

The complaint

Mr S is represented.

He holds a Self-Invested Personal Pension ('SIPP') provided by Embark Pensions ('EP') – the SIPP was a 'Liberty SIPP' which EP took over. He obtained a statement of charges from EP and noticed a fee of £1,889.29 paid from the SIPP to True Potential Wealth Management LLP ('TPWM') in July 2014. He disputes this payment and does not recall receiving a service for the fee, so he seeks a full refund of the payment (with interest) from TPWM.

What happened

Our service initially considered our jurisdiction to address the complaint, because TPWM has no record for Mr S or his SIPP, and no record of a service provided to either. For this reason, we initially concluded that he could not establish a relationship with TPWM, so he was not an eligible complainant.

The investigator with conduct of the case then considered additional evidence, mainly –

- Written confirmation from EP, in April 2023, that, based on the SIPP's records, a specific/named adviser from a third-party firm had confirmed, in July 2012, that his firm had been appointed as advisers for the SIPP; that on 23 September 2013 notification of a transfer of business from that firm to TPWM was received; that the same adviser then continued to service the SIPP, under TPWM, until December 2016; that the same adviser, under another/different firm, then resumed servicing of the SIPP in December 2017; and that the £1,889.29 payment to TPWM was an adviser fee.
- A letter from TPWM to Mr S dated 7 May 2014, in which the former gave the latter information on how to access his personal client website page, including the website address, his access ID number, his username and his password.

There is also record of a telephone conversation between the investigator and Mr S, in which Mr S confirmed that he had always dealt with the named adviser and knew he was a representative of TPWM at the time, but he could not recall ever being told about the fee.

The investigator then concluded that a customer relationship between Mr S and TPWM had been evidenced and established by the additional documentation/information, so he is an eligible complainant. With regards to the merits of his complaint, the investigator concluded that it should not be upheld.

He mainly found as follows – available evidence showed that the named adviser had been appointed to service the SIPP, under the previous firm; after the service was transferred to TPWM there is no evidence that the arrangement was ever stopped or cancelled; the adviser was with TPWM at the time the £1,889.29 fee was paid to TPWM; TPWM's inability to find any record for Mr S or his SIPP is not necessarily unreasonable, given that the fee was paid around 10 years ago and its service to the SIPP ended in 2016; data protection regulations mean it was not obliged to retain such records after six years; Mr S' recollection

of events in 2014 is limited; the May 2014 letter from TPWM to him shows that services were being provided to him at the time; so, overall, the opposite cannot reasonably be concluded and the claim for a refund of the fee has not been established.

Mr S' representative conveyed his disagreement with this outcome and his request for an Ombudsman's decision. It said TPWM cannot provide evidence that advice was given at the time of the fee payment, that the onus is on it to do that, so its inability to do so means it should refund the payment (with interest).

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 have reached the same findings and conclusions expressed by the investigator.

With regards to Mr S' eligibility to complain and his relationship with TPWM, I too am satisfied that the 2023 confirmation from EP and the 2014 letter from TPWM to Mr S establish a customer-firm relationship between the parties. That, alongside available information that he was a consumer at the relevant time, also confirms that he is an eligible complainant.

The regulator's Handbook includes rules, in its Dispute Resolution provisions, for our jurisdiction. The rules for eligibility to complain are that – an eligible complainant must be a consumer, a micro-enterprise, a charity, a trustee of a trust, a CBTL consumer, a small business or a guarantor; and an eligible complainant must also show that the complaint comes from a relationship covered by the rules. The customer-firm relationship is covered by the rules, so my conclusion has been reached by applying these rules to the facts of and information in Mr S' case.

The evidence that has helped us to establish his customer relationship with TPWM also stands to defeat his complaint. I understand his and his representative's strength of feeling in their pursuit for a refund of the relevant fee, but in the face of said evidence their argument appears to be flawed.

Justification – in terms of explanation – for the 2014 fee payment to TPWM has already been established. It was the adviser firm appointed to service his SIPP between 2014 and 2016, and EP has confirmed that the payment was an adviser fee payment. Therefore, the payment was not arbitrary, it was made because of the advisory service TPWM was appointed to provide to the SIPP and, based on the April 2014 letter, to him.

As such, the question is not about whether (or not) the fee can be explained – it has already been explained – the question is about whether (or not) Mr S received the service for which the fee was paid. Whereas, the onus would arguably have been with TPWM to explain a fee payment it has received from Mr S, or refund it if there was/is no explanation, in terms of an allegation that he did not receive the service he paid for, the onus is mainly upon him to either prove the allegation on the balance of probabilities and/or, at least, present facts and evidence from which his claim can be determined. He has done neither.

He has confirmed to us that he always dealt with the named adviser who serviced the SIPP under TPWM between 2014 and 2016. That same individual provided that service prior to TPWM taking over, and he resumed servicing of the SIPP, under a different firm, in 2017. The implication is that the named adviser was providing ongoing service to Mr S and his SIPP throughout these periods, including the period in which he did so under TPWM. As the

investigator said in his view, TPWM's 2014 letter to him also shows an element of service delivery – the personal client website page.

These aspects support the conclusion, on balance, that TPWM cannot reasonably be found to have failed to deliver the advisory service that it was paid for. Such failure has not been established. Importantly, whilst he cannot recall notice about the fee or its payment, Mr S appears to concede that he had ongoing dealings with the named adviser at the time and he does not appear to have particularised any specific service component he feels he did not receive or was deprived of.

The fact that TPWM's records cannot evidence the advice or service to Mr S and his SIPP does not automatically mean no advice/service was provided. I echo the investigator's observation about the data protection and retention rules which mean it is possible that, at the time the complaint was raised (in 2023), TPWM no longer retained records of its advice/service to him and his SIPP. Furthermore, the absence of its records does nothing to alter the conclusion mentioned above and the evidence that supports it.

Overall, on balance, and for the reasons given above, I do not find that Mr S has a basis to claim the refund of fees he has asked for.

My final decision

For the reasons given above, I do not uphold Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 25 July 2024.

Roy Kuku
Ombudsman