

The complaint

Mr C brings a complaint about Fisher Investments Europe Limited trading as Fisher Investments UK (hereafter referred to as '*Fisher*'). He says that Fisher behaved unprofessionally when seeking to solicit his custom for discretionary investment management services. Mr C also submits that Fisher did not provide him with complete subject access within the required timescale, after he made a specific data request.

What happened

Mr C says he became aware of Fisher after receiving contact on LinkedIn which began around 2020. He says that he felt the approach was harassing, but nonetheless he eventually agreed to a meeting with one of its advisers.

Fisher says Mr C requested specific product information brochures via LinkedIn in October 2017, June 2020, February and August 2021, and finally in January 2022. As a result of these enquiries, calls and emails were exchanged between the parties sporadically from March 2020 until early 2022, when an introduction meeting was arranged.

On 22 March 2022, Mr C agreed to speak to a Fisher Private Client Director (who I will hereafter refer to as the 'adviser') via video conferencing, with a view to discussing a business relationship and receiving future investment advice. Fisher says the meeting was approximately 30 minutes – but there is no recording of it.

After the meeting Mr C complained to Fisher via email. He said that the adviser had failed to listen to anything he said, and the service he received as a prospective client was shocking. He set out several areas of concern around the gathering of information, the 'hard selling' nature of the call, the behaviour of the adviser and the failure to understand his needs. Mr C told Fisher that he felt it was a 'train wreck' of a meeting.

Later that day, Fisher's Executive Managing Director called Mr C – but did not receive a reply. On 1 April 2022, Fisher acknowledged the complaint in writing.

On 19 May 2022, Fisher issued a complaint outcome to Mr C. It said it had a goal to provide every person with a positive experience of its business, regardless of whether the person goes on to become a client or not. Though it was sorry that the meeting of 22 March 2022 didn't meet Mr C's expectations, it did not uphold the complaint and believed the matter closed. It said it would, however, use the feedback to engage in additional training measures.

The following day, Mr C complained to this service. He said the adviser failed to identify herself, did not evidence her credentials, did not understand or appreciate his investment portfolio or objectives, and failed to conduct any type of risk assessment. He also said she failed to consider his overseas assets, she refused to listen to his concerns about protecting his capital, and she was generally harassing, ignorant and aggressive.

Mr C said he held grave concerns that other people are being misled by Fisher since the poor conduct has been disregarded or referred to as 'feedback'.

Finally, Mr C said he had to make a Subject Access Request ('SAR') because Fisher refused to provide him with the data it collected and processed about him internally, and it would not provide data regarding its adviser or its investigation.

On 21 May 2022, Mr C emailed Fisher to say he felt it had failed to undertake a proper complaint investigation, as well as breaching law relating to data protection. He also said he would refer it to the Financial Conduct Authority ('FCA') in relation to how it advertises itself on LinkedIn.

Mr C also said he wished to make a Subject Access Request ('SAR') which should be provided within one month. He told Fisher that he had made a SAR previously – but it says it has had no record of that.

On 6 June 2022, Fisher wrote to Mr C again. It provided him with the information he had sought in response to his SAR. Fisher also said it recognised Mr C remained dissatisfied and on that basis it provided a response to key aspects of his email. In summary, it said:

- it was wrong of Mr C to assert that no complaint investigation was completed;
- the matter had been reviewed in full;
- it will not be conducting any further investigation;
- it had replied to Mr C's SAR in accordance with its privacy notice;
- the first instance of any such SAR request was by email on 21 May 2022;
- it had otherwise obtained relevant consent to contact Mr C in accordance with that notice;
- it was not required to evidence the credentials of its adviser;
- however, to reassure Mr C, it confirmed that the adviser he spoke with was qualified and properly registered with the FCA;
- Mr C had six months from the date of the final response letter (of 19 May 2022) to bring the complaint to the Financial Ombudsman Service if he hadn't done so already.

Mr C sent an email to Fisher on 9 June 2022 providing further comments, as well as including annotations handwritten onto the letter of 6 June. That same day, Fisher emailed Mr C a further copy of the SAR information.

On 17 June 2022, Fisher wrote to Mr C for a final time. It said it had reviewed Mr C's comments and handwritten observations following its previous letter but nothing it had seen changed its position. It remained satisfied that it had fully complied with the request for personal information under the General Data Protection Regulations ('GDPR'), and it held no other information about Mr C that had not already been supplied to him within his SAR.

When the complaint was originally referred to this service, Fisher objected to it being allowed to continue. It said that it did not believe any regulated activity had taken place; nor did it consider that Mr C was an eligible complainant – and therefore the complaint Mr C was making now did not fall within the jurisdiction of the Financial Ombudsman Service.

An investigator from this service reviewed the complaint, firstly in respect of our rules – and she determined that it ought to be allowed to proceed.

Fisher thereafter agreed for the complaint to continue. Our investigator then went on to review the merits of the complaint. She concluded that Fisher had not done anything wrong in the way in which it approached and met with Mr C. She realised Mr C felt unhappy with the manner of the introduction meeting but noted Fisher had apologised for this.

Finally, our investigator said that she believed Fisher had replied to the SAR within the required timeframe – and she didn't think it needed to do anything more.

Mr C said he disagreed with the outcome reached by our investigator, and the complaint should be sent for an ombudsman's review. Mr C said that the investigator had not looked at the facts correctly and disregarded the behaviour of Fisher's adviser during the meeting by transposing facts and downplaying the adviser's poor conduct. In his view, that was unacceptable.

In a further email, Mr C made additional comments. I have read these in their entirety, though I shan't be repeating them verbatim as they're known to both parties. In summary, Mr C said:

- he did not accept the summary of the facts as set out by the investigator;
- he felt she ought to be required to go back and repeat the facts precisely as he had relayed them to her;
- she had relied on claims made by Fisher without evidence to support them;
- the Financial Ombudsman Service should operate as the 'consumer watchdog';
- on that basis, this service must be obligated to consider the law, specifically as it related to false advertising by Fisher on LinkedIn;
- this service must also be obligated to obtain the credentials of the adviser to prove their qualifications;
- we must also obtain an affidavit or similar from the adviser or evidence of a call recording because Fisher was legally required to provide a recording;
- this service must investigate Fisher's use of LinkedIn as a means of promoting financial services;
- the investigator's role was to protect him as a consumer and she has failed to do her job;
- he remains of the view that he demands proof of the meeting from March 2022;
- the complaint has not been properly reviewed, and this service has not seen all of the evidence as Fisher has failed to provide it;
- even though he requires an ombudsman's decision, he knows it won't be a different outcome as ombudsmen always agreed with investigators, which is a 'stitch up';
- he agrees his full name should not be published.

Our investigator was not persuaded to change her view, and she explained that to Mr C. However, he still remained unhappy and submitted further comments, noting:

- Fisher had no right to refer the complaint to this service, if our decisions do not compel it to act within legal requirements;
- otherwise the complaint is a waste of his time and this service's time, and Fisher ought merely to refer itself to the FCA;
- failing that, this service should be required to refer Fisher to the FCA;
- in terms of his service complaint, he has the right to refer it to the Independent Assessor ('IA');
- without any recording of the meeting, it has to be the case that his comments are material fact as to what happened – and therefore the evidence ought to be weighted in his favour;
- he asked that our investigator pass the complaint to both the FCA and the IA.

Fisher reconfirmed that it did not have any recording of the meeting conducted by video conferencing.

Mr C thereafter pursued a complaint about the service he had received from our investigator, specifically in her consideration of the evidence on file. That matter was addressed separately by one of our managers.

Mr C then made some final comments in respect of the complaint:

- he believes all matters can and should be referred to the FCA;
- he also remains steadfast in his view that this service ought to uphold consumer law, and we promote ourselves as doing so;
- the main crux of his disagreement with the outcome is that he feels our investigator failed to look at how Fisher misleads potential customers;
- we have a duty to tell Fisher if it needs to alter its professional behaviours;
- as it was, the adviser had no details about his specific assets and investments and as such could not conduct a meaningful discussion about global holdings;
- he believes the IA should oversee the investigator's conduct.

Fisher did not have any further comments to make.

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 thank the parties for their considerable patience whilst this matter has awaited review by an ombudsman. I can see how strongly Mr C has about this issue. I do not intend to make matters worse for him, but I am not going to uphold this complaint or make any award against Fisher. For the reasons I'll go on to explain, I do not find Fisher's actions to be unfair or unreasonable in the circumstances.

My decision will not review any aspect of the service concerns Mr C has raised about our investigator; those were addressed by our team manager. I can see Mr C is also familiar with recourse to the Independent Assessor – a process which can occur after a case has closed.

I've included a detailed chronology of the complaint in the 'what happened' section of this decision. I have done so to assist Mr C and to recognise the depth of his ongoing concerns. However, I won't be addressing every individual submission Mr C has made in turn.

We are not a court; and though there are rules I may rely on in respect of complaint handling procedures, I am not required to comment on each point or make specific determinations on every submission put forward by the parties.

The Financial Ombudsman Service provides informal dispute resolution. My remit is to make findings on what I believe to be fair and reasonable to both parties in the circumstances and this does not follow a prescribed format. Instead, I will set out my reasons for my findings on what I consider to be the central issues in this complaint, based on the evidence before me.

The reason I explain this is because Mr C has told us that he feels this service ought to act as a consumer watchdog; that is not the case. Mr C also believed that my decision would have to be the same as the investigator's – and that is not the case either. I have independently reviewed this matter and reached my own determination on the evidence before me. Mr C can find further information about our service and how we make decisions online at: <https://www.financial-ombudsman.org.uk/who-we-are/make-decisions>.

It's also important for me to point out that we do not act in the capacity of a regulator. That means our decisions don't ordinarily interfere in how a business may conduct its operations

or exercise what may be commercial judgment on the provision of a particular service. That remit falls to the FCA. So, though Mr C believes otherwise, it is not my role to determine how Fisher positions itself in a marketing capacity on networking sites, such as LinkedIn.

Whilst Mr C is entitled to form his own view on the reasonableness of Fisher's approach to introducing its services to prospective clients, I must also do the same. And from an objective standpoint, I do not consider that the approach or the introductory meeting has been unfairly handled.

On each of the six occasions that he requested brochures from Fisher, Mr C consented to being contacted to receive information about the services it could offer him. This eventually led to the meeting of March 2022 being arranged.

It is quite clear that Mr C and the adviser did not have any satisfactory exchange of views in that meeting – and underlying this was a misapprehension from Mr C's side that this meeting consisted of investment advice (and the adviser could not offer that advice). However, Fisher says this was not the case. The purpose of the meeting was for the parties to have an introduction, so Mr C could understand what Fisher does and how it operated. If that introduction was successful, a further investment fact-find meeting would be arranged.

In any event, the parties both determined that progression to a second meeting was not appropriate. Both Fisher and Mr C say that Mr C was focused on investment holdings overseas – in a country where Fisher does not hold regulatory authority. As such, its adviser could not assist Mr C.

Accordingly, because the meeting did not proceed to any form of investment advice, Fisher says it was not obliged to retain a recording of the meeting (which would otherwise be a regulatory requirement). I agree with this, and do not believe I otherwise ought to compel Fisher to provide a transcript that it has not obtained; it has given a reasonable explanation as to why the meeting did not need to be recorded. I agree that businesses ought to obtain recordings of electronic communications in instances of arranging (bringing about) deals in investments – but, on balance, that did not apply here.

I recognise that Mr C continues to feel that the use of his data is a matter of wider concern for him – specifically regarding any data Fisher holds. I have seen the complete file Fisher provided Mr C and I agree that it sent it within one month of the request of 21 May 2022. However, I cannot make findings on whether that provision was a GDPR breach or not. That role falls to the Information Commissioner's Office ('ICO'), and Mr C can contact that organisation about data protection issues, if he requires.

As I have set out above, the parties have markedly different impressions of what happened at the 22 March 2022 meeting – and neither account is conclusively verifiable. Instead, each party has provided their recollection of events along with the contemporaneous email correspondence.

I have not seen any objective evidence by which I can conclude that Fisher has behaved unfairly or unreasonably in the context of any regulated activity such that I could make any direction or award. If Mr C was unhappy with perceived unprofessionalism on the part the adviser, he was able to choose not to undertake any further business relationship with Fisher as well as notify it of his concerns – and he did both. That aside, the issues he is raising are matters which are governed by the FCA and/or the ICO and not otherwise within my remit.

My final decision

I realise that my decision will come as a great disappointment to Mr C. However, for the

reasons I have set out above, I do not believe Fisher Investments Europe Limited trading as Fisher Investments UK has acted unfairly in the circumstances. I therefore cannot uphold Mr C's complaint or make any award to him.

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

Jo Storey
Ombudsman