

## **The complaint**

Mr S complains that he's unfairly been charged fees by Fairstone Financial Management Limited ("FFML") for annual reviews which never took place.

Mr S is being represented in this complaint by a claims management company. However, for ease of reference, my decision will refer to Mr S only.

## **What happened**

FFML acted as Mr S' financial advisor regarding his retirement planning from July 2016 until January 2021.

Mr S complained to FFML in October 2022 as he was unhappy that he'd been charged ongoing advisor charges despite him not receiving annual reviews. He asked FFML to refund these unfair charges.

FFML looked into Mr S' complaint but said he'd raised it too late.

Mr S didn't agree and so he referred his complaint to this service for an independent review.

An investigator at this service considered Mr S' complaint and said that the complaint had been brought in time. However, they didn't think FFML had acted unfairly in charging Mr S for its ongoing advisor charges. They explained that the charge was fully explained and agreed to at the time of taking the initial advice. They were also satisfied FFML had conducted annual reviews, albeit not all were done with discussions with Mr S.

Mr S didn't accept the investigator's findings as it was FFML's responsibility to conduct an annual review to ensure the ongoing suitability of his previously recommended products. He said this would need to include a thorough discussion around his personal and financial circumstances which didn't take place in 2019 and 2020. So he felt the charges for the services he didn't receive should be refunded.

As such, the complaint has been passed to me 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.

I understand Mr S' main concern to be that he didn't receive the service he paid for. In considering this, I think the starting point is to determine what was disclosed to Mr S and whether this was sufficient.

The rules determining what must be disclosed to a consumer ahead of any transaction taking place are the Conduct of Business ('COBS') rules. In respect of the ongoing payment of adviser charges, COBS 6.1A.22 (from 6 April 2016) states:

*"A firm must not use an adviser charge which is structured to be payable by the retail client over a period of time unless (1) or (2) applies:*

*(1) the adviser charge is in respect of an ongoing service for the provision of personal recommendations or related services and:*

*(a) the firm has disclosed that service along with the adviser charge; and  
(b) the retail client is provided with a right to cancel the ongoing service, which must be reasonable in all the circumstances, without penalty and without requiring the retail client to give any reason; or*

*(2) the adviser charge relates to a retail investment product for which an instruction from the retail client for regular payments is in place and the firm has disclosed that no ongoing personal recommendations or service will be provided."*

Following the initial advice in July 2016, FFML provided Mr S with a copy of its service and payment agreement. That document explained the costs of the services FFML was providing was chargeable at "1% of the future values of each invest we manage on your behalf on an annual basis". It also provided an example, "Assuming an investment balance at the end of year of £100,000, the ongoing fee could be £1,000. This charge will increase as the fund value grows."

The suitability report dated 6 July 2016 also set out the costs Mr S could expect to pay, which included the 1% ongoing servicing charge.

Overall, I'm satisfied FFML made its annual costs very clear to Mr S, both in percentage and monetary terms. I am also satisfied the format in which the information was presented to him met the expectations of the Regulator. I'm also satisfied that the client agreement clearly explained that Mr S could cancel the ongoing arrangement at any time, which leads me to conclude FFML has acted appropriately in its dealings with Mr S around his concerns linked to disclosure of costs.

Turning to Mr S' main concern, it's important to understand the nature of the service he originally signed up for with FFML to determine whether he got what he paid for.

The agreement Mr S signed between him and FFML stated he would be entitled to (amongst other services):

*"Annual Strategy Meeting: To review your investments and risk profile, your mortgage, personal and family protection and general insurances together with your Wills & Trusts and any other aspect of your financial planning needs. You will receive a report on our conclusions and recommendations.*

*Annual investment valuations: To review and comment on the performance of the investments and pensions which we manage for you against agreed benchmarks and confirm they remain within your agreed risk profile."*

As the original advice was formalised in July 2016, Mr S should've expected an invitation to an annual meeting in or around July 2017. FFML has provided a letter to this service showing it wrote to him in August 2017. That letter referred to a discussion FFML had recently had with Mr S. The letter provided a full review of his circumstances, recommendations and enclosed a valuation report.

I've also been provided with a similar letter that was sent in August 2018. In this FFML explained that it had tried contacting Mr S but was unable to speak with him. FFML explained that it had conducted an annual review based on Mr S' circumstances recorded in the previous annual review and asked him to let it know of any changes to his circumstances that may impact its original recommendation. Again, this letter included FFML's recommendations and enclosed a valuation report. Following receiving this letter, I've seen in an internal note from FFML that Mr S contacted it requesting to discuss his options. The internal note indicates that this discussion happened on 14 November 2018 and Mr S agreed to remain within his current funds.

I've also seen annual review letter following no contact with Mr S was sent by FFML in September 2019. FFML explained in this letter that it had conducted an annual review based on Mr S' circumstances recorded in the previous annual review and asked him to let it know of any changes to his circumstances that may impact its original recommendation. FFML also explained that it had reviewed the performance of his pension over the past twelve months and said it was underperforming against the annual target. It said it was important that Mr S contacted FFML upon receipt of the letter so it could discuss this further. However, there is no record of Mr S contacting FFML in response to receiving this. The letter was sent to the same address used on the previous letters and so on balance, I think Mr S received this letter but chose not to contact FFML.

FFML has also provided an annual review report sent to Mr S in July 2020. In this, FFML confirms it spoke to Mr S on 16 July 2020 in which it discussed his pension plan and the underlying cash assets within. FFML also confirms in this report that Mr S' circumstances hadn't changed.

An annual review wasn't undertaken in 2021 because Mr S had cancelled the ongoing service agreement in January 2021 and so I don't think it was reasonable to expect FFML to undertake one at that point as Mr S was no longer a client.

Taking into account all of the above, I'm satisfied FFML provided Mr S with annual reviews in line the service it agreed at the outset. I appreciate one of these reviews took place in 2019 without Mr S speaking to FFML, but I'm satisfied a full review took place based on what information FFML held for him. Furthermore, Mr S confirmed his circumstances hadn't changed in the 2020 review and so it follows that FFML's review in 2019 was based upon the correct information.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 17 November 2023.

Ben Waites  
**Ombudsman**