DRN-4521097

The complaint

Mrs B complained about the service provided by Marshall Wooldridge Financial Services Limited (MW) in respect of her pension arrangement.

What happened

Mrs B started her client relationship with MW in 2011 in respect of providing financial advice on pension funds derived from a legal order.

We've been provided with various documents. These include an adviser's charge agreement signed by Mrs B in 2013. This confirms the charges and the initial and ongoing service provision at that time. The 2013 document included the following, which was referred to by our Investigator. Mrs B stressed the contents more recently:

- An annual review by phone, email, or face to face
- To review ongoing goals and objectives
- Explanations of changes to legislation, taxation rules and the economy
- Advice on budgeting, debt management, estate planning and insurance options
- Review your investments and implement any changes required. This includes reviewing the asset allocation, your attitude to risk and providing a portfolio valuation
- Access to our client team who will respond and deal with ad hoc queries
- Liaise with other professionals as required e.g., third parties such as solicitors and accountants
- Regular support and contact
- Maintain your records and keep these up to date
- 0.5% charge (so £500 based on £100,000)

Further documents provided to this service have included meeting and review records, emails, several signed client agreements (without the terms on charges and service provision) from later years, and a terms of business document from 2021 (which differs to the 2013 document and including in the way services are referred to and there is reference to a 1% charge).

<u>Mrs B's complaint</u>
In early 2023 Mrs B complained to MW, referencing a fall in the value of her pension and other matters, including her unhappiness with MW's contact and service. She terminated the advisory relationship.

Mrs B contacted us as she wasn't happy with MW's response to her complaint. She told us that she had discovered at her annual review in January 2023 the fall in the value of her pension fund (during November 2021 to November 2022) and she was unhappy about this and that she hadn't been contacted by MW at all during this time to discuss the performance and to review her options. Mrs B considered the fall in value had been unusual based on her understanding of market performance. She says that during her annual review in January 2023 her advisor told her he was shocked when looking at the performance of her fund. It does not appear this comment is accepted by MW.

Mrs B has gone on to tell us more about her dis-satisfaction with MW. In summary she complains that she has been told MW do not monitor fund performance outside of the annual review, but that they do monitor things more frequently for most of their clients. She also says she has been told by two non-MW advisers that they would expect more regular fund monitoring from an adviser.

Mrs B also said she wasn't happy that at her annual review in January 2023 MW advised her to change her investments, but this advice was retracted shortly afterwards, and she was advised to remain as she was invested until the financial markets recovered.
Mrs B didn't think MW answered her concerns adequately. She thought they viewed her expectations to be unrealistic.

Mrs B also let us know that her enquiries had led her to find out she had been given the wrong information regularly since 2017 in MW's annual review reports. This included in respect of her fund value, and the number of units held. In addition she highlighted the inclusion of a graph intended to be used as a 'benchmark', which Mrs B said MW had accepted was inappropriate.

She said she understood what MW said about this investing being a longer-term proposition and that it was not focussed on short term volatility but felt there must be a stage where consideration ought to be given to changing an investment. In any event, she said this thinking did not mean MW didn't have a duty to monitor investments and contact a client to discuss options when there was a fall in value (which she continues to believe did not match the sector's performance). Overall she complained:

- MW didn't monitor performance regularly
- MW failed to meet their service agreement obligations when it came to appropriate or timely communication
- She was given inaccurate information on value and units since 2017
- Advice she was given in early 2023 was conflicting

<u>MW's response to complaint</u>

In March 2023 MW replied to Mrs B's complaint. They apologised for a lack of contact in the preceding 12 months during turbulent market conditions. They felt they could have done more to reassure her, both in respect of market activity and on the approach here, that doing nothing was sometimes the best option.

MW rejected the main thrust of the complaint. They considered the change in the value of her pension reflected wider market volatility but fitted into an overall picture of growth. They said their advice had been suitable and this had been reviewed with her annually. MW didn't accept they ought to have been completing individual checks and reviews of her pension more frequently.

They explained the reason why a particular benchmark was sent out to clients and said it was not inappropriate. They accepted Mrs B had been sent the wrong fact sheet in a mailing and apologised. MW didn't accept their recent advice in 2023 on investing had been wrong and explained why they said they had been highlighting a newly available alternative.

MW went on to tell us they felt that over the investment period Mrs B received adequate service and overall excellent performance from the returns on her investment. Her pension assets had risen in value from £125,288 to £220,731 over an 11-year investment period (providing an annual growth of just below 7%). They went on to say that over 10 of the 11 years the fund had shown positive returns including 10% in the year 2020-21. It was only in one full year of investment that the value had fallen, and they said it was this that had prompted Mrs B's complaint.

Overall they continue to stress Mrs B did not suffer a loss over the whole period of investment and had simply experienced a short-term impact as a consequence of volatility. This is something they consider typical and in-line with investing over the longer term. However they told us that as a gesture of goodwill they wanted to offer Mrs B £250.

Mrs B's response to MW's offer

Mrs B did not accept the offer from MW. She didn't think they had answered all her points. In addition she did not think £250 compensated her for the additional losses she asserts she has sustained as a result of poor service, and this includes the annual service fee. She stressed to us these funds were the result of life work and this is the pot on which her future life depends.

Investigator's view

Our investigator thought MW's offer of £250 was enough and explained why they had reached this view.

Mrs B's response to view

Mrs B did not agree and sent through further information and submissions. In summary she remains dis-satisfied with the poor performance of her pension funds, and failures in the service provided. Mrs B says she has worked since the age of 15 to afford such a fund and told us it is the only pension she has to determine her financial future and she has been left unable to trust any financial experts. She doesn't think MW provided a competent service over a number of years. In particular she says that regular contact ought to have included discussions on performance (whether instigated by her or otherwise) and that because this didn't happen, this can be linked to financial loss. She also wanted us to require MW to change the way they provide their service.

MW's response

MW didn't accept they ought to do anything further. They accepted values they had sent from 2017 had been wrong. They explained this was because Mrs B's reviews needed to be produced manually.

MW stressed this administrative error did not impact the actual performance of her funds, or the service she was otherwise provided with. In addition they noted Mrs B also received annual valuations from the provider, and these would have had the correct value. They indicated this fund is not Mrs B's sole asset or pension and didn't accept Mrs B's comments about this. They also noted contacted in May 2022, and investments had not changed.

Provisional decision

On 9 November 2023 I issued a provisional decision. This wasn't because I disagreed with the investigator, however I hoped it would assist parties to understand my thinking.

In addition I had seen MW previously suggested that if Mrs B didn't accept their offer it would lapse. It didn't appear to me that MW disagreed with the Investigator's view but taking everything into account I considered it appropriate to share my intended decision to enable any new submissions to be provided. I indicated I intended to uphold Mrs B's complaint in part and require MW to pay her £250.

Responses to my provisional decision

MW did not respond to my provisional decision. I am satisfied it was received by them as it was sent to the contact details used throughout the time this case has been at this service. Mrs B was disappointed with my provisional decision. She felt I had not sufficiently addressed her belief that the service agreement is ambiguous and could be understood in the way she says she interpreted it. Mrs B accepts it is not the role of this service to tell MW to change the way they operate and understands what I have explained about this and any wider concerns. She let me know this desired change is at the heart of her dissatisfaction.

Mrs B continued to stress the areas of complaint she has raised. She accepts her expectations in respect of an annual review were met but continues to think MW didn't monitor regular contact as she says their service agreement and the nature of the relationship required them to do.

Mrs B says the provision of incorrect annual figures from 2017 had inflated the value of her fund and she now says it led her to believe it was doing better than it was and might have influenced her decision to continue with the same investment. She says the correct information sent annually by the provider didn't highlight the error to her as the fund value fluctuates daily.

Mrs B notes the fund had been invested in the same way prior to her engaging MW. She continues to think that overall good performance ought not to detract from the concerns about one year's poor performance. She continues to stress her belief that the performance was worse than general market conditions and thinks MW ought to have acted differently during this year.

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 have not changed my thinking from that set out in my provisional decision. I previously explained that I mean no discourtesy by not mentioning everything that has been provided and said, and that parties can be assured I have considered everything provided with care.

I have seen that Mrs B is concerned about some of the pension information being included in my decision, albeit she understands that it is a matter for me to conclude what information I find relevant and choose to include in my decision. I have included matters that I consider relevant, and which assist in understanding this complaint and reflect the issues raised by the parties and the reasons why I have reached my decision.

Mrs B's primary concerns related to the value of her pension fund by late 2022, in other words, its performance over the preceding period of around a year. It was when looking more closely at her plan she came across other matters complained about.

These further concerns can be divided into concerns where MW accept they provided incorrect information (e.g. fund values sent out annually from 2017) and concerns where MW don’t accept they failed, or not in any meaningful way (the service provided outside of the annual report with the incorrect fund values).

<u>Performance of Mrs B’s pension fund</u>

I understand that Mrs B was concerned when she saw her fund value had decreased by late 2022. But this doesn’t mean MW did something wrong, nor that they are responsible for what are agreed to be performance related losses to the fund, (when compared to an earlier value from around a year before).

The last few years have been particularly volatile when it comes to the performance of the financial markets, and this reflects international and national activity. Mrs B accepts this is part of the risk with investments which aim to perform over the longer term. It would be unrealistic to expect guaranteed annual growth every year. Indeed investment strategies over the longer term usually include the acceptance of the likelihood as well as the risk of periods of volatility or limited growth, and they target overall growth over a longer term. Up until recently Mrs B’s fund has seen continued growth on the original sum invested.

I note that Mrs B’s investment risk profile for her portfolio’s objectives is recorded consistently in her review documents as being medium to high risk. The review document for 2020 for example explains that investors with this profile usually have some investment experience and are generally “*willing to take on investment risk and understand the nature of the long-term risk/ return trade-off… While they can suffer from regret when their decisions turn out badly, they can accept that occasional poor outcomes are a necessary part of long-term investment*”.

It wouldn’t be unusual for funds (or investors) with such a risk profile to see greater fluctuation in values compared to those with more conservative approaches.

This service does not in general terms usually consider complaints about the specific performance of an investment. Such performance is generally outside of our ambit. I haven’t seen anything that makes me think the decrease in the value over the 12-month period was anything but performance related. Nor is there anything to suggest Mrs B’s fund wasn’t invested in-line with her investment profile. I don’t consider the performance of Mrs B’s fund in the period she is concerned about to be particularly surprising, and it is consistent with the fluctuating values, including losses, that have been seen during the same time. I appreciate Mrs B believes her fund’s losses are unusual and higher than is reflected in the market performance. I don’t agree there’s anything to suggest that the loss in value is anything but performance based, or unusual, given what has been seen in respect of performance during this period.

I don’t think Mrs B is complaining really about the performance in any event, but about what MW did (or failed to do in her view). I don’t consider the decrease in the value something MW ought to be considered responsible for.

I have not been persuaded that it is reasonable to conclude MW failed to monitor Mrs B’s fund in the way they were required to do. MW’s service included annual reviews, and it’s not disputed this part of their service was offered and provided. It would not be fair or reasonable to require them to address and loss or repay the annual fee on this basis.

I am not satisfied it is reasonable to say MW ought to have done something differently and in particular they ought to have been expected to have contacted Mrs B earlier based on the performance of her fund over this shorter term in the circumstances here.

MW apologised when they first replied to Mrs B's complaint for a failure to keep in better or more regular contact during recent times of economic volatility. However this does not mean MW were required to do more and I can't see that MW failed to respond to any contact from Mrs B.

MW say that whilst they may monitor the markets and funds regularly, a fall in the market may not mean a strategy needs to be changed. They don't accept such changes in the market require them to do anything further. I don't think this is an unusual or unreasonable approach, as applied here. It is important to remember the service being provided to Mrs B was not a more personal or active fund management service.

I haven't seen anything to suggest Mrs B contacted MW about any market concerns during the period complained about, it appears to me contact in May 2022 was motivated by considering her options on taking benefits. Mrs B told us it was the provision of a value in late 2022, considered in early 2023 that prompted her concern and complaint. I have no doubt it will have been upsetting and worrying for Mrs B to have seen a fall in value.
It is right to note that I have seen the May 2022 contact had identified a significant fall in value. However based on what has been provided, I am not persuaded that MW ought to have been expected to act differently here. Nor, in any event, do I accept that it can reasonably be concluded (without the benefit of hindsight or speculation) that changes would have been made, and that such changes would have limited, or reduced performance losses experienced by the fund during this time.

I don't conclude that MW ought to be required to make any payment for any performance loss experienced or repay an annual service fee for this period (or indeed any earlier period). I've seen that Mrs B continues to stress that her adviser had initially said he was shocked when seeing the fall in the value of her fund when meeting in 2023, and that MW do not appear to accept this comment. In light of my findings on the change in value I don't consider I need to reach a finding on whether this comment was made or not to decide Mrs B's complaint.

For completeness, in May 2022 Mrs B and her adviser were in contact about the plan value and investments. This was in respect of obtaining values and taking benefits and Mrs B appeared to be hoping not to need to access this fund if she took benefits at the time.

The adviser emailed Mrs B in May 2022 replying to her email of the same day. He let her know he had just received an updated value on her plan and what it was. He identified her fund had lost 15% since November 2021 and that he was surprised by this. From what he says at the time, it is clear he had expected a lower loss in value, and he refers to having seen 6% falls in value elsewhere for the same period. The adviser went on to suggest looking at moving her plan to a different portfolio. It isn't known what further contact followed until the annual review at the end of the year.

This service has not been provided with any complaint about this contact from Mrs B, nor anything further from either party about this contact and related discussions in and around May 2022, save MW says that the investments were not changed. Mrs B seems to suggest there was no contact from MW in 2022 prior to the annual review communications at the end of the year and that she didn't know of the fall in value until her review in early 2023. This being the case, I concluded I don't need to request further information about what happened around May 2022, as I don't consider it necessary to decide the complaint brought to this service.

<u>Incorrect fund value information provided from 2017</u>

MW provided incorrect information when they provided annual fund values from 2017. I uphold the part of Mrs B's complaint relating to this part of MW's service. It remains unclear to me when this error was first identified. MW's final response letter of March 2023 doesn't address this.

I accept from MW the error arose due to the way in which information was processed when producing the annual value. I am told the need for manual work impacted how charges were shown, or not shown. It does not appear the incorrect information suggested significantly different valuations from the actual values each year. Nor were any errors so substantive such as to make me think there might be a meaningful loss of expectation experienced by Mrs B. Nor do I accept her recent suggestion that the values sent by MW might have caused her to act (or fail to act) in such a way that can be linked to her not changing her investment position in 2021 or 2022, which she might otherwise have done.

Mrs B received annual valuations from her provider which were accurate. In the circumstances I am surprised it took so long for this error to be identified, (it may reflect that there were not significant differences). Mrs B now suggests that she could not rely on the provider's valuations as values fluctuated daily. This might explain why she did not identify a difference between MW and her provider's annual valuations (and tends to reflect that the MW valuations were not significantly different). It does not support Mrs B's suggestion that she relied on MW's valuation sent out once a year when it came to choosing whether to act. In any event, I am satisfied this repeated error did not cause Mrs B any financial loss. I have no doubt its discovery caused her real concern. Had Mrs B continued to be a client of MW I would have hoped to understand more about what they had done to ensure such errors would not recur.

I have seen that Mrs B was also unhappy about other information sent out with her annual review documentation. I have not found any such information to indicate any substantive error or failure on the part of MW, nor that such information might reasonably be understood to have contributed to Mrs B experiencing any loss.

I have seen what is said about the impact of the discovery of there having been inaccurate information provided annually for some years and the apparent dispute between the parties about the role of this fund in Mrs B's financial plans. I have balanced everything said and provided and I consider the offer made by MW fairly reflects the impact and the long-standing nature of the advisory relationship.

Further areas of complaint raised

Mrs B says that if she been contacted more frequently in 2021 and 2022, she would have understood the market conditions sooner. Mrs B suggests that had she done so, she would have been able to seek advice and consider whether she ought to act. Thus she suggests she would have avoided the level of loss experienced by her fund.

Mrs B told us that if she had understood MW would have only been looking at her arrangement once a year, she would have been checking it more frequently as she says she did before engaging MW. Mrs B notes that over the years she generally only had contact around her annual review or when instigated by her. Mrs B says other advisers have told her it's reasonable to expect more frequent monitoring.

More recently Mrs B told us she thinks MW's terms of business are poorly written and that when they used the word 'regular' in 2013 this was ambiguous. She says that however unintentionally, this might partly explain why she thought there would be monitoring at times between annual reviews. Overall she isn't happy with the service and information provided and suggests what was done, was not done reasonably well.

Having seen the documents provided, it is clear there have been times over the years where MW and Mrs B have been in contact in respect of her arrangements more than once in a year. For example in 2017 and 2018 there appear to have been several reviews. I accept from Mrs B there have been times when she instigated contact. I've seen Mrs B says she actively managed the fund herself prior to 2011 and that over the years she has raised queries and asked about alternative options. Whilst I don't understand how Mrs B actively managed fund, and she says it was invested in the same way prior to 2011, I don't consider this is an area in which I need to make any finding when deciding this complaint.

I've explained above why I don't think the performance of Mrs B's pension during the relevant period ought on its own to have required MW to have contacted Mrs B. Nor do I think MW ought reasonably to have been required to or expected to contact Mrs B more frequently than they did in the year or so preceding her annual review in January 2023. However it is sufficiently clear that they did, given the emails from May 2022 that have been provided.

I haven't seen anything that makes me think that even with earlier contact in the 2021- 2022 period, it can reasonably be said Mrs B would have done something differently and her pension would not have decreased in value or to such an extent.

From what I have seen MW met what they were obliged to offer when it came to an annual review and the associated service under the terms of their service agreement. I don't consider it unusual for an adviser with a similar ongoing servicing agreement, where annual reviews are paid for and part of the service, to contact their client once a year in respect of the review, (it isn't unusual for there to be contact shortly prior to the review to ask about any change in circumstances). Some firms may choose to provide other more generic (or tailored) information throughout the year. Some firms may be internally monitoring specific funds throughout the year. This might depend on preferences set by the client. Other clients and advisers might and can have a different service relationship set up.

Mrs B has pointed to the contents of the 2013 service agreement provided to this service; however I don't think what was provided failed to meet what was required. Mrs B thinks the use of the word "*regular*" in the 2013 agreement might be ambiguous, might have misled her or be understood to require MW to have contacted her outside of the annual review service, but I don't agree. It does not preclude MW from doing so, but I do not consider it created a binding obligation for there to be contact or a review of her investments more frequently than annually. I don't think the service being provided (including in 2021 to 2022) required this. I note MW's 2021 terms do not use the word 'regular' and refer simply to an annual review service. I have not been provided with all terms from 2014- 2020, but I don't consider they are required here.

In any event, this was not a new advisory relationship or service offering, MW had been advising Mrs B for over ten years on her pension investment and as such she would have been aware of the service provided and how regularly there was usually contact. It has not been complained or suggested that the service provided significantly changed in 2021 and 2022.

In addition to concluding MW ought not to have been required to contact Mrs B when the value of her investment fell during this period, I consider it too remote and speculative to conclude that if MW had contacted Mrs B at an earlier point in 2021 or 2022, she would have invested differently and avoided or limited the loss experienced by her fund.

Putting things right

What MW must do

I uphold Mrs B’s complaint in part. In reaching this thinking I have taken account of everything, and in particular that MW provided incorrect annual valuations in their annual review documents from 2017.

I accept the errors in the values were not significant and Mrs B would have been receiving the correct values from her provider annually (and in the circumstances it seems surprising therefore the error wasn’t noticed earlier). However she was entitled to receive the right information. To discover she was sent inaccurate information will have understandably caused her real concern.

MW previously offered £250 to Mrs B, and this is the sum they must pay to her. This might be a somewhat higher sum than I might usually consider for distress and inconvenience based on limited errors in valuations where accurate information was also being provided, and where I don’t consider any loss or detriment was linked to the error. However I don’t think it would be appropriate or reasonable here to decrease the original sum offered by MW.

My final decision

For the reasons given I uphold Mrs B’s complaint about Marshall Wooldridge Financial Services Ltd in part. They are required to pay her £250. I would expect this payment to be made to her within 28 days of their being informed of her acceptance of my decision.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs B to accept or reject my decision before 15 January 2024.

Louise Wilson
Ombudsman