

The complaint

Mrs S complains about Cheetham Jackson Ltd (CJL). She's unhappy with the level of service they've provided her with, specifically the lack of annual reviews which she believes has caused her a financial loss.

What happened

Mrs S received investment advice from CJL in 2011 and became their client at that time. She complained to them in 2021 and said, in summary, that she had only received one annual review between 2011 and 2019. The impact of this was that her risk profile hadn't been amended to reflect many changes she'd had in her life.

She was also unhappy with how CJL had lost several thousand pounds when she'd transferred a pension to them and thought that they didn't have appropriate systems in place for managing client reviews, funds and investments. She wanted a refund of the fees she'd paid in addition to compensation for loss of income.

CJL looked into the concerns she'd raised and partially upheld her complaint. They could only find evidence of one review in 2018. During this review they noted that they'd asked Mrs S if she'd had any significant life changes and she'd answered no. They upheld her complaint point regarding lack of reviews, but disputed that she hadn't been given an opportunity to disclose her major life changes in relation to her attitude to risk (ATR).

They also said they couldn't find evidence of any errors relating to losing funds from a pension transfer. They pointed to Mrs S' 2018 review which referred to a pension being reviewed with a view to moving it to a SIPP. They concluded an error did happen, but it was subsequently rectified and apologised for any distress this may have caused at the time. In order to put things right, they offered Mrs S a refund of fees she'd paid for any periods where she didn't receive a review and £100 for the distress and inconvenience they'd caused her.

Mrs S didn't accept their findings and asked for our help in the matter. The complaint was considered by one of our investigators who broadly agreed with CJL's findings but thought that Mrs S was also due interest on the refund of fees. CJL accepted the investigator's findings, but Mrs S disagreed. She said, in summary:

- Any interest should be yearly, compounded and take into account the financial position she would have been in had she been advised to make larger regular pension contributions several years earlier.
- Her method of investment in her pension would have changed and increased significantly had she been advised on a regular basis. Since moving to her current advisor, she'd begun making far larger monthly contributions rather than just once a year.
- She disagreed with the amount of compensation for distress and inconvenience as she'd spent a significant time chasing up a Subject Access Request (SAR) and her initial complaint and dealing with the fact that, had she been advised regularly, she

would have made significantly more contributions to her pension and other investments and enjoyed the benefit of those and been in a better financial position.

- She expected consideration to have been made for any interest on the fees that were taken from her funds and could have been invested.

The investigator wasn't persuaded to change his opinion, he thought that:

- The annual review costs would never have been reinvested had the reviews taken place, so simple interest was a fair resolution.
- There was no evidence that Mrs S would've been advised to increase the contribution nor that it would've been affordable to do so.
- The issues around the SAR weren't an aspect of the complaint he was considering, so he was satisfied with the offer of compensation that had been made.

As there's been agreement the complaint has been passed to me to make a 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.

Having done so, I think this complaint should be upheld and I will now explain why. CJL have accepted that they haven't provided Mrs S with the level of service they should have done so my role here is to determine fair redress.

Broadly speaking, our approach is that where we think an error has occurred, we look to put a consumer back in the position they would have been had the error not occurred. What should have happened in Mrs S' situation is that she should have received the regular reviews she was paying for. Had she done so, then she would have received a regular review of her circumstances and CJL would have rightly kept the fees Mrs S was paying them.

Given that Mrs S didn't receive the reviews she should have done, I think it is fair to refund the fees that she paid. I also take her point that the fees would have remained invested in the portfolio. Therefore, I think fair redress would be to refund the fees plus any potential growth they would have received had they remained invested.

I appreciate the points Mrs S has made about the changes she made when she moved to a different adviser, and I thank her for the evidence she's provided showing the advice she received. However, like the investigator, I don't think I can safely say that she would have received the same advice from CJL if the reviews had gone ahead. I say this because the documentation from the 2018 review doesn't contain any indication that this was the direction that CJL would have advised her to go in.

The documentation shows that Mrs S' existing arrangements were meeting her previously identified needs and there hadn't been any significant changes since her last review which should influence the design of her portfolio. A plan was agreed for surplus capital and CJL were going to review an Aviva pension with a view to moving it to a SIPP.

There's no mention of increasing monthly investment savings or pension contributions despite agreeing a plan for surplus capital. It's clear Mrs S feels very strongly that she would have been told to do so if she'd had the reviews, but given the outcome of the 2018 review,

I'm not persuaded that this is the case. It doesn't seem likely that CJL would have advised her to increase her contributions in the reviews that were missed if they didn't advise her to do so in the 2018 review.

Advisers will take differing approaches, so we must be careful not to use the benefit of hindsight to judge an adviser's actions based on another adviser's approach. So, taking everything into account, I'm not persuaded that compensation is due for lack of growth based on the changes Mrs S made when she moved to a new adviser. I appreciate this will be disappointing to Mrs S, but I don't think I can fairly uphold this aspect of her complaint.

I appreciate that Mrs S has been inconvenienced by dealing with this complaint and I've considered the points she's raised. Having done so, I agree with the investigator's opinion that £100 compensation is fair and reasonable for the distress and inconvenience she's suffered.

So, in summary, I think CJL needs to put things right by refunding Mrs S any fees she was charged for periods where no reviews were provided. I also think they need to pay her compensation for the distress and inconvenience she's suffered. But they don't need to do anything in regards to the other points Mrs S has made.

Putting things right

- CJL should refund the fees they charged Mrs S for any year where they didn't provide a review.
- Calculate any lost investment return on that sum, by determining what each fee would have been worth if it remained invested in Mrs S' portfolio.
- If this proves too difficult, they can use the FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) as a benchmark to calculate the return. I think this would be a suitable benchmark as Mrs S wanted capital growth and was willing to accept some investment risk.
- They should also pay Mrs S £100 compensation for the distress and inconvenience she's suffered.

My final decision

For the reasons I've given above, I uphold this complaint. Cheetham Jackson Ltd should compensate Mrs S as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 27 June 2024.

Marc Purnell
Ombudsman