

The complaint

Mr C complains that Scrutton Bland Financial Services Limited (Scrutton Bland) didn't provide the ongoing advice service Mr C was paying for. Mr C says if his annual review had taken place when it should've done he'd have been advised to mitigate his exposure to fixed interest investments. He also says that substantive advice about his pension asset weighting wasn't provided, despite written requests.

What happened

The (second) investigator has issued a very detailed view, setting out the background to the complaint and his findings. I'm not going to set everything out again here. But, in summary, Mr C's service agreement with Scrutton Bland included an annual review, minimum twice yearly valuations and additional meetings by agreement. Annual reviews were held in May 2019, March 2020 and April 2021. There was also a meeting in November 2021.

Mr C's concerns centre on what happened in 2022 following Scrutton Bland's acquisition and merger which Mr C had been told about at the November 2021 meeting. Mr C's existing adviser left Scrutton Bland in February 2022 and a new adviser was assigned to Mr C in March 2022. Mr C requested a meeting with the new adviser which was arranged for 28 April 2022. Mr C subsequently cancelled the meeting – he was going to be travelling and he wanted to limit the possibility of contracting Covid which would've meant cancelling his travel plans. When Mr C returned an annual review pack had been issued (on 19 May 2022). It included a fact find which Mr C completed and returned to Scrutton Bland. There was an email exchange between Mr C and Scrutton Bland on 26 May 2022 to clarify Mr C's income.

There was no further contact between Mr C and Scrutton Bland until Mr C complained to Scrutton Bland on 1 September 2022. Mr C said, other than an introductory conversation and a follow up letter on 22 March 2022, there'd been no material contact and no service or advice had been given. He said it was nearly ten months since his half year review had been undertaken by the previous adviser and his full year review was now four months overdue which was unsatisfactory, particularly as the markets remained difficult and volatile, and his pension fund had fallen in value and charges continued to be deducted from services which hadn't been provided.

There were some exchanges about Mr C having cancelled the meeting on 28 April 2022 and if things had been followed up after Mr C had returned the fact find in May 2022. Mr C met with his new adviser on 26 September 2022. Switching to a Discretionary Fund Management (DFM) arrangement was discussed. New risk profiling was undertaken. Mr C was currently assessed as risk level 3 but risk level 4 would have less bonds/gilts reliance. There was also some discussion about switching to cash but the adviser said he couldn't recommend that. The adviser said the risk profiles supported a move to risk level 4 or 5. Mr C wasn't comfortable with that, given the higher equities element.

Scrutton Bland issued its final response to Mr C's complaint on 4 October 2022, not upholding the complaint. It said a review meeting had been arranged for 28 April 2022 which Mr C had cancelled. Scrutton Bland had tried to contact Mr C but the review would've taken place if Mr C hadn't cancelled it. Mr C didn't accept what Scrutton Bland had said and

responded the following day. There were further exchanges. Mr C also met further with the adviser on 10 October 2022. The next day, Mr C emailed his adviser instructing that his entire portfolio be switched to cash. Mr C told the adviser on 17 October 2022 that he was terminating his relationship with Scrutton Bland.

I've referred to events after the final response letter was issued largely for the sake of completeness because, as the investigator has explained, anything after that – such as what was said about switching to cash – is outside the scope of the current complaint.

The investigator's main findings were:

- Prior to 2022 and the merger there was a set format for the annual review – a fact find would be issued which Mr C would check and amend if necessary and return to Scrutton Bland. The annual review meeting would then be arranged.
- After Mr C received the new adviser's introductory letter Mr C got in touch and requested a meeting. Mr C intended that to be an introductory meeting and to discuss his concerns about the departure of a number of senior personnel. Mr C's new adviser was planning to carry out Mr C's annual review at the meeting. It wasn't fair for Scrutton Bland to say that was the annual review meeting if Mr C hadn't been told that beforehand.
- Mr C accepted he'd cancelled the meeting. Scrutton Bland had prepared documentation on the basis the meeting was an annual review meeting but that didn't seem to have been agreed between Mr C and Scrutton Bland and the format that had previously been adopted wasn't followed. A fact find was later issued and returned by Mr C. It was reasonable for him to have expected the same service as before – that an annual review would then be arranged.
- Scrutton Bland had emailed Mr C to confirm his income. Scrutton Bland should've asked Mr C then if he was ready to have the annual review. And, if Scrutton Bland had referred to rearranging it, Mr C would've confirmed he was unaware it had been arranged in the first place but a review would've been arranged anyway. But it was unfair for Scrutton Bland to say Mr C cancelled his annual review and should've got back in touch to rearrange. It seemed there were issues with the merger that were being ironed out and Mr C's service was affected. Mr C had paid for a service he didn't receive. Scrutton Bland should refund all ongoing adviser charges from February 2022 to when Mr C's relationship with Scrutton Bland ceased.
- Scrutton Bland didn't have a discretionary mandate. So changes in asset class and holdings had to be advised. But Scrutton Bland did undertake portfolio rebalancing. Scrutton Bland had said Mr C's annual review was due on or around 12 February 2022. If the annual review had taken place then, and allowing ten working days, it was fair to conclude that rebalancing would've taken place around 25 February 2022. Scrutton Bland should calculate if Mr C had suffered any financial loss by the portfolio not having been rebalanced then. A distress and inconvenience payment should also be made.
- As to whether any changes to Mr C's holdings would've been recommended had the annual review been undertaken earlier, the April 2021 annual review meeting didn't recommend any changes. Mr C's notes referred to the need to watch inflationary pressures and a possible switch out of bonds/fixed returns. They were reasonable matters for consideration but no formal recommendation was made and Mr C's attitude to risk (ATR) remained as 3 out of 10. Mr C's notes of the call in November 2021 said no further action but '*with a watchful eye on inflation*'.
- There didn't appear to be any change to Mr C's ATR, objectives or needs until September 2022 when Mr C's ATR was assessed as 5 out of 10. There was no reason to recommend changes prior to then. A DFM arrangement had been mentioned but Mr C wasn't comfortable with the increased costs.

- Scrutton Bland didn't advise moving to cash. Mr C could've proceeded against advice. It seems that's what had happened. Scrutton Bland had facilitated Mr C's instruction. Not proceeding with the same asset allocation was against Scrutton Bland's advice – Scrutton Bland needed to conclude changes were in line with Mr C's ATR, needs and objectives. There was no evidence any of that had altered considerably from the April 2021 review until the September 2022 meeting.

Mr C accepted the investigator's finding that Scrutton Bland had failed to provide the ongoing service he was paying for and the recommendation that all adviser fees should be reimbursed, plus a payment of £200 for the trouble and upset caused. But Mr C didn't think the rebalancing exercise would put him back in the position he ought to have been in. Essentially Mr C's point was that changes to his portfolio would've been recommended to mitigate his exposure to bonds and gilts which advice Mr C would've accepted. Mr C referred to the meetings in April and November 2021 which highlighted the need to monitor future inflationary pressure giving rise to a possible need to switch out of bonds/fixed returns. By Q1 in 2022 it was evident that inflationary pressure was set to increase further.

The investigator had said Mr C's annual review should've been undertaken in February 2022. And that a significant move away from the original asset allocation would've required a recommendation based on Mr C's needs, objectives and ATR. In September 2022 the new adviser, under an obligation to *'Know Your Client'*, undertook an ATR assessment and based on that recommended a change in risk profile to 5 (from 3). If the annual review had been done earlier, the same exercise would've been undertaken and the same recommendation made. So redress should be based on a move away from the original asset allocation having been recommended in February 2022. But Mr C didn't think it would be fair to adopt risk profile 5 and suggested 4 should be used – and that was the result of the risk profiling undertaken by his new advisers and adopted for his investments.

We shared Mr C's comments with Scrutton Bland. It accepted that communication appeared to be at the root of the issue regarding the meeting booked for 28 April 2022 which Mr C had cancelled. If that meeting had gone ahead, there'd have been one of two outcomes: either an introductory meeting with a subsequent annual review meeting booked; or the annual review would've been completed. If the portfolio had been rebalanced in April 2022 in line with Mr C's ATR (level 3), there'd unlikely have been any significant change as the portfolio was already underweight in cash, gilts and bonds.

Scrutton Bland had issued the annual review pack in May 2022 which historically had instigated the annual review. Scrutton Bland could've contacted Mr C to rearrange the annual review but, as Mr C had said he'd get in contact when he was ready to reschedule, it was left up to Mr C. Scrutton Bland added that it was aware of Mrs C's recent diagnosis and so was respecting Mr C's wishes in not contacting him. Mr C had previously got in contact if he'd wanted to amend his portfolio asset allocation, such as switching significant sums to cash. Prior to the meeting in September 2022 he didn't raise any concerns about his portfolio. During that meeting Mr C completed a new ATR questionnaire resulting in a change in ATR from 3 to 5 and the adviser made recommendations accordingly.

The investigator considered the further submissions before writing to Mr C and Scrutton Bland to say that his view hadn't changed and addressing some of the points made. The investigator said, as neither party had accepted his view, the matter would be referred to an ombudsman and asked for any further final comments. He shared Scrutton Bland's comments with Mr C.

Mr C was very unhappy when he saw what Scrutton Bland had said about not wanting to contact Mr C given his wife's diagnosis. Mr C said Scrutton Bland had tried to use that as an excuse for not contacting Mr C between May and September 2022 which was upsetting and

objectionable. Mr C said his wife wasn't diagnosed until mid/late June 2022. There was no contact between Mr C and Scrutton Bland between 26 May 2022 until Mr C complained on 1 September 2022. So Scrutton Bland was unaware of Mrs C's illness. Mr C wanted a full and genuine written apology to be made personally to his wife.

Mr C made some other comments which, although I'm not setting them out here, I've taken into account in reaching my decision.

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 agree with the findings reached by the investigator and the reasons he gave why he was upholding the complaint. I don't have much to add to what the investigator has already said and which I've summarised above.

The complaint centres on the fact that Mr C's 2022 annual review didn't take place until late September 2022. The investigator carefully examined what happened after Mr C's adviser had left and what Mr C would reasonably have understood to be the purpose of the meeting scheduled for 28 April 2022. I agree there was no reason why Mr C would or ought to have known that the new adviser intended to undertake Mr C's annual review at that meeting. So Mr C wouldn't have known that, in cancelling the meeting – which had been arranged at his request – he was also cancelling his annual review.

Particularly as, after Mr C had cancelled the meeting, he later received an annual review pack including a fact find which would normally signal that the annual review was to be scheduled. So when he returned the fact find Mr C would've thought the annual review would be arranged. And, as Mr C didn't know he'd cancelled what was to be the annual review meeting, I don't see the onus was on Mr C to rearrange it. I also agree, if Scrutton Bland had asked Mr C if he was ready to rearrange when clarification of his income position was sought, Mr C would've confirmed he was and so the annual review would've been arranged. As the investigator said, both Mr C and Scrutton Bland would've been happy with that and things wouldn't have developed as they did.

But that didn't happen and, as the situation didn't remedy itself, I need to consider what should've happened. Scrutton Bland has confirmed that Mr C's annual review falls on or around 12 February each year. Scrutton Bland has argued that in previous years it was later and it seems that was Mr C's expectation too – he's said he was expecting the annual review to take place in May 2022, six months after the November 2021 meeting.

But, as Scrutton Bland has confirmed that Mr C's annual review was due in mid February, I think it's correct to take that as the starting point in looking at what Mr C's position would've been if Scrutton Bland had acted as it should've done. It seems that the original adviser's departure (whether brought about in conjunction with the merger or otherwise) coincided with when Mr C's annual review should've taken place and so impacted on the service Mr C received. If that service had been seamless, Mr C's annual review would've taken place in mid February 2022.

I agree with the investigator that Scrutton Bland should reimburse Mr C for all ongoing adviser charges from February 2022 to when Scrutton Bland ceased to be Mr C's advisers – on the basis that Mr C was paying for a service he wasn't receiving. And I agree that Mr C's portfolio should've been rebalanced following the annual review and that the ten day window the investigator suggested for that to have been done is reasonable. I also agree the calculation should be up until the point when Mr C's portfolio was disinvested.

Mr C accepts the investigator's findings on those issues. But Mr C's position is, if his annual review had taken place earlier, he should've been advised, following through on the discussions in April and November 2021, to limit his exposure to bonds/gilts given the continuing inflationary pressures. Mr C refers to the annual review and the new assessment of his ATR taking place around April/May 2022 or, at the latest, August 2022. But, as I've said, my starting point is that the annual review should've happened in February 2022. So that's the date I'm looking at in deciding if changes would've resulted had the annual review been done then.

In a situation such as this, where what would've have happened if things had been done correctly isn't agreed, we reach a decision on the balance of probabilities – that is what we consider is likely to have happened, taking into account the available evidence and the wider surrounding circumstances.

It can be very difficult deciding, after the event and without relying on the benefit of hindsight, whether different investment decisions would've been made. But, from what I've seen, I don't think it necessarily follows that Mr C's position in February 2022 would've been the same as it was some seven months later. I agree with the investigator that, if the annual review had taken place in February 2022, which I note was only some three months after the meeting in November 2021, the advice would've likely remained the same – that Mr C should continue with his existing, long term, investment strategy.

I note what Mr C says about his new adviser needing to '*Know Your Client*' and what Scrutton Bland has said about the responsibility of an adviser to reassess a client's circumstances and requirements, attitude to risk and capacity for loss on a regular basis. And that, given the change in adviser, it was appropriate for the new adviser to ask Mr C to complete a new ATR questionnaire. But the issue is whether there's sufficient evidence to say Mr C's position in September 2022 was broadly the same as it would've been some seven months earlier and, in particular, that a change to his ATR would've been recorded in February 2022, leading to new recommendations.

Like the investigator, I think that, by September 2022, Mr C's position had changed. From the portfolio values he's quoted, it seems that by then his fund value had fallen. Although there had been some fluctuations, between April and August 2022, the value had remained relatively stable at somewhere above £1,600,000. But by September 2022 the value was just over £1,500,000. I think that may have led Mr C to think further about his investment strategy going forwards and prompted a move towards trying to generate more growth. I note that even then there was some further debate about exactly what risk level Mr C should adopt and whether he should switch to cash, a move which he later made, against Scrutton Bland's advice. That may be the subject of another complaint so I'm not going to comment here other than to say that, even once the annual review had taken place in September 2022, Mr C's position appears to have been somewhat undecided.

All in all I think there's insufficient evidence for me to say changes to Mr C's portfolio should've been recommended in February 2022 had the annual review taken place then. I'd perhaps add that, despite my finding that the onus was on Scrutton Bland to arrange Mr C's annual review and Scrutton Bland failed to do so, it was open to Mr C to get in contact with Scrutton Bland if he considered that anything needed to be discussed urgently. In saying that I'm very mindful of Mrs C's diagnosis in mid/late June 2022 but Mr C could've got in contact before then if there was anything of particular concern.

That brings me to Mr C's point about his wife's illness. I can understand this is a very sensitive issue. And that Mr C and his wife would rightly feel very aggrieved if there was any suggestion that Scrutton Bland is now saying it didn't get in touch because it was aware that

Mrs C was unwell if Scrutton Bland didn't or couldn't have known that at the time. Mr C has explained that his wife wasn't diagnosed until mid/late June 2022. I think he'll have been acutely aware of the timing and so it would then follow, as there seems to have been no contact between 26 May and 1 September 2022, that Scrutton Bland couldn't have known, during that period, that Mrs C was unwell. But I recognise that Scrutton Bland's comment was made sometime after the event. It can sometimes be difficult to pinpoint exactly when, what is by then known, the particular knowledge was first acquired. So there may have been some confusion on Scrutton Bland's part.

In theory, I can direct a business to take steps such as apologising. But I'm often reluctant to do that, particularly where, as here, a genuine apology is sought. In my view, unless an apology is freely given, it may simply be a forced token gesture and in effect meaningless.

I think Scrutton Bland should re examine its records carefully and if it now accepts that it was unaware until a later date that Mrs C was unwell, write to Mrs C confirming that and apologising for any suggestion that any failure to contact Mr C between 26 May 2022 and 1 September 2022 had anything to do with Mrs C's health.

All in all I agree with the investigator's findings and the redress he suggested and which I've adopted below. I've add some directions to clarify how the redress should actually be paid.

Putting things right

To compensate Mr C fairly Scrutton Bland Financial Services Limited should:

- Reimburse adviser fees from February 2022 to when Scrutton Bland Financial Services Limited ceased to be Mr C's advisers.
- Calculate the notional value of Mr C's portfolio if it was rebalanced on 25 February 2022 and continued to the date of disinvestment. That's the *fair* value which should then be compared with the *actual* value of Mr C's portfolio at the date of disinvestment. If the *fair* value is greater than the *actual* value, there's a loss and compensation is payable. If the *actual* value is greater than the *fair* value, no compensation is payable.
- Any loss should be paid into Mr C's pension plan to increase its value by the amount of the compensation. The payment should allow for the effect of charges and any available tax relief. Compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.
- If compensation can't be paid into Mr C's pension plan, it should be paid direct to him. But had it been possible to pay into the plan, it would've provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr C won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr C's current marginal rate of tax. For example, if Mr C is a basic rate tax payer, the reduction would equal 20%. However if he'd have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- Pay Mr C £200 for the trouble and upset caused.

My final decision

I uphold the complaint. Scrutton Bland Financial Services Limited must redress Mr C as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or

reject my decision before 11 August 2023.

Lesley Stead
Ombudsman