

The complaint

Mr S complains that Profile Financial Solutions Limited, trading as Profile Pensions, ('PFS') charged him annual charges without providing him a service. And wants the fees that were taken refunded.

What happened

In 2017 Mr S had a number of different pension plans that were reviewed by PFS. It advised him to switch a number of those to a new personal pension. It agreed his attitude to risk and put him into a lifestyling pension product.

Mr S paid PFS a one off fee for the transfer advice. And he agreed to an ongoing adviser charge of 0.4% of his transferred pension fund each year.

PFS have provided us with a copy of the client agreement document that it says Mr S would have been sent. The document indicates it was produced in August 2016 and stated:

"Our ongoing service will include:

- *Monthly monitoring of funds by PFS for quality and suitability*
- *Yearly call to assess any changes in your circumstances or attitude to risk*
- *Yearly update and information regarding holdings*
- *Ongoing support with correspondence and administration"*

And also explained:

"Should you choose to receive ongoing reviews but subsequently decide that you no longer want this service you can cancel it at any time by contacting us by phone or email and we will not charge you."

Mr S complained to PFS, in a phone call in 2023, that it had been taking money from his pension each year but that he didn't think it had done anything for him.

PFS responded to Mr S's complaint and upheld it in part. It explained that it had tried to contact Mr S in 2018, 2019 and 2020 to carry out a review with him. And thought this was sufficient to warrant the fee it had taken. But PFS accepted that it hadn't attempted to conduct a review in 2021 so offered to refund 40% of the fees for that year. It argued that the annual review was only part of the service it provided. PFS also found that Mr S had asked to terminate his agreement with them in May 2022 so offered to refund the fees it continued to take from May 2022 onwards. And additionally offered Mr S £250 for the distress and inconvenience his experiences caused.

Mr S didn't accept PFS's answer and brought his complaint to our service. Our investigator looked into what happened and didn't think that PFS had treated Mr S fairly. She explained that she didn't think that PFS had met its agreed service as it had failed to conduct any review of Mr S's pension in any year following its agreement. She said that PFS's attempts

to contact Mr S weren't sufficient. And there was little evidence of its provision of other services that might warrant any fee being applied. She recommended that PFS put Mr S's pension back into the position it would have been if PFS had taken no fees.

PFS disagreed. It considered that it wasn't responsible for the fact that Mr S didn't respond to offers of reviews. And that the periodic review calls were only part of its ongoing service. It didn't agree with the principle that a full refund was fair. So this case was referred for an ombudsman's 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 am upholding Mr S's complaint for broadly the same reasons that our investigator has already explained.

It is apparent that Mr S is extremely dissatisfied with the service that he received from PFS. That started within a year of his transfer when he had cause to complain about the failure to set up contributions to his new pension. This matter was responded to by PFS and Mr S accepted its offer of compensation. So, whilst I understand that Mr S may consider that his issues with PFS started from this, this matter was dealt with and our investigation will not be considering the merits of that issue. This decision will be confined to whether or not PFS provided Mr S with the service that it should have for the annual fee it took from his pension.

When considering what is fair and reasonable, I take into account relevant laws and regulations as well as the regulator's rules, guidance and standards. Where appropriate I also consider what was good industry practice at the time of the advice. This includes the overarching principles for business that the regulator publishes and includes '*principle 6 – a firm must pay due regard to the interests of its customers and treat them fairly*'.

What the regulator had said?

As a regulated firm, PFS had many rules and principles that they needed to adhere to when providing advice to Mr S. Many of these were found in the regulators handbook under the Conduct of Business Sourcebook (COBS) and Principles for Businesses (PRIN).

Of specific relevance to this complaint is COBS 6.1A.22 which said:

“A firm must not use an adviser charge which is structured to be payable by the retail client over a period of time unless (1) or (2) applies:

(1) the adviser charge is in respect of an ongoing service for the provision of personal recommendations or related services and:

*(a) the firm has disclosed that service along with the adviser charge; and
(b) the retail client is provided with a right to cancel the ongoing service, which must be reasonable in all the circumstances, without penalty and without requiring the retail client to give any reason; or*

(2) the adviser charge relates to a retail investment product for which an instruction from the retail client for regular payments is in place and the firm has disclosed that no ongoing personal recommendations or service will be provided.”

The regulator also produced guidance in the form of an FCA factsheet (For investment

advisers - Setting out what we require from advisers on how they charge their clients). The factsheet was published in September 2014 and said;

“Ongoing adviser charges

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.”

PFS have shown us what it says is the client agreement that was relevant for its relationship with Mr S. It isn't in the form of a signed agreement but is a published document dated August 2016. I'm inclined to accept that it is the service that was agreed to for the fee that had been agreed. And, whilst I haven't seen a signed agreement, I've listened to the calls from the time where I've heard Mr S agree to the ongoing service charge. So, PFS needed to provide the service that it set out, and I listed in the above section of this decision, in order to be entitled to the fee that Mr S agreed to pay PFS.

The rules that the regulator put in place were quite clear. And meant that PFS needed to actually deliver on the service it promised in order to justify its fee. And the FCA additionally made its expectation clear by explaining in its Factsheet for advisers that businesses needed to have robust systems in place to make sure clients received the ongoing service they were paying for. And I have judged the actions of PFS by these standards.

The initial advice was given in 2017 and led Mr S to transfer his pensions consolidating those into a single pension that was put into a life styling investment product. This meant the fund provider adjusted the investments to reduce the exposure to risk approaching retirement age. This didn't require active intervention from PFS.

Did PFS provide Mr S with the agreed service in 2018?

PFS had contact with Mr S in May 2018 which was likely with the intention of providing him with some form of review of his pension. But Mr S was upset at the fact his transfer in 2017 hadn't been handled to his satisfaction and PFS ended up dealing with his complaint instead. After addressing his complaint PFS haven't provided any evidence that it made any further attempt to provide Mr S with a review of his pension. It therefore didn't provide Mr S with any form of review, and I can't see that it had a robust system that ensured that service was provided like it should have.

Did PFS provide Mr S with the agreed service in 2019?

PFS have provided us with a screenshot that it says is evidence that it attempted to call Mr S to conduct a review. Even if I accept that was the purpose of the attempted call in May 2019, although I've been provided no documentary evidence of any report or paper review of his pension from the time, it still means that the review wasn't done. And I don't think that a single attempted call is evidence that PFS had a robust system that ensured that service was provided like it should have been.

Did PFS provide Mr S with the agreed service in 2020?

PFS have shown us a screenshot that it says shows it sent Mr S a letter in May 2020 inviting him to take part in a review. It hasn't provided us with a copy of this letter so I don't know

what it required Mr S to do. Or what it offered him. But it's clear that, if Mr S received it, he didn't respond to it. And PFS have provided no evidence that it made any attempt to follow it up. Which means that it didn't provide Mr S with any review of his pension in 2020 either. And I don't think that a single mail shot is evidence that PFS had a robust system that ensured that its service was provided like it should have been.

Did PFS provide Mr S with the agreed service in 2021?

PFS accepted in its complaint response that it didn't make any attempt to perform a review with Mr S in 2021. And having considered the evidence I agree. It contacted him in August 2021 but that was to try to obtain an email address so that it could set Mr S up with an online account. So PFS didn't provide Mr S with the agreed service in 2021 and the absence of any attempt to do so is yet further evidence of its failure to have put a robust system in place that ensured that a service was provided like it should have been.

Did PFS provide Mr S with the agreed service in 2022?

PFS called and spoke with Mr S in May 2022 about his pension. PFS again explained to Mr S that it would like to be able to contact Mr S by email and to set him up on its online portal. During the course of that conversation Mr S made it known that he remained unhappy about the service PFS had provided him with and that he didn't want anything more to do with PFS. I won't repeat the content of this call in detail but have listened to it and think that it's clear that Mr S wanted to cancel his ongoing agreement with PFS at that point. And, as I noted earlier, his client agreement allowed him to cancel his agreement at any time on the phone or in person and he wouldn't be charged.

PFS called him again in July 2022 asking for information about his plan and it was clear that Mr S couldn't understand why he was still hearing from PFS. It phoned him again in August 2022 as a follow up to a recommendation that it said it had sent him. This call again seemed to go badly with Mr S again expressing his dissatisfaction with the service he'd had from PFS. PFS told him he was still paying it an ongoing adviser fee and Mr S became increasingly cross asking PFS why it was still contacting him.

So, in the course of 2022 PFS didn't provide Mr S with any review of his pension in spite of the fact it had a couple of calls with him. And still took its full ongoing advice charge from Mr S's pension. But I think that the call in May 2022 should have been interpreted as Mr S withdrawing from his agreement with PFS. So it should not have taken any further charges from his pension and should not have continued to contact him. Which means that the charges that it took in 2022 onwards were unreasonable. In fairness, this was also the conclusion that PFS came to when investigating Mr S's complaint.

Summary

I've explained above that I don't think PFS provided Mr S with the service that it told him it would in any year after he transferred his pension. It hasn't evidenced that it had robust systems in place to deliver the service. Yet continued to take the full service charge without having provided what was a key part of the personalised service delivery.

PFS has argued that the annual review was only a part of its service. And I can see that the client agreement indicated that was the case. But the service was provided as a whole. The client agreement did not tell Mr S how much he was paying for each element of the service. Nor did it give him the option to opt in or out of each of the elements. So I don't think it's fair for PFS now to decide how much it thinks it's fair to charge Mr S for the other parts of its service offering.

In any case, I've considered the other elements of its service offering.

It promised Mr S a '*yearly update and information regarding holdings*'. But I've seen no evidence that it provided this either. Mr S received information about this from his pension provider whom he paid separately for its service. I don't think it's fair or reasonable for PFS to claim it should retain an element of its fee for a service provided by someone else.

It promised Mr S that it would provide '*monthly monitoring of funds ... for quality and suitability*'. PFS provided no evidence that it did this either. Instead it has explained that it had a panel that met quarterly to discuss client's investments generally for suitability. That is not the same level of service that it promised. Mr S's pension was with a mainstream pension provider with a lifestyle investment strategy. The pension provider was responsible for monitoring the funds for its customers. Overall, PFS haven't been able to demonstrate what it actually did for Mr S here. So I'm not persuaded that I can determine the value this service offered to be able to reasonably determine that Mr S owes PFS a portion of the fee it took for it.

PFS promised Mr S that it would provide "*ongoing support with correspondence and administration*". Which it wasn't called on to provide. Again, it didn't indicate in its client agreement how much of his fee covered this ad-hoc service, but given that it didn't need to provide this service it would have incurred no specific cost. So am not persuaded that this should be considered as constituting a significant part of the fees that PFS took from Mr S that would warrant the retention of a percentage.

For the reasons I've given I'm upholding Mr S's complaint. PFS didn't provide Mr S with the service that it said it would. Which is most likely due to the fact that it didn't put in place robust enough processes to ensure that it would. And it is fair and reasonable that it should compensate Mr S for charging him for a service that he didn't receive.

Putting things right

For the above reasons I don't think that PFS did enough to provide Mr S with the service it promised in any of the years that it took fees from him. Its client agreement with him didn't stipulate that it would be due for the different elements of the service. So I find no evidential basis for PFS's suggestion that a return of 40% of the fee is all that should be returned for any failure to provide any meaningful annual review of his pension.

Ultimately, for the reasons I've explained, I find that PFS didn't provide the service it agreed for its fee. It agreed to provide the full service for the full fee. And it did not. So I think the fairest way to now put things right is to refund the whole fee taken for the years where it has not provided the service agreed to.

PFS must put Mr S's pension into the position it would be in if it hadn't taken any ongoing advice fees from it.

This will mean calculating the lost investment returns on each deducted fee, based on the actual investment performance of Mr S's pension, from the date the fees were deducted to the date that PFS are told that Mr S accepts my decision.

When PFS have calculated this total loss to Mr S'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 S'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 S as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Mr S has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to their 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 should also pay Mr S the £250, it suggested, for the distress and inconvenience that it recognised it had caused. This is because, after having made his feelings known about wanting to end his client relationship with PFS, PFS caused additional distress by continuing to contact him against his wishes.

If payment of compensation is not made within 28 days of PFS receiving Mr S'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 S a tax deduction certificate in respect of interest if Mr S asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

My final decision

I uphold Mr S's complaint and direct Profile Financial Solutions Limited trading as Profile Pensions to compensate Mr S as I've set out under '*putting things right*' above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 February 2024.

Gary Lane
Ombudsman