

The complaint

Mr B's complaint is that LEBC Group Limited didn't provide the periodic reviews he was entitled to under its Client Servicing Agreement. Mr B would like a refund of the ongoing advice fees that he paid for that service.

What happened

I issued my provisional decision on this complaint on 15 November 2022. The background and circumstances to the complaint and the reasons why I thought it should be upheld were set out in that decision. I have copied the relevant part of the decision below and it forms part of this final decision.

Copy of Provisional Decision

Mr B's complaint was considered by one of our investigators. He sent his assessment of the it to both parties in April 2022. The background and circumstances to the complaint and the reasons why the investigator recommended that it should be upheld were set out in that assessment. In brief, a Client Servicing Agreement was signed by both parties in May 2019. This agreement set out LEBC Group Limited's (LEBC) ongoing portfolio governance review service. An ongoing fee of 0.5%pa was payable for it. The fee was taken directly from the pension plan.

As part of the service LEBC would carry out a portfolio governance review once a year. The agreement said as part of the periodic review LEBC would "Contact you to arrange a review discussion".

Mr B contacted LEBC in June 2020 saying he'd expected a review to have been arranged. An LEBC adviser got in touch and the first annual review was completed on 24 June 2020. A full fact find was carried out and a review letter sent to Mr B. The adviser also told Mr B that he probably didn't need to retain the services of an adviser in his particular circumstances.

LEBC again didn't contact Mr B to arrange a review in the following twelve-month period. Mr B complained to LEBC about the matter in August 2021. LEBC contacted Mr B to offer a review, albeit acknowledged that it would be late.

LEBC didn't uphold Mr B's complaint. It said this was because it had offered a review even though it was later than agreed. Mr B referred his complaint to us.

The investigator thought that Mr B's complaint should be upheld. He said Mr B had said he wanted a review service because of all the market uncertainty due to the impact of the Covid-19 pandemic. He thought retaining the advisory service was in his best interests.

The investigator said the purpose of the annual review was set out clearly in the Client Servicing Agreement; not only did LEBC clearly state they would contact Mr B to arrange a review, but that the review would provide him with an update on his investments, assess his circumstances and ensure that the governance still met his needs, providing recommendations where appropriate.

The investigator thought the Client Service Agreement was clear about what would happen each year. He said the signature page stated in bold that "...by signing this agreement below you are confirming to us that you agree to all the terms and conditions in this agreement." The investigator said it followed that LEBC was making a commitment to Mr B as its client, that in return for paying his ongoing advice fee they were agreeing to fulfil the terms and conditions in the agreement.

The investigator said the agreement between both parties was that in return for a 0.5%pa ongoing advice fee, LEBC would contact Mr B to arrange his annual review and carry out agreed actions as set out in the Client Service Agreement. He said without the contact to arrange a review, the agreed actions in the review and any outputs could not happen, so Mr B had been paying for a service that he didn't receive. He said although LEBC contacted Mr B in October 2021 this was only because he had contacted LEBC and raised the issue with it. He said he didn't think a review would have been completed had he not done so, and it was not part of the agreement for Mr B to have to arrange this himself.

The investigator said taking all this into account, he thought LEBC should refund Mr B the ongoing advice fee from the date of the annual review that was actually carried out on 2 June 2020, up until when Mr B terminated the agreement with LEBC.

Mr B agreed with the investigator's findings. LEBC did not.

LEBC said, in summary, that although Mr B had had to contact it himself to arrange the review in 2021, the adviser had previously told him that an annual review was probably not necessary due to the ongoing suitability of his investment. It said Mr B was also aware that he could cancel the ongoing adviser charge at any time, but he chose to continue with them.

LEBC said it was unfortunate that both of the advisers that had been dealing with Mr B had left its employment. And that it was also managing the ongoing challenges of the pandemic. It said it offered a review as soon as it was able to offer one in 2021, and Mr B hadn't been financially disadvantaged as a result of the slight delay. It therefore didn't think it was appropriate to refund the ongoing advice charge in the circumstances.

The investigator responded to say that although one of LEBC's advisers had told Mr B a review 'was probably not necessary', Mr B had said he wanted these to continue. He said Mr B's needs and circumstances could change in future, as well as the investment performance, which were key reasons for advisory firms recommending annual reviews. The investigator said the key point was that LEBC continued to take a fee without providing the services agreed upon, so he thought the fee should be refunded.

What I've provisionally 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 come to the same conclusion as the investigator that the complaint should be upheld. However I think fair compensation should be calculated slightly differently.

LEBC carried out two reviews for Mr B – albeit after he chased about them. Mr B has confirmed the second review was on 14 October 2021. And that the ongoing service charge was stopped following that meeting.

Mr B has also explained that he felt he was in an impossible position when LEBC offered him the second review in October 2021 (following his complaint to it). He was waiting the

outcome of his complaint, and the charges related to the review had already been paid.

I do understand Mr B's position. And I accept that part of the service was for LEBC to contact Mr B to arrange the review. It didn't do that in the relevant period, and Mr B had to prompt it. However, as Mr B has acknowledged, the second review was carried out - albeit late. I think the main part of the service being paid for was the review. And I don't think the fact LEBC carried out the review can be ignored.

LEBC should have provided two annual reviews within the first two-year period. I think it would be reasonable to conclude that failing to contact Mr B in the first year be put down to a single oversight. But I don't think it's unreasonable for Mr B to have lost confidence in the firm when it happened the second time – this suggests a pattern of behaviour.

So overall, I don't think LEBC provided a timely and efficient service. Therefore I think Mr B's complaint should succeed.

Mr B cancelled the service after the second review had been completed given he wasn't satisfied with the level of service offered. I accept that Mr B could have cancelled the service at any time, but I think he acted reasonably when waiting for the firm to carry out the second review as he had paid for that service. Given that LEBC carried out two reviews which should have been provided within a two year period and which Mr B had paid for, I think it's fair that LEBC should refund Mr B for that period of time he was paying for the review service over and above the two years.

My provisional decision

Accordingly, my provisional decision is that I uphold Mr B's complaint.

I intend to order that LEBC Group Limited calculates and pays compensation to Mr B on the following basis:

The agreement was for LEBC Group Limited to provide annual reviews. I think the first annual review should reasonably have been held within a year of the transfer value being received by the pension provider.

LEBC should therefore calculate the total number of days that Mr B was paying for the review service from the date of receipt of the transfer value by the provider, to the date Mr B stopped the ongoing review service. It should then calculate the total fees that have been paid for the ongoing service over that period.

LEBC should refund those fees, on a proportionate basis i.e. calculate the total and then take the relevant percentage, over and above two years' worth of fees. Interest at the rate of 8% simple should be added to the amount to be refunded from the date the service was stopped until settlement date.

The refund payment should if possible be paid into Mr B's pension and allow for the effect of charges and any available tax relief. However it shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr B as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid.

Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement. I am assuming that Mr B will

be a basic rate taxpayer in retirement. So making a notional deduction of 15% overall from the loss adequately reflects this (20% income tax on 75% of the fund). If either party disagrees with the assumption that Mr B will be a basic rate taxpayer in retirement, they should say so in responding to this provisional decision.

LEBC Group Limited should also pay Mr B £200 for the distress and inconvenience caused to him by the matter.

Mr B responded to say that he thought the wording of my decision saying “*However, as Mr B has acknowledged, the second review was carried out – albeit late*” read as though he was “*Ok with a review taking place some 5 months late*”. He said this wasn’t the case.

LEBC responded to say that it didn’t agree with my provisional decision. It said it didn’t think the adviser fees should be refunded or any compensation be added in respect of distress and inconvenience. It said the challenges caused by the pandemic and changes to staffing meant it became more difficult to offer reviews during the period in question. It said Mr B did have two reviews. And his portfolio continued to be managed effectively during the period. LEBC also said it had informed Mr B that there was no actual requirement for another review unless his circumstances changed.

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 seen no reason to depart from my provisional decision that the complaint should be upheld.

I accept that the pandemic was unique, and may have caused all sorts of difficulties. That’s understandable. However, ultimately, Mr B was paying for a service that he thought was worth having for his circumstances. And that service wasn’t delivered in a timely and efficient manner in accordance with what had been agreed. LEBC said it carried out two reviews. Effectively I’ve asked it to refund Mr B for that period of time he was paying for the review service over and above the two years. I think that is fair in the particular circumstances.

So taking all the above into account, I still think the complaint should be upheld, and what I said I intended to award in my provisional decision is fair and reasonable in the circumstances.

My final decision

For the reasons set out in my provisional decision and above, my final decision is that I uphold Mr B’s complaint.

LEBC Group Limited should calculate and pay compensation to Mr B as I have outlined above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 23 December 2022.

David Ashley
Ombudsman