

The complaint

Mr C has complained about the investment advice he received in 2019 from Park Hall Financial Services Limited ("Park Hall"). He's said that pension/retirement planning was one of his stated objectives, but this wasn't addressed by the adviser. He's also complained that the ongoing advice charges (OACs) that he's paid have not been justified because the advice was inadequate, and Park Hall has not been proactive in arranging his annual reviews.

What happened

In 2018 Mr C contacted Park Hall looking for financial advice, having been recommended by a friend. His initial email to the advisor dated 20 August 2018 stated that he was looking for "general financial advice" and that he wanted to maximise his returns, while planning for retirement and setting some money aside for his children's future.

Mr C wanted advice for both him and his wife, Mrs C. Mrs C has also complained about the suitability of the advice she received along with the OACs. I have also considered Mrs C's complaint under a different reference. However, as there is some overlap between the two complaints, where necessary I've referred to the relevant circumstances relating to Mrs C.

The adviser to whom Mr C first wrote responded to him within a number of days from his first email but as Mr C was trying to obtain some information regarding his wife's pension it wasn't until about one year later that Mr C and his wife met with the adviser.

On 11 October 2019 the adviser completed a fact find with Mr C (and his wife) and recorded his circumstances at the time as:

- He was aged 48 and was married.
- He was employed full time as a civil servant with a salary of just over £51,000.
- He owned his own home with his wife with an offset mortgage.
- He had two dependent children.
- He was a UK resident and domiciled in the UK for tax purposes.

This document also recorded that Mr C wanted advice on "savings and investments". Mr C signed this form confirming that he agreed with the recorded objectives.

The fact find doesn't appear to have been completed in full and there were some blank sections:

- The life, critical illness and income protection section.
- The investment section.
- The section detailing the objectives and regular savings.
- The section for funding of education.

However, it did record Mr C's details around his health, his dependants, his employment information and what current pension provision he had in place. There are also notes made

in the fact find about Mr C's then current investment holdings and the trust funds he had set up for his children. As well as this, further information was provided to the adviser by Mr C detailing his regular expenditure, assets and liabilities. A full assessment of Mr C's risk level was also carried out and was detailed in a different document

Following the collation of this information Mr C was sent a suitability letter by the adviser dated 7 November 2019. It recorded that Mr C's objectives were to:

- Review his ISAs as he was looking to achieve growth above that of deposit-based accounts.
- Invest funds he had built up over the years for his children's financial needs, for instance further education costs or house deposits.
- Save an additional £300 each per month in the most tax efficient manner.
- Benefit from annual reviews of his investments to ensure they remain suitable.
- Have an investment strategy in line with his attitude to risk.

It also set out that as far as the advice was concerned it was *limited to the above areas only*.

Mr C was recommended to do the following:

- Transfer his existing ISA held elsewhere into a new Stocks and Shares ISA on the Park Hall investment platform facilitated by a firm I will call Firm S.
- Invest the funds in the Park Hall Balanced portfolio as this was in line with his risk profile.
- Invest the funds currently saved for his children in a personal portfolio invested in the same funds as the ISA. These funds could be migrated over to Mr C's ISA in subsequent tax years.
- Contribute £300 per month into his personal portfolio. In future this may be redirected to the Stocks and Shares ISA.
- Review the portfolio annually to ensure it remained in line with his risk profile and continued to be suitable for his long-term investment goals.

At the same time Mr C was provided additional information that set out the applicable fees and charges if he went ahead with the recommendation - an initial fee of 3% of the transfer amounts; a total annual management charge of approximately 1.63%, deducted from the investment; no initial charge for arranging the regular contributions; and an ongoing advice charge 0.5% of the value of the initial investment.

Mr C was also provided with some further documents – the Key Facts Documents (KFDs) and illustrations on the projected investment and was encouraged to study these and the product literature to ensure it met his requirements and that it was for him to decide whether to accept the recommendations the adviser had made.

Mr C agreed to the recommendations. The ISA transfer was completed on 4 December 2019 and the regular contributions started on 1 December 2019.

In terms of the OAC part of the complaint Park Hall confirmed that between the inception of the investment and the date of the complaint Mr C was sent joint letters along with his wife, annually inviting him to arrange a meeting with his adviser where his investments could be reviewed to ensure the portfolio still met with his objectives. These letters were sent 5 January 2021, January 2022 and January 2023.

Mr C has confirmed that he received the letters, but he never responded to them.

Also in January 2023 Mr C received a letter from Park Hall informing him that his adviser had left and that he would be contacted soon by a new one. However, as Mr C didn't receive anything from his new adviser, on 31 May 2023 he raised a complaint to Park Hall about the delays in contact, the difficulties he had with getting in touch with his previous adviser and the suitability of the advice.

Specifically, he said the advice was unsuitable because he was looking for general financial advice *and* pension /retirement planning advice. And while he initially understood the future payments to be the element of retirement planning, he has now realised this wasn't the case. He said that he should have been advised to contribute regularly to his pension instead as this would have allowed him to receive tax relief from his income while increasing the benefit available to him on retirement. He was adamant that pension/retirement planning was his key objective, despite this point not being recorded or confirmed in the suitability report and fact find, stating that his motivation had always been in regard to his retirement options and how they interacted with his children's potential educational needs. He also stated that the emails between him and the adviser had referenced his objective of pension/retirement planning and that as the adviser had collected information in the fact find about his current pensions it was clearly a focus for him at that time.

In terms of the OACs Mr C said that his original adviser had always been very difficult to get hold of and despite leaving numerous messages for him he never returned calls within a reasonable time frame. However, he did accept that he had received the annual review letters but because of the difficulties with his adviser he felt making this arrangement was too difficult.

He also felt that the client agreement of July 2019 showed that Park Hall was to proactively review and assess his portfolio each year and issue a report, but this never happened. Despite this he did confirm that he had made some changes to his portfolio and his contributions in between the annual review dates so he wasn't passive in relation to his investments. But while the adviser had acted on his instructions the level of engagement from him didn't justify the OACs.

Park Hall investigated the complaint and sent an individual to see Mr C to discuss the matter. Following this Park Hall didn't feel it had reason to uphold the complaint. Having reviewed the documents from the time of the advice it was satisfied that Mr C's recorded objective was general financial advice and that no needs around pension/retirement planning had been discussed when Mr C met with the adviser. So, it was reasonable that advice about this point had not been provided. Park Hall was also satisfied that Mr C was fully aware of what the advice was related to as he had signed documents confirming this.

In relation to the OACs, Park Hall was satisfied it had sent the review letters asking Mr C to schedule a review meeting annually and at the correct times and as it was Mr C who had decided not to respond and take up the offers of reviews it was justified in charging for the ongoing advice. It also felt that as it had completed work on Mr C's portfolio in between the review dates, such as moving funds from a general investment account to ISAs and increasing Mr C's monthly contributions to the ISA in 2021 again the regular advice charges were justified.

However, Park Hall did acknowledge that there was an unreasonable delay in the new adviser contacting Mr C in 2023 when he took over from the previous one. For this it apologised. It also offered to complete a full holistic analysis of Mr C's circumstances including cash flow modelling with no charge along with continuing to provide ongoing service for the next twelve months with no fee.

Mr C wasn't happy with the offer Park Hall had made and so brought his complaint to this Service where it was assessed by one of our investigators. She didn't uphold the complaint as she felt that whilst pension/retirement planning had been mentioned when Mr C initially made contact with Park Hall it wasn't mentioned after this and most importantly it wasn't mentioned in the fact find or the suitability letter as a specified objective. So she wasn't satisfied that pension/retirement planning was something Mr C wanted advice on when he met with the adviser around twelve months after he initiated contact.

Mr C didn't agree with the assessment remaining adamant that he was given the impression that the adviser was taking pension/retirement planning into account when providing his advice.

He also said that while the fact find didn't mention planning for pension/retirement there were other mistakes in it that he had raised with the adviser but he had been "brushed off". And so Mr C felt that this was a similar issue and so he signed the declaration of the fact find on that basis.

While the investigator considered Mr C's comments she wasn't persuaded to change her initial outcome. So as no agreement could be reached the complaint has been passed to me to decide.

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'd like to reassure both parties that I've carefully considered all of the arguments made and the evidence provided. If I don't comment on or refer to everything that has been said this isn't meant as a discourtesy or because I haven't thought about it. Rather it is because my decision addresses what I think are the key points in deciding the complaint, bearing in mind our role as an informal dispute resolution service and my remit of deciding what a fair and reasonable outcome is.

I've taken into account relevant: law and regulations; regulatory rules; guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the relevant time.

Where the evidence is incomplete or inconclusive, (as it is here), I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened given the available evidence and wider circumstances.

Mr C's complaint consists of two main points:

- a) The suitability of the advice provided in 2019 and how it didn't include anything on pension/retirement planning, despite this being one of Mr C's objectives.
- b) The OACs that Mr C has paid to date and whether they can be justified.

Suitability of the advice

As mentioned above Mr C has said the advice he received was unsuitable because it didn't include any advice about pension/retirement planning. So he feels the adviser didn't do as he was asked and overall the advice didn't meet the objectives he had communicated to him.

He also said that the documents completed at the time of the advice meeting show that he did in fact seek advice that went beyond his existing savings and the fact the pension section of the fact find was completed supports this.

It's important to point out that obviously I wasn't at the meeting where the fact find was completed so I can't know for sure exactly what was discussed. So in order to make my findings, I must look at all the information that has been provided to me in the course of the complaint to see if what Mr C has said can be supported. I have also taken account of what Mr C has said verbally and while I don't dispute this, in order to uphold this complaint I must be persuaded by the information available to me that Mr C's recollections are not being made with the benefit of hindsight.

I have seen the initial emails Mr C sent to the adviser in 2018 and I agree that they do confirm that Mr C initially set out that he wanted advice about pension planning. However the fact find document and the suitability report, that would have been produced with the aid of Mr C almost a year later, states something different in terms of his objectives for advice. Given Mr C signed to confirm the details on the fact find were correct and he accepted the advice set out in the suitability report the evidence suggest that Mr C was, at the time, happy with the advice and what it covered.

It's worth saying that it isn't unusual for a client's objective to change over time so it isn't beyond the realms of all possibilities that this happened here so I can't say the discrepancies between the emails and the fact find and suitability report seems wholly unusual.

Furthermore, the fact find and the suitability report are the main means of recording and confirming a client's objectives when advice is being provided so it's important those details are accurate and accepted by all parties. In this case they were accepted by Mr C with no evidence of him not agreeing to the parameters of the advice.

In addition, as detailed earlier, the suitability report clearly states what Mr C's objectives were and also made it clear that the advice was limited to only those areas detailed. So given the clarity of this information I can't see how Mr C could have been misled into thinking that any part of the advice concerned pension/retirement planning because nothing in the report confirmed this or even alluded to it.

Furthermore, the fact find also stated that Mr C required advice on savings and investments – again nothing here mentions pension/retirement planning so again I don't see how Mr C could have thought that retirement planning was included when it wasn't stated. It also stated that if he had felt at the time that the adviser had not addressed all of his aims and objectives he had the opportunity to raise it with the advisor – which the evidence suggests he didn't.

The suitability report made it clear that Mr C was to read it along with the other documents provided to ensure he was happy with the information and that it met his requirements and left it to him to decide whether to accept the recommendation or not. Given Mr C accepted the advice that was given to him in 2019 with no argument (that can be seen in the information provided to me) I am satisfied that he was provided with clear detailed information about what the advice was pertaining to and so knew and was happy in 2019 that the advice didn't encompass anything about pension/retirement planning.

I know Mr C thinks the fact that the pension section of the fact find was completed thereby supporting his assertion that pension/retirement planning was always to form part of the advice. However, I don't follow this line of thinking. This section and indeed the fact find itself was a way of recording all pertinent information about Mr C which would help inform the advice. It isn't indicative of any aims or objectives by the mere fact it was completed. The

aims and objectives are usually noted somewhere in the notes section of the fact find, which it was, and then reinforced in the suitability letter, the aim of which is to set out what the advice is after consideration has been made about the details collected in the fact-finding process.

Overall, therefore, I don't agree that the advice provided was unsuitable on the basis that one of Mr C's objectives was not included. The information I have shows that Mr C's objectives were investment and savings advice and this was set out clearly in documentation provided to Mr C. And the fact he signed to confirm he was happy with the advice means he must have been satisfied at the time that the advice covered what he wanted. The fact the initial emails mentioned pension/retirement planning is largely irrelevant because it isn't unusual for aims and objectives to change over time.

Ongoing Adviser charges

As a regulated firm, Park Hall had many rules and principles that it needed to adhere to when providing advice to Mr C. Many of these are found in the regulator's, the Financial Conduct Authority ('FCA'), handbook under the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS').

In relation to ongoing advice charges, the following provides useful context for my assessment of Park Hall's actions here.

In 2014, the FCA produced guidance in the form of a factsheet titled *"For Investment advisers - Setting out what we require from advisers on how they charge their clients"*. The factsheet 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."

While the factsheet wasn't published until late 2014, it didn't mark a change to the rules firms like Park Hall were already expected to follow. Rather it re-enforced or reminded firms of the standards already in place when providing on-going advice services.

There are specific rules and guidance within COBS about ongoing advice charges. COBS 6.1A.22 says:

"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 or a pension transfer, pension conversion or pension opt-out or arrangement with an operator of an electronic system in relation to lending 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."*

And from 3 January 2018, arising from MiFID II, COBS 9A.3.9 explained that investment firms providing a periodic suitability assessment shall review, in order to enhance the service, the suitability of the recommendations given at least annually.

I am satisfied that Park Hall sent Mr C the regular review letters at the correct times. I have seen copies of those letters and Mr C has confirmed he received them along with confirming that he ignored the letters. And while I appreciate the frustration over his adviser's availability given he has acknowledged he received the letters and actively ignored them I am satisfied that Park Hall did what it was obligated to do and therefore I see no reason why the OACs need to be refunded.

Furthermore, while I know that Mr C feels that the client agreement inferred Park Hall was to proactively review and assess his investments and issue report, what the client agreement actually says is:

Where we (Park Hall) agree to provide you with a service that included an ongoing review of the suitability of the investment we have recommended we will carry out this review at least annually. To do this we will need to make contact with you to assess whether the information we hold about you remains accurate and up to date. We will issue you with a report setting out the results of our assessment and if relevant any updated recommendations.

In my view this simply sets out that Park Hall would contact Mr C annually and invite him to have a review of his investments, which is what it did. It doesn't overtly state that Park Hall will conduct the review on its own without any participation from Mr C and then just simply issue a report. Furthermore, it is illogical to think that any review of someone's investments can take place without the participation of the investor. The point of a review is to discuss any changes in the investor's circumstances in the preceding year along with any future changes in aims and objectives and amend the portfolio in accordance with these changes if required. So, Park Hall could not have done that on its own hence why Mr C was invited to take part in the reviews himself.

It was also stated in the suitability report where the charges were explained that the adviser would *enter Mr C's details into its electronic diary system and would write to him on an annual basis with a valuation of his portfolio and an invitation to make an appointment to discuss his portfolio further.*

The adviser went on to say in the same report:

If your circumstances have changed during the year I would urge you to take the opportunity to make an appointment with me to discuss the ongoing suitability of the products. If you neglect to contact me following your annual review, I will assume that your circumstances remain the same and that the products remain suitable for your investment objectives. You do not need to wait for annual review if your circumstances change and would like to review your products sooner.

During an annual review meeting, we will discuss any changes to your circumstances and how these changes may impact on your current investments.

Following an annual review meeting I will establish whether the advice in this report remains suitable for you or whether any changes need to be made in line with your risk profile and the information disclosed to me at our annual review.

You can cancel the ongoing advice fee if you no longer need financial advice on an annual basis however this will mean that we will no longer provide annual reviews and this advice may become unsuitable should your circumstances change.

This information which Mr C would have read at the outset makes it very clear that he would be invited to take part in an annual review each year, what the purpose of the annual review was and what Park Hall would do in terms of his portfolio if Mr C didn't respond to the invitation. So while he says now that he had expected Park Hall to be more proactive when it came to the annual reviews of his portfolio, I'm unsure why he thought this because as above it was explained in clear terms what would happen when it came to the time of the annual reviews.

In light of this information, I am satisfied that Park Hall fulfilled its obligations in terms of the annual reviews and that the only reason they weren't carried out was because Mr C didn't respond to the invitations. Mr C was not a passive investor, shown by the fact he actively made changes to his investments over the years mid reviews, and it appears he was fully aware of the requirements to review his investments regularly. It just seems that he chose not to engage with Park Hall in regard to them which doesn't justify refunding the charges related to this service. Given his actions towards his own portfolio I think it was reasonable for Park Hall to do what it did – make changes to the investment arrangements in line with Mr C's requirements as and when he contacted it and offer to review the portfolio annually – and I think the charges Park Hall were paid for this service were justified and so don't require a refund to Mr C.

In summary therefore, I am satisfied that in 2019 when Mr C met with the adviser his objectives for advice were not pension/retirement planning. I appreciate at initial contact in 2018 he had stated this was to form part of the advice however, from everything I have seen it appears to me that he legitimately changed his objectives by the time he met with the adviser because it was set out in clear and understandable terms what the advice covered and Mr C accepted those terms and the advice as a whole.

I am also satisfied that the OACs that Mr C has paid are justified – Park Hall did carry out work for Mr C on his investments over the years and Park Hall also invited Mr C to annual review meetings but it was Mr C who had decided not to take them up on their offer.

My final decision

For the reasons set out above my final decision is that I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 23 July 2025.

Ayshea Khan
Ombudsman