

The complaint

Mrs S complains that Alltrust Services Limited is charging fees for illiquid investments held within her SIPP (Self-Invested Personal Pension).

What happened

Mrs S' complaint was considered by one of our investigators. He sent his assessment of it to both parties on 15 December 2023. The background and circumstances to the complaint were set out in that assessment.

However to recap, the investigator said that Mrs S had previously been advised to make an investment in The Resort Group (TRG). A large number of complaints of a similar nature (a lack of due diligence on investments it had accepted) were subsequently made against the original SIPP provider – Rowanmoor. Rowanmoor subsequently went into administration.

The administration of Mrs S' SIPP was taken over by Alltrust Services Limited in March 2023. It charged fees in line with Mrs S' original agreement held with Rowanmoor. The latest annual fees were taken on 19 June 2023.

Mrs S made a claim to the Financial Services Compensation Scheme (FSCS) about Rowanmoor. I understand this is still being considered. Mrs S has said she would like the SIPP fees to be frozen while the FSCS are looking into her claim in order to stop any redress, if the claim is upheld, being affected by the charges.

Alltrust said it wasn't possible to freeze the charges as all the assets within the SIPP were live. It said HMRC deem TRG to be a viable asset, and because of this it must remain in the SIPP until the asset is sold or written off.

The investigator said he thought the Financial Conduct Authority's (previously known as the Financial Services Authority) Principles for Business were of particular relevance to deciding what was fair and reasonable in the circumstances of this complaint. He said they were set out in the FCA's handbook and were "...a *general statement of the fundamental obligations of firms under the regulatory system*".

He noted that in *British Bankers Association, R (on the application of) v The Financial Services Authority & Anor* [2011] EWHC 999 (Admin) (20 April 2011) Ouseley J said:

"The Principles are best understood as the ever present substrata to which the specific rules are added. The Principles always have to be complied with. The specific rules do not supplant them and cannot be used to contradict them. They are but specific applications of them to the particular requirements they cover. The general notion that the specific rules can exhaust the application of the Principles is inappropriate. It cannot be an error of law for the Principles to augment specific rules."

And

“Indeed, it is my view that it would be a breach of statutory duty for the Ombudsman to reach a view on a case without taking the Principles into account in deciding what would be fair and reasonable and what redress to afford. Even if no Principles had been produced by the FSA, the FOS would find it hard to fulfil its particular statutory duty without having regard to the sort of high level principles which find expression in the Principles, whoever formulated them. They are of the essence of what is fair and reasonable, subject to the argument about their relationship to specific rules.”

The investigator said he thought that Principle 6 was of particular relevance in this complaint:

“Customers’ interests – A firm must pay due regard to the interests of its customers and treat them fairly.”

The investigator said the Financial Service Authority’s September 2009 thematic review report on SIPP included the following:

“We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses (‘a firm must pay due regard to the interests of its customers and treat them fairly’) insofar as they are obliged to ensure the fair treatment of their customers. COBS 3.2.3(2) states that a member of a pension scheme is a ‘client’ for COBS purposes, and ‘Customer’ in terms of Principle 6 includes clients.”

The investigator said these comments were made in the context of the quality of the business a SIPP operator was accepting. He said he acknowledged that Alltrust wasn’t responsible for the acceptance of Mrs S’ business. But he said it nonetheless was clear from the FSA’s comments that SIPP operators were obliged to ensure the fair treatment of their customers.

The investigator said in deciding what was fair and reasonable in the circumstances of the case, he’d given careful consideration to Alltrust’s obligation to ensure the fair treatment of its customers.

The investigator said even though the assets within the SIPP were illiquid they still had to be administered, and there was still work to be done to manage the investments. He said although Alltrust had to treat customer’s fairly, he didn’t think this meant it had to cancel or freeze the charges.

The investigator said Alltrust wasn’t responsible for Rowanmoor going into liquidation or the fact that Rowanmoor couldn’t be asked to take control of any illiquid, or difficult to sell, assets held with the SIPP. He said Alltrust wasn’t responsible for the actions of Rowanmoor before it took over the SIPP administration. And that in order for the SIPP fees to be cancelled, the investments within the SIPP would need to be sold or written off. He acknowledged that because of the nature of the investments that could be difficult to do. But he said this wasn’t a result of something that Alltrust had done – the due diligence should have been carried out by Rowanmoor and not Alltrust.

The investigator said, however, that he didn’t think the fees Alltrust was charging were fair – in as far as it was charging higher fees to Mrs S than it would for new or its existing clients holding similar investments. He said the fees it charged were different to what Rowanmoor charged. So he thought in order to treat Mrs S fairly, Alltrust should charge Mrs S what it would charge one of its new or existing clients.

Mrs S didn’t accept the investigator’s findings, and therefore the complaint has been passed to me to consider.

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've come to the same overall conclusions as the investigator, and largely for the same reasons.

Mrs S didn't specifically respond to the investigator's assessment. However Mr S - who has a related complaint – did. Whilst I'm not entirely sure if that was also on behalf of Mrs S I've taken it into account in my decision below, albeit it ultimately doesn't change the outcome of the complaint.

Mr S said that he thought the findings were predicated on the idea that Alltrust couldn't be held accountable for the decisions made by Rowanmoor as it no longer existed. But he said it seemed more logical, and a widely accepted business practice, that following an acquisition the acquiring entity assumed the responsibilities and liabilities of the acquired entity. He said that for all intents and purposes Alltrust was the same entity as Rowanmoor – it acquired it by choice. However its clients had little choice other than to continue to use its services. Mr S said it wouldn't be possible to find another SIPP provider to take on the accounts given all the problems. And he said the complaint wasn't, as stated, that Alltrust was charging fees for an illiquid investment – it was that they were charging fees for an investment that they were negligent in accepting.

Firstly, I recognise that Mrs S is in a difficult situation and there is no straightforward way out of it. I don't know all the circumstances behind her original decision to invest in TRG. However I don't think Mrs S being invested in TRG is a result of an error or omission by Alltrust, or that it accepted responsibility for that decision when it acquired Rowanmoor. Alltrust acquired Rowanmoor's SIPP business and took over the future administration and operation of its SIPPs. I don't agree that makes it effectively the same entity. The FSCS has accepted claims against Rowanmoor relating to its alleged past failings which wouldn't be the case if Alltrust had accepted responsibility as part of its deal.

So I think if Mrs S' complaint is as Mr S says - that Alltrust is charging fees for an investment that it negligently accepted – that particular complaint fails. I'm not persuaded that Alltrust has any responsibility for the initial acceptance of the investment into the SIPP.

Mr S has also referred to another Ombudsman's decision which he says established that finding a way of preventing ongoing fees was an intrinsic part of putting things right. However that decision and what was considered fair compensation was against Rowanmoor, and has to be considered in the context of the errors or omissions by Rowanmoor and in light of Rowanmoor's own responsibilities and obligations at the time.

Each case is considered on its individual facts, and a firm's own responsibilities in the context of the particular circumstances. As I've said above, I'm not persuaded that Alltrust had any role or responsibility in the initial investment here.

Mrs S invested in three apartments in TRG. My understanding is that her SIPP also holds a portfolio of investments and cash. Whilst I accept that the returns on the investments in TRG haven't gone as promoted or Mrs S expected, they are still an ongoing concern.

Mr S has said although the property assets may be 'live' in theory, they aren't in practice. He said there is virtually no chance of selling them whilst the protracted FSCS claim goes on. He said they cannot be liquidated fully or even partially.

As I've said above, I recognise Mrs S is in a difficult position. But what I'm considering here is a complaint against Alltrust, and Alltrust's role in the matter and its own responsibilities and obligations to Mrs S. Investing in these type of overseas property developments that aren't protected by UK law and regulations has significant risks, and although the investments in TRG are illiquid, that is part of the nature of this type of investment and a typical risk with it.

Whether or not the investment was suitable for Mrs S wasn't a matter for Alltrust to consider. As I've said, I don't know the full circumstances behind Mrs S' investment in TRG, but if an Independent Financial Adviser (IFA) gave advice it was the IFA's responsibility to ensure its advice was suitable. Rowanmoor had its own separate responsibilities when accepting the investment into the SIPP. However Alltrust merely took over the administration and operation of the SIPPs from March 2023 – it wasn't responsible for Mrs S being in the investment in the first place.

This isn't a situation where the investment has totally 'failed'. The SIPP's holding in TRG is 'live' along with significant amounts in a portfolio of investments and cash. There are a number of tasks and responsibilities in administering a SIPP, and I don't think it's unfair for Alltrust to continue to apply charges in the particular circumstances here.

My understanding is that Mrs S could try and sell the apartments she holds in TRG, but I appreciate the likelihood of doing so is limited given the issues surrounding the investment and the associated difficulties in finding a buyer. It would also involve significant costs. I also understand Mrs S could try and transfer the properties in specie to another SIPP provider. But again, Mrs S would need to find a provider willing to accept such a transfer and, as Mr S has said and in my experience, that would also present difficulties. So on the one hand I appreciate that Mrs S is clearly in a position that is difficult for her to resolve herself and she is still incurring charges.

But on the other, Alltrust wasn't responsible for the investment in TRG – that was due to failings by other parties.

Mrs S is Alltrust's customer, and Alltrust must act in her best interests and treat her fairly. Alltrust has said its senior management is considering the matter and what can be done with the properties with the FSCS and FCA – albeit nothing has been decided yet. I appreciate that will therefore be little comfort to Mrs S. But Alltrust should endeavour to do all it can to try and help find a solution to the matter as quickly as reasonably possible.

In the meantime however, for the reasons given by the investigator and in the context of the above, I think it would be fair and reasonable for Alltrust to charge the fees that it would charge for its own new SIPP customers and refund the difference in charges from the time it took over the SIPP.

We also said it should add interest to the refund at 8% simple per annum. Alltrust said it didn't agree that 8% was appropriate given the interest would have been accrued on money taken from the SIPP bank account. I think Alltrust is correct here – albeit the amounts are only a few pounds either way. Given the fees would have been paid from the bank account, if they hadn't been taken they would have earned interest at the rate applied to that account. So I do think that's the appropriate interest rate to apply - to the date of this decision in any event - in the circumstances.

Putting things right

Alltrust Services Limited should refund the difference in fees from the time it took over the

SIPP. And then going forward charge the same fees it charges its own new customers. If the fee for 2023/24 hasn't been charged yet it should be on this basis when it is charged.

Interest on the refund of fees should be in line with the interest that would have been applied had those monies been in the cash account and paid from the date the fees were paid to the date of this decision.

Interest at the rate of 8% simple should be added to the total compensation payable as at decision date, from the date of this decision to settlement date, but only if the compensation isn't paid within 28 days of us notifying Alltrust Services Limited of Mrs S' acceptance of this decision.

Alltrust Services Limited should pay such an amount into Mrs S' pension plan to increase its value by the value of the compensation as outlined above. The payment should allow for the effect of charges and any available tax relief.

However Alltrust Services Limited shouldn't pay the compensation into the pension if it would conflict with any existing protection or allowance. If it's unable to pay the money into Mrs S' pension it should pay it to Mrs S direct. Had it been possible to pay the money into the plan it would subsequently provide a taxable income. Therefore if paid direct it should be reduced to notionally allow for the income tax that would otherwise have been paid – also taking into account that ordinarily 25% would be taken tax free. So *if* Mrs S is a basic rate taxpayer a reduction of 15% on the total would be appropriate.

My final decision

My final decision is that I uphold Mrs S' complaint in part.

I order Alltrust Services Limited to calculate and pay compensation to Mrs S as outlined above under 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 19 April 2024.

David Ashley
Ombudsman