

## **The complaint**

Mr O complains that Truscott Wealth Management Limited (“TWM”) has received fees from his pension investments, that he hadn’t agreed to pay, for ongoing advice.

## **What happened**

Mr O held defined benefits in an occupational pension scheme (“OPS”). He also held pension savings in another defined contribution OPS. In 2022 he started to consider transferring those benefits to a personal pension plan, and engaged a financial advisor (not TWM) to provide him with the necessary advice. He received advice from that financial advisor in 2021 and, as a result, informed the OPS trustees that he wished to transfer his pension benefits. He held a guaranteed cash equivalent transfer value (“CETV”) that expired in November 2021, but since his acceptance of the CETV was received before the deadline, the trustees allowed a further period of three months for the transfer to be completed.

In February 2022, as the transfer deadline was approaching, Mr O became dissatisfied with the fee structure being proposed by his financial advisor, both in terms of the initial advice fee, and the penalties he would need to pay if he later moved his pension investments to another provider. So he engaged TWM to assist with the transfer instead.

The timescales for TWM to complete its work on Mr O’s transfer were compressed. And it seems that Mr O wasn’t immediately able to move his pension savings into a scheme of his choosing. But the transfer was completed before the OPS deadline. Mr O is not complaining about the work TWM did in completing the transfer of his pension savings.

TWM firstly provided Mr O with some abridged advice. In line with the regulator’s expectations, Mr O was then provided with full advice about the transfer before it could proceed. When Mr O met with TWM he agreed to pay a one-off fee of £25,000 for the full advice and assistance in transferring his pension savings. And TWM says that Mr O also agreed to pay an annual fee (charged in monthly instalments) of 0.5% of the value of his pension savings for its ongoing advice and support. It is that ongoing advice charge that is the subject of this complaint – Mr O says that he didn’t give his agreement for the provision of that service.

TWM didn’t agree with Mr O’s complaint. But, as a gesture of goodwill it offered to refund that month’s charge that had only recently been collected. I understand that refund hasn’t been made, following Mr O’s decision to bring his complaint to us.

Mr O’s complaint has been assessed by one of our investigators. He didn’t think that the ongoing advice service had been sufficiently discussed with Mr O, or that he had agreed to pay the charges. So he thought that the complaint should be upheld and asked TWM to put things right.

TWM didn’t agree with that assessment. So, as the complaint hasn’t been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr O accepts my decision it is legally binding on both parties.

## 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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr O and by TWM. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority ("FCA"). Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

Our investigator has set out the regulator's expectations for when a consumer is being charged an ongoing fee for advice, or servicing, of their investments. But I think it worth repeating those expectations, set out in factsheet 10 for investment advisers, here. In that factsheet, in a section headed Ongoing adviser charges the FCA said;

*Ongoing charges should only be levied where a consumer is paying for ongoing service, such as a performance review of their investments, or where the product is a regular payment one. If you are providing an ongoing service, you should clearly confirm the details of the ongoing service, any associated charges and how the client can cancel it. This can be written or orally disclosed.*

*You must ensure you have robust systems and controls in place to make sure your clients receive the ongoing service you have committed to.*

So I think those expectations set out clearly a number of matters that TWM should have discussed with Mr O as part of any agreement for ongoing charges to be collected from his pension investments. In particular I think TWM needs to be able to provide details of any description it gave to Mr O of the ongoing services it would offer. And also to show that Mr O accepted that service and agreed to pay the associated charges.

There is not a significant amount of documentation around the ongoing service that TWM offered to Mr O. I accept that TWM says that the service was discussed verbally with Mr O on a number of occasions, although Mr O says he doesn't recall any such discussions. But, without a transcript or recording of those discussions, it is very difficult for me to conclude whether those conversations took place, or if they did what exactly was discussed. So to a large extent I need to rely on the documentation that was produced at the time.

When Mr O first engaged TWM he was asked to sign a fee agreement document. The copy that has been provided to us by both parties shows that agreement was signed on 24 February 2022 – apparently before the full transfer advice was provided to Mr O. It sets out the one-off charge that Mr O agreed to pay for the full advice, and then provides some further information about the ongoing advice service. For clarity I am reproducing below the entire paragraph from the fee agreement document about the ongoing advice service. It said;

*“If we recommend a transfer and suggest it would be in your interest to carry out future reviews in accordance with our ongoing services, and you agree to this, we will charge £734.78 per month representing 0.50% of the fund value on an annual basis and which will fluctuate accordingly.”*

There is no dispute between the parties that Mr O signed that agreement. But what is disputed, and what I need to consider in this decision, is whether the above, or any further discussions, is sufficient to conclude that an agreement exists between Mr O and TWM for the provision of ongoing advice.

I've looked carefully at the wording of the above agreement. It seems to me that paragraph has a number of dependencies before it can be considered to show an agreement between Mr O and TWM. Firstly TWM would need to recommend the transfer. It would then need, as part of that advice, to recommend that Mr O would benefit from ongoing reviews. And finally Mr O would need to agree to receive that service. So I'm not persuaded that Mr O's signature to this agreement is sufficient, on its own, to conclude that he should pay the stated fees to TWM for its ongoing advice service.

The cost of the ongoing advice was also shown to Mr O as part of an illustration of his pension investments that was supplied by the pension provider. But again, that illustration simply formed part of the discussions that Mr O had with TWM about the potential transfer. I think it can only be considered an illustration – I don't think it showed anything that would suggest the pension provider was aware of any completed agreement between Mr O and TWM for the ongoing advice service.

Both parties have also provided me with a copy of an email sent by Mr O to TWM in April 2022. There is some dispute between Mr O and TWM about the meaning of the email, the relevant part of which I reproduce below. Mr O said;

*“I am also conscious we have an unfinished conversation on ongoing advice – as I said for now I want to see if the funds can recover from the unfortunate timing around the transfer out of [old provider] and fees (with which I am fine).”*

TWM says that the text above relates to a conversation about the investment of some of Mr O's transferred pension savings. It says the unfinished business was regarding when, or if, those transferred funds would be invested. Mr O says that the meaning of his email was clear – that he hadn't by that time agreed to take the ongoing advice service from TWM.

Mr O has explained that he has extensive investment experience as the chairman of the trustee board for a large OPS. So he says that he always intended to manage his pension investments himself, drawing on support from the professional advisors that he worked with in his trustee role. He says that those intentions were one of the reasons that he moved away from the initial financial advisor in February 2022. He only engaged a financial advisor, and paid what he considers to be a significant fee for the work that was undertaken, since he was required to take regulated advice before transferring defined benefits from the OPS.

I have also listened to a conversation between Mr O and the pension provider earlier this year, shortly after Mr O says he had become aware that TWM was collecting ongoing servicing fees from his pension investments. I am satisfied from the tone and content of that conversation, that took place before Mr O made his complaint to TWM, that he was previously unaware that ongoing servicing charges were being paid from his pension investments to TWM.

Mr O says that a period of around ten months had elapsed between the transfer and his discovery of the servicing charges. He says that in that time he hadn't received any contact,

or advice, from TWM. But, on the other hand, TWM says that is not unusual. It says that it would generally offer consumers an annual review of their investments – and since it had not been a year since the transfer, it hadn't provided that review to Mr O.

I think that the difficulty this presents is that, from his conversation with the pension provider, I am not satisfied that Mr O was sufficiently aware that he was paying for any ongoing servicing. And it doesn't seem that, even if TWM quite reasonably would only expect to contact Mr O once a year, Mr O had been made sufficiently aware of the services that he would receive from the firm for the ongoing charges he was paying. So I think that TWM has fallen short of the regulator's expectations in terms of providing Mr O with a clear confirmation of the details of the ongoing service.

I accept that TWM considers it has a legal agreement with Mr O for the payment of the ongoing servicing charge. As I've explained earlier, I am not persuaded that things are anywhere near as clear cut as TWM suggests. But, and most importantly here, I am required to decide complaints on the basis of what I consider to be fair and reasonable.

I am satisfied that Mr O has provided a plausible explanation why he wouldn't have knowingly agreed to take ongoing servicing from TWM. And I don't think that TWM has met the regulator's expectations in terms of the clarity of its explanation of that service. On balance, I think that if those expectations had been met Mr O would have expressly declined the ongoing servicing from TWM (rather than, as is the case here, simply not accepted it). So I don't think that the charges TWM has taken for the ongoing servicing have been collected fairly and should be refunded to Mr O.

### **Putting things right**

I don't think it has been reasonable for TWM to collect the ongoing servicing fees that have been taken from Mr O's pension investments. So all those monthly fees should be refunded to Mr O.

TWM should pay into Mr O's pension plan to increase its value by the total amount of the monthly fees that have been deducted. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If TWM is unable to pay the total amount into Mr O's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount 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 O won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr O's actual or expected marginal rate of tax at his selected retirement age. I think it reasonable to assume that Mr O is likely to be a higher rate taxpayer at the selected retirement age, so the reduction should equal the current higher rate of tax. However, as Mr O would have been able to take a tax-free lump sum, the reduction should only be applied to 75% of the compensation.

### **My final decision**

My final decision is that I uphold Mr O's complaint and direct Truscott Wealth Management Limited to put things right as detailed above.

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

reject my decision before 11 September 2023.

Paul Reilly  
**Ombudsman**