correspondence in 2021) already confirmed this, even before the unissued 2022 letter.

It appears that despite the complainants correcting her error and clarifying their position at the outset, no revision work was conducted in response. Instead, the recommendation remained the same and was seemingly rebranded to them as no longer being based on an ethical and sustainable objective, and as being based on a performance objective. In other words, the portfolios remained invested in funds that had initially been selected mainly for their ethical and sustainable characteristics.

Consideration of the description and profiles of the relevant funds makes it reasonably clear that ethical and sustainable objectives were important within them. As stated in the previous section, at least 85% of Mr R's portfolios were occupied by them and 66% of Mrs R's portfolio was occupied by them. These were significantly high proportions. In Mrs R's case she wanted no such funds, and in Mr R's case he had a minimal tolerance for sustainable funds (only) and no tolerance for ethical funds. Using his previous portfolio as a form of guidance, this minimal tolerance probably translated to an allowance of around 3% for each of his portfolios.

In the above context, the 85% and 66% ethical and sustainable funds exposure in the complainants' portfolio was significantly and inherently unsuitable.

Station's present position is that regardless of the funds having these particular characteristics, they were nevertheless good performing funds, so they still met the



complainants' objective and were therefore suitable.

Its earlier evidence presents some conflict with this. It previously accepted that *"Less ethical stocks have performed better in the time that you have held your investments"*.

The unissued offer letter also said – *"This has led to your investments falling in value below the original amounts invested and below the value of a "normal" (ie not ethically or sustainably biased) portfolio"*; and it proceeded to calculate, and state, that Mr R's portfolios had *"underperformed in comparison to a less sustainable portfolio by 4.27%"* and that Mrs R's had underperformed by 5.43%. The letter concludes with an offer to pay them compensation for their loss.

The letter supports the complainants' records and accounts of the meeting in February 2022 and of Station's undertaking to them that it accepted responsibility for their unsuitable portfolios and responsibility to redress the matter. Like the investigator, and for this reason, I too consider their records to be reliable.

Within its present position, Station cites cumulative performance comparison graphs for the following periods – two and a half years, two years, one year, three months and one month; all ending in February 2022. All but the two and a half years and the two years graphs show underperformance (as of February 2022) of the complainants' portfolios compared to benchmark portfolios. The matter addressed in the February 2022 meeting was the underperformance of their portfolios at the time, and since August 2021. The one year graph shows underperformance problems arising around October 2021 and then setting in around December 2021. The three months and one month graphs mainly show underperformance throughout their respective periods. These graphs appear to have been used during the meeting, and they support the complainants' point.

In the above context – that is, knowing it had given unsuitable investment advice, knowing its advice had already led to losses (within six months), knowing it had promised to fix the portfolios and redress the losses and knowing the matter needed to be urgently addressed (given the inherently time sensitive nature of investments) – it is quite indefensible that Station thereafter failed to change and reinvest the portfolios. It appears to have exercised discretion to reverse its initial decision (and undertaking to the complainants) to uphold the matter and pay redress. Given the evidence, I do not consider such a reversal to be reasonable. However, doing that was one thing, but to ignore the pressing need to repair the portfolios was another, and was distinctly irresponsible. Especially so because the complainants repeatedly reminded it every month between February and June 2022.

This establishes a reasonably clear basis to find that Station repeatedly breached the complainants' investment instructions. If, as they state, the financial damage from February 2022 onwards has been the most significant, Station is responsible for that damage. It failed to repair the unsuitable portfolios in that month, it failed to compensate for the losses incurred up to that month, it accepted responsibility for both at the time, and then it subsequently failed to act upon clear instructions and reminders to repair the unsuitable portfolios.

### Issue 3

On balance, and based on the complainants' own submissions and on the facts of their case, I am not persuaded that Station did anything wrong in this issue.

The issue is about Station's ongoing service and the portfolio/performance reviews that should have happened within that service.

It is the complainants' evidence that when the adviser "*sent details for the initial 3-month (October) performance review*" they were "*shocked at how poor the performance was and how little [the adviser] was able to provide by way of explanation*", and that "*'Volatility' was the only explanation, but this made no sense as every single fund was losing money (not just the overall Portfolios), this at a time when indices were rising*".

This led to a performance review meeting (online, through 'Zoom') between the complainants and the adviser in October 2021. They have confirmed that the adviser addressed their performance concerns during this meeting, but on reflection they consider that she did so poorly. They also say she followed up the meeting with an erroneous summary.

The complainants have said that the February 2022 face-to-face meeting, with the adviser and a Director of Station, was held at their request and for the purpose of discussing their performance concerns further. Indeed, that subject was discussed, leading to the concessions and promises from Station that I mentioned above. The Station Director made a catch-up call to them on 10 March 2022, during which they say he affirmed the promise to change the portfolio at no cost and to compensate them for loss. Thereafter, the complaints process featured and by June/July 2022 Station's ongoing service ended.

The complainants are entitled to take the view that the meetings in October 2021 and February 2022, and the telephone call in March 2022, all fell short of being meaningful reviews or discussions about the portfolios' performances, or fell short of the performance reviews that they would have liked, but the fact is that all three were engaged in reviewing the performance of their portfolios. The two meetings were performance reviews, and they happened around the times that the complainants expected them to happen – that is, the first (in October 2021) in the aftermath of the initial investments, and the second (in February 2022) around the start of the new year and around six months into the investments.

It is also true to say that email correspondence around the two meetings, mainly with the adviser, also focused on the task of reviewing performance and contained some discussions in this respect. Again, even if the complainants felt/feel the emails lacked any value, they were nevertheless sent in relation to the ongoing performance reviews. Withdrawal of the service around June/July 2022 explains why they did not have the third meeting they say they were expecting – which would have happened in June/July 2022.

Overall, on balance and for the above reasons, I do not uphold this issue.

#### Issues 4 and 7

In straightforward terms, I do not find that Station did anything wrong in these issues mainly because it is a matter of fact that neither was caused by Station, neither was within its responsibilities, the platform's operation and application of the platform fees were Aegon ARC's responsibilities, and Station could not reasonably have been expected to have any control over Aegon ARC in either respect.

The complainants say they have not seen evidence of Station supporting their pursuit to have Aegon ARC fix the platform access problem. That does not automatically mean there was no such support, or that behind the scenes (or unseen) such support did not happen. It was reasonable for them to expect a degree of support from Station, after all the platform was its recommendation and they had just been onboarded onto it. Its support appears to have been promised and I do not have enough evidence to conclude, on balance, that they were misled in that respect.

It was in Station's interest to help, for the same reason that it had recommended the platform

and it probably wanted its recommendation to work without problems. It could have raised the matter with Aegon ARC in ways that were unrecorded and/or unknown to the complainants, and because of its interest in the matter it probably did this. Ultimately, it did not cause the problem and it did not hinder its resolution, and it is more likely (than not) that it tried to support them at the time. Overall, I do not find grounds to say it did something wrong in the matter.

As the investigator said, there is evidence that Station did as much as it could to set up the platform on the reduced fee rate. I have considered evidence associated with and supporting the following statement from the adviser –

*“... using Aegon ARCs bespoke charging calculator I ensured the lower platform charge was applied directly with Aegon. I also supplied [the complainants] with manually adjusted Illustrations to show the effect of the lower platform charging structured (attached) ... As you will also see the lower bespoke platform charge was formally requested to be applied with Aegon as per my attached email. As to how the bespoke reduced platform cost with Aegon was calculated please see attached the Excel Calculator”.*

The complainants acknowledge that the matter needs to be addressed directly with Aegon ARC and they are doing so with assistance from their new adviser. Again, I do not find grounds to say Station did something wrong in this matter.

#### Issue 5

Station does not dispute this issue. The data breach occurred, as summarised above. Station has acknowledged it, assured the complainants that it has fixed it and apologised to the complainants.

The breach was/is a serious matter. I consider that Station mishandled it by not disclosing and addressing it immediately in a transparent manner. It is also my view that, given its seriousness, the adviser's communication to the complainants about it could have displayed more insight and reflection, and more sincerity in her expressions. I agree with the investigator that the complainants should receive an award for the distress caused by this issue.

The investigator's proposal was to award £500 in this respect, inclusive of the distress caused to the complainants by issues 1 and 2. I understand their view that the award is insufficient. However, I disagree and I consider that it stands in the following context –

- We are not the industry regulator, so we do not have the power to make punitive awards. Nothing in the award is aimed at punishing Station for the data breach, because it is outside our powers to do so.
- The award aims to provide the complainants with a monetary form of compensation for the distress and trouble they have been caused by the effect and impact of issues 1, 2 and 5, distinct from any financial loss arising from these issues.
- No financial loss resulted from issue 5. The financial loss impact of issues 1 and 2 will be separately addressed in my provisions and orders for redress below, so they are not to be duplicated in an award for distress.
- The award level of £500 reasonably covers distress from the isolated event in issue 5 and the trouble and upset that issues 1 and 2 would have caused the complainants.

## Issue 6

I distinguish and separate Station's conduct during our investigation of the complaint and the complainants' reference to its conduct in their GDPR pursuit.

It is not uncommon for firms to need additional time to make representations to us or to respond to our enquiries. This does not automatically mean they are disrupting our process, and I have not seen evidence that Station disrupted our process for dealing with the present complaint. It is also not unusual for firms to dispute our findings, irrespective of the state of evidence, and to exercise their right to an Ombudsman's decision. Even if the complainants consider that Station ought to have yielded to the weight of evidence against its position, and settled the complaint, that does not remove or dilute its right to ask for an Ombudsman's decision – and it does not automatically make such a request unreasonable.

With regards to the GDPR and ICO related matter, both (separately or jointly) are beyond the complaint and issues that I am addressing and are within my remit to determine. Therefore, it is beyond the scope of this decision – especially as I lack involvement in and details of the matter – to make a finding on how Station has conducted itself within it.

I now turn to Station's internal handling of the complaint.

I can determine complaints about regulated activities, like Station's investment advice to the complainants. On its own, complaint handling is not a regulated activity (and it is not an ancillary activity connected to the conduct of a regulated activity). In some cases, it might be that a complaint to a firm and its alleged mishandling of it forms a part of the substantive case. For example, where the alleged mishandling of a complaint is said to have added to the substantive problem. Ordinarily, I would not address an issue about complaint handling in isolation. However, in these types of cases, addressing the firm's complaint handling can be a necessary part of determining the overall complaint. I find that the present complaint is such a case.

Evidence shows that between the February 2022 meeting and, at least, up to the end of March 2022 (when the unissued offer letter was sent internally within Station), both sides had agreed on a resolution of the problems with the unsuitable portfolios (including repairing the portfolios and compensating the complainants for loss).

Thereafter, Station changed course and completely abandoned the agreed resolution. It also appears to have switched the matter into one of a *disputed* formal complaint without, it seems, initially informing the complainant. Then, it was distracted by its focus on the process for the complaint and it wrongly used that as a reason to ignore repeated instructions from the complainants for action on their portfolios. The process created no obstacle to such action, even if it had decided to maintain that the portfolios were suitable – which they were not – the fact was that its clients were giving direct investment instructions that Station was obliged to execute, but failed to. Those instructions were not dependent on Station's complaint process.

In the end, Station's mishandling of the process (as summarised above) led to the complainants facing a position (in July 2022) in which their complaint was rejected, but arguably more importantly urgent remedial work required for their portfolios remained outstanding. In this respect, I note evidence of an email to Station around June 2022 that appears to have been from their PI insurers, suggesting that it consider, separately, giving advice on the changes to the portfolios. It chose not to.

For the above reasons, I agree that Station mishandled the internal complaints process and that it had a direct effect on, at the very least, issue 2. However, as I said above, it is beyond

my remit to make punitive awards and the complainants' financial loss in issue 1 (which essentially incorporates issue 2) is to be addressed separately. I have considered if Station's mishandling of the complaint should result in a higher distress award. I am not persuaded that it is tangible enough to do so. Station was entitled to apply the complaints process and its main wrongdoing was allowing that process to affect what it should have done in issue 2 (which is to be addressed separately in terms of redress).

I note the complainants' arguments about their earlier expressions of dissatisfaction which they say should have triggered an earlier complaints process. I consider this somewhat of a moot point. It does not appear to be their case that they sought to make formal complaints earlier but were denied due process, and it appears that the formal process in 2022 started without their awareness and happened, partly, without their desire for one – as they would have preferred Station to meet the promises it made in February 2022.

### Issue 8

Station was entitled to withdraw and terminate its service as it saw fit. I have not seen any provisions in its terms of service that prevented it from doing that. However, it was wrong to have repeatedly denied the complainants execution of their investment instructions over the course of around five months up to the termination of service. I also consider that it was wrong not to address the need to change the portfolios, perhaps as a final task, before the termination of service. As I said above, it did not matter that its position at the time supported the recommended portfolios. The fact was that it was in receipt of repeated instructions from the complainants to change the portfolios, so it should have done that, even if that had to be done on an execution only basis.

Station's initial advice resulted in unsuitable portfolios for the complainants, it initially accepted this then it reneged on its promise to fix it, then it refused to execute the complainants' instructions to fix the portfolios, and then it withdrew its service without having fixed the portfolios – leading to the complainants having to incur fresh fees from their new adviser in order to achieve what Station should have done for them.

For the above reasons, I agree with the investigator's award of a refund, to the complainants, of Station's initial advice fees.

### **Putting things right**

#### **Fair compensation**

The complainants should be put, as closely as possible, into the position they would probably now be in if they had been given suitable advice. I take the view that they would have invested differently, as evidence treated above confirms. It is not possible to say *precisely* what they would have invested their portfolios in, with suitable advice, but I am satisfied that the provisions and orders set out below provide for fair and reasonable redress (and compensation) to them.

#### **What must Station do for Mrs R and Mr R?**

- Pay them £500 as compensation for the distress and trouble they have been caused in issues 1, 2 and 5, and for the reasons given above.
- Repay, to them, the initial advice fee charged by Station, together with simple interest on that amount at the rate of 8% a year, starting from the date the fee was paid to Station and up to the date of settlement. The interest is to compensate them

for being deprived of the refund amount from the start date to the date of settlement.

### What must Station do for Mrs R?

To compensate Mrs R fairly, Station must:

- Compare, from the start date to the end date in the table below, the performance of her ISA investment portfolio with the notional value it would have if, at the outset, it had been invested in a non-ethical/sustainable biased portfolio suitable to her investor profile.
- If the *actual value* is greater than the *notional or fair value*, no compensation is payable. If the notional or fair value is greater than the actual value there is a loss and the difference is compensation payable to Mrs R.

In the event that redress cannot be calculated, properly, on the basis of the aforementioned notional value, I have provided for an alternative benchmark below.

- Station must pay the resulting compensation directly to Mrs R.

Income tax may be payable on any interest paid. If Station deducts income tax from the interest it should tell Mrs R how much has been taken off. Station should give Mrs R a tax deduction certificate in respect of interest if she asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Mr R's ISA	Still exists and liquid	Notional value of a non-ethical/sustainable biased portfolio suitable to Mrs R's investor profile; or alternative benchmark (for half the portfolio – FTSE UK Private Investors Income Total Return Index; for the other half – average rate from fixed rate bonds)	Date of investment	Date of settlement	Not Applicable

### **Actual values**

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

### **Notional and Fair values**

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

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

Any withdrawal from the portfolio should be deducted from the fair value calculation at the

point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I will accept if Station totals all those payments and deducts that figure at the end to determine the fair value, instead of deducting periodically.

### **Why is this remedy suitable?**

I have decided on this method of compensation because:

- Primarily, Mrs R's ISA should have been invested in a non-ethical/sustainable biased portfolio suitable to her investor profile, hence my order to use the notional value of such a portfolio as the redress benchmark. However, if it is not possible to properly calculate redress on that basis, then the alternative benchmark and reasons below apply.
- Mrs R wanted capital growth, but she had a low to medium risk profile.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income **Total Return** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mrs R's low to medium risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objective. The 50/50 combination would reasonably put her into that position. It does not mean that she would have invested 50% of her ISA in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return she could have obtained from investments suited to her objective and risk attitude.

### **What must Station do for Mr R?**

To compensate Mr R fairly, Station must:

- Compare, from the start date to the end date in the table below, the performance of his portfolios with the notional values they would have if, at the outset, they had been invested in non-ethical/sustainable biased portfolios suitable to his investor profile.
- If the actual value is greater than the notional or fair value, no compensation is payable. If the notional or fair value is greater than the actual value there is a loss and the difference is compensation payable to Mr R.

In the event that redress cannot be calculated, properly, on the basis of the aforementioned notional values, I have provided for an alternative benchmark below.

- With regards to the ISA, Station should pay compensation directly to Mr R.

- With regards to the pension, Station should pay the compensation into Mr R's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. The compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- With regards to the pension, if Station is unable to pay the total amount into Mr R's pension plan, it should pay that amount directly to him. 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 R would not be able to reclaim any of the reduction after compensation is paid.
- With regards to the pension, the *notional* allowance should be calculated using Mr R's actual or expected marginal rate of tax at his selected retirement age.
- With regards to the pension, it is reasonable to assume that Mr R is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr R would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

Income tax may be payable on any interest paid. If Station deducts income tax from the interest it should tell Mr R how much has been taken off. Station should give Mr R a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
1. Mr R's Pension	Still exists and liquid	Notional values of non-ethical/sustainable biased portfolios suitable to Mr R's investor profile; or alternative benchmark (FTSE UK Private Investors Income Total Return Index)	Date of investment	Date of settlement	Not Applicable
2. Mr R's ISA					

### **Actual values**

This means the actual amounts payable from the portfolios at the end date.

### **Notional and Fair values**

This is what the portfolios would have been worth at the end date had they produced returns using the benchmark.

Any additional sum paid into the portfolios should be added to the *fair values* calculation from the point in time when it was actually paid in.

Any withdrawal from the portfolios should be deducted from the fair values calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I will



accept if Station totals all those payments and deducts that figure at the end to determine the fair values, instead of deducting periodically.

### **Why is this remedy suitable?**

I have decided on this method of compensation because:

- Primarily, Mr R's Pension and ISA should have been invested in non-ethical/sustainable biased portfolios suitable to his investor profile, hence my order to use the notional values of such portfolios as the redress benchmark. However, if it is not possible to properly calculate redress on that basis, then the alternative benchmark and reasons below apply.
- Mr R wanted capital growth. He had a medium to high risk profile and he was willing to accept some investment risk.
- The FTSE UK Private Investors Income **Total Return** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr R's objective and medium to high risk profile.

### **compensation limit**

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

In the complainants' case, the complaint event occurred after 1 April 2019 and the complaint was referred to us after 1 April 2022 (but before 1 April 2023), so the applicable compensation limit would be £375,000.

### **decision and award**

I uphold the complainants' complaint on the basis set out above. Fair compensation should be calculated as I have also stated above. My decision is that Station Associates Limited must pay them the amount produced by the calculations, up to the relevant maximum.

### **recommendation**

If the amount produced by the calculations of fair compensation is more than the relevant maximum, I recommend that Station Associates Limited pay the complainants the balance. This recommendation is not part of my determination or award. Station Associates Limited does not have to do what I recommend.

**My final decision**

For the reasons given above, I uphold Mrs R's and Mr R's complaint, and I order Station Associates Limited to calculate and pay them redress and compensation (for the initial advice fee and for distress and trouble) as stated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to accept or reject my decision before 18 December 2023.

Roy Kuku  
**Ombudsman**