

The complaint

Ms X says Francis Clark Financial Planning (FCFP) failed to provide her with adequate advice in respect of her pensions and investments.

What happened

Ms X had been a client of Winter Rule for many years. It provided assistance with her annual tax returns and accounts. She says it introduced her to its in-house financial adviser (Mr Z). Around 2012 Winter Rule was taken over by Francis Clark.

FCFP says it had an agreement with Ms X to provide her with financial advice. And that a separate entity, Francis Clark LLP (FCLLP) was engaged to provide her with accountancy and tax services.

Ms X says that her pension provision was a major part of her financial planning – both her private pensions and the main defined benefit (DB) scheme she was a member of.

In 2016 Ms X agreed a memorandum of understanding with a local authority about the expansion of the coverage of the professional services she provided. This meant there would be a review of her pay and conditions, which would take effect from 1 April 2016, including her pension benefits. The review wasn't finalised until 2018. And she says she sought advice about her options and how to proceed.

Essentially, it is these changes to Ms X's circumstances and what unfolded subsequently that are at the heart of her complaint. In February 2021 she raised several concerns with FCFP and FCLLP about what she considered were shortcomings in the services they'd provided.

For example, Ms X said FCFP failed to provide her with adequate advice in respect of her pensions and investments, such that she'd been exposed to avoidable tax charges and a sub-optimal approach to managing her Lifetime Allowance (LTA).

Ms X says there's no evidence her affairs were properly managed after Mr Z's departure from FCFP in 2018. She believes there were communication issues between it and FCLLP, which exacerbated the problems she's encountered. She says she's incurred unjustified fees. And that she's suffered financial detriment because of what's happened.

FCFP responded to Ms X in March 2021. It rejected her complaint. It said the ongoing service she paid for was in respect of the management of her Individual Savings Accounts (ISAs). It had delivered this. It said it had never been engaged to provide such advice about her pension provision.

Ms X brought her complaint to the Service. The Investigator didn't uphold her case. She concluded there hadn't been an agreement with FCFP to provide her with comprehensive advice covering her whole financial position, for example incorporating her DB pension arrangement. When it had provided advice about ad hoc pension contributions, it had properly considered matters such as the position on her LTA.

Ms X disagreed with the Investigator, so her complaint has been passed to me to review afresh and to provide a decision. This is the final stage of our process.

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.

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I should make clear the scope of this decision. The complaint Ms X brought to us included allegations about the acts and omissions of two firms – FCFP and FCLLP. As she is aware, these are separate entities.

FCFP is an independent financial advisor firm. It is a limited company regulated by the Financial Conduct Authority (FCA). I can consider alleged acts and omissions by it.

FCLLP is a limited liability partnership registered to carry on audit work, regulated by the Institute of Chartered Accountants in England and Wales. It's an accountancy practice and provides advice services, including on taxation. I can't consider what it may or may not have done – ultimately these would be matters for its regulatory body.

I'm not upholding Ms X's complaint. I'll explain why.

The first thing I've considered is the extensive regulation around transactions like those performed by FCFP for Ms X. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 6 - which requires a firm to pay due regard to the interests of its customers.
- Principle 7 - which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms like FCFP. As such, I need to have regard to them in deciding Ms X's complaint.

One of the arguments Ms X makes is that FCFP and FCLLP effectively held themselves out as a single entity. She noted that the Francis Clark website said:

"...as a team we work closely with our accountancy colleagues to create detailed, cohesive and tax efficient financial plans for our clients to help them achieve their long-term financial objectives."

Taken together with some of the earliest communications Winter Rule had with Ms X and the approach of the business then to hold joint meetings between the accountancy and financial adviser teams and Ms X, I understand the point she makes – it's not without merit.

FCFP says it and FCLLP have always been entirely separate firms with different company registrations, different employees, individual professional indemnity insurance, offering different services and engaging completely separately with clients for the services provided.

I don't think promoting the virtues of different businesses being able to work closely for the benefit of clients alters the underpinning and separate agreements Ms X reached with FCFP and FCLLP about what they would be individually responsible for.

In this regard, I find the separate agreements Ms X signed with FCFP and FCLLP and the predecessor business, and the various key transactions each had with her, evidence the actual scope and substance of the relationship.

For example, the terms and conditions of business she signed with Winter Rule (Financial Planning Limited) in 2007 said the following with regards to fees:

"5. We derive income from commission paid to us in respect of transactions in life assurance, pensions, ISAs...Alternatively you may wish us to work on a fee basis. Our fees for providing the services covered by this engagement letter are based on the degree of skill and responsibility involved and the time necessarily occupied on the work. Before the work is carried out we will indicate to you the amount of the fee...."

"6. Where, on receipt of instructions from you, a financial report is prepared or additional work has to be undertaken that does not relate to investments on which commission is payable, or advice is given but no transaction is arranged on your behalf, fees will be costed on a time-spent basis at a rate agreed with you in writing..."

These earlier agreements provided for payment by commission where the firm recommended a particular product. And where commissions were not applicable, for fees in respect of work done.

Since 31 December 2012, financial adviser firms were no longer able to be paid through commission from the provider. Following implementation of the Retail Distribution Review (RDR), advisers were paid by way of fees rather than through the payment of commission. Those fees could be paid in cash or taken from the investment as a percentage reduction.

I can see this development in the arrangements between Ms X and FCFP. In March 2013 it provided advice to her about her investment and pension priorities. In the letter of engagement, which formed the contract for services between the two parties, it said the following about its charges:

"We charge our clients for our professional services which include advice, implementation and review. Full details are included in the section of the Client Agreement headed Paying for Services."

"Advise and implementation fee – my fee for the services and advice detailed above will be 3% of the monies invested...In the event that we do not implement any pension or ISA policies, this fee is all you will pay..."

"Review fee – our review [ongoing] service will charge you a fee equivalent to 0.5% of the value of the funds under review. This review service includes a comprehensive annual report which will be presented to you at a meeting where we will answer your questions and agree on any changes to your plans, including rebalancing the asset allocation and ensuring the fund selection remain suitable..."

Ms X signed and returned a copy of the letter to say she accepted the engagement terms and the fees proposed. On balance, I think it's more likely than not Ms X understood the basis on which she'd engaged FCFP.

In her most recent submission, Ms X said she didn't accept that the business arrangement she had with FCFP was limited to the written signed contracts and that its service was limited to oversight of the products it was receiving fees for. She has pointed to a pattern of advice she says she received from FCFP and its predecessor on pensions.

There is an audit trail which shows FCFP and its predecessor did do work for Ms X in relation to her pension. For example:

- In 2005 her objectives included building a fund to meet her daughter's school fees, maximising the use of ISA's to invest for the medium term, and to consider her pension provision.
- In 2006 FCFP recommended and established a personal pension plan for Ms X with Scottish Widows. And later, after being provided with details of her DB scheme valuation she sought confirmation that it had considered the position on tax. It confirmed she was well within the then lifetime allowance provisions.
- In 2012 FCFP received information from Ms X about her DB scheme. This enabled it to confirm that she could safely make a further contribution to her personal pension of £10,000 within the relevant current taxation parameters.
- In 2013, FCFP made a further recommendation that Ms X should add another £10,000 to her personal pension. This appears to have been the last contribution it advised her to make.
- In 2015, a letter from FCFP to Ms X confirms that as her earnings were now all pensionable and covered by her DB scheme, there didn't appear to be an opportunity for further contributions.

So, I agree with Ms X that there was a pattern here of FCFP engagement with matters concerning her pension provision, as well as her investments. But I think the pattern, was for FCFP to recommend how she might utilise available funds, after ISA investments, for her personal pension.

For example, in 2013 Ms X's stated objectives were to utilise her maximum ISA subscription for the year and to make a single pension contribution. In recommending the set-up and later contributions to her personal pension between 2006-2013, I think FCFP had a duty to understand the relevant regulations for allowances and taxation for each transaction. From the evidence I've seen it had a grip on this.

There doesn't seem to be any dispute between the parties that the only fees received by FCFP for ongoing review work were in relation to the oversight of her ISA funds. Other fees charged by FCFP over the years were for advice and implementation where it made recommendations to Ms X about additional investments and the set-up of her personal pension and subsequent contributions to it.

When annual reviews were carried out by Mr Z before his retirement (after which Ms X said the service fell short), it was made clear that these would only cover the funds under review (her ISA funds). It only oversaw the products she'd taken out through it.

As the Investigator noted, the fact-finds from 2015 and 2016 show Ms X opted for focused advice. She thought the reason for this was that she also had an ongoing agreement with

FCLLP which would review her wider financial position as her accountants. Ms X told us she submitted her financial documentation to it regularly.

Ms X says Mr Z told her he was due to retire and that a colleague would be looking after her investments and pensions in the future. I don't think this implied anything beyond the existing contract between the parties, encompassing the sort of transactions that had been a feature of the service he'd provided previously.

I think there are two significant matters at the heart of Ms X's complaint. The first is the change in her contract to deliver professional services to her local authority client. And the second was the dynamic regulations around the pension LTA.

In respect of the former, Ms X says she does not accept that improvements to her pay and conditions could not have been foreseen. She noted that a pay review had been outstanding for some time and that the expansion of her responsibilities was being considered and took place in 2016.

Ms X has provided a copy of the memorandum of understanding from 2016. This was a framework for her to continue working while negotiations were ongoing between the relevant parties. Ms X's proposal for how much she should be paid had been rejected. And a process for further negotiation and mediation put in place.

So, while the memorandum evidences her remuneration package was under review, the outcome wasn't certain. Indeed, Ms X has acknowledged the review of her situation wasn't finalised until the summer of 2018.

In responding to a proposal she'd received about her new remuneration package in June 2018, she relayed her acceptance and made the following enquiry:

"I can confirm I have spoken to [Mr Y] at [FCLLP] as recommended...He has raised a comment about the pension contribution. Can you confirm that I will receive a non-contributory pension supplement and what this will be? I would be happy for [you] to speak to [Mr Y] with regards my pay and pension to ensure that the appropriate tax payments are paid."

I can see that in August 2018 FCLLP sent Ms X a letter setting out the tax implications of her pay review. It noted that even at that point it still didn't have sufficient information to determine how this would impact on her with any certainty.

In January 2019 Ms X approached FCLLP again asking about one of the options available to her for reducing the tax payable on her excess pension savings, which resulted from the settlement she'd agreed. It responded on 9 January, noting the option she'd enquired about would reduce her tax bill but would also impact on her pension benefits. It said it wasn't a decision to be taken in a hurry and that she needed to take independent financial advice.

I note that in posing certain questions to the local authority she was providing professional services for about the new package of pay and conditions, it also said she should be seeking financial advice.

Based on the information I've seen, it's clear that Ms X engaged with FCLLP about her new remuneration package in 2018 and the associated tax consequences.

Despite FCLLP's suggestion she should seek financial advice, I can't see she engaged with FCFP on the matter. I can't see that she informed it of the significant changes in her circumstances. Or that she asked for advice about the various options available to her. And

I've found no evidence that she instructed it to provide her with recommendations on how to proceed.

One of Ms X's main concerns is that she will exceed her pension LTA. I note that over the period she had engaged FCFP and FCLLP, the position on LTA had been dynamic. And the direction of travel of the allowance hasn't been consistent. In 2006/07 it stood at £1.5m and it increased to a peak of £1.8m in 2011/12.

The Government then decided to reduce the allowance, by the time where FCFP recommended Ms X should make her last personal pension contribution in 2013, the LTA stood at £1.5m. Based on what it knew at that point about her situation and the tax regulations, it's advice that she was able to make such a contribution without worrying about the LTA ceiling was reasonably founded.

From 2014/15 the Government made further reductions to the LTA. In 2015/16 it was £1.25m and by 2016/17 it reached a low point of £1.0m. Between 2017 and 2020 there were small increases to allow for inflation and the LTA now stands at £1.073m.

Given the uncertainty of the outcome of the review of Ms X's new remuneration package, which wasn't settled until the summer of 2018, it's not clear that FCFP was ever in a position to have recommended action to her to mitigate her LTA position by this point.

Ms X says the first time she saw an adviser after Mr Z retired was 18 months later in September 2019, after issues with her pension taxation had emerged. She said:

"[FCFP's new adviser] suggested that I get advice from [FCLLP]...in the past it had been [FCFP] who has obtained the Lifetime Allowance valuation... In addition I had already received this advice from FCLLP. This indicated to me that there had been an inadequate handover and there were communication difficulties between the two companies. I therefore contacted [FCFP] to ascertain the position and it became clear at this point both companies were trying to mitigate any liability they might have. I personally obtained the values of all my pensions whereupon I ascertained I was potentially going to be over the Lifetime Allowance."

Ms X took early retirement in October 2020. In doing so she crystallised her main DB pension. She received an index linked payment of £47,589 per year, a lump sum of £66,491 and death benefits. When she took the benefits they were measured against the then applicable LTA of £1.073m – she'd accessed around 95% of her allowance.

The value of her remaining uncrystallised pensions, including her Scottish Widows plan was around £160,000 in 2021. Leaving aside I can't see that certain elements of her provision had been previously declared to or captured by FCFP, this meant over £100,000 of her pot will be subject to excess pension taxation if she accesses these benefits under current LTA regulations.

Ms X could reasonably have expected to have received contact from FCFP earlier than she did in 2019. The usual pattern appears to have been some contact between the parties each year around January to March. It has said when it was preparing for her annual review it had been told by FCLLP not to contact her.

The Investigator said:

"Whilst I don't dispute that [FCLLP] may have advised [FCFP] not to contact you at that time due to ill health, it's not unreasonable for [FCFP] to follow this advice as [FCLLP] would've been in touch with you and would've known more about your personal situation..."

Ms X was sceptical that this would've happened. She said she was in constant contact with FCLLP at this time.

I've seen an exchange of emails from May 2019 which does show what FCFP said was correct. It had made the following enquiry:

"I am aware...that you are currently undertaking some work for [Ms X] in relation to annual/lifetime allowance as I believe she has received several years of backdated pay and pension contributions. I just wanted to get an update as to the current status of this as I am due to invite her in for a review meeting..."

FCLLP responded in the following terms:

"Don't contact [Ms X] ...at the moment. She is in the middle of a dispute with [her employer], part of which is to do with annual allowance calculations, and off sick from work. Until that's resolved it wouldn't be appropriate to have a review."

There's an argument that as a separate entity FCFP shouldn't have relied on FCLLP as a gate-keeper to contact Ms X. But, in the circumstances, I can understand why it was guided by the latter given its active relationship with her.

In any event, even if FCFP had been in contact with Ms X to conduct a review, this would've again focussed on her ISA holdings – the service she was paying for. And while its possible she'd have commissioned further work from it on a fee basis, it seems she was engaged with FCLLP on the matter of pension taxation.

Further, given the timing of the settlement she'd arrived at with the local authority and changes to LTA regulations, it's not clear how any intervention by FCFP could've alleviated her position here.

I've thought carefully about the fact that FCFP was shown on Ms X's Scottish Widows pension as the servicing agent. While it may not have been receiving any fees or commission in respect of the plan, I've considered whether it nevertheless had responsibility for oversight of it. I can see arguments on both sides.

I think the deciding factor here is the substance of the relationship evidenced between the parties over nearly 20 years. I've not seen FCFP was ever instructed by Ms X to provide advice in relation to her retirement planning. Had it been, I'd expected to have seen more information about her objectives such as when she expected to retire, what her income requirements were and a more comprehensive assessment of her provision.

I think it's more likely than not FCFP's involvement in her pension arrangements was always bounded to particular parcels of advice, such as the establishment of her Scottish Widows plan and making ad hoc contributions, and implementation where its recommendations were accepted. For this advice it received a fee. But there's no evidence she requested an ongoing review service across all her pension provision.

As such, I don't think it would be fair or reasonable for me to conclude that FCFP owed Ms X an obligation in relation to her pension planning over the lifetime of her relationship with it. There was no contract between the parties for such. There were no instructions from Ms X with regard to providing her with advice about the matters she now complains about. And she hasn't paid for such a service.

My final decision

For the reasons I've already set out, I'm not upholding Ms X's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms X to accept or reject my decision before 19 August 2022.

Kevin Williamson

Ombudsman