

## The complaint

Mr S complains that Alliance Trust Savings Limited (“ATS”) has failed to deduct the correct recurring advisor charges from his pension savings. And he complains that ATS has failed to invest his regular contributions to his pension, leaving them instead on deposit and earning no interest.

## What happened

Mr S has been assisted in making this complaint by his financial advisor. That advisor was also responsible for the original advice that Mr S received (that I noted in my provisional decision), for the management of his pension savings, and was the recipient of the advisor charges paid by ATS. But, for ease, in this decision I will generally refer to all communication about the complaint as having been with, and from, Mr S himself.

I issued a provisional decision on this complaint in May 2022. In that decision I explained why I thought the complaint should be upheld and what ATS needed to do in order to put things right. Both parties have received a copy of the provisional decision but, for completeness and so those findings form part of this decision, I include some extracts from it below. In my decision I said;

*In 2016 Mr S received some advice from the financial advisor about his pension savings. As a result of that advice he agreed to transfer his pension savings into a self-administered personal pension (“SIPP”) provided by ATS. He agreed to pay his financial advisor 1.5% of the transferred funds for the advice, and an ongoing charge of 0.6% per annum of his pension savings for the ongoing management of his funds. He agreed that the ongoing charges should be paid monthly by ATS by deduction from his pension savings. And following the advice Mr S agreed to make regular contributions of £200 per month to his pension savings.*

*When Mr S’s instructions were set up by ATS an error was made. The proportionate ongoing advisor fee should have been set at 0.05% per month (0.6% divided by 12 months). But ATS incorrectly set up the fee at 0.5% per month (6% per annum). ATS’s error wasn’t noticed until Mr S was moved to a new processing system in 2019. ATS calculated that Mr S had overpaid advisor charges amounting to just over £8,400.*

*Mr S’s original application form for the SIPP didn’t include any investment instructions. The financial advisor later inputted a one-off instruction for the investment of the originally transferred pension savings. But ATS says no instructions were provided for the investment of Mr S’s regular monthly contributions. So those contributions were held as cash deposits and used, in part, to pay the monthly advisor charges. Mr S’s financial advisor provided ATS with new investment instructions in July 2020.*

*When Mr S made his complaint to ATS it accepted that the advisor charges it had deducted from his pension savings were incorrect. It offered Mr S £100 for the trouble and upset he’d been caused. But it noted that the funds had been paid to*

*Mr S's advisor so it asked that firm to repay the overpayment to Mr S. The financial advisor firm declined that request noting that it had received the payments in good faith. And ATS said that it had been correct in the way it had not invested the regular monthly contributions – the advisor had not provided any directions for the investment on the SIPP application form.*

*I don't think there is much dispute that ATS has deducted an incorrect amount of advisor charges from Mr S's pension savings. And I think it is similarly clear that those excess deductions have been paid to Mr S's advisor. But, this complaint is dealing with the relationship between Mr S and ATS – not that between Mr S and his financial advisor, or any agreements between the financial advisor and ATS. So my powers are limited to looking at whether ATS has treated Mr S fairly, and if not, what ATS needs to do to put things right.*

*It seems that the charges instruction that Mr S provided to ATS was clear. As a result ATS should have deduct 0.05% of his pension savings each month, and paid that sum to his advisor. ATS has not complied with that instruction. Whilst it is disappointing that Mr S's financial advisor didn't notice the mistake earlier, and that it has been reluctant to return the overpayment to ATS, those are not the fault of Mr S. I think that Mr S has a reasonable expectation that ATS will put right the mistake that it made. And if it needs to take any further action to recover those monies, say from the financial advisor, the success or otherwise of those actions should have no bearing on the compensation that is paid to Mr S.*

*ATS's own calculations suggest that it has taken excess charges from Mr S amounting to £8,403.63. I can see no reason why ATS should not return those funds to Mr S's pension savings immediately.*

*I turn now to the investment instructions that were provided to ATS in relation to Mr S's regular monthly contributions.*

*Mr S made his application to ATS via a paper application form – it seems likely that the form was completed on his behalf by his financial advisor. Section 12 of that form relates to "Investment Instructions". That part of the form was not completed when it was sent in to ATS.*

*The explanatory text to that section of the application form reads;*

*"If you have not yet decided which investments you would like to make you may leave this section blank and your cash will be placed on deposit. We do not currently pay interest on cash deposits within our platform product range....."*

*So I think it is clear from that text that Mr S's failure to complete the investment instructions would reasonably lead to ATS leaving his contributions on deposit, and earning no interest. And that is what happened.*

*I have no doubts that wasn't the intention of Mr S, or his financial advisor. They have pointed out that accompanying the application form was an illustration showing potential investment returns should the contributions be invested in certain assets. But I don't think the illustration gave any direction, or authority, for ATS to make those investments. So I don't think ATS has done anything wrong in relation to this part of the complaint.*

*I have noted that Mr S has been encouraged by the financial advisor to make a complaint about its failure to provide investment instructions. Since there is a possibility that complaint might arrive with this Service for our consideration I am not making any finding that the advisor was at fault for the lack of investment instructions. But I am entirely sure that ATS doesn't bear that responsibility, and so doesn't need to compensate Mr S for the period of time, between 2016 and 2020 that his contributions were not correctly invested.*

*But, as I said earlier, on 21 July 2020 Mr S's financial advisor did provide ATS with valid investment instructions. And so Mr S's pension savings were moved off the cash deposit around that time. So that means that, had ATS not made a mistake in the level of charges that it deducted, the excess amount would have also benefitted from investment returns from that date. So those additional returns should also form part of the compensation that ATS pays to Mr S.*

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Mr S said that he accepted my provisional decision. ATS raised some questions in relation to what I said needed to be done in order to put things right.

ATS no longer holds detailed information relating to the individual charges that were deducted from Mr S's pension savings. It asked whether, should that information not be available, it would be reasonable to base the redress on the amount noted in my provisional decision (£8,403.63). And since it would also be unable to identify the exact date on which the charges were taken, it asked for guidance on how it could establish any investment losses that had arisen.

Mr S has since confirmed that he thinks it reasonable to consider the amount of charges deducted as £8,403.63 in the absence of any other confirmatory information.

### **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.

Given that neither party has disagreed with my provisional findings, I see no reason to alter those conclusions. But I will provide a little further discussion about the redress that is payable in light of the questions posed by ATS.

Both parties appear to agree that it would be reasonable to consider the amount of excess charges deducted by ATS as £8,403.63. I am content that is the best representation we have available of those excess charges and so think it reasonable for that amount to be used as the basis of the redress that is paid to Mr S.

As I noted in my provisional decision, an error appeared to have been made in failing to add investment instructions for Mr S's pension savings – although I didn't think ATS was responsible for that error. So the excess charges that were deducted would not have benefitted from any investment returns until that error was corrected. And my understanding is that the excess charges had stopped being deducted before the investment instructions were corrected. So I don't think the exact timing of the charges deductions matters – they wouldn't have initially benefited from any investment returns even if they'd remained within Mr S's pension savings. So it is entirely reasonable for ATS, when calculating the compensation due to Mr S, to treat the excess charge amount as having been added back into Mr S's pension savings on the day before the investment instructions were corrected (21 July 2020).

## **Putting things right**

ATS acted incorrectly in deducting charges from Mr S's pension savings at the rate of 0.5% per month. It should instead have deducted charges at the rate of 0.05% per month. So to put things right I direct ATS to;

- Refund the additional charges that have been deducted from Mr S's pension savings as a result of its error. I agree that a reasonable estimation of those total additional charges is £8,403.63
- Add investment returns to that sum, equivalent to the returns seen on Mr S's remaining pension savings between 21 July 2020 and the date of my final decision.

The compensation should be paid into Mr S's SIPP. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If ATS is unable to pay the total amount into Mr S's SIPP, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to notionally allow for any income tax that would otherwise have been paid.

The notional allowance should be calculated using Mr S's actual or expected marginal rate of tax at his selected retirement age. I think that it's reasonable to assume that Mr S is likely to be a basic rate taxpayer at his selected retirement age, so the reduction would equal 20%. However, Mr S would have been able to take a tax-free lump sum, so the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

Should the compensation not be paid to Mr S within 28 days of his acceptance of my final decision, ATS should add further compensatory interest at a rate of 8% per annum to the compensation from the date of my final decision to the date of settlement.

ATS should also pay the sum of £100 that it has already offered to Mr S for the trouble and upset he has been caused.

## **My final decision**

My final decision is that I uphold Mr S's complaint and direct Alliance Trust Savings Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 August 2022.

Paul Reilly  
**Ombudsman**