DRN-4377230

The complaint

Mr K has complained that The Insurance Partnership Financial Services Limited (TIPFS) and AFH Independent Financial Advisers Limited (AFH) didn't provide him with the level of service that had been agreed – specifically there was a failure to provide pension reviews.

TIPFS was acquired by the AFH Financial Group in 2020 by way of share purchase and liability for the period prior to acquisition falls to AFH.

What happened

Mr K was advised by TIPFS in February 2017 in connection with transferring his Group Personal Pension to a personal pension with the same provider and increasing his pension contributions. TIPFS charged Mr K £750 and Mr K agreed to an ongoing fee of 0.5% pa. What that covered isn't agreed. But the suitability report said Mr K had selected '*a comprehensive service where* [his] *circumstances and financial objectives are reviewed at regular intervals*.' Mr K had no reviews between 2017 and January 2020. He did get two portfolio valuations in 2018 and 2020 and there were some email exchanges with TIPFS' adviser about various topics.

On 17 January 2020 TIPFS wrote to Mr K saying they'd become part of the AFH Financial Group. TIPFS would cease trading but Mr K's existing adviser would remain working for AFH. The letter confirmed that Mr K 's existing plans and ongoing charges would remain unchanged but novated to AFH. The letter said Mr K was currently on the Financial Planning Service and his plan had an ongoing adviser charge of 0.5% pa and his next review was now due. AFH's Client Agreement was enclosed.

No review took place. Between January 2020 and August 2022 AFH sent Mr K two valuation reports, in January 2021 and June 2022. Mr K instructed two execution only lump sum pension contributions – £35,000 in August 2021 and £28,000 in May 2022.

In May 2022 Mr K completed a review questionnaire which showed there'd been several changes in his circumstances. Mr K's first full review with AFH was completed in August 2022. Following this review Mr K complained to AFH. He said AFH was receiving a 0.5% pa ongoing charge from his pension but he didn't think AFH had provided a service in return. He said he'd previously requested a review but the adviser hadn't contacted him. And the adviser hadn't been available to assist with making a pension contribution so Mr K had to complete that himself on an execution only basis.

In its response letter dated 10 November 2022 AFH said TIPFS' letter of 17 January 2020 confirmed that AFH would continue to provide the 'Financial Planning Service' proposition offered by TIPFS and for the same 0.5% pa ongoing adviser fee. AFH referred to what the Client Agreement enclosed with that letter had said about what that service included. AFH accepted that, in some respects, the service Mr K had received since AFH had taken over had, in some respects, fallen short. Notably there was nothing to show that annual reviews had been undertaken by the adviser. AFH said other services had been available to Mr K – including telephone and email access to an adviser and valuation reports were provided. Mr K had received responses from AFH and guidance in respect of queries he'd raised.

But AFH acknowledged that annual assessments of Mr K's financial planning needs and his risk profile weren't completed and he hadn't had a full financial review until 22 August 2022. AFH therefore upheld his complaint and offered to refund half of the adviser fees he'd been charged since AFH had taken over TIPFS – in total £4,075.41 since January 2020. AFH therefore offered to refund £2,036.

In April 2023 AFH wrote to Mr K having investigated the service he'd received before January 2020. AFH didn't uphold that complaint. AFH referred to Mr K having signed TIPFS' Client Agreement and Service Proposition document which set out the various service levels offered. AFH said its records showed Mr K had opted for the Financial Planning Service and it was agreed the ongoing charge for that would be 0.5% pa. That charge was referenced in the suitability report dated 10 March 2017 although it didn't specifically refer to the Financial Planning Service. Mr K signed a Financial Planning Fee Agreement confirming an ongoing adviser charge of 0.5% pa.

AFH said the Client Agreement and Investment Service Proposition confirmed that the service consisted of access to the admin support team; telephone/email access to an adviser; and an annual valuation report. AFH said those services had been provided to Mr K. AFH offered Mr K £100 because they hadn't sent him a valuation in 2019.

Mr K didn't accept either of AFH's offers. He referred his complaint to us.

Our investigator looked first at the service Mr K had received before January 2020 from TIPFS. AFH had said Mr K had opted for the Financial Planning Service which meant he wasn't entitled to annual reviews. The levels of service offered by TIPFS were set out in the Client Fee Agreement and Investment Service Proposition signed by Mr K on 17 February 2017. But the document doesn't specifically say which level of service Mr K had agreed to. The suitability report makes no reference to the Financial Planning Service that AFH said had been agreed. The report refers to the service level selected as *'comprehensive*' and says Mr K would receive ongoing reviews, so he'd have expected to get them. Without ongoing reviews, the fee he was paying probably wouldn't have seemed good value.

When AFH took over TIPFS, Mr K signed a new Client Agreement which included ongoing reviews. AFH didn't complete any ongoing reviews with Mr K between January 2020 and August 2022 and had therefore offered to refund half of the fees Mr K had paid over that period and on the basis he still had access to an adviser, had received valuations and two execution only transactions were completed.

Having reviewed the valuation reports, email exchanges and the documentation around the execution only transactions, the investigator didn't think AFH were proactive enough in how they'd dealt with Mr K. The interactions between Mr K and AFH meant it would've been very easy to offer him a review. There'd been two execution only transactions, in August 2021 and May 2022. The investigator said he'd expect, when a customer who is paying for ongoing advice wanted to top up their pension through their financial adviser, that the adviser would use that as an opportunity to offer advice, rather than just facilitating the contributions on an execution only basis.

Mr K would've expected to receive reviews between March 2017 and August 2022. The investigator accepted that other services were available to Mr K – he'd received valuation reports and he had access to an adviser.

But the investigator didn't think what AFH had offered was fair. Mr K's dealings with the adviser before January 2020 were very limited. The valuations he was sent were generic and wouldn't have taken any time to produce. Mr K would've been receiving statements from

Scottish Widows so the valuations from AFH would've been of limited value. After January 2020 the interaction between Mr K and AFH increased but AFH missed many opportunities to offer Mr K the level of service he was paying for. The questionnaire Mr K completed in May 2022 showed there were numerous areas he wanted help with if he was to be able to achieve his objective of retiring early. AFH should've identified those areas of concern and addressed them sooner so that Mr K could be confident he was going to achieve his goals.

The investigator set out what AFH needed to do to put things right for Mr K. He said it would be fair for AFH to refund three quarters of the ongoing fees Mr K had paid from the date his new pension was set up to the date of his first review with AFH.

AFH hasn't responded to the investigator's view, despite several reminders.

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 don't have much to add to what the investigator has said and which I've recapped above. I agree with the investigator and for the reasons he set out that AFH's offers weren't fair and reasonable.

I've looked first at what was agreed between Mr K and TIPFS. AFH says Mr K opted for TIPFS' Financial Planning Service. I've seen that Mr K signed TIPFS' Client Fee Agreement and Investment Service Proposition. It sets out four service levels, one of which was Financial Planning, and what's included in each. The Financial Planning Service only covers the three areas AFH has cited. But what's not clear from the document is what service proposition Mr K had discussed with the adviser and agreed was the most suitable to cover his needs.

I've looked at what other evidence there is to show what was agreed as to what the 0.5% pa charge for ongoing service would cover. Like the investigator, I've placed weight on what the suitability report recorded. It's an important document and contemporaneous written evidence. In my view, it's likely to accurately record what was agreed at the time.

The section headed '*Service Proposition and Reviews*' refers to the importance of regular reviews and to Mr K having selected a '*comprehensive service where your circumstances and financial arrangements are reviewed at regular intervals'*. The next part doesn't seem to have been completed fully. It should've set out the frequency of the reviews and the charges. But there's no dispute that Mr K agreed to an ongoing charge of 0.5% pa. I don't think a '*comprehensive service'* is consistent with Mr K only having agreed to the Financial Planning Service which, of TIPFS' three main service propositions, was the most basic. I agree that Mr K is unlikely to have regarded a 0.5% pa charge as good value if regular reviews weren't included. I think Mr K's agreement with TIPFS included on going and at least annual reviews.

I also note what TIPFS said in the letter dated 17 January 2020 – that Mr K's arrangements would continue as previously. That's consistent with the enclosed Client Agreement which said, under '*On-going Legacy Services*', that Mr K's charges would remain unchanged to those previously agreed and he'd continue to receive a service which was commensurate to the existing TIPFS proposition. It's clear from the AFH Client Agreement which was enclosed that, going forwards, Mr K would be entitled to annual reviews. If, as AFH says, Mr K's existing service agreement hadn't included those, that would've been a departure from what AFH said was happening to clients previously with TIPFS. If AFH was offering something more, I'd have thought AFH would've been keen to point out that Mr K's position would be improved. AFH also referred to Mr K being on the Financial Planning Service and said his '*next*' review was now due. That seems to suggest Mr K had been receiving on going reviews.

After AFH took over, Mr K's ongoing advice fee remained 0.5% pa and there's no dispute that reviews were included. But, although TIPFS noted, in the letter of 17 January 2020, that a review was due, that didn't happen until May 2022. Once AFH knew that a review was due, AFH should've followed that up and offered Mr K one. I also agree with the investigator that opportunities to offer a review did arise but weren't taken up by AFH.

AFH acknowledges there were service failings and that's reflected in the fact that it made offers to Mr K. But, like the investigator, I don't think what was offered was fair and reasonable. I think the facility to have his pension reviewed regularly would've been important to Mr K. Although some of the other services were available to Mr K and he may have accessed them, AFH failed to deliver on what I think was a fundamental part of its agreement with Mr K.

Putting things right

In assessing what would be fair compensation, my aim is to put Mr K as close as possible to the position he'd now be in if he'd been charged an ongoing advice fee commensurate with the level of service he actually received. I agree with the redress proposed by the investigator. I've adopted it and set it out again.

I think it's fair and reasonable that AFH Independent Financial Services Limited refund Mr K three quarters of the ongoing fees he paid from the date his new pension was set up until the date of his first review with AFH Independent Financial Services Limited. What I've set out below is aimed at restoring Mr K's pension fund to what it would've been if the lower level of charges had been deducted.

AFH Independent Financial Services Limited must:

- Calculate each ongoing fee deduction taken from Mr K's pension from the inception of his pension to the date of his first ongoing review. Each individual deducted fee should have the notional investment growth of Mr K's pension applied from the date each ongoing individual fee was deducted from the pension until the date of Mr K's first ongoing review. Each individual amount should then be totalled and reduced by 25%. This amount can then be added to the value of Mr K's pension as at the date of Mr K's first ongoing review. This amount is the fair value.
- 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.
- If there's a loss it should be paid into Mr K's pension plan, to increase its value by the amount of the compensation and any interest. It 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 K'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 K won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr K's actual or expected marginal rate of tax at his selected retirement age. He's told us that he's a higher taxpayer so the reduction would equal 40%. But 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 30%.
- Provide details of the calculation to Mr K in a clear, simple format.
- Income tax may be payable on any interest paid. If AFH Independent Financial Services Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, AFH Independent Financial Services Limited should tell Mr K how much has been taken off and give him a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.
- Redress should be paid to Mr K within 28 days of notification to AFH Independent Financial Services Limited that Mr K has accepted my final decision. If redress (or any part of it) isn't paid within that period then interest at 8% simple pa should be added from the date of my final decision to the date of payment.

Actual value

This means the actual amount payable from the investment at the date of Mr K's first ongoing review.

Fair value

This is what the pension would have been worth had only 25% of the ongoing fees been taken from Mr K's pension as detailed above.

My final decision

I uphold the complaint. AFH Independent Financial Services Limited must redress Mr K as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 11 December 2023.

Lesley Stead
Ombudsman