

## **The complaint**

Mr A has complained that Chase Integral Limited gave him unsuitable advice to invest in the Stirling Mortimer Fund No. 8 through his SIPP (Self Invested Personal Pension). He has also said he hasn't received ongoing advice about it. And he is concerned about the cost of the SIPP and fees paid to Chase Integral Limited.

## **What happened**

I issued a decision dated 15 June 2023 setting out the reasons that I only had jurisdiction to consider the parts of Mr A's complaint about him not receiving ongoing advice, the cost of the SIPP and the fees paid to Chase Integral Limited. I explained the part of his complaint about the suitability of the advice to invest in Stirling Mortimer Fund No. 8 through his SIPP hadn't been referred to us within the relevant time limits.

Mr A's case was then passed to one of our investigators to consider the issues referred to us within time. He sent both parties his assessment of those issues on 20 July 2023. In summary, he said there was no regulatory limit on the amount either an adviser or a pension provider could charge. He said consumers were free to seek alternative advice or transfer to a different provider if they were unhappy with the amount of fees.

The investigator said in the 9 September 2009 suitability report the adviser had explained he was recommending a SIPP instead of the generally more economical personal or stakeholder pension alternatives as Mr A wished to have access to a wide range of investments, including unregulated investments and to be able to self-invest his funds. The adviser had explained the particular SIPP provider had been recommended because of its record of service and performance, which had been recognised through numerous industry awards; the range of investments available; the ability to manage the SIPP online and review its performance; and its transparent and competitive charges.

The investigator said the adviser had provided an illustration from the SIPP provider showing the charges associated with the SIPP. The investigator said the SIPP was required to hold the unregulated Stirling Mortimer Fund, and cost wasn't the only consideration when selecting the provider. He said whilst other products and providers may have been cheaper, they didn't offer the functionality of the SIPP recommended or the ability to hold the Stirling Mortimer Fund. The investigator said that he didn't think the SIPP provider's charges appeared excessive in any event, and the costs were clearly set out to Mr A. So the investigator didn't think this part of Mr A's complaint should be upheld.

The investigator went on to explain that although advisers could no longer be paid by commission after the Retail Distribution Review ('RDR') of 31 December 2012, payment through commission was common prior to it. And commission arrangements pre-RDR could, generally, continue post-RDR. The investigator went on to explain how commission arrangements and agreements worked between the consumer, the adviser and the product provider.

The investigator said whether or not there was an obligation on Chase to provide an ongoing service depended on what was agreed between the consumer and the adviser. He said Mr

A's client agreement signed on 17 July 2009 said "...with regards to investments which we have arranged for you, these will not be kept under review but we will advise you upon your request". However he noted the suitability report dated 9 September 2009 said "An annual review will of course be offered following the placing of the business".

The investigator said he hadn't seen any evidence that Chase had offered Mr A any formal annual reviews. But that he also hadn't seen any signed agreement confirming Chase would provide these; Mr A's client agreement which set out the service Chase would provide Mr A confirmed it wouldn't review his investments.

The investigator noted Chase had said it hadn't provided annual reviews of the Stirling Mortimer Fund as it was a closed-end fund where changes couldn't be made until the end of the fixed term. The investigator thought that appeared to be a reasonable position to take. And although Chase hadn't offered Mr A an annual review of the fund, it had clearly provided him with an ongoing service. The investigator noted numerous e-mails had been exchanged between Mr A and Chase including Chase regularly sending him updates and reports on the Stirling Mortimer Fund. Chase also spoke to Mr A over the phone; met with him in person; and provided advice on other investments, protection, wills, trusts, mortgages and his businesses.

So overall, the investigator said although the suitability report referred to annual reviews there was never any formal agreement in place for Chase to provide ongoing advice. But it was clear that Chase had provided Mr A with an ongoing service in any event. Therefore, the investigator didn't think this part of Mr A's complaint should be upheld either.

Mr A said, through his representative, that he didn't agree with the investigator's findings. The representative said, in summary, that it wasn't disputed that Chase provided Mr A with advice relating to his investments, protection, wills, trusts mortgages and business. It said it would be unreasonable for the ordinary man to dispute the advice he continued to receive – particularly given how much he was paying for Chase's services. However it said it would be unreasonable to suggest that Mr A would continue to pay for advice that was negligent, which is what transpired with the advice he received relating to the Stirling Mortimer Fund.

The representative said Mr A had confirmed he had no cause for concern given the constant re-assurances he received from Chase – notably through e-mail and telephone. Although he understood the value of the investment could fluctuate, he continued to place his complete trust in the adviser who specialised in that area – he continued to receive re-assurances that the investment would provide better returns and that he ought to "wait it out."

The representative said Mr A confirmed he didn't receive any annual statements or reviews and so was unclear about the status of his investment. It said Mr A didn't possess any investment experience prior to investing in Stirling Mortimer, and wasn't sophisticated enough to make the unregulated, high-risk investment himself. The representative said Chase owed Mr A a duty to ensure he understood the risks involved with the investment and provide continued advice in line with his best interests – but it failed to do so.

### **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 come to the same conclusions as the investigator, and largely for the same reasons.

In responding to the investigator's assessment Mr A and his representative raised a number

of points which are largely related to the suitability of the advice surrounding the Stirling Mortimer Fund. I explained the reasons why I wasn't able to consider the parts of Mr A's complaint about the suitability of the advice to invest in that fund in my decision dated 15 June 2023. I've considered jurisdiction again in light of what Mr A and his representative have said. But having done so, I'm still not persuaded the complaint about suitability was referred to us in time.

For the reasons I explained in that decision, I think irrespective of any re-assurances from Chase, Mr A ought reasonably to have become aware of the risks presented by the Stirling Mortimer Fund by 2014 at the latest. Clearly the value of investments can go up and down. Different professionals may have different reasonable opinions about the future value of any particular asset class or investment. Even if Chase was giving Mr A assurances about its likely future value, this was still in the context that the Stirling Mortimer Fund had fallen by around 25% by 2014. So it clearly involved appreciable risk to the capital invested. Although its value could have subsequently recovered, that doesn't gloss over the fact that it had, in reality, fallen in value significantly illustrating its exposure to risk.

For the reasons I explained, I think Mr A was aware of its fall in value and I think it follows ought reasonably to have become aware that it was exposed to significant risks – irrespective of its future performance/any re-assurances from Chase. So if Mr A didn't want an investment that was exposed to risk he ought reasonably to have become aware that there was a problem in 2014 at the latest. Therefore his complaint about the suitability of the Stirling Mortimer Fund was referred to us too late, and I can't consider it.

Chase provided information and reports about the Stirling Mortimer Fund to Mr A. And there were ongoing discussions about it over time; albeit I accept these may have been prompted by Mr A's queries. Chase had also requested information about the fund from Stirling Mortimer itself over the years, and some of the responses were copied to Mr A. I don't think Chase was trying to mislead Mr A about the fund's prospects. And although a 'formal' annual review may not have been offered, it's clear from the correspondence between Mr A and Chase that Mr A took an active interest in its position and it was discussed on several occasions in any event. I don't think the lack of an offer of a 'formal' review was detrimental to Mr A in the particular circumstances.

### **My final decision**

My final decision is that I don't uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 5 October 2023.

David Ashley  
**Ombudsman**