DRN-4225201

The complaint

Mr H has complained that Argentis Financial Management Ltd, trading as Gallagher Wealth, didn't provide the full advice service for which he was paying annual fees, and that as a result of this, he missed out on investment opportunities for sums held in cash.

What happened

The investigator who considered this matter set out the background to the complaint in his assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

On 11 July 2018, Mr H signed an Engagement Document with Argentis Financial Management Limited (a firm which ceased to be regulated from 15 September 2021). Argentis agreed to carry out annual reviews of Mr H's financial circumstances for a fee of £1,500 per annum plus VAT (£1,800 in total).

An updated Engagement Document with Gallagher was signed by Mr H on 1 August 2019. This also established an agreement to carry out annual reviews for a fee of £1,500 per annum plus VAT. The adviser charge was to be deducted from existing investment products.

The annual review meeting notes from 2018 and 2019 recorded that Mr H was looking to sell his residential property to move closer to family. Mr H intended to downsize and release equity. In 2019, review meeting notes recorded that Mr H intended to use the cash in his SIPP as income and to access up to £20,000 tax free cash immediately.

On 16 December 2020, Gallagher sold its wealth business (Argentis Financial Management Ltd) to Harwood Wealth Management Group, and that business traded under the name Argentis Financial Planning Limited.

On 21 September 2021, Argentis was removed as the servicing agent on Mr H's pension. In May 2022, Mr H complained to Gallagher as he'd been paying the adviser fee, but he hadn't been receiving the service or ongoing advice. Mr H requested a refund of £1,800 for 2018, 2019 and 2020, along with simple interest of 8% on each of the payments.

Mr H had calculated the compensation to be £6,696 at the time. Mr H also said that he'd retained a large cash sum in his pension and questioned whether this was appropriate as he'd missed out on investment opportunity on that sum. Mr H asked Gallagher whether it felt this warranted compensation.

Gallagher replied on 28 June 2022 with its final response letter, partially upholding Mr H's complaint. Regarding the fees, Gallagher offered Mr H £3,247.83 to settle his complaint.

Mr H initially disputed this amount, but after Gallagher explained it had provided a partial service in 2018 and 2020 and a full service in 2019, Mr H agreed to accept this.

After further correspondence, Gallagher agreed to compensate Mr H for the missed investment opportunity on the basis that, had he received an annual review in 2020, he could have potentially invested the large cash amount he had in his SIPP. Gallagher said it was unclear as to how Mr H would have invested as the pension only held cash and a commercial property.

It therefore offered to pay interest on the cash fund value of £117,752 at a rate of 1.75% for the duration of 2020. This amounted to £2,060.67, bringing the revised offer to £5,712.05 in total.

On 7 October 2022, Mr H emailed Gallagher saying that he disagreed with its use of the interest rate of 1.75% on the balance of £117,752.31. Mr H said that he expected compensation at simple interest of 8%, which he calculated to be £9,420.18, plus the fee refund offered of £3,247.83. Mr H said that he'd accept a total of £12,668.01 to conclude the matter.

Gallagher declined to pay Mr H £12,668.01 and said it felt its offer of £5,712.05 was fair.

Dissatisfied with the offer, Mr H referred the matter to this service through his representative/adviser.

The representative confirmed on 12 May 2023 that Mr H's complaint regarding the fee element was resolved as Mr H had indicated he would accept the £3,247.83 offered by Gallagher. Mr H's representative also confirmed that his SIPP cash funds were subsequently invested on the 21 December 2022.

The investigator said that, in his view, the outstanding issue was the rate of interest to be applied to Mr H's cash balance of £117,752.31. Gallagher had offered to apply the interest rate of 1.75%, but Mr H sought 8% simple pa.

The investigator didn't think that the complaint should be upheld, saying the following in summary:

- This service would only usually apply 8% simple interest in situations where a consumer had been deprived of the use of money, rather than a lack of investment opportunity.

- Instead, we would look at how the consumer would more likely than not have invested the funds, and if this couldn't be determined exactly, then we would use one of our benchmarks as a proxy for the missed investment return.

- The annual review meeting notes indicated that the intention was to maintain Mr H's cash in the SIPP as he required liquidity. He needed access to the cash to bolster his income in a period of uncertainty until he sold his property and downsized, thereby releasing capital.

- The investigator therefore said that it would have been prudent to not put the capital at risk. He also noted that the property had been sold in February 2021. And so, had Gallagher undertaken its review meeting in 2020, at that point Mr H's property was still unsold. Gallagher would therefore have likely advised Mr H to retain the cash element in liquid form until Mr H's circumstances changed.

- The use of the no risk benchmark, which relied upon he average return from one year fixed rate bonds, was therefore appropriate in the circumstances. But as the

Bank of England base rate at the time was 0.1%, the investigator considered Gallagher's offer of interest of 1.75% pa to be generous.

- He also considered the offer to apply the interest for one year was fair. Gallagher sold the Argentis business in December 2020 and Argentis was removed as the servicing agent in September 2021. Gallagher's liability shouldn't therefore extend beyond that date.

- The investigator also noted that Mr H didn't invest the cash until December 2022 under the advice of his representative. This service took the view that consumers should seek to mitigate any losses, and Mr H could have appointed a new financial adviser in 2021 in order to review his situation.

Mr H's representative disagreed, however, saying that Mr H would like the matter referred to an ombudsman for review. It added that Mr H didn't feel that either the option of a no risk or risk option other than cash had ever been provided.

It said that Mr H maintained that 8% simple pa was a fair resolution and, in terms of using one of our benchmarks as a risk solution, this would have equated to a 3.6% to 3.8% with the appropriate risk over a three to five year period as shown in the FTSE UK Private Investors Income total return index.

The representative therefore requested that Gallagher's final offer be reconsidered and uplifted to compensation of around £8,500.

There was then a telephone call between the investigator and Mr H's representative, in which the former reiterated his view that the no risk comparator seemed the fair benchmark to use as Mr H was keen to retain liquid funds from which to draw income as he was going through a period of uncertainty relating to his property sale.

Although he noted the request to use a higher risk benchmark, the available evidence didn't support the position that this is what would have been recommended had a review taken place, given Mr H's situation at the time.

But as agreement couldn't be reached, the investigator confirmed that the case would be referred to an ombudsman for 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.

And having done so, I've reached the same conclusions as the investigator, and for broadly the same reasons.

I acknowledge what Mr H's representative has said about no option other than cash having been presented to him, but I think this rather misses the point of what the investigator has tried to achieve here. On the basis that a review should and would have happened in 2020, he's concluded that such a review would have determined that, given Mr H's situation at the time (with uncertainty prevailing due to the property not yet having been sold), the best course of action would have been to remain in a "no risk" environment.

And I agree with the investigator that, although the representative has suggested that a higher risk benchmark should be used, the available evidence doesn't support the position that this would more likely than not have been the recommendation at the time – given Mr

H’s situation.

So I think it follows that, to put Mr H as closely as possible in the position he would more likely than not have been in, had the review occurred when it should, the no risk benchmark would be the appropriate comparator. And as with the investigator, I think Gallagher’s offer to apply 1.75% interest, for the entirety of 2020, at a time when the base rate was (for nine months of that year) 0.1%, seems quite generous.

Overall, therefore, on the basis that Gallagher remains prepared to pay the offered amount, I don’t think it would be fair or reasonable to uphold the complaint and apply a higher rate of interest than that already offered.

My final decision

My final decision is that I don’t uphold the complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 25 August 2023.

Philip Miller
Ombudsman