

The complaint

Mr A complains that Eaton Financial Services Ltd (Eaton) have not been providing him with the service that he has been paying for via an ongoing advice charge deducted from his pension.

What happened

In November 2016, Eaton provided advice to Mr A in respect of his pensions, and as a result, his personal pension arrangements were transferred to a pension with Royal London. He agreed to the ongoing charge of 0.5% per annum being taken from his pension monthly.

In 2022, Mr A complained to Eaton that he did not believe that the fee he had been receiving warranted the charge being taken as he had not received any reviews. Eaton responded saying that they had carried out reviews each year, with the exception of 2020 and 2021, which were missed due to Covid. They agreed to refund the advice charge taken for those years, which amounted to £1,406.

Mr A disagreed that reviews had taken place, and stated that he had not received any reviews between 2016 and 2022. He requested a refund of all the ongoing advice fees charged, amounting to £6,199. Eaton did not agree to this, and Mr A forwarded his complaint to this service. Our investigator reviewed the information provided by both Mr A and Eaton. She concluded that there was insufficient evidence to show that meaningful reviews had taken place to justify the advice charges taken from Mr A's pension, which should be refunded along with £100 additional compensation to reflect the distress and inconvenience caused.

Eaton did not agree. They stated that they had provided Mr A with regular review documentation, and had discussions with him over the years. They increased their offer to a refund of half the ongoing advice fees charged. Having considered this, Mr A did not accept the offer and as a result the case has been referred to me for a final 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.

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 investigator's review that Mr A's complaint should be upheld.

Mr A has not stated that he was unaware of the advice charge being deducted from his pension, nor that he is unhappy with the advice charge per se. He has stated that he believed that the ongoing advice charge being deducted was a standard commission charge, and it was only when he spoke to another adviser, he was made aware that he should be receiving a service in respect of the charge. Mr A's complaint is therefore that the service he has received has not warranted the level of charges, which totals just over £6,000 since 2016.

The issue to be determined therefore is whether reviews were carried out in line with the level of service that Eaton's Service Level Agreement offers for the charge applied to Mr A's pension.

COBS 6.1A.22 sets out the rules relating to adviser charges. It requires that, unless the ongoing charge comes from regular premiums, any new agreement to collect ongoing charges must be for the provision of personal recommendations or "related services" on an ongoing basis, the consumer must have been told what those services are going to be and given the option to stop paying for them.

Eaton offered two levels of service which attracted different levels of charges – Level 1 (0.75%) and Level 2 (0.5%). These were set out in their Service Level Agreement, a copy of which has been provided. There is no evidence that Mr A was provided with a copy of this, nor have either party indicated that he was. Each service level offered differing services. Eaton have stated that Mr A was on service Level 2. This is consistent with the 0.5% ongoing advice charge that was stated on his Royal London application form, and the fee that was deducted from his pension.

Eaton have stated they believe that Mr A understood all the charges made on his pension as they were in the initial disclosure documents, although they have not provided evidence that Mr A was provided with copies of these. The signed copy of the service level agreement Eaton have provided was an agreement between Mr A's employer and Eaton, although it states "*this agreement is to provide annual reviews to all members of [name of company]*". In their complaint correspondence, Eaton have stated that Level 2 included;

- Annual statements of holding
- Access to support team
- Ongoing access to your adviser.

The Service Level Agreement document expands this further and states the services that a client could expect if they were on Service Level 2;

- Annual statement of holdings
- Access to our support team
- On-going access to your adviser
- The offer of an annual Review Meeting by email, telephone, by post, or face to face
- Example Agenda of a Review
 - Discussion of your financial objectives and priorities
 - Discussion and review of your risk profile, and any new factors which may influence your current attitude to risk capacity for loss and timescales
 - Presentation of your portfolio's performance
 - Discussion of the current asset allocation
 - Recommendation and implementation of any re-alignment required to rebalance your portfolio
 - Discussion of any legislative changes affecting your investments
 - Discussion of family succession planning, if appropriate
 - Discussion of fees for the upcoming year.

I note that the service level agreement states that customers would be "offered" an annual review meeting, it does not state that one would automatically take place every year. Notwithstanding this, by outlining what would be covered in a review meeting, the Agreement does set a level of expectation that a review meeting would take place at least periodically.

The Service Level Agreement therefore includes two key elements – the review documentation and the offer of the review meeting. I can find no evidence to indicate that review meetings meeting the criteria indicated in the Service Level Agreement were either offered or took place at any time.

I have then considered the review documentation that Eaton say was provided to Mr A, in particular to ascertain whether they evidence adherence with the level of service set out in the service level agreement, and with what would reasonably be expected by a customer paying for that level of service. I am not persuaded that the service met the required standards.

Eaton state that they provided review letters annually. There is a slight discrepancy in Eaton's recollection of how these were delivered, as they stated in their initial emails with Mr A that they were provided to the directors of the company to be distributed to each individual employee – in their later correspondence to this service they state the early reviews were delivered to Mr A's desk. I note that following Mr A's complaint, a further review letter was issued in 2023, which was sent by email.

Mr A states in his complaint (December 2022) that he had not received any review letters and believes that the letters provided as part of the complaint submission from Eaton were created retrospectively. As Eaton have provided the letters they say were created at the time that each review was due, there is no evidence to indicate that these were created retrospectively, I have to conclude that the review letters were created on the date indicated on the letters.

Eaton have indicated that at least some of the review letters were left at Mr A's place of work, along with other employees' reviews, to be distributed to the relevant individuals. The later review letters are stated to have been sent to Mr A. I have considered whether Eaton went far enough in the steps taken to ensure that Mr A received the review letters created. I am not satisfied that they did. I do not believe that relying on a third party to pass the review letters to Mr A could be considered to be as reliable as sending them to his home address or to him via email and consider there is a high likelihood of him not receiving them.

Although Eaton believed that they had issued review letters, I note that the letter itself closes with a request for Mr A to check the information held was up to date, and sign and return the form along with the enclosed risk analysis questionnaire. I understand that Mr A didn't sign and return any of the review letters that Eaton say that they sent to him. If this form had not been received following each year's letter being sent, I would have expected Eaton to have made contact with Mr A by alternate means, for example by phone call or email. There is no evidence or suggestion that Eaton did this at any point between 2016 and 2023.

Eaton state that they had telephone conversations periodically with Mr A, which covered his pensions and his employment status. The review letters have been provided as part of Eaton's submissions however they have confirmed they do not have telephone notes or recordings and the review letters make no reference to any of the discussions that had taken place.

As detailed above, I have no way of knowing whether or not Mr A did or did not receive the review letters produced by Eaton, however, I think it more likely than not that he didn't because there seems to be ambiguity about how those letters were provided to him and importantly, Eaton haven't been able to provide any signed confirmation/receipt letters from Mr A stating that he'd read and understood them. However, as these letters have been provided by Eaton as part of their response to the complaint, I am able to consider the content of the reviews, and whether they met with the provisions of Eaton's service level offerings. Eaton state that they believe that they have fulfilled their obligations, both by

issuing regular review letters, and by having discussions with Mr A. They state that they have had discussions relating to Mr A's pension and employment, which they consider forms part of their service.

Having reviewed the letter created by Eaton by way of regular review, I am not satisfied that they meet either the COBS 6.1A.22 requirements or Eaton's own service offering. The letters provided are brief, provide an outline of performance of the fund over the preceding period, and request Mr A completes and checks a personal information form. Each letter also states *"due to government legislation changes I also enclose a risk analysis report and request its completion and return as soon as you can"*. The review letters provided did not take into account Mr A's personal circumstances, particularly any likely changes, any possible changes to his attitude to risk or objectives, nor did they invite him to a review meeting. They are therefore insufficient to be able to be considered as a review meeting the service level agreement Mr A was paying for.

Eaton states that they have had telephone conversations with Mr A which they believe constitute part of the review offering. However, they have been unable to provide any call recordings, phone call notes, or meeting notes to evidence this. Mr A does not dispute that telephone conversations have taken place, but does maintain that they were not reviews of his pension. Having taken into account the lack of evidence or detail pertaining to these calls, and the fact that no changes were made to Mr A's pension as a result, I am unable to conclude that these calls represented regular reviews or offered any value to Mr A.

COBS 6.1A.22 also states that *"the consumer must have been told what those services are going to be and given the option to stop paying for them."* It has been detailed above that there is no evidence of Mr A having been provided with documentation confirming what the services he was being charged for would be. Alongside this, there is also no evidence of Mr A being made aware that he could stop paying the ongoing advice charge.

Putting things right

For the reasons stated above, I uphold Mr A's complaint and direct that Eaton refund all ongoing charges paid by Mr A since the transfer in November 2016 to the date of my final decision. Each of the charges taken should be backdated to the point at which they were debited and re-applied to Mr A's pension, so they benefit from any investment growth. Eaton will need to contact Royal London to assist them with this.

- Eaton shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.
- If it is unable to pay the compensation into Mr A's pension plan, Eaton 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 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 A won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr A's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr A is likely to be a basic rate taxpayer and hasn't indicated otherwise, so the reduction would equal 20%.
- However, if Mr A would 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%.

Additionally, I direct that Eaton pay a further £100 to reflect the distress and inconvenience caused.

My final decision

For the reasons stated above I uphold Mr A's complaint and direct Eaton Financial Services Ltd to refund the ongoing service charges deducted from Mr A's pension, plus £100 to reflect the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 17 November 2023.

Joanne Molloy
Ombudsman