

## **The complaint**

Mr W complains that Profile Financial Solutions Limited (PFS) failed to provide him with the agreed level of service for the annual fees he was paying. And wants the return of the annual fee that it was paid.

## **What happened**

In October 2014 Mr W's existing pensions were reviewed by PFS. It advised him to switch three existing pensions into a new pension policy. It agreed his attitude to investment risk with him and recommended an investment strategy for his new pension.

Mr W paid PFS a one off fee for that advice. And agreed to an ongoing adviser charge of 0.3% of his overall pension fund. PFS explained that would be around £140 a year based on the initial transferring fund size.

PFS's client agreement says that its ongoing service should have included:

- Monthly monitoring of funds for quality and suitability
- Yearly calls to assess any changes in circumstances or attitude to risk
- Yearly updates and information regarding holdings
- Ongoing support with correspondence and administration

PFS explained that it carried out an annual review call with Mr W in January 2016. It says it called Mr W in December 2016 to review his circumstances but didn't get to speak with him.

Around November 2017 Mr W cancelled his ongoing service agreement with PFS. PFS contacted him that month to discuss the service it offered him and in March 2018 Mr W agreed to re-instate PFS as his advisers providing him with ongoing advice.

In May 2019 PFS have shown details of its prepared review and that it called Mr W on 21 May 2018 to book an appointment with him. This appears to have been missed and there is evidence of further attempts resulting in PFS contacting Mr W on the phone on 28 May 2018 to review his circumstances.

In May 2019 PFS say it called Mr W and wasn't able to speak to him. So it didn't provide him with any review. And that in 2020 it attempted to contact Mr W in January but again was unable to speak with him. It made no further attempt to contact Mr W during 2020 or 2021.

PFS say that it contacted Mr W in March 2022 and completed a review of his pension. And recommended a further pension switch to a self-invested pension plan (SIPP) that it explained had cheaper fees.

In August 2022 Mr W complained to PFS via a representative. The representative explained that Mr W didn't consider that PFS had delivered the agreed service and that it should return the fees it had received from Mr W's pension. PFS didn't uphold Mr W's complaint. It thought that the unsuccessful calls it made were sufficient to satisfy the service it had promised.

Our investigator was unable to resolve the complaint so it was referred for an ombudsman's decision. I looked into the circumstances and issued a provisional decision explaining why I thought Mr W's complaint should be upheld and suggested what PFS should do to put things right.

### **In my provisional decision I said**

In Mr W's original complaint his representative suggested that it was unfair to charge an ongoing fee as a percentage of the fund because it would increase if the fund's value grew. So I'll start by saying that I've found no issue with the way in which PFS has explained its original charging structure to Mr W. The costs were set out in a clear and unambiguous way. It is acceptable industry practice to charge a fee as a percentage. But businesses should also give indicative values of those charges. And the charges must have been made clear prior to any agreement. Which they were. I've seen that they were clearly set out in the documentation Mr W was sent in 2014.

I'll now consider whether PFS actually delivered the service that it charged for. The facts in this case are not actually in much dispute. Quite simply, PFS failed to contact Mr W in a number of the years that he was paying it an annual fee. Namely 2016, 2017, 2019, 2020, and 2021. PFS claim that it made calls to Mr W during four of those years and wasn't able to speak to Mr W. And it says that Mr W didn't have an email address.

I've considered what PFS indicated to Mr W in its original recommendation to switch pensions in 2014. Here it referred to reviewing his financial arrangement, saying:

*"We discussed the importance of regularly reviewing your financial arrangements including rebalancing your portfolio of investment funds. I recommend that your funds are rebalanced annually as part of their automatic process. The details of this are described in the Key features document. Your attitude to risk should also be assessed on a regular basis as this could change... Our on-going commitment to you is detailed in our Client Agreement."*

We've asked for the Client Agreement. PFS have shown us a copy of a client agreement that it implies is relevant to this case. It isn't signed or dated unfortunately. If this was the agreement that PFS had with Mr W, as it claims, then it was contracted to provide the ongoing service that I set out earlier under **what happened**. It offers no further detail about what the specific features of that service offering would include. I can see that Mr W cancelled the ongoing advice in 2017 as he didn't think he was getting, in his words, *"anything for his money"*. And PFS made several phone calls to him and persuaded him to take up the ongoing service again. It sent him a new Adviser Charge Instruction form in March 2018 by post but doesn't indicate that there was any new or alternative Client Agreement.

So I've thought about the following things that PFS agreed to do and what it was fair and reasonable for Mr W to expect.

#### *Monthly monitoring of funds for quality and suitability*

We've asked PFS what this meant. It says that it has an Investment Committee that monitors investment strategy and the individual funds selected. And it says that its committee meets quarterly to discuss these matters.

I think this is fairly vague. It is a service that appears to have no meaningful output or any quantifiable means for a consumer to understand whether it has or hasn't been done. Quarterly committee meetings don't provide evidence of monthly monitoring. Although I

understand that PFS are saying it was continuous. In practice though, the only way that a consumer would know that this was being done would be if they were to be updated of the results of this monitoring periodically.

I understand that this service offering doesn't specifically tell Mr W that he'll be updated of the results of this monitoring. But I think it would be reasonable to expect that it would form part of the periodic review that was also part of Mr W's agreed service.

#### *Yearly calls to assess any changes in circumstances or attitude to risk*

This part of the service offering would appear to imply that once a year PFS will refresh its fact-find with Mr W. Which seems reasonable as it will influence any assessment it makes about the suitability of Mr W's investments. The suitability report PFS gave Mr W in 2014 promised yearly rebalancing of funds. So the information that it obtained through this would be important in providing the tailored service offering it promised.

I think it would have been fairer to Mr W if the delivery of this service offering had been made clearer. A year is a long time, and some expectation of when in the year this would be due would have made it easier to schedule and plan for. But it appears that, because Mr W didn't use email, PFS didn't schedule appointments consistently with him.

I need to decide whether trying to phone him or write to him once in a year satisfies this element of the service offering. I note that this statement is worded in such a way to imply that PFS will make yearly calls. Not simply offer them. I also note that where these calls haven't happened the attempts have happened at seemingly random times of the year. And I don't think that the attempts to contact Mr W were very persistent. Or that the importance of the calls was emphasised at any point.

I've considered how difficult it might have been for PFS to actually get to speak to Mr W. And of relevance for me in considering this is the contact that PFS had with Mr W following his cancelling the ongoing service in November 2017. He was contacted by PFS and spoken to on the phone in November 2017; December 2017; January 2018; February 2018 and finally on 7 March 2018 when he eventually agreed to reinstate the ongoing advice charge. This is five times in five months that PFS were successfully able to contact and speak with Mr W on the phone.

I also note that in May 2018, shortly after reinstatement, PFS showed a degree of persistence over a number of days that month in order to get to speak with Mr W in order to successfully review his circumstances.

Overall, the evidence doesn't persuade me that it was impossible for PFS to have provided Mr W this service as it had agreed to do. And I would note that the responsibility was on PFS to make genuine and reasonable efforts to perform this service. And I don't think that it consistently did this. And during 2021 it can't evidence it made any effort to reach out to Mr W at all. And offers little in the way of reasoning for that. I understand that Mr W didn't have email. And it may have meant that PFS couldn't use its preferred approach in dealing with Mr W. But it had his address. It was able to write to him, as it did when it sent him the Adviser Charge Instruction form in 2018. And should have done that in order to fulfil its duty here as well.

#### *Yearly updates and information regarding holdings*

This service offering doesn't promise Mr W phone calls. So could, presumably be fulfilled by a written update. I think it would be reasonable to assume that this would be the means by which PFS would inform Mr W of the result of its monitoring of his funds and its review of his

personal circumstances.

PFS haven't provided any evidence that it provided any update to Mr W about his holdings in any year other than 2022 when it recommended a further pension switch. Which it did in writing.

I am aware that Mr W received annual statements from his pension provider. So he would have been aware of the value of his pension and that it continued to be invested in the same way. But those statements offered no commentary on the performance or ongoing suitability of the holdings. And they were statements that were provided as part of the service offering of Mr W's pension provider. In the case of the provider that he was transferred to in 2014, that provider levied a charge of 0.23% of fund value.

This means that the statements that PFS have sent us, as evidence that Mr W was aware of his pension value, are not evidence that PFS did anything to satisfy this element of its service offering. These are statements that were prepared and provided by a third party. And I don't think it's fair or reasonable for PFS to charge an additional element of its annual fee for something that Mr W has already paid that third party for.

#### *Ongoing support with correspondence and administration*

This element of the service offering was conditional on any specific ad hoc requirement Mr W might have had. Mr W hasn't suggested that he required or asked for any specific ongoing support. But I've no reason to suppose that PFS wasn't available to him in the event that he did.

#### *Summary*

I've considered the specific rules and guidance from the time. Which means that PFS were required to clearly set out the services that it would provide Mr W for the ongoing fee it was receiving. And it needed to have robust systems and controls in place to make sure that Mr W received the ongoing service that it committed to.

I think PFS could have been clearer to Mr W about what it was offering. So I've taken a fair and reasonable approach in determining what that service offering ought to have provided. For the reasons I've explained above, I don't think that PFS provided Mr W with the service that he paid for. He didn't receive annual calls or suitable yearly updates in any years other than 2018 and 2022. I come to that conclusion based on the specific circumstances of this case and the evidence that's been presented.

It follows that I don't think it's fair or reasonable for PFS to have taken its adviser charge from Mr W's pension scheme without delivering the service that it had promised him. This was an agreement between PFS and Mr W. Put simply, it would be reasonable for PFS to be paid the agreed amount for providing a service that had been agreed. But not where that service hasn't.

#### **Responses to my provisional decision**

PFS responded to disagree with my provisional decision. In summary PFS made the following points:

- It responded with a timeline which was the same as the information that I had already considered.
- It said that periodic suitability assessments and review calls are only part of its

ongoing service and commitment to its customers. It said that it monitors funds for quality and suitability and the provision of pension statements. It is available for ad hoc enquiries. And said that the customer can choose to complete the review or not.

- It referred to things our investigator said that differed from the answer I'd given. Including that he didn't think it was our approach to ask a business to refund fees in these circumstances.
- It believes that the outcome I reached differed to other decisions it has received from our service about this type of issue.
- It requested that I review my outcome based on its new proposal to refund 40% of the charges taken during the period from 2017 until Mr W removed PFS as his adviser. And that it also pay 40% of the annual charges that it received in 2021 when it agrees that it failed to attempt to contact him for a review. It suggested paying 8% interest to those amounts. But argued that it shouldn't pay the £100 distress and inconvenience payment that I had proposed.

### **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 would start by reassuring PFS that the timeline it sent in response corresponds with the facts that I had already considered and taken into consideration. It is not new evidence. I think I was clear in determining that PFS had told us it had called Mr W in some of those years that it failed to provide him with a review of Mr W's pension.

I understand PFS's position is that it's okay for it not to provide a key part of the service to Mr W if it tries to call him once a year and he doesn't take the call. But I don't agree that is fair or reasonable.

I made the point in my provisional decision that Mr W was, more likely than not, available to speak with PFS. And I came to that conclusion based on the evidence that PFS was successfully able to contact him every month for 5 months whilst it was trying to persuade him to re-instate the ongoing advice agreement that he'd cancelled. During that period he wasn't actually PFS's client. Yet it went to great lengths to contact him repeatedly. I haven't seen the same level of persistence from PFS in trying to get hold of Mr W to then deliver the service that it promised him.

I've considered the argument that PFS have put forward again regarding Mr W's failure to give it an email address that it could use. But I don't think that is a reason that it couldn't write to him with an update, review, or invitation to have a telephone meeting. It had his address. I re-iterate again that it wrote to him in 2018 when it needed him to sign the Agreement to re-instate the ongoing adviser charge.

I've listened to a call that PFS made to Mr W in December 2017. The caller asked him why he had cancelled and whether he had gone to another advisor. He explained that he hadn't. But he had left because he didn't think he got anything for the money. Mr W said he hadn't had any contact. The caller from PFS expressed surprise saying, *"I have to apologise for that. That's bang out of order. We normally do an annual review over the phone to bring you bang up to date with the situation"*. The caller didn't know why Mr W had been missed that year. And asked him if he had an email address which Mr W explained he didn't. The caller explained that PFS sends emails to customers to arrange convenient times to call. And told him that he was missed because he doesn't have an email address. The caller told Mr W

that PFS could rectify the fact that he doesn't have an email address by calling him to provide his reviews.

This call is further evidence that has led me to decide that Mr W's lack of an email address was not a suitable reason for PFS to fail to provide him with its agreed service. If it was actually the case that PFS couldn't reliably provide a service for a customer without an email address, then it should have made that clear. And not entered into a further agreement to take an ongoing charge for a service it didn't reasonably expect to be able to provide.

In my provisional decision I explained why I thought that the annual review was a key part of PFS's service offering. And, taken as a whole, there were far too many years where it simply didn't provide it. In 2021 PFS acknowledge it made no effort at all to contact Mr W. Yet seem to consider, up until my provisional decision, that was a fair and reasonable way for it to have treated Mr W. For the same reasons that I explained in my provisional decision, I disagree with PFS's view. I don't think it was fair or reasonable not to make any effort to contact Mr W in 2021. And I don't think it was fair or reasonable for it to have failed to conduct a review call in the years 2016, 2017, 2019, 2020, 2021 even if it may have tried to make an unscheduled call to him once during each year. I understand that PFS couldn't make Mr W engage with them. But I would expect to see further efforts being made and then Mr W being contacted in writing about his review. And I don't think this happened.

PFS believe that my provisional decision differs from things that were said in our investigators view. And it is correct. When a case is referred for a final decision it is the role of the ombudsman to review all the evidence and make a decision based on what is fair and reasonable. In this case I have done that and have come to a different conclusion to our investigator. So what I have said will disagree in a number of ways. But I think I have clearly set out my reasons for coming to the conclusion that I have.

PFS have also referred to two decisions it has received on other cases. We assess each case on its own merits. Circumstances and evidence may differ. In this case I have based my decision on what I think a fair and reasonable outcome is based on the evidence of what has happened in this specific case. I am not bound by determination's given in other cases.

PFS have suggested that it should only be asked to refund 40% of the fees charged. And only 2017 and 2021. I've explained above why I've decided that it needs to compensate Mr W for all of those years in which it failed to provide him with any review calls. So I don't consider its offer to be fair in the way it still seeks to limit the years that it compensates for.

I've considered PFS's suggestion that it only refund 40% of the fee it took though. It explains that it has previously offered this to settle complaints and it has been accepted. But it hasn't provided any evidence to explain why the provision of a review call once a year accounted for 40% of the work that it did on Mr W's behalf each year.

And I would reassure PFS that I did give this matter consideration prior to issuing my provisional decision. I considered in some detail the client agreement it said it had with Mr W in trying to work out what service Mr W was entitled to expect. And I addressed each element of its service offering in my provisional decision. Nothing has changed my mind on what I decided previously.

To summarise my findings on the overall level of service according to each element of service agreed to:

- PFS demonstrating that it held quarterly investment committee meetings is not adequate evidence that Mr W's funds were monitored monthly.
- PFS didn't provide yearly calls to assess Mr W's circumstances in 2016, 2017, 2019,

- 2020, 2021 without reasonable excuse for not having done so.
- PFS didn't provide Mr W with any yearly updates of his pension holdings. The only information that Mr W received was from his pension provider, who he was paying separately for the service it provided.
- Mr W didn't require any ongoing support with correspondence or administration in any of the years where there was no yearly call.

I considered all of this in order to gauge whether it was fair and reasonable to suggest that PFS refund all of the fees that it took from Mr W's pension. I've considered this issue again in light of PFS's suggestion. But I am not persuaded that the other things that it agreed to do for the fee amounted to 60% of the work required. PFS haven't evidence that being the case. And for the reasons given in my provisional decision and summarised above, I do not think PFS have adequately discharged those elements of its service either.

Taking everything as a whole, PFS hasn't evidenced that it provided Mr W with the service it agreed to in many years. So my final decision is that Mr W's complaint should be upheld for the reasons given in my provisional decision and expanded upon here. In those years where PFS failed to provide Mr W with the service promised I think it is fair and reasonable that it refunds 100% of the fees that it took. And that, in doing so, it restores Mr W's pension to the position it would have been in if those fees had not been taken. I set out below how it must do that.

### **Putting things right**

My intention is to put Mr W, as close as possible, into the position he'd have been but for PFS's mistake. In this case that means putting Mr W's pension fund into the position it would have been in had the fees not been taken. The pension would have been higher by the value of those fees and any investment returns that those fees would have gone on to benefit from.

PFS must calculate the loss in value of Mr W's pension due to the deduction of the fees taken in 2016, 2017, 2019, 2020, and 2021. To be clear, this will mean calculating the lost investment returns on each fee, based on the actual investment strategy of Mr W's pension, from the date the fees came out to the date that PFS are told that Mr W accepts my decision.

When PFS have calculated this total loss to Mr W's pension (from the fees that should not have been paid, and the lost investment returns from those amounts) it should, if possible, pay that total loss amount into Mr W's personal pension. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr W as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Mr W has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this.

PFS must also pay Mr W £100 for the distress and inconvenience he has been caused. I understand that PFS disagrees with this. But I think that Mr W has been caused an amount of distress and inconvenience by PFS service failing. He previously raised his concern about a lack of ongoing service but was convinced, following a number of calls, that he would get a

regular service. And then subsequently didn't causing him repeated inconvenience in having to raise this issue again.

If payment of compensation is not made within 28 days of PFS receiving Mr W's acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If PFS deducts income tax from the interest, it should tell PFS how much has been taken off. PFS should give Mr W a tax deduction certificate in respect of interest if Mr W asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

### **My final decision**

For the above reasons I uphold Mr W's complaint and direct Profile Financial Solutions Limited to compensate Mr W in the manner set out under *Putting things right* above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 3 November 2023.

Gary Lane  
**Ombudsman**