DRN-4073349

Financial Ombudsman Service

The complaint

Mr and Mrs S complain that Affinity Financial Awareness Limited ("Affinity") didn't provide them with agreed three yearly reviews of their investments. They also say they received poor service when they complained. Although Affinity refunded its on-going fees, Mr and Mrs S say it's failed to take into account that they could've switched to an enhanced discretionary service at an earlier date if the reviews had taken place, and they want to be appropriately compensated.

What happened

Mr and Mrs S became clients of Affinity in 2008. In 2013 they met with an advisor to review and top up their investments. As part of that review, Mr and Mrs S agreed to an on-going service fee of 0.5%. In 2022 they complained they hadn't received the reviews which should have taken place in 2016 and 2019.

Affinity said Mr and Mrs S had the option of a review every three years, but that they didn't contact Affinity until 2022 to say they wanted a review. Mr and Mrs S said the report issued in 2013 said, "*we will invite you to have a review of your holdings and risk approach every 3 years*", so Affinity should have sent them an invite.

Following a further investigation, Affinity maintained that it didn't offer proactive reviews. But it said it appreciated the 2013 report worded things differently and so it offered to refund all the fees Mr and Mrs S had paid for its standard service since 2016.

Our investigator didn't recommend that the complaint should be upheld. She said Mr and Mrs S had received the other aspects of the standard service, such as phone access to an advisor and newsletters, and they must have been aware they hadn't received a review in 2016 and 2019 and could have contacted Affinity if they wanted one. In the circumstances, she thought the refund of fees was fair and reasonable.

Mr and Mrs S didn't agree. They said, in summary, that:

- They received various documents from Affinity saying a review appointment would be arranged.
- They've been in contact with their original advisor and he's confirmed they should have been proactively contacted, but that he'd left Affinity's employment by the time the first review was due.
- The 2013 report says, "*we will invite you to have a review of your holdings and risk approach every 3 years*". So it's wrong for Affinity to say it didn't offer proactive reviews.
- It's wrong to say that the fee they paid wasn't charged solely for the reviews. The other listed services didn't attract an ongoing fee.
- The investigator failed to make any comment about the way their complaint had been handled by Affinity. Affinity took too long to respond and made mistakes.

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.

I understand Mr and Mrs S's strength of feeling on this matter. Their submissions are detailed and substantial and they have raised a number of points. I have fully considered everything they have told us, but I am not going to respond to every point one of the parties has made or to answer every question raised. That isn't because I haven't taken into account what Mr and Mrs S have said, but because my role is to focus on what I consider material to the outcome of the complaint.

I find the 2013 report was reasonably clear. It said:

"You have asked us to provide you with an on-going review"

"We will invite you to have a review of your holdings and risk approach every three years."

"Option of a review meeting with your adviser and reconfirmation of your investment risk attitude"

Based on this, I think Mr and Mrs S reasonably expected to be contacted by Affinity every three years to be offered a review. I don't think use of the word "*option*" meant it was Mr and Mrs S's responsibility to ask for a review. Rather that when they were offered one, they didn't have to take up that offer.

I've seen evidence to show that Affinity corresponded with Mr and Mrs S and said it would be contacting them to arrange a review. For example, in its July 2016 letter it said:

"In due course, we will contact you to arrange a review appointment."

And in its March 2020 "Wealth matters" newsletter, it said:

"We will be contacting you over the coming weeks in order to discuss these important issues."

But Mr and Mrs S never received specific contact from Affinity about arranging a review meeting. I do think Mr and Mrs S could reasonably have contacted Affinity earlier than they did if they wanted a meeting. They provided us with the above communications to highlight that Affinity said it was going to contact them. So, if they were concerned that they hadn't heard from Affinity and they wanted a review, they could reasonably have contacted Affinity to arrange a meeting. But that doesn't change my conclusion that Affinity made a mistake in not contacting them to specifically offer a review in 2016 and 2019.

Mr and Mrs S have suggested they "slipped through the net" because their advisor left Affinity in 2016. Whereas Affinity maintains it doesn't proactively offer reviews. I don't find I need to make a decision on the reason why Affinity failed to offer Mr and Mrs S a review, as I don't find it makes a difference to the overall outcome of the complaint. The key point here is that Affinity should have offered Mr and Mrs S a review in 2016 and 2019 and, for whatever reason, failed to do so.

Having found Affinity made a mistake, my aim is to put Mr and Mrs S back in the position they'd be in now if the mistake hadn't been made.

Firstly, they were paying for a service which they didn't receive, and I would expect the associated fees to be refunded.

Mr and Mrs S agreed to pay 0.5% of the funds under management each year in return for Affinity's "standard service". Despite how Mr and Mrs S have interpreted this, I find the 0.5% covered not only a three yearly review, but also the other services listed under the standard service, namely:

"*Telephone access to an adviser, Affinity portfolio administration hotline, Portfolio valuation statement on request, Adviser assistance in arranging income or capital withdrawals, E-mailed client newsletter and budget summary update, Automatic portfolio rebalancing in line with your agreed attitude to risk and underlying asset allocation*"

It's not clear how much of the 0.5% charge was specifically for the cost of the three yearly review, but Affinity told us it refunded the charge in full from 2016. In doing so, I find it has treated Mr and Mrs S fairly.

Secondly, I need to decide whether Mr and Mrs S would be in a different position now had they been offered reviews in 2016 and 2019. I can't say with certainty what they would have done. It's possible they may have declined the reviews; after all, they didn't contact Affinity to arrange one themselves, so it doesn't seem they were too concerned about having a review at the time. But, assuming two reviews took place, it's possible the advisor may have recommended changes and it's possible Mr and Mrs S may have agreed to those changes. And that may have made a difference to the value of their investments now.

As the evidence here is inconclusive, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances. I think it's more likely than not that Mr and Mrs S would be in the same position as they are now. I say that because Mr and Mrs S's investment objectives and attitude to risk didn't change over this period. I can see from the review that was carried out in 2022 that their investment objective was capital growth and they were assessed as having a "balanced" attitude to risk. This was the same as in 2013. So their investments during this period remained suitable for them. In 2022 Affinity recommended, and Mr and Mrs S agreed, to move from an advisory to a discretionary managed arrangement. And, had they had a review at an earlier date, it's possible this may have been recommended at one of those review meetings. But, because their existing investments and advisory arrangement wasn't unsuitable for them, I can't say they have been disadvantaged.

Mr and Mrs S also complain about the way Affinity handled their complaint. I'm satisfied that Affinity sent Mr and Mrs S a final response to their complaint within eight weeks. But it didn't answer or acknowledge Mr and Mrs S's follow up letter, which it received on 27 October 2022, until 14 February 2023. It did email Mr and Mrs S on two occasions during this period to reassure them that their complaint was still being looked into. And it had provided them with this service's details, so they could have contacted us if they remained unhappy with Affinity's final response and were concerned about the time Affinity was taking to reply to their most recent letter. Whilst Affinity took a long time to respond in full to Mr and Mrs S's October letter, and it made a mistake in its response, I'm satisfied that it apologised. Whilst this delay will have caused Mr and Mrs S some distress and inconvenience, I make no award. That's because the refund of fees was more generous than this service would have awarded – because Mr and Mrs S received all of the services covered by the fee with the exception of the three yearly reviews. So overall I find they have been fairly compensated.

My final decision

For the reasons I’ve explained, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S and Mrs S to accept or reject my decision before 16 April 2024.

Elizabeth Dawes
Ombudsman