

The complaint

S complains that AFH Independent Financial Services Limited (“AFH”) hasn’t carried out a review of its investments since it took responsibility for them in 2013 but has charged an annual fee. And it says there was a fund switch in 2018 which resulted in investments being switched into cash which has eroded the value of the trust.

The complaint is brought on the Trust’s behalf by the trustees.

What happened

Two members of the S family sought investment advice from an independent advisor and, as a result, they made three gifts into two investment bonds which were placed in two family trust funds in or around 2003 and 2006. In 2013 AFH acquired the business which had provided the advice. AFH continued to receive the trail commission and fees which had been agreed at the outset.

The trustees complain AFH should have been regularly reviewing the trusts’ investments in return for the fees and commission it received.

In 2018 the investment bond provider closed the fund that the trustees were invested in and automatically switched the existing holdings into another cash fund. The trustees say this has impacted the ability of the trusts to achieve its objectives.

AFH said it was entitled to receive the commission and fees when it acquired the business. It said it had no responsibility for selecting the alternative fund in 2018. But it accepted it could have contacted the trustees to discuss the fund switch after it had happened, and it offered them £250 by way of an apology.

When the trustees referred the complaint to us, AFH said it didn’t think it was a complaint we could investigate because it had been brought too late. It said the original advice had been provided more than six years ago and it had been more than three years since the trustees were made aware of the fund switch.

Our investigator explained what parts of the complaint she thought could be investigated by us. In summary, she said she thought we could only investigate the commission and fees which were made within six years of the trustees complaining to AFH. So from 8 October 2016. And that we could investigate the fund switch and the lack of annual reviews as these parts of the complaint had been brought within six years.

AFH agreed with the investigator’s conclusions, so the investigator was then able to look at the merits of the complaint.

The investigator didn’t recommend that the complaint should be upheld. She didn’t think AFH was responsible for the ongoing suitability of the trusts’ investments and that, because the trustees would have been made aware of the fund switch by the provider, there was no obligation on AFH to give advice about it to the trustees. And she thought that the trail

commission and fee agreement was put in place at the inception of the investment and, as such, AFH was entitled to receive it when it took over as servicing agent.

The trustees didn't agree. They said, in summary, that:

- If notification about the fund switch had been sent, this would have been addressed to the trustee whose husband had recently died and who was vulnerable. This should have been taken into consideration.
- AFH has accepted it made mistakes and could have handled things better.
- If AFH had contacted the trustees about the fund switch, they could have asked for advice.

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.

Is this a complaint this service can consider?

Neither party raised objections to our investigator's conclusion about what parts of this complaint we could consider. But, whilst I appreciate both parties are now more interested in the outcome of the merits of the complaint, it's important that I also firstly decide if it is a complaint we can consider. I appreciate this may seem technical but, as our investigator explained, we must follow the Dispute Resolution rules set down in the Financial Conduct Authority's ("FCA") Handbook. A copy of these rules is available on its website.

The relevant rule I need to consider is found within DISP 2.8.2 which says:

The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

(1) more than six months after the date on which the respondent sent the complainant its final response, redress determination or summary resolution communication; or

(2) more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint.

The rule goes on to explain, that we can still consider a complaint where these time limits have been exceeded, if there have been exceptional circumstances which prevented the complaint being brought on time, or where the business consents to us investigating the complaint.

I'm satisfied that the complaint was brought within six months after the date on which AFH sent its final response. I've gone on to consider the six and three-year timescales.

Has it been more than six years since the event S is complaining about happened?

There are two parts to the trustees' complaint.

Firstly, they complain that, whilst AFH has charged an annual fee, it hasn't carried out a review of the trusts' investments since it took responsibility for them in 2013. The trustees

signed an agreement with AFH on 6 January 2014. The trustees complained to AFH on 8 October 2022. I'm satisfied the trustees raised their complaint within six years of the annual reviews which would, or should, have taken place since 2016.

I will consider below the second part of the rule to decide if we can consider the trustees' complaint about the annual reviews and fees before 2016.

Secondly the trustees complain about a fund switch which took place on 21 September 2018. I'm satisfied they brought their complaint within six years of the fund switch taking place and we can consider this part of their complaint.

Has it been more than three years since the trustees knew, or should have known, they could complain about it?

I need to decide whether the trustees knew, or should reasonably have known, that they could complain about the lack of annual reviews which they say should have taken place from 2014 to 2015 inclusive. I'm satisfied the trustees knew that AFH had taken over responsibility for the trusts' investments because they'd received correspondence about the change of business, and they'd signed an agreement with AFH on 6 January 2014. It's reasonable to assume that an annual review would most likely include a meeting with the trustees or, as a minimum, would comprise an annual letter to the trustees setting out the details of a review. In the absence of any meeting or review correspondence, I think the trustees should have known that reviews were not taking place a year after they'd signed the agreement. The trustees also complain that an annual fee was charged. But AFH sent regular valuations to the trustees which included cash statements showing the deduction of fees and the receipt of trail commission. So the trustees should've known they could complain about the fees when they received the valuations.

For these reasons I think the trustees brought their complaint about annual reviews and fees pre-2016 more than three years since they should reasonably have known they had cause for complaint. And this service isn't able to consider the merits of that part of their complaint.

Were there any exceptional circumstances which prevented the trustees from bringing their complaint to us sooner?

Exceptional circumstances here would mean, for example, serious ill health which prevented the trustees from bringing the complaint.

The trustees say that information from AFH about the investments was being sent to just one trustee who was elderly and vulnerable. But the arrangement to send correspondence to just one trustee must reasonably have been agreed at the outset of the relationship with AFH. Or, if it wasn't, the remaining trustees should've reasonably realised they weren't receiving any information. The trustees were all responsible under the terms of the trust deed for fulfilling their trustee responsibilities, so I find it was each of their responsibilities to ensure they were receiving the information about the investments they needed to fulfil their duties. If they were concerned about one trustee's ability to understand or act on information being received they should have ensured they were also in receipt of that information.

So, overall, I don't find there were any exceptional circumstances here which prevented the trustees from bringing the complaint within time.

In summary, for the reasons I've explained, I'm satisfied this service can consider the following parts of this complaint:

- The lack of annual reviews since 2016, whilst fees continued to be charged and trail

commission received.

- The 2018 fund switch.

Annual reviews, fees, and trail commission

When the previous business provided investment advice in 2003 and 2006, it set out its fees, charges, and commissions. For one of the policies, it said it would receive 0.50% of the fund value each year as servicing commission. For the other policy it said it would receive 0.50% trail commission as a portfolio administration charge. The trustees signed to agree these charges. I think it was made reasonably clear that this would be received for the duration of the investment. And when AFH acquired the business, it was entitled to continue to receive these payments.

In return, I don't find there was any obligation on AFH to provide ongoing advice or annual investment reviews. I think AFH made it reasonably clear when it took over as servicing agent for the investment that it wouldn't keep the investments under review unless there was a written agreement to do so. I've not seen evidence that there was such an agreement.

For this reason, I don't find that AFH is obliged to return the trail commission or refund its fees.

The 2018 fund switch

In 2018 the investment provider closed the fund the trusts were invested in. This was a protected cash bonus fund. It automatically switched the investment to the closest equivalent - a cash fund. I don't find AFH was responsible for the switch, and there was no opportunity for it, or the trustees to take alternative action at the time as the switch was automatic. From the evidence I've seen, it seems more likely than not that the fund provider sent notification about the switch to the address which had been provided by the trustees when the investment was made. So the trustees should reasonably have been aware of the switch and could have contacted AFH if it wanted any advice.

The trustees say that the letters about the fund switch would have been sent to the trustee who was elderly and whose husband had recently passed away. I am not unsympathetic to the situation, but I've not seen evidence to show that AFH, or the fund provider, were made aware of the full circumstances and they hadn't received instructions to send correspondence to the address of an alternative trustee.

As a gesture of goodwill, AFH offered the trustees £250. It accepted that it could have contacted the trustees when it was notified of the fund switch. But, as noted above, I don't find there was any obligation on it to provide proactive advice and the trustees should have been aware of the switch, so they could have contacted AFH if they wanted to discuss anything. AFH has told us it is still willing to honour its offer which I think is fair and reasonable in the circumstances.

My final decision

My final decision is that AFH Independent Financial Services Limited should pay the trustees £250.

Under the rules of the Financial Ombudsman Service, I'm required to ask The Trust to accept or reject my decision before 6 March 2024.

Elizabeth Dawes
Ombudsman