

The complaint

Mr B says Darwin Financial Management Ltd ('Darwin') did not provide him with the advisory service for his Self-Invested Personal Pension ('SIPP') that he paid for and was entitled to. The service began in 2007 and in 2020 he transferred his SIPP to another firm. He says this was due to notice from Darwin that it was withdrawing from pension related services, and that the new firm he moved his SIPP to reviewed it and advised him of the following:

- Funds within it had not been regularly reviewed or rebalanced (which may have affected growth in the SIPP).
- The SIPP itself was more expensive than an alternative pension product.
- Fund charges in the SIPP had not been made clear to him.
- There was no evidence of the annual review service that he was entitled to, so fees he incurred in this respect had been unduly charged.

What happened

One of our investigators issued two views on the matter. In his first view, he mainly said:

- Mr B's new adviser highlighted underperformance in three of the SIPP's funds during the preceding four years, but Darwin has said this is a snapshot description that does not reflect their overall performance. It has referred to evidence of switching and rebalancing in the SIPP in the early years of its service, and particularly between 2010 and 2013. One firm's approach should not necessarily be compared with another's. In the present case, Darwin's approach was to focus on overall fund performance to meet required income and to undertake changes in the SIPP only when/where necessary. It has not been established that the SIPP's funds were neglected.
- Darwin says advice, fund factsheets and illustrations presented to Mr B explained to him the relevant fund management charges in the SIPP. Some evidence of factsheets from 2007 and 2012 have been shared with this service. It is not clear that Mr B would have had a full understanding of the total fund charges but it cannot be assumed that they were not explained to him. Darwin has also referred to the online access Mr B had to his SIPP portfolio which included information about charges. On balance, it has not been established that he was not informed about fund charges.
- Darwin explains that the fee structure for the Standard Life SIPP that Mr B had was the same for a Standard Life Personal Pension, as there are no drawdown fees or capped income drawdown review fees, and that the varying management fees in the SIPP were no more expensive than those in other investment products. There is not enough evidence of the contrary, so Mr B's claim about the SIPP being more expensive than an alternative is not established.
- With regards to annual reviews, Darwin accepts that some were missed. It also says in some years Mr B waived them because he was happy with his investments as they were at the time – but Mr B disputes this.

In his first view, the investigator referred to his understanding that Mr B was not being charged for annual reviews and that it was unclear how many annual reviews were missed, so he considered compensation for inconvenience instead. Upon receipt of further evidence, he reviewed the case and his findings – but only with regards to the annual reviews aspect. He referred to the following:

- Evidence, and Darwin's concession, that Mr B was charged (annually) an ongoing service fee of 0.5% (of fund(s) value) which included the annual review service.
- Evidence that other aspects of the ongoing service included annual statements, online portfolio access, access to a secure messaging service and access to an advisor.
- Evidence of fund(s) values as of July of each year after the service began and up to 2020 (when the service ended).
- Evidence from Standard Life of when switches happened in the SIPP and evidence from Darwin that those switches indicate when annual reviews happened.

Based on the above, the investigator concluded that annual reviews were missed in 2008, 2014, 2015, 2016, 2017 and 2018. He noted that of all the elements in the ongoing service around a quarter related to annual reviews, so he concluded that Darwin should compensate Mr B by refunding him with 25% of the ongoing service fees he incurred in these years – because no annual reviews were done in them. Darwin appears to have agreed with this outcome, but Mr B did not. He said he should receive a full refund of the relevant fees because the annual review was the only meaningful element in the ongoing service he paid for. The matter was referred to an ombudsman.

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.

This service does not usually determine matters of investment performance in isolation. Performance is rarely guaranteed and there is no evidence that there was such a guarantee in the present case. Mr B has referred to the underperformance observations made by the new firm he moved his SIPP to, and there is evidence that Darwin does not refute those observations. However, it makes the point – with which I agree – that the basis of the observations does not cover the full picture on the SIPP's funds. This is a somewhat natural and fair conclusion given that out of around 13 years, the new firm commented on only the last four years of performance in *some* of the SIPP's funds.

Furthermore, the issue to establish is whether (or not) Darwin did something wrong (or omitted to do something right) that adversely (directly or indirectly) affected the SIPP's funds. Overall and on balance, I have not seen evidence that shows this. Mr B and his new adviser were/are entitled to their views on how much fund rebalancing and switching could or should have been done in the SIPP, but that does not automatically mean that Darwin's approach was wrong. Its approach – which, in broad terms, was to address matters in the SIPP only when and where necessary – is not uncommon in the industry. Depending on the circumstances in a case this could be reasonable or unreasonable, but in isolation it does not automatically confirm a lack of service.

Evidence of the years in which annual reviews did not take place serves as evidence of periods in which Darwin does not appear to have considered whether (or not) rebalancing

steps were necessary. I will address, below, the fee refund claim related to this aspect of the case. That claim covers the arguments that have been made about neglect of the SIPP in the context of not receiving a service that was paid for. However, in terms of determining whether (or not) a wrongdoing by Darwin adversely affected the SIPP's funds' performance, more needs to be shown beyond the years in which it did not conduct annual reviews.

Management of the SIPP's underlying funds had a much closer relationship with their performances than Darwin's advisory service to the SIPP (as a whole). It was not responsible for fund management. In terms of servicing the SIPP, rebalances and fund switches in the years where annual reviews were missed might or might not have helped performance, but they would not have been made with performance guarantees and, without the benefit of hindsight, I am not persuaded that Mr B has shown that such actions would probably have improved performance. Furthermore, there is evidence rebalancing and fund switching was conducted by Darwin in the SIPP during other years in its service to the SIPP. As set out in the investigator's second view, Standard Life confirmed such activities in 2009, 2010, 2011, 2012, 2013, 2019 and 2020. I do not consider it can fairly be said that, overall, the SIPP was neglected by Darwin.

I understand Mr B's complaint about the cost of the SIPP, and the notion that a cheaper pension alternative existed. However, I consider it an under-developed argument that lacks supporting evidence. He has highlighted that he did not require the 'self-invest' feature of a SIPP, so this appears to be the context in which he says a cheaper pension alternative should have been considered for him. However, it has not been shown that his SIPP was unduly expensive and there is a lack of details on what would have been a suitably cheaper alternative. It is important to note that a firm's regulated obligation to give suitable advice does not extend to giving the *most* suitable advice or advice that is more suitable than another. The issue for me to consider here is not necessarily that a cheaper pension product could have been *more* suitable for Mr B, instead it is about whether (or not) his Standard Life SIPP was unsuitably expensive – and, on balance, I have not seen evidence that it was.

The balance of available evidence is that at the outset in 2007 and during the reviews and fund switching activities in the years mentioned above, associated fund charges were considered by Darwin and were disclosed to Mr B (in the form of advice, illustrations and fund factsheets – some evidence of which has been shared with us). On this basis, I agree with the investigator's finding that Mr B's claim he was uninformed in this respect has not been established.

Darwin's failure to conduct annual reviews in the years identified by the investigator appears to have been accepted by both sides. The dispute that remains in this aspect is about the level of compensation Darwin should pay for this omission in service.

The types of ongoing advice services firms provide can differ in their contents. Annual reviews are common within them but they are not automatically the main feature or the only meaningful element of the service. Evidence of the precise nature of the service, in each case, is important. Unfortunately, in the present case, whilst this service existed and was paid for from the outset its terms were not documented until much later. Darwin relies on the subsequent written terms of service as evidence of what it says they always were, but Mr B has invited us to question the reliability of the written terms and instead he asserts that active ongoing servicing of the SIPP's funds [which is relevant to their annual reviews] was essentially *the* ongoing service – and nothing else was provided.

The written terms confirm the same 0.5% fee that applied to Mr B's SIPP. 12 main service components are listed in it, including – annual statements, ongoing access to Darwin's support team, access to an adviser, portfolio rebalancing, valuations, review meetings and financial health checks. These examples amount to over half of the components listed in the

written terms and they appear to be what was available to Mr B/his SIPP from the outset. On this basis, and on balance, I consider that the written terms are a reliable reflection of what the ongoing service included.

At least three of the components – portfolio rebalancing, valuations and review meetings – sit within the annual reviews aspect of the service. The financial health check could be a potential fourth component of this aspect, but I consider that it a description that probably overlaps or duplicates the act of ‘reviewing’ that would inherently take place in an annual review exercise. I do not consider that any other component sits naturally in the annual review aspect of the service. In this context – the annual reviews covering three (but no more than four) of the 12 ongoing service components – I agree with the investigator’s assessment that around a quarter of the service related to annual reviews. For the same reason, I agree with the investigator’s finding on redress, which I set out below.

Putting things right

As I said above, there is evidence that Darwin did not provide Mr B with the annual reviews he paid for and was entitled to in 2008, 2014, 2015, 2016, 2017 and 2018; he paid for an ongoing advice service from Darwin – at the annual rate of 0.5% (of fund(s) value) – and that service included the annual reviews; the annual reviews accounted for around a quarter of the service; on balance, it is fair to conclude that a quarter of the fees he paid was for the annual reviews.

For the above reasons, I do not accept Mr B’s claim for a full refund of the ongoing service fees he paid in the above stated years. I conclude that the refund he is entitled to, because he did not receive annual reviews in these years, is limited to the total of a quarter of the fees he paid in each relevant year.

I order Darwin to calculate the full ongoing service fees Mr B incurred and paid in 2008, 2014, 2015, 2016, 2017 and 2018; to calculate a quarter of the fees for each year; to add them into a total; and to pay/refund Mr B with the resulting total as compensation for the annual reviews that did not take place in these years. I also order Darwin provide Mr B with a calculation of the compensation in a clear and simple format; and to pay him interest on the compensation, at the rate of 8% simple per year, from the date of this decision to the date of settlement *if* it does not pay the compensation to him within 28 days of being informed of his acceptance of this decision (should he accept it). This is to compensate him for any undue delays from Darwin in settling the refund/compensation.

compensation limit

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £350,000, £355,000 or £375,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In Mr B’s case, the complaint events began before 1 April 2019 and the complaint was referred to us after 1 April 2020 (but before 1 April 2022), so the applicable compensation limit would be £160,000.

My final decision

For the reasons given above, I uphold Mr B's complaint (about the annual reviews only) and I order Darwin Financial Management Ltd to calculate and pay him compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 6 September 2022.

Roy Kuku
Ombudsman