

The complaint

Mr K complains that HBOS Investment Fund Managers Limited trading as Halifax Financial Services (HFS) have applied incorrect charges to his income drawdown plan. In addition, he's unhappy about how HFS have handled his queries and subsequent complaints to them.

Mr K would now like HFS to refund all of the charges that they have levied on his plan that are in excess of the 0.5% he says he originally signed up for.

What happened

Mr K held an income drawdown plan with HFS that he took out in September 2003.

After receiving his yearly statement in 2021 that was in a different format to previous versions, Mr K became concerned about the charges that were being applied to his plan. Mr K felt that the costs that were set out in the statement were in excess of the 0.5% that he'd previously agreed to with HFS when he originally took his plan out.

After querying the charges with HFS and not receiving a satisfactory answer, Mr K decided to formally complain to them. In summary, he said that he felt HFS were overcharging him and as such, it was impacting the value of his plan. He wanted the extra costs he believed HFS had levied to be refunded to his plan.

After reviewing Mr K's complaint, HFS concluded that they were satisfied that they'd done nothing wrong. In November 2021, HFS wrote to Mr K, explaining that they weren't upholding his complaint and telephoned him to explain why. HFS explained that they needed to present the costs and charges information differently in statements following a rule change by the Regulator, the Financial Conduct Authority. They went on to say the costs hadn't increased.

Following the complaint, Mr K went on to raise a number of further queries with HFS and additional complaints.

Mr K was unhappy with HFS's various replies so he referred his complaint to this service in November 2022. In summary, he said that he didn't think that the various responses he'd received from HFS adequately addressed his concern. That was, he felt HFS had been charging him more than the 0.5%, which he'd originally agreed to, when he took the plan out with them.

The complaint was then considered by one of our Investigators. He concluded that whilst HFS may have issued communications that were initially unclear, having looked at the documentation presented to him, it appeared that he was only paying the 0.5% that he agreed to. He also went on to say that he felt the £650 that HFS had offered to Mr K for the trouble they'd caused was fair.

Mr K, however, disagreed with our Investigator's findings. In summary, he said that given he'd received various conflicting messages from HFS about how the charges were being applied, he wasn't confident that their latest explanation was accurate. In addition, Mr K also said that given HFS's original plan documentation doesn't state any other charges will be levied, in his view, the additional transactions costs he believes they've charged have resulted in around £40,000 worth of extra costs being taken over the last 20 years for which he'd like refunded.

Our Investigator was not persuaded to change his view as he didn't believe that Mr K had presented any new arguments that he'd not already considered or responded to. As he remained unhappy with the outcome, Mr K asked the Investigator to pass the case to an Ombudsman to review that outcome.

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.

Can I consider this complaint?

I appreciate that Mr K feels strongly that HFS's actions have resulted in a financial impact on him but, if a business, in this case HFS, objects to this service looking into their concerns due to the complaint not being submitted to us in time, I must first look to see if it meets the regulator's rules on whether this service can or cannot look at the case. Those are covered under the Financial Conduct Authority's Dispute Resolution Rules - DISP2.8.2. The rules explain that for this service to be able to consider Mr K's complaint, he must have submitted his concerns to us *no later than six months after having received HFS's final resolution letter*. HFS believes Mr K has submitted his complaint to us outside of that requirement.

Mr K says that HFS are trying to escape on a technicality, highlighting the weakness of their case. However, the six-month rule is in place to ensure fairness to both parties and allows a line to be drawn in the sand following a complaint – otherwise firms would be faced with an open-ended liability.

Both our Investigator and HFS have shared a detailed timeline of what happened and when. As that timeline is well known to both Mr K and HFS and isn't being disputed by either party, I don't see the need to repeat it here. However, I will focus on what I consider to be the key dates that are important in determining whether this service has the jurisdiction to hear Mr K's complaint.

- When Mr K first raised his concerns with HFS, they provided their final resolution letter to that complaint on 23 November 2021 and at that point, they provided the appropriate referral rights to this service. That meant that he had until 23 May 2022 to raise his complaint with ourselves about the charges.
- Unhappy with HFS's response, Mr K raised a further complaint with them. HFS responded to that complaint on 17 January 2022. As it covered the same points, HFS reiterated that Mr K had six months from the date of the *original* resolution letter to refer his concerns to this service – so, that still meant by 23 May 2022.
- As Mr K remained unhappy with their response about the charges, he raised further concerns with them. HFS wrote a third resolution letter to Mr K on 21 April 2022. In that letter, they explained that they'd reviewed his complaint about the charges again, but

reached the same decision as they did previously. Again, HFS reiterated that Mr K had six months from the date of the *original* resolution letter to refer his concerns to this service.

- HFS wrote again to Mr K on 22 September 2022 in response to his further complaint, this time to their Chief Executive. That letter provided a further explanation of why they'd reached the previous decisions they'd issued and apologised for the poor levels of customer service he'd received. Importantly, that letter stated his complaint had been reassessed and HFS issued new referral rights to this service. So, by specifically telling the complainant that its new response was a reinvestigation of the complaint, and providing new referral rights to us, HFS were withdrawing their earlier final responses in respect of the six-month rule. This meant that Mr K then had until 22 March 2023 to raise a complaint to this service.

As Mr K submitted his complaint to us on 21 November 2022, it therefore follows that I've concluded this service does have the jurisdiction to hear his complaint.

Charges

I have summarised this complaint in far less detail than Mr K has done and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this; our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. Instead, I will focus on what I find to be the key issue here – and that's Mr K's disappointment that he believes HFS have been overcharging him on his income drawdown plan.

Having done so, I am upholding Mr K's complaint in part. And, that's purely from the perspective about the way in which HFS handled his original queries, telephone calls, follow up emails and letters about the charges. But, for me to be able to uphold Mr K's complaint about the charges, I would need to find that something has gone wrong and that he has lost out as a result. Having carefully reviewed the information that HFS have provided, I've not been persuaded that Mr K has been overcharged. Therefore, I agree with our Investigator's view and for largely the same reasons. Whilst I don't have a great deal more to add over what our Investigator has already explained, I appreciate that this will likely come as a disappointment to Mr K, I'll explain why.

Mr K is concerned that having received a new style of statement from HFS in 2021, he's been paying more than the 0.5% in costs than he originally agreed to when he took the plan out in 2003.

I think it would be helpful to provide the background as to why HFS had to make the alterations to Mr K's statement that it did though. In July 2019, the Financial Conduct Authority, updated its rules around what information firms should present to consumers who were taking an income from their pensions. Those updated rules required firms to provide information on the actual costs and charges that consumers were paying for their pensions post-sale, during the decumulation phase (i.e. when they are in drawdown like Mr K is). The aim of the exercise was to help ensure that consumers were placed in a fully informed position about all of the costs that were being applied to their retirement pots.

Amongst other things, the Regulator's new rules required HFS to disclose costs and charges in pounds and pence, as evidence suggested consumers are generally better able to understand presentations that use pounds and pence rather than percentages. However,

the rules also allowed firms to disclose costs and charges information in percentage terms too. The Regulator provided a 12-month implementation period, starting from 1 August 2019, to give firms time to make the necessary systems changes required to meet the new rule requirements. This meant that only those costs and charges incurred by consumers after the end of the implementation period (i.e. after 1 August 2020) had to be identified and disclosed to consumers who are in drawdown in their annual statement. That's why Mr K saw the changes to his statement when he did.

In running a plan such as Mr K's, there's various costs involved including, but not restricted to - administration and IT expenses, trading costs, fund manager fees including research as well as custodial charges. Previously, firms just included a single cost for running the plan but now, greater transparency is provided around where many of those charges are incurred. Some of those costs are known in advance but, in some cases, the firm has to estimate those charges until a better understanding is reached on the actual cost incurred.

From what I've seen, HFS initially undertake a manual calculation to estimate the consumer's charges. The letter that HFS issues explains why the charges are an estimate (under the sections 'An explanation of your fund charges' and 'An explanation of other charges'). I won't repeat all of that text here because Mr K has copies of that correspondence, but HFS's systems then calculate any charge adjustments due on the plan on 31 December each year, regardless of when the plan's anniversary date is. HFS take their regular charges by cancelling units but importantly, as I've already said, some costs aren't always known in advance and as such, are only estimates. What that means in practice is that any charge adjustments due from January 2021 to September 2021 for example, would not be calculated by their system until 31 December 2021. As such, the costs in that period have to be estimated so HFS can issue their letter at the plan anniversary date.

The normal yearly management charge is already included in the price of the units within Mr K's fund. And, at the end of the year, HFS then work out the actual yearly charge that was due. HFS have explained that extra units are then added to the plan which has the same effect as reducing the annual management charge.

Whilst it's clear that, at the moment, HFS's systems require manual intervention to incorporate the Regulator's new rules, once all of the costs are taken account of, Mr K does appear to only pay 0.5% in charges on his plan. From what I can see, the costs Mr K is paying aren't new, it's just that following the new rules the Regulator introduced, the way in which the information needs to be broken down and presented to consumers has altered.

Having looked at the Regulator's rules that were introduced on this issue, it's clear that they're not expecting businesses to be able to provide this level of detail retrospectively. So, whilst I can appreciate that Mr K may wish to see a detailed prior picture of the costs that were applied to his income drawdown plan before 2021, HFS have said that their systems are simply not calibrated to provide that level of historic detail – but to be clear, that doesn't mean HFS are doing anything wrong. The important consideration is that they're applying the Regulator's new rules from the point that they're required to do so moving forward. And, whilst I well appreciate that Mr K may wish to see this historic information, I can't force HFS to give him information that they're neither able to give or required to do so by the Regulator.

HFS's Customer Service

In his complaint to this service, Mr K explained that he'd found the whole experience of dealing with HFS on this issue extremely stressful. He went on to say that they mishandled what should've been very much an 'open and shut case', taking twice the time to resolve

things for him than they should have.

As I've already explained earlier, I'm not planning on repeating the timeline of what happened and when because it's well known to both parties. I also think that it's important to acknowledge that HFS have already conceded that the service they've provided to Mr K when responding to his queries and complaints about the charges hasn't been as effective as it could've been. I am therefore upholding this element of Mr K's complaint.

Whilst I am sympathetic to the trouble and upset Mr K says HFS have caused him, they advised him on four separate occasions about his right to refer his complaint to this service. But, from receiving the new style of statement showing the charges on his plan to raising multiple complaints with HFS, it took Mr K over a year to raise his concerns with this service. I think, had he done so earlier, some of that inconvenience could've been limited.

I've therefore carefully considered the £650 that HFS have already offered Mr K for the trouble that they've caused him. Based on the facts of the case I'm satisfied that amount is fair and reasonable and as such, I will be directing HFS to pay those monies to Mr K if they've not already done so.

My final decision

HBOS Investment Fund Managers Limited trading as Halifax Financial Services has already made an offer to pay Mr K £650 to settle the complaint and I think that this offer is fair.

Therefore, my decision is that HBOS Investment Fund Managers Limited trading as Halifax Financial Services should pay Mr K £650 if they've not already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 16 October 2023.

Simon Fox
Ombudsman