

The complaint

Mr B complains that Compass Wealth Management Consultants Limited (Compass) have been paid fees it wasn't entitled to from his personal pension plan. He would like the fees refunded and compensation for the lost investment growth.

What happened

Mr B was advised to transfer a pension to a firm now called Royal London by his previous financial adviser (Westhill). Mr B says he agreed a fee of 0.5% for arranging the transfer. And an ongoing adviser charge (OAC) of 0.5% per annum of the fund value. These fees would be deducted from the plan by Royal London. And Westhill would provide ongoing services and advice, including an annual valuation report. The plan started in July 2013.

Compass acquired the clients of Westhill in May 2016. After then Mr B says he didn't receive any valuations or contact until May 2020, when it rang him and asked whether he required an ongoing financial advice service. He advised he did not. In November 2021 Compass contacted Royal London to remove itself as servicing agent of the plan and stopped the OAC payments.

Mr B says having received a letter confirming this from Royal London, he wrote to Compass in January 2022. He said it hadn't provided him with any services since it took over from Westhill and he asked for the OAC paid since then to be refunded.

Compass rejected his complaint. It said it had sent Mr B a Welcome letter in May 2016, enclosing a questionnaire for him to complete to confirm his ongoing advice requirements. It said this wasn't returned and it wrote again in March 2018, saying it had been unable to reach him to discuss a review. It said the letters were sent to the address on file as Mr B hadn't updated this with it until making his complaint.

Compass said it didn't have any records of Mr B being provided with ongoing services by Westhill. It said it had received copy correspondence from Royal London and called him in May 2020, when he didn't want to make any changes. It said its records did include a Client Agreement signed by Mr B on 2 October 2012. This said any work would be subject to a fee to be agreed in advance but didn't detail any fees. But it said the charges for advice on the plan were agreed and confirmed in the policy documents as being 0.5% initially with an ongoing fee of 0.5% p.a. *"for any ongoing services that Westhill may provide"*.

Compass said it was sorry that Mr B was disappointed by the lack of communication, but that it had tried to contact him, and he could've contacted it if he required advice. It said since the transfer from Westhill Mr B's plan had been subject to its *"Essential"* proposition which had a fee of 0.5% p.a. And, that this basic service didn't automatically give access to an adviser for regular reviews, which were charged at a higher fee of 0.75%.

Compass said that the fees paid initially to Westhill and then to it *"related to the initial setting up of the original policy"* and consequently it was *"unable to agree to your request for a full refund of fees paid from May 2016"*. But it said as a gesture of goodwill it was prepared to offer an ex-gratia payment of £500 to settle the complaint.

Mr B referred his complaint to our service. Our investigator looked into, and she decided to uphold it.

Our investigator said the plan had been arranged after the Retail Distribution Review (RDR). This had abolished ongoing commissions on new plans. Meaning the OAC couldn't continue unless Mr B agreed to it, which he hadn't, and services were provided in return, which hadn't been. She said Compass wasn't entitled to keep the OAC received since May 2016 and should refund it to Mr B. And, that it should undertake calculations to establish what investment return had been lost due to the charges. Or as a simpler alternative, preferred by Mr B, to add interest of 8% per year simple to each of the monthly OAC payments to date.

Compass didn't agree. It made or repeated a number of further points including. That Mr B had been an employee of Westhill. That he'd never updated his address with it. The original Client Agreement was completed pre RDR and the initial charge was so low because an ongoing charge was to be paid. That Mr B was aware of the ongoing charge but made no attempt to contact either it or Royal London to cancel it. And it didn't agree that it hadn't provided any service as effectively its "Essential" service charged at 0.5% had been provided. And that in these circumstances it considered the £500 already offered to Mr B was fair.

Our investigator said Compass hadn't provided any new evidence in support of its arguments. She said that the adviser charging document generated by Royal London when the plan was taken out clearly stated that the ongoing fee of 0.5% was "*in respect of ongoing service your financial adviser will provide*". She said she felt Compass was in breach of the Financial Conduct Authority's (FCA) rules in respect of OAC.

As Compass doesn't agree it has come to me to decide.

My provisional decision

I issued my provision decision on 21 February 2023; I explained the reasons why I was planning to uphold the complaint. I said:

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'm planning to uphold the complaint.

I'm surprised Compass has tried to argue that it was entitled to receive these ongoing fees from May 2016. I think it is clear that these fees didn't arise from any pre RDR business that had been arranged. They were adviser charges for ongoing services, as set out in the plan documents from Royal London. There's no evidence that any services were provided to Mr B by Compass, and he never agreed to its "Essential" service in any case.

The rules on OAC are clear and set out by the Financial Conduct Authority in the Conduct of Business (COBS) rules. These are:

"COBS 6.1A.22 R 06/04/2016 RP

A firm must not use an adviser charge which is structured to be payable by the retail client over a period of time unless (1) or (2) applies:

- 1. the adviser charge is in respect of an ongoing service for the provision of personal recommendations or related services and:*

(a) the firm has disclosed that service along with the adviser charge; and
(b) the retail client is provided with a right to cancel the ongoing service, which must be reasonable in all the circumstances, without penalty and without requiring the retail client to give any reason; or

2. the adviser charge relates to a retail investment product ... for which an instruction from the retail client for regular payments is in place and the firm has disclosed that no ongoing personal recommendations or service will be provided.”

To comply with these rules after it acquired the client bank of Westhill, I think Compass should have obtained Mr B's agreement about the services it would provide and what the charges would be for them. It didn't do this.

When it didn't receive a response to the Welcome Letter and questionnaire from Mr B I think Compass should have made further enquiries. If it couldn't obtain Mr B's agreement to ongoing charges, it should have told Royal London to stop paying them. But on its own evidence it didn't attempt to contact Mr B again until nearly two years later in March 2018, again without response. It made no further contact attempt until May 2020 when it did speak to Mr B but failed to formalise the situation then.

But in November 2021 Compass decided to remove itself as servicing agent with Royal London and the OAC was stopped. Contrary to the arguments it has made since there would be no reason for it to have done this at this time if there was an agreement in place with Mr B. So, I don't think the further arguments it has made to justify keeping the fees made are valid, so I'll only consider them briefly here.

That Mr B changed address is irrelevant as I think the responsibility here was with Compass. His phone number was unchanged, but Compass attempted just two calls in four years. And Mr B had updated his address with Royal London which was on copy correspondence provided to it. That Mr B may or may not have been employed by Westhill is also irrelevant.

Compass has also argued there's no evidence services were provided by Westhill, presumably as justification that it also received fees for providing no services. I don't think this is relevant as it should have obtained Mr B's agreement in any case. But, from the evidence available I think it more likely than not that Westhill was providing services to Mr B. This is demonstrated by the portfolio valuation report produced dated 15 December 2015 which it provided to him. That also means that the "Essential" service that Compass says Mr B's portfolio was "subject to" wasn't comparable to that provided by Westhill.

So, I don't think Compass has treated Mr B fairly or reasonably as it wasn't entitled to take the OAC. However, I think it is necessary to expand on the proposed method of compensation to ensure it is fair for both parties.

I asked Mr B for some further details. He confirmed that the plan is still in force and that he intends to take benefits from it once his complaint is resolved. Although he should note that he can take his benefits immediately if he wishes as it won't impact the compensation due to him. He also confirmed he will be a basic rate taxpayer after he takes the benefits.

Putting things right

My aim in awarding fair compensation is to put Mr B back into the position he would have been in, had it not been for Compass's error. Our investigator suggested that this be in the form of a refund of the charges with the addition of interest at 8% per year simple to date. Normally, our service would ask Compass to determine whether Mr B has suffered a loss by

calculating the notional value of the pension if the OAC charges hadn't been taken and subtracting the current value of the pension from this notional value. If the answer is negative, there's a gain and no redress is payable.

It's likely that calculating the notional value would be more complicated and time consuming than the alternative 8% per year simple interest method. In view of both Mr B's age and that he waiting to take benefits from his plan I think it's fair that this matter be resolved promptly. Adopting the simpler approach may assist in this and Mr B is happy with this method. The sums involved are relatively small and this simpler process may reduce costs for Compass compared to undertaking notional value calculations, which would also require a significant amount of information to be provided by Royal London, which may not be possible.

When awarding compensation for losses under pension plans it is necessary to reflect the taxation position of the pension, otherwise it's possible that too much compensation would be awarded, which wouldn't be fair to Compass. That wasn't mentioned in our investigators view, so I've set out how this should be dealt with below.

So, I think this is a fair way to approach the matter and if Compass agrees it should be possible to promptly resolve the complaint informally at this stage. But if it doesn't think this is a fair approach, I will direct it to undertake a notional loss calculation as outlined above.

At this stage I think the following is fair:

- Compass should calculate and pay to Mr B all the charges taken from his plan since May 2016, including interest at 8% per year simple from the date each charge was taken to the date payment is made to him.*
- As Mr B is above the age at which tax relievable pension contributions can be made and intends to take his benefits from his pension plan immediately, the compensation calculated above should be paid to him directly rather than into his pension plan.*
- As the payment is to be paid directly to Mr B it is fair that Compass make a notional reduction to it to allow for future income tax that would otherwise have been paid. As Mr B hasn't yet taken any tax-free cash from the plan, 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – which Mr B has advised will be 20%. So, making a notional reduction of 15% overall from the loss adequately reflects this. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr B won't be able to reclaim any of the reduction after compensation is paid.*
- If either Compass or Mr B dispute that this is a reasonable assumption, they must let us know as soon as possible so that the assumption can be clarified, and Mr B receives appropriate compensation. It won't be possible for us to amend this assumption once any final decision has been issued on the complaint.*
- Compass should provide Mr B with a clear and simple calculation showing how it arrived at the total figure.*

I asked both parties to send me any further information or comments they would like me to consider.

Response to provisional decision

Mr B queried the notional tax reduction of 15%. He said it wouldn't be fair if Compass didn't have to pay the full amount or alternatively it should pay the tax. But having discussed this with our investigator Mr B said he accepted my decision.

Compass said it didn't agree with my decision but would abide by it. And it queried the awarding of 8% per year simple to the OAC deducted. It said the OAC payments hadn't been deducted out of Mr B's bank account, so he hadn't been deprived of the use of the funds and it asked for the reasoning for this to be clarified. It did however agree that it would calculate Mr C's loss on this basis.

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've decided to uphold the complaint.

I don't think Compass was entitled to receive the OAC payments, so Mr B hasn't been treated fairly. I think the OAC deducted should be reimbursed and Mr B put back into the position he should have been in as closely as possible.

Compass has expressed reservations about the proposed redress including interest at 8% per year simple rather than being calculated on a notional value basis. In the circumstances of this complaint, I think this is a reasonable basis to calculate fair compensation as the sums involved are relatively small and it expedites resolution of Mr B complaint as he is waiting to take benefits from his plan.

Royal London has said it wouldn't be able to accept a further payment into Mr B's plan in view of his age, so Compass paying the compensation directly to him is the next best alternative. Mr B has expressed reservations about the tax adjustment, but this is necessary to avoid him being potentially overcompensated where redress is paid to him directly, which wouldn't be fair to Compass.

Putting things right

To put Mr B back in the position he should have been in:

- Compass should calculate and pay to Mr B all the charges taken from his plan since May 2016, including interest at 8% per year simple from the date each charge was taken to the date payment is made to him.
- As Mr B is above the age at which tax relievable pension contributions can be made and intends to take his benefits from his pension plan immediately, the compensation calculated above should be paid to him directly rather than into his pension plan.
- As the payment is to be paid directly to Mr B it is fair that Compass make a notional reduction to it to allow for future income tax that would otherwise have been paid. As Mr B hasn't yet taken any tax-free cash from the plan, 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – which Mr B has advised will be 20%. So, making a notional reduction of 15% overall from the loss adequately reflects this. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr B won't be able to reclaim any of the reduction after compensation is paid.

- Compass should provide Mr B with a clear and simple calculation showing how it arrived at the total figure.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint against Compass Wealth Management Consultants Limited.

I direct Compass Wealth Management Consultants Limited to calculate and pay the redress as set out above to Mr B and provide him with a simple calculation of how it arrived at the total figure.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 24 May 2023.

Nigel Bracken
Ombudsman