DRN-4275263

The complaint

Mr V complains that Lift Financial Limited (Lift) unfairly continued to take fees from his pension plan from April 2014. He feels that he's been paying for advice that he didn't receive for the eight years from 2014 to 2022.

Mr V's pension plan was set up when Lift was known by a different name. But I'll only refer to Lift in my decision.

What happened

Mr V joined his employer's group personal pension (GPP) plan in 2009. Although the provider of the GPP has now changed, I'll refer to it as provider S, and to the employer as business B.

Lift said it managed business B's Staff Pension Scheme – the GPP plan – before business B decided to move this provision in-house in 2014.

Lift said that at the time, GPPs were generally arranged on a commission basis. And that in 2006, business B had chosen to set up the scheme on a commission basis - Lift would receive 1% of all initial and transfer contributions into the scheme as well as 0.25% fund-based commission.

Lift also said that the fees it received from the business B pension scheme were a contractual arrangement between it, provider S and the scheme provider for the services provided to business B. It said these included setting up and administering the scheme, including joiners, leavers and help with payroll. So this wasn't for services provided by Lift to the individual employees. It said that this arrangement remained in place until business B decided to move this provision to another provider in 2014.

Lift said that at this point, business B's contributions to the scheme stopped, although members could continue to make contributions into the scheme if they wished.

Lift said that it provided every new employee of business B with individual financial advice when they joined the GPP, as part of the original agreement and charging structure agreed with business B. And that this was effectively free to individual employees, as its costs were covered by the consultancy charging structure it had agreed with business B.

Lift met with Mr V in 2009. It wrote to him in December 2009 to confirm what it'd discussed with him in respect of him joining the GPP. The letter said that Lift had been appointed by business B: "*to provide personal advice and guidance on the staff pension scheme*". It also included a copy of its Retail Client Agreement. This stated the following under "Services to be provided":

With regards to investments which we have arranged for you, these will not be kept under review, unless agreed with you, but we will advise you upon your request.

It also contained a declaration which said:

I have read and understood the terms laid out in this agreement & the related 'Key facts' documents and have chosen for [name] to be remunerated by;

Payment of a fee.

Payment by commission (or product charges).

Payment by a combination of commission and fee.

Mr V was also provided with a new joiner pack which stated the following:

How much will my financial adviser receive?

FEES

Adviser's Initial Fee

£1.00 of each regular payment. equivalent to 1.00%. The same basis of Adviser's Initial Fee will apply to all future regular payments.

Adviser's Fund-Based Fee

0.25% each year of the encashment value of the fund.

Mr V complained to Lift when he realised he was still paying it 0.25% each year in September 2021.

Lift said that the charging structure that was in place was part of the original policy terms agreed when the business B scheme was originally setup in 2006. It said that it could be "switched off", but that Mr V would have to instruct his scheme provider directly to arrange this.

Lift said that the legacy charging structure still applied to Mr V's account because it had been in force before 31 December 2012 when the "Retail Distribution Review" (RDR) came into force. It said that although RDR had removed the ability for an insurance company to pay an initial or ongoing commission to an adviser firm as part of the product charges, it only impacted new accounts.

Mr V asked Lift how it could justify the charging structure if he could simply turn it off. Lift said there were rules in place, referred to as the 'sunset clause', whereby existing payments to advisers were allowed to continue after 1 January 2013, as these were contractually agreed arrangements setup before that date.

Mr V felt that Lift should've notified him of the ways to cancel this commission, in the absence of providing any ongoing advice. Lift acknowledged what Mr V had said. But felt that as there was no agreement between him and it for an ongoing advice service, there'd been no obligation to provide such a service, so there couldn't have been an "absence" of ongoing advice. It repeated its point that the payments received by Lift were part of the original contractual arrangement between it and business B, which it said it remained entitled to receive.

Mr V asked Lift for a copy of the contract between it and business B. But Lift said this couldn't be provided for commercial reasons. It has, however, provided a copy for this service.

Mr V wrote to the in-house pensions team at business B in October 2021. It told him: "*In*

2014 the decision was taken to move away from provider S and to cease the advice/charging structure so that fees were more transparent". He felt that this meant that Lift's agreement with business B was cancelled in 2014. As this was some time after the implementation of the RDR, he wrote to Lift in October 2021 to ask it to confirm why it'd continued to charge the advice fee.

Lift replied to Mr V on 3 November 2021. It said that it'd never taken anything from his pension other than the fees agreed when the plan was originally set up, and that it was contractually entitled to receive these fees. It said that the arrangement had remained unchanged despite the fact that business B's contributions had ceased in 2014.

Lift acknowledged how strongly Mr V felt about the issue. And said it was willing to refund – on an ex gratia basis - the fees paid to it since April 2014, when business B's contributions ceased. It said this amounted to £3,351.10. Lift also said that Mr V would need to contact his provider directly to turn the fees off going forwards.

Lift said that as it couldn't refund payments directly back into Mr V's account, the amount offered represented the fees he'd paid, if they'd been credited to his account, less an allowance for the tax he would've had to pay when the money was withdrawn from the pension.

Mr V asked Lift to provide him with a calculation. Lift did so. Mr V didn't think Lift should've taken his tax-status into account in its calculations. Lift said it had followed the standard method for calculating compensation when refunding personal pension fees.

Mr V felt that the implementation of the RDR had made the contractual terms invalid. But even if they were valid, he felt Lift's calculation was inaccurate.

In a final attempt to conclude the complaint, Lift said it was willing to increase its without prejudice offer to £3,750 to account for the additional commission payments made to it, together with an additional ex-gratia amount of £200.

Mr V brought a complaint about Lift to this service in March 2022. He said in 2014 business B had moved away from the requirement for Lift to act as an adviser and to cease the charging advice structure. He said he'd retained his pension within the GPP, which had since changed providers. But he'd noticed on his statement that he was still paying 0.25% fund-based commission for advice. Mr V said he hadn't received any advice from Lift since 2014.

Mr V said that Lift had provided regular financial services to him in 2010, 2011 and 2012. He said this included investment advice and pension tax advice, all of which he felt was financial advice. He felt that Lift seemed to be taking a view that despite offering a comprehensive financial advice service it was only the scheme's administrator. He said Lift had continued to offer these advisory services to business B clients without contacting him. And that Lift had contacted him for the first time shortly after he'd lodged his complaint.

Mr V felt that after the implementation of RDR, there was a material change in the organisation of the scheme which resulted in Lift no longer performing any of the functions it had claimed it was paid for. He didn't think this was correct.

Lift issued its final response to the complaint on 9 July 2022. It didn't think it'd done anything wrong. It repeated its point that the RDR hadn't prevented existing arrangements from carrying on under the 'sunset clause'. It said that the continuation of the 0.25% annual fund-based commission after 2014 had allowed it to continue to deal with former business B scheme member queries without having to charge employees and ex-employees on an

explicit individual basis.

Lift also said that it was contractually entitled to receive the 0.25% charge. And it was therefore under no obligation to provide Mr V with any service for the 0.25% charge.

Our investigator asked Mr V if he could provide copies of any statements he'd received that showed the charges he was querying.

Mr V provided this service with statements from 2010, 2014, 2017 and 2020. The 2010 statement stated: "*Units are deducted monthly to meet the cost of the Adviser's Fund Based Fee of .25% each year of the fund value*". The 2014 statement didn't note fees.

The 2017 and 2020 statements both contained the following note about the Adviser fund-based fee:

"*The fund based fee is 0.25% of your plan value that you agreed to pay your financial adviser each year. You can increase or reduce the amount of these fees, or, if you are no longer receiving an on-going service from your adviser, stop payments.*

You should talk to your financial adviser to confirm what will happen if you do change these fees".

Our investigator didn't think that the complaint should be upheld. He didn't consider that Lift had acted unfairly by continuing to receive commission. He said that although the RDR had stopped ongoing commissions after 1 January 2013, it didn't apply retrospectively to schemes taken out before it. So he felt Lift had acted within the original agreement when it continued to take commission after 2014.

Our investigator also said that the retail client agreement he considered Lift had given to Mr V in 2009 said that investments wouldn't be kept under review unless agreed with the customer. But that advice could be provided at the customer's request. He felt this showed that Lift didn't have a contractual requirement to provide advice in order to continue receiving commission.

Mr V didn't agree with our investigator. He made the following points:

- It was inappropriate that Lift wouldn't allow him to see the contract between it and business B. He felt he needed to have sight of the contract for a fair outcome to be achieved.

- He said that although the provision of advice from Lift was an optional part of the service, the ongoing charges of 0.25% were mainly to cover managing business B's pension scheme, so a scheme member didn't benefit from a reduction in ongoing fees if he or she didn't take any advice.

- He felt that the agreement between Lift and business B was cancelled in 2014. And that this meant that the legal document through which Lift was claiming commissions had expired two years after the implementation of the RDR. He felt that this was a material change to the service offering which had occurred after the RDR was in force. So he didn't believe that Lift could continue to utilise those provisions. He also argued that the agreement was effectively a service agreement to run the pension scheme. So felt that the RDR provision should apply to his trail commission.

- Mr V also felt that the compensation Lift had offered shouldn't have allowed for his tax status.

As agreement couldn't be reached, the complaint has come to me for a review.

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'm not going to uphold it. I agree with our investigator that Lift didn't act unfairly by continuing to receive commission after April 2014.

Mr V considers that the fund-based fee of 0.25% should've stopped when business B's contributions into the GPP stopped in 2014. He feels he's been paying for advice that he didn't receive between 2014 to 2022.

I've thought carefully about what Mr V has said. But I don't agree that the fund-based fee should've stopped in 2014. I'll explain why.

The information provided to Mr V at the outset

The new joiner pack Mr V was provided with set out the advice services that Lift would provide to him as a member of the GPP. This included advice about contributions, risk profiling, asset allocation and assessment of legacy pensions.

Mr V was also provided with a members guide produced by provider S for the GPP. Page 21 of this guide explained that an adviser's fund-based fee could be applied. And that this fee could be reduced or stopped at any time.

I'm satisfied that the evidence shows that Mr V was given clear and not misleading information about what fees Lift would receive. And that Lift provided detailed information about what services it would provide for those fees. I'm also satisfied that Lift provided Mr V with assistance both when he first joined the scheme, and at several later dates before business B's contributions to the scheme stopped.

But Mr V's complaint isn't about the fees he initially paid, it's about the fact that the fees continued to be deducted after Lift's contractual obligations to business B ceased in April 2014. So I've gone on to consider what should've happened at this point.

What should've happened when business B's contributions to the scheme stopped?

Lift said that when business B's contributions to the scheme stopped, members could continue to make contributions into the scheme if they wished. It said that the fee arrangement remained unchanged despite business B's contributions ceasing in 2014. So it continued to take the 0.25% Adviser fund-based fee.

Mr V felt that, as he'd had no further assistance from Lift since 2014, he shouldn't have been paying the 0.25% annual Adviser fund-based fee. He said that when business B moved its pension provision in-house in 2014, it moved away from the requirement to have Lift as an adviser, so the charging structure should've ceased. He said that before 2014, a number of Lift's independent financial advisers had provided him with regular financial services, which included investment advice and pension tax advice. So he felt Lift had given him financial advice before 2014.

Mr V said that the extent of the "free service" Lift had provided up to 2014 was at odds with his experience. And that his current pension provider had Lift listed as his Financial Adviser. He felt that after the implementation of the RDR there was a material change in the

organisation of the pension scheme which had led to Lift no longer performing any of the functions it had claimed to be paid for. So he didn't think it was right that it should continue to receive payments after the RDR as it hadn't provided him with any services.

Lift said that the fees had been fully disclosed to Mr V when he enrolled into the scheme. And that it had never been contractually obliged to provide an ongoing advice service to individual employees in order to receive the fund-based commission payable. But that despite this, it had provided Mr V with help whilst he'd been a member of the scheme. It also acknowledged that it had been noted as Mr V's Financial Adviser on his new pension provider's paperwork. It said this was because it had been the Financial Adviser for the entire business B scheme, not Mr V individually.

Lift also said that it was each individual employee's decision on whether to join business B's pension scheme. And that it didn't provide individual financial advice to employees as part of this joining process.

Although Lift has argued that it wasn't ever Mr V's Financial Adviser, I'm not persuaded that it wasn't. I'm satisfied that Lift did provide Mr V with advice in respect of his joining the GPP. And I'm also satisfied that it further provided him with advice about his investments and pension contributions.

As I noted earlier, I consider that Lift provided clear information to Mr V about the charges that would apply to his pension, including the Adviser's fund-based fee of 0.25%. Lift told this service that it received an initial commission - for providing this service to business B - of 1% of all contributions and transfers paid into the scheme, and 0.25% fund-based commission. It said that these commissions were added to the product charges and agreed with business B as its preferred method for paying for Lift's- service.

I'm satisfied from the evidence that the fund-based advisor fee and initial fee on contributions were commission payments. The new joiner information pack recorded that the initial fee was to pay for the scheme administration on behalf of business B, and the adviser fee to pay for advice to members of the GPP.

As part of its original agreement with business B, Lift agreed to provide advice to its employees that were members of the GPP. So I'm not sure why Lift continues to argue that the adviser fee was only to provide services to business B, when the evidence both Lift and Mr V have provided shows that it also provided members with advice. I acknowledge that the advice provided was limited. And that deeper advice might incur additional fees. But I'm satisfied that Lift did provide Mr V with financial advice.

The adviser fee of 0.25% provided for advice to be given to Mr V. But I don't agree that this means that no commission should've been taken from Mr V's pension after he stopped receiving any advice from Lift. I'll explain why.

When Mr V joined the GPP, Lift was allowed to take commission from his pension in the way that it set out it would do. And although the fund-based adviser fee wasn't described as commission, I'm satisfied that in essence that is what it was, as it was a fee that was paid to Lift on an ongoing basis. Although Mr V thinks it shouldn't be allowed to have taken commission from his pension after 2014, as it didn't provide him with any advice after that, I don't agree. I say this because before the RDR rules came into force, it wasn't wrong for advisers to take ongoing commission from a pension such as Mr V's. And the COBS rules that applied when the RDR rules were implemented allowed businesses like Lift to continue to accept commission payments on transactions executed prior to 30 December 2012.

The information I've seen doesn't indicate that Lift contractually undertook to provide

ongoing annual reviews or that Mr V requested them. And specifically, the copy of the retail client agreement that Lift has provided and which it says would've been provided to Mr V says that investments won't be kept under review unless agreed with the customer. But that advice could be provided on the customer's request. So, I don't think Mr V would've been led to believe that he could expect Lift to provide him with ongoing annual reviews. And just because Mr V didn't ask for any advice from Lift after 2014, doesn't mean that it was wrong for Lift to take the adviser fee until Mr V cancelled it.

The information provided to Mr V in the members guide explained that the advisers charge could be cancelled. I understand that Mr V started to question why this fee was still being taken in 2021. Lift explained he would have to discuss this with the current provider of his pension. From what I've seen, Mr V's post-2014 pension statements, and the information he was provided with at the time he joined the pension scheme, made this option clear. I say this because the members booklet provided by provider S stated:

"*You can reduce or stop the Adviser's Fund Based Fee at any time*".

And both of the post-RDR pension statements Mr V has shared with this service stated:

"*You can increase or reduce the amount of these fees, or, if you are no longer receiving an on-going service from your adviser, stop payments."*

Therefore, although I acknowledge that Mr V didn't realise he had the option to stop paying the Adviser's fund-based charge until 2021, I can't fairly hold Lift responsible.

I'm satisfied that the annual 0.25% Adviser fund-based fees that Lift received were commission payments for advice provided to employees. And that the initial 1% charge on contributions was for the administration of the GPP on behalf of business B. The nature of the arrangement seems to be a series of deferred commission in respect of the original advice Mr V received rather than a large one-off payment.

Therefore, although I consider that Lift could've been clearer to Mr V in how it has described the service it provided to him, I'm of the view that Lift was entitled to continue to take commission payments from Mr V's pension, after the RDR rules came into being. So I don't uphold the complaint.

I acknowledge that Mr V would like to see Lift's agreement with business B. I understand why he'd like to. But I can't fairly ask Lift to share this document with Mr V given its commercial nature, despite it being several years old. And, having reviewed the relevant sections of the agreement, I'm satisfied that Lift has acted in line with it.

I also acknowledge that Lift made Mr V a without prejudice offer as a gesture of goodwill to refund the charges taken since 2014. Mr V has told this service that he doesn't think it was reasonable for Lift to take his tax status into account in its calculation.

As I've found no evidence that Lift unfairly continued to take the Adviser fund-based fee from Mr V's pension after 2014, I can't reasonably ask Lift to reconsider the calculation method it used for its offer.

My final decision

For the reasons given above, I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 11 September 2023.

Jo Occleshaw
Ombudsman