

The complaint

Mr M complains about the suitability of the advice and level of service provided by Albert Goodman Financial Planning Limited (“Albert Goodman”) since 2009.

What happened

The events leading up to this complaint were set out in detail by our investigator in his assessment. Both parties provided comments in response. I don’t intend to repeat here what our investigator stated but will instead provide a summary of the key events that led to this complaint.

- In 2003, Albert Goodman advised Mr M to start an open annuity with an initial investment of £249,250. Albert Goodman also advised Mr M on the underlying investments for the annuity – these were held on the Transact investment platform. The rules of the annuity contract required Mr M to draw a minimum level of income each year. Therefore, each year, a proportion of the underlying investments were sold and transferred, as a cash sum, to the annuity provider who would, in turn, use the money to provide monthly income to Mr M;
- In 2009, Albert Goodman advised Mr M to switch the management of the underlying investments for the annuity from Transact to Quilter’s discretionary fund management (“DFM”) service;
- In 2013, Albert Goodman advised Mr M to switch the management of the underlying investments for the annuity from Quilter to Brooks MacDonald’s DFM service;
- In line with the long-standing agreed process, in January 2019, Brooks MacDonald transferred a cash sum to the annuity provider so that it could provide monthly income to Mr M. He decided to change the annuity income payment frequency from monthly to annually in arrears, with the next annual payment scheduled for March 2020. This change meant the annuity provider would hold cash of about £20,900 for over 12 months, pending the next annual payment. Mr M didn’t want that to happen. So on 10 February 2019 he asked Albert Goodman to arrange for the excess cash held by the annuity provider to be reinvested by Brooks MacDonald. After retaining about £3,400 to cover charges and minimum balance requirements, the annuity provider returned the cash balance to Brooks MacDonald for reinvestment. Reinvestment occurred on 14 March 2019; and
- In 2020, Mr M became aware that Albert Goodman offered a centralised investment proposition (“CIP”) but it hadn’t recommended it to him. This upset him because the charges under the CIP were less than Brooks MacDonald’s DFM service.

This complaint

During 2020, Mr M complained to Albert Goodman. The issues complained about were broad and covered several events since 2009. These concerned the suitability of the switch advice provided by Albert Goodman in 2009 and 2013, failure to recommend investment in

the CIP, the provision of misleading information about costs and charges, poor and unprofessional service and delays in acting on his instructions. Overall, in exchange for the fees it had been paid, he felt that Albert Goodman hadn't provided value for money and that he should've been advised in 2009 to retain investment on the Transact investment platform.

Albert Goodman didn't uphold Mr M's complaint. It was content that the switch advice it had provided in 2009 and 2013 was appropriate for his circumstances and met his needs. It didn't think it had made any error regarding the CIP option because, while it came with lower costs, it wasn't actively managed unlike Brooks MacDonald's DFM service which, despite the higher costs, had generated better overall returns than the CIP. It noted that, as at March 2020, the value of Mr M's investment portfolio was about £260,000 despite him having withdrawn £275,000 since 2003 following the initial investment of £249,250. It was satisfied that, in response to his concerns about costs, it had adequately explored and presented alternative options to reduce ongoing costs but he had declined these. While it accepted its adviser had mistakenly provided incorrect information relating to costs for which she had apologised, it was satisfied she had acted professionally and acted in his best interests.

Mr M didn't accept Albert Goodman's response and referred the matter to this service. Albert Goodman objected to this service considering the parts of Mr M's complaint regarding its switch advice in 2009 and 2013 because it thought he had complained too late about those specific points.

Our investigator recommended that this complaint should be upheld in part. In his assessment he stated, in summary, that:

- He couldn't consider the parts of Mr M's complaint about Albert Goodman's switch advice in 2009 and 2013 because, in his opinion, he had complained too late under the rules of this service;
- Albert Goodman wasn't at fault for not recommending its CIP to Mr M. Notwithstanding this point, the evidence confirmed that, after becoming aware of the CIP option, Mr M wasn't inclined to move his investment away from Brooks MacDonald's DFM service at that time;
- Albert Goodman could've provided a better level of service by responding sooner to Mr M's email of 10 February 2019 in which he instructed it to arrange for excess cash held by the annuity provider to be reinvested by Brooks MacDonald. Reinvestment occurred on 14 March 2019. The investigator thought reinvestment could've occurred on 20 February 2019 had Albert Goodman acted in good time; and
- To put things right, our investigator recommended that Albert Goodman do two things. Firstly, pay Mr M £250 to compensate him for the trouble and upset caused by the level of service he had received. Secondly, to carry out a loss assessment and pay any compensation due to Mr M on the basis that reinvestment of the excess cash was carried out by Brooks MacDonald on 20 February 2019 and not 14 March 2019.

While Albert Goodman accepted our investigator's assessment, Mr M didn't. He provided comments in response. Our investigator considered those comments but wasn't persuaded to change the outcome of his assessment. Since agreement couldn't be reached, this complaint has been referred to me for review.

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.

When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 and the Dispute Resolution section in the FCA's handbook, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The nature of this service

It's clear that Mr M is unhappy about our investigator's approach to assessing this complaint. He questioned the veracity of some of the documents provided by Albert Goodman and our investigator's reliance on these in reaching his conclusion.

For Mr M's benefit, I think it's necessary to set out how this service reaches decisions. We were set up as an informal and free alternative to the courts. To use our service, consumers don't need to make their case in person. And there's no "cross-examination", where both sides ask each other questions. We make decisions on the facts and evidence available in each case. Either side can tell us what they remember saying or being told. Written evidence or paperwork from the time is often very helpful. The decision we come to on what is fair and reasonable in all the circumstances of the case may be different to what a court would decide applying legal rules.

The purpose of this final decision isn't to repeat or address every single point raised by Mr M and Albert Goodman. So if I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. If Mr M accepts this final decision in the specified timeframe, Albert Goodman must do what I've told it to do. If Mr M doesn't want to accept this final decision, he doesn't have to. But it does mean our involvement has come to an end and Albert Goodman doesn't need to do anything. Mr M may still be able to take legal action against Albert Goodman, but we won't be involved in this.

I've considered all the evidence afresh. Despite Mr M's concerns, I have no reason to question the veracity of the documents provided by Albert Goodman. I've reached the same conclusion as our investigator for the following reasons.

Albert Goodman's switch advice in 2009 and 2013

The investigator explained to Mr M that this service operates under a set of rules called the Dispute Resolution ("DISP") rules set out in the Financial Conduct Authority's Handbook. The relevant rules applicable here are under DISP 2.8.2. These state that this service cannot consider a complaint if the complainant referred it to us more than six years after the event complained of or, if later, three years from the date on which the complainant became aware (or ought reasonably to have become aware) that they had cause for complaint. For the reasons outlined by our investigator, I'm satisfied that, in respect of Albert Goodman's advice to switch investment manager in 2009 and again 2013, Mr M ought reasonably to have been aware he had cause for complaint more than three years before he made this complaint. I haven't seen any evidence that exceptional circumstances prevented Mr M from complaining sooner. Therefore, under this final decision, I won't be considering the suitability of Albert Goodman's advice to Mr M in 2009 and 2013.

Albert Goodman's CIP

I can see that Mr M describes himself as having an 'aggressive' risk profile and his overarching objective has always been to draw annuity income while maintaining his investment portfolio at around £250,000, in line with his initial investment of £249,250 in 2003. It seems that this objective had largely been met by the time Mr M complained in 2020.

Despite this, Mr M said that Albert Goodman should've advised him to switch the management of his investment portfolio from Brooks MacDonald to its CIP to reduce costs. Albert Goodman developed its CIP in 2015. It offers a range of diversified model investment portfolios aligned to different client risk profiles. Since the underlying investments in the CIP aren't actively managed, costs are lower when compared to actively managed options, such as Brooks Macdonald's DFM service.

In my view, lower costs available through an alternative option doesn't automatically transform an existing suitable arrangement into an unsuitable one. If higher costs are incurred but with good reason – such as providing genuine potential for higher investment returns – then it could, in some circumstances, be deemed suitable. This means that I won't automatically uphold a complaint simply because an alternative course of action entailed lower costs. There's a broad spectrum of suitable investment options, all with different costs and features. Considering Mr M's income needs and investment objective, I haven't seen any evidence that persuades me it was unsuitable for his investment portfolio to continue to be managed by Brooks MacDonald rather than switching to Albert Goodman's CIP. So I don't intend to uphold this element of his complaint.

In any event, I note that in response to Mr M's concerns about costs, Albert Goodman presented alternative options to him including its CIP. But he declined the options presented and was, at that time, despite the costs involved, content to continue with Brooks MacDonald's DFM service, seemingly because of the investment returns it had achieved.

Returning excess cash to Brooks MacDonald for reinvestment

Like our investigator, I think Albert Goodman could've responded sooner to Mr M's email of 10 February 2019 in which he instructed it to arrange for excess cash held by the annuity provider to be reinvested by Brooks MacDonald. Reinvestment occurred on 14 March 2019. Like our investigator, I think it's fair to say that reinvestment could've occurred on 20 February 2019 had Albert Goodman acted in good time. So I think it's fair and reasonable to uphold this part of Mr M's complaint and direct Albert Goodman to carry out a loss assessment and pay any redress due to Mr M as a result of the delay in reinvesting his money.

Putting things right

What I've set out below is in line with what our investigator previously recommended in his assessment.

Albert Goodman must pay Mr M £250 to compensate him for the trouble and upset caused by the level of service he received. In addition, Albert Goodman must carry out a loss assessment to determine if the undue delay in reinvesting the excess cash led to Mr M suffering a financial loss. My aim in awarding fair compensation is to put Mr M into the position he would've been in had the undue delay not occurred.

Albert Goodman must carry out a loss assessment on the following basis:

- Compare the *actual* value of Mr M's investment portfolio with the *notional* value had the cash returned to Brooks MacDonald been reinvested on 20 February 2019 and

not 14 March 2019. If the *actual* value is greater than the *notional* value, no compensation is payable. If the *notional* value is greater than the actual value, there's a loss and compensation is payable;

- The *actual* and *notional* values should be obtained as at the date of this final decision;
- Interest at 8% simple per year from the date of this final decision to settlement should be added to the compensation figure if it isn't settled within 28 days of Albert Goodman receiving Mr M's acceptance of this final decision;
- If there's a loss, this should be paid to Mr M's current investment portfolio to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid to the portfolio if it would conflict with any existing protection or allowance;
- If compensation cannot be paid to Mr M's portfolio, it should be paid direct to him. But had it been possible to pay it into the portfolio, it would've ultimately provided a taxable annuity income. Therefore, the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid on that income. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr M won't be able to reclaim any of the reduction after compensation is paid;
- The *notional* allowance should be calculated using Mr M's actual or expected marginal rate of income tax. I've decided it's reasonable to assume that he's likely to be a basic rate taxpayer, so the reduction would equal 20%. Since the money would provide taxable annuity income only, there aren't any tax-free lump sum issues to consider; and
- Provide the details of the calculation to Mr M in a clear, simple format.

Income tax may be payable on any interest paid. If Albert Goodman considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate in respect of interest if he asks for one so that he can reclaim the tax on interest from HM Revenue & Customs, if appropriate.

I note that Albert Goodman no longer has servicing rights on Mr M's investment portfolio. Therefore, it's likely he'll need to sign a letter of authority giving his permission for Albert Goodman to obtain the information it requires from other businesses to enable it to carry out the loss assessment calculation.

My final decision

I uphold this complaint in part. Albert Goodman Financial Planning Limited must redress Mr M as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 3 November 2022.

Clint Penfold
Ombudsman