

The complaint

Mrs and Mr E complain about the lack of comprehensive annual reviews they received from Foster Denovo Limited (Foster Denovo) - after 2019 - for an Individual Savings Account (ISA) and pension drawdown plan they held between them. They're unhappy about the ongoing fees they paid in respect of the reviews and would like them to be refunded.

What happened

In 2014 Mrs E took out an ISA following a recommendation from Foster Denovo. In 2017 she transferred an ISA from another provider into her existing plan. At this time Mr E also transferred his pension plans into a new drawdown plan.

In addition to the initial charges that were applied, Mrs and Mr E agreed to pay Foster Denovo 0.75% of their funds as an ongoing adviser fee.

Mrs and Mr E say that no annual reviews took place on their investments after 2018. Foster Denovo says that from early 2020 until 2022 it prepared reports and conducted telephone reviews with Mrs and Mr E but was told they didn't require any further advice or wish to make changes to their investments.

In December 2022 Mrs and Mr E complained about the lack of ongoing reviews and requested that any ongoing fees Foster Denovo were due to receive were stopped. Foster Denovo said that it had provided reports for 2019 to 2021 which appeared to meet the standard required of its "service engagement." Although it said it hadn't been able to find any documentation relating to a review in 2022 and offered to refund that year's adviser fees. But it also thought that overall it had applied its charges in line with the fee agreements which had been signed by Mrs and Mr E.

Mrs and Mr E weren't satisfied with that response so brought their complaint to us where one of our investigators looked into the matter. He thought the complaint should be upheld as he wasn't satisfied that the ongoing service justified the fees that had been applied. He wasn't satisfied that Mrs and Mr E were made aware of, or agreed with, the information contained within Foster Denovo's annual reports. He didn't think the reports were tailored sufficiently to their needs. He thought Foster Denovo should refund the ongoing adviser fees it had applied since 2018 and add simple interest at 8% per year to each payment.

Mrs and Mr E accepted the investigator's view, but Foster Denovo didn't. It thought the reports it provided demonstrated that the adviser had conducted annual reviews and issued confirmation letters afterwards. It said the reports were then held on Mrs and Mr E's records.

It said that – because of issues arising from the global pandemic – it had adopted a telephone review process instead of 'face to face' meetings. Furthermore it said Mrs and Mr E had agreed to that style of review in an email dated 20 August 2018. It also said that they hadn't registered any disapproval of its service from 2018 to 2022 and thought the only reason for the complaint being raised now was because of a delay in conducting a review in 2022 because of Mr E's ill health in that year.

The investigator wasn't persuaded to change his view and so Foster Denovo asked for the complaint to be referred to an ombudsman – so it was passed to me to review.

I issued a provisional decision on 28 February 2024. Here's what I said.

"Mrs and Mr E haven't made any complaint about the suitability of the plans or the investment strategy that Foster Denovo recommended to them. Their complaint is simply that they haven't received the level of ongoing service they expected in relation to the ongoing adviser fees they paid – particularly after 2018.

So to begin with I've looked at the fee agreement that was signed and accepted by Mrs and Mr E in April 2017 to see what level of ongoing service Foster Denovo was obliged to provide. It's "select review service" - which was an "ongoing advice, financial coaching and review process" - was "designed to make sure the arrangements we put in place continue to meet your goals." It carried a yearly fee of 0.75% of the total value of Mrs and Mr E's assets and was supposed to cover "where appropriate:

- a review of progress made in achieving your aims:*
- an update on any changes to your personal finances or goals; and*
- a review of your savings and investments performance and current pension strategy.*

As part of our select annual review service, where appropriate and at no extra cost, we include a recommendation to change investment funds where we gave the original advice."

Foster Denovo didn't provide a guide to what this review should look like or how it would be carried out – so I need to consider whether the reviews that were conducted met the coverage set out above. I have considered what regulatory guidance was in place at the time relating to ongoing reviews - but I'm not aware of anything specific. The regulator's fact sheet No.010 – which covers "adviser charging" stated that ongoing adviser charges "should only be levied where a consumer is paying for ongoing service, such as a performance review of the investments.... if you are providing an ongoing service, you should clearly confirm the details of the ongoing service..."

I think Foster Denovo did confirm the details in its fee agreement, so I think it was entitled to charge fees – as long as the service fulfilled its duties. In the absence of any definitive guide of exactly how the review ought to have looked I've considered what I think it ought to have covered in a fair and reasonable way as well as deciding whether the three metrics that were set out in the fee agreement were met. And while I think this matter is very finely balanced, on balance, I don't think Foster Denovo has done enough in terms of providing a relevant and robust review to satisfy those metrics. I say that for the following reasons:

Updating personal finances or goals

It should be remembered that Foster Denovo wasn't providing a full holistic financial review each year. It was designed to "make sure the arrangements we put in place continue to meet your goals." I wouldn't expect Foster Denovo to try to review other provider's plans or investments, although I think a broad idea of the type and value of other investments held was important for it to be aware of.

But to be able to review the existing plans I think Foster Denovo did need to be aware of any updates and changes to Mrs and Mr E's circumstances. These were the very circumstances that needed to be assessed in the first place before any recommendation was made.

Foster Denovo says the adviser conducted the review by telephone from 2020 onwards as attitudes to face to face meetings had changed because of the global pandemic. This doesn't seem an unreasonable adjustment to its approach to have made in the

circumstances. But of course that didn't mean that the quality of such telephone reviews – or their importance within the overall review process – should be any less than the face to face meetings had been.

I've looked carefully at the reports that were carried out from 2018 onwards and I note that the personal information that was recorded was the same as that input in 2022. This included exactly the same figures for income, expenditure, deposits held in cash, total assets, and attitude to risk (ATR). But it seems unlikely to me that this information could have remained unchanged year after year. For example Mrs and Mr E's state pension were recorded as the same over this period, but I find that to be inconsistent with what happens to state pensions which are usually increased annually in line with a particular benchmark. I also don't think it's likely that Mrs and Mr E's expenditure would have remained unchanged or their total assets which included the value of their home. But I think the biggest issue here was that the ATR remained unchanged (or at least wasn't assessed) over that time.

Of course Foster Denovo will, I assume, say that the adviser asked Mrs and Mr E if their circumstances had changed each year and that would have recorded the answer they gave. And I don't doubt that if asked that question – assuming it related to significant event changes in their lives – Mrs and Mr E would have said there were no changes. But I think the adviser needed to robustly challenge that idea, particularly in areas where he ought to have known things would have changed (income and expenditure), or in areas like ATR where Mrs and Mr E wouldn't possibly have known things had changed unless their ATR and capacity for loss were evaluated against questions designed to assess their risk profile.

There's no suggestion here that the adviser wasn't trying to conduct an annual review, but I think what he provided wasn't consistent with the metric of "review progress made in achieving your aims" because it wasn't based on updated personal circumstances. I would have expected the adviser to have set out Mrs and Mr E's objectives again in each report and explained how their investments had met or were aiming to meet those objectives. From reading each report it's unclear to me what the objectives were and which targets had already been achieved and which remained.

A review of your savings and investments performance and current pension strategy.

One of the difficulties in determining the outcome here is to consider Mrs and Mr E's own expectation of what the reviews should have looked like. Mrs E has said that the annual reviews were "random, unprepared and informal" with a focus on possible new investments instead of reviewing the existing ones. I haven't been provided with any recordings of these meetings but I've no reason to dispute Mrs E's recollection of things. But I don't think it follows that the reviews didn't fulfil their obligations because they weren't "formal" enough for example.

But Foster Denovo did say that it would conduct "a review of your savings and investments performance and current pension strategy." So I've looked at the reports to see if I think that happened – and I'm not persuaded that it did. I say that because the report did set out the valuations of each of Mr and Mrs E's plans. It also noted the investment strategy of the plans and showed the asset class breakdown of the investment portfolios.

But most of that information would have been provided to Mrs and Mr E by their product providers within annual statements and fund factsheets.

What I would have expected to see would have been a more tailored analysis of the plans Mrs and Mr E held and how the investment strategy fitted in with their objectives and ATR/capacity for loss – if retested. But I haven't seen anything to support the idea that Foster Denovo conducted an analysis of the investment performance and pension strategy

in line with how it said it would or in line with what I would have expected it to do.

But even if I am wrong in my explanation of what I think the report should have done and failed to do it's still unclear to me why Foster Denovo – who clearly did spend a significant amount of time preparing the analysis that was laid out in its reports – didn't issue the information contained within the reports to Mrs and Mr E. Had the information been provided I think they would have been more informed about their investments and could have then decided if the information they'd received was sufficient for their needs or whether they needed to ask for further advice. After all Foster Denovo also said that it would "include a recommendation to change investment funds where we gave the original advice" where appropriate and at no further costs. I don't think it would have been possible for Mrs and Mr E to comment on any such recommendation unless it understood the basis on which it was made.

There's no suggestion here that Foster Denovo didn't prepare the background information required to conduct annual reviews. Nor that it contacted Mrs and Mr E to carry out that review – with the exception of 2022 for which it's provided an explanation. And as I've said I've also carefully considered whether Mrs and Mr E had a higher than reasonable expectation of the reviews. But I've concluded, on balance, that the annual reviews didn't meet the metrics that Foster Denovo set out in its terms of engagement and fee agreement, and that it didn't provide Mrs and Mr E with any meaningful report afterwards setting out the outcome of the review against objectives and forthcoming targets and goals.

So, I think Foster Denovo should compensate Mrs and Mr E as set out in my redress formula below.

To compensate Mrs and Mr E fairly, Foster Denovo must:

At the date of any final decision, compare the current (actual) value of both Mr E's drawdown plan and Mrs E's ISA investment with their notional (fair) value had each annual adviser fee not been applied at the time it was. Foster Denovo should pay the difference between the fair value and the actual value of the investments as compensation.

I think this method is fairer because it takes account of the actual growth lost from each plan as a result of the annual adviser fees, rather than a simplified interest figure for loss of use of the capital. I think the compensation should be paid directly to Mrs and Mr E at this time, but had the compensation been paid into Mr E's drawdown plan, it would have provided a taxable income.

Therefore the compensation that Mr E should receive should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr E won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr E's actual or expected marginal rate of tax at his selected retirement age.

It's reasonable to assume that Mr E is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if he would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

If either party dispute that this is a reasonable assumption, they must let us know as soon as possible so that the assumption can be clarified and Mr E receives appropriate

compensation. It won't be possible for us to amend this assumption once any final decision has been issued on the complaint.

Foster Denovo should also add any interest set out below to the compensation payable.

Income tax may be payable on any interest awarded.

Any additional sum paid into the investment should be added to the fair value calculation from the point in time when it was actually paid in.

Any withdrawal from the Foster Denovo should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Foster Denovo totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically."

Responses to the provisional decision

Mrs and Mr E accepted the provisional decision although they wanted to know who would carry out the redress calculation as they felt it would be difficult for them to fully understand. But they also wanted to confirm some additional points:

- Their response to Foster Denovo in suggesting they "*didn't require any further advice*" related to further investment in new or additional products. They restated that they didn't receive any ongoing advice or financial coaching, nor did they go through any additional review process to ensure their arrangements met their goals.
- They accepted their understanding of financial investment was "low" but, regardless, didn't believe that the service Foster Denovo provided fulfilled its duties and was unacceptable in relation to the fees it charged.
- The telephone appointments that were held were often "*rushed and random.*" They didn't believe it was a professional service and thought this was borne out by the fact Mr E's pension was only assessed twice – both times in 2020.

Foster Denovo didn't accept the provisional decision. It said:

- It didn't believe we had fully considered the information it provided about the telephone discussions which confirmed the content of the annual review documents. It thought it had demonstrated, through the notes on Mrs and Mr E's records, that there were areas of discussion to which Mrs and Mr E provided responses.
- The global pandemic of 2020 restricted the ability to conduct face to face meetings. This was unfortunate but followed the government guidelines at the time – especially for clients who might have been considered more "at risk." It thought Mrs and Mr E had confirmed their agreement to this style of review in an email from 2018.
- It didn't believe there was any evidence to support Mrs and Mr E assertion that they had been unhappy with the review service since 2018. It agreed had to compensate Mrs and Mr E for any lack of service during 2022 as a result of its investigation, although it believed this was explained by Mr E's ill health at that time.
- It wanted me to reconsider my decision in light of the unique and difficult situation arising out of the global pandemic.

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.

And having considered the further submissions from both parties I see no reason to depart from my provisional findings. I'll set out my final reasons below.

There hasn't been any concern shown by Mrs and Mr E about the suitability of the investment advice they were given by Foster Denovo – so I haven't considered that matter here. What has been raised in their complaint – and is therefore the matter I will focus on – is the ongoing service they received after their initial meeting in 2017 and whether the service they were given justified the level of ongoing charges that were levied.

I've looked at the fee agreement that Mrs and Mr E signed in April 2017 which set out the ongoing service they could expect. They agreed to a “*select review service*” which was an “*ongoing advice, financial coaching and review process.... designed to make sure the arrangements we put in place continue to meet your goals.*” So I've looked at whether I think the reviews met those objectives – which were set out more clearly as:

- *A review of progress made in achieving your aims.*
- *An update on any changes to your personal finances or goals; and*
- *A review of your savings and investments performance and current pension strategy.*

I've looked at each one turn and analysed the objectives against what actually happened as well as taking into account any regulatory requirement. Although I note the only real regulatory guidance was that if ongoing fees were to be charged there should be some evidence of the service being provided as well as the need to fully explain the details of the service – the latter of which I'm satisfied Foster Denovo did by virtue of what I've set out above from the fee and engagement agreement.

Updating personal finances and goals

I'm mindful that from 2020 Foster Denovo carried out the reviews by telephone because of the difficulties and restrictions placed upon it because of the global pandemic. Foster Denovo says I haven't fully considered the implications of these difficulties especially as they were following government guidelines at the time and were particularly mindful that Mrs and Mr E might have fallen into the “vulnerable” category of people that could be most affected by face to face meetings.

And Foster Denovo is right to point out the difficulties of conducting face to face meetings at this time and I have carefully considered the situation in place at the time. I also note that Mrs and Mr E did suggest in an email from 2018 they were comfortable with this approach. I think Foster Denovo were entirely right to use this approach – which was laid out by the government as part of its strategy. I have therefore considered whether I think the reviews met their objectives within the framework of telephone meetings instead of what might be expected from face to face meetings. But that didn't mean that the quality of such telephone reviews – or their importance within the overall review process – should be any less than the face to face meetings would have been.

With regards to “*updating personal details*” I note that the personal information recorded in the reports was the same in 2022 as it had been in 2018. This included details about income and expenditure and assets held as well as Mrs and Mr E's attitude to risk (ATR). I accept that Foster Denovo would have asked if there had been any changes, but I think such a question would most likely have been met with a negative response – unless there had been a substantial or noticeable change that Mrs and Mr E thought might be relevant. But in order

to meet the objectives of the review I think Foster Denovo needed to establish if there were any changes to Mrs and Mr E's personal circumstances – such as the ones I set out above.

I don't think it's reasonable to suggest their income and expenditure, or assets held, or even their ATR would have remained unchanged over that period of time. I think it was for Foster Denovo to challenge those areas more robustly and I think it more likely than not it would have established that there were changes which I think would have had a bearing on their advice about whether "*the arrangements we put in place continue to meet your goals.*" I think Foster Denovo needed to do more here, which was equally possible over the telephone as it was "face to face." And I think it was only possible for Foster Denovo to meet the metric of *reviewing the progress of achieving Mrs and Mr E's aims* had those personal details and circumstances been updated.

As an example I don't think it was possible to confirm the existing investments were still entirely suitable unless the ATR was tested or at least reinforced – which I haven't seen any evidence was the case here. I don't take lightly the fact that Foster Denovo did carry out a review, but I don't think it met the objectives Foster Denovo had itself set out in the fee arrangement and therefore didn't justify the fee that was paid. I haven't seen any evidence from the reports to support the idea that Mrs and Mr E's objectives were restated and a review of the progress in achieving them was set out clearly. And at the very least I don't think the personal information Foster Denovo used was sufficiently updated to demonstrate that progress against their goals.

The savings and investment review and Mr E's pension strategy

In their response to my provisional decision Mrs and Mr E reiterated their concerns that the telephone reviews they received were often "*rushed and random*" and seemingly not the professional service they expected. They said the adviser often said, "*he'd been busy*" and was "*just about to contact them.*" They said they didn't even receive the email he said he'd sent to explain his forthcoming retirement and how it affected them. I can understand their frustration over this perceived "poor service," but I haven't been provided with any evidence in the form of the calls for example to support these claims – although I have no reason to doubt their recollections.

Foster Denovo on the other hand said it thought its telephone reviews covered the contents of its annual reports and the notes that were made of the (joint) discussions were input onto Mrs and Mr E's records and available for scrutiny. It thought it had provided the ongoing service it said it would provide – particularly taking into account the restrictions imposed on meetings during and following the global pandemic.

So I've looked carefully at the annual reports that Foster Denovo produced. I note that the reports contained a lot of factual information about Mrs and Mr E's investments – such as valuations and detailed breakdowns of the portfolios they held. As well as confirmation of their personal information – although I've already said I don't think this was updated as it should have been. But I'm not satisfied that the reports contained the sort of bespoke, tailored analysis of Mrs and Mr E's ongoing goals and objectives and how the data that was provided supported the idea of ensuring "*the arrangements we put in place continue to meet your goals.*"

I think the idea of the ongoing reviews should have been to establish how the investment strategy was or wasn't achieving Mrs and Mr E's progress in achieving their aims, and what changes or adjustments might need to be made in order to do so more effectively. In short I simply don't think the reviews achieved their stated aims and therefore I don't think could be said to reasonably have justified the ongoing fees that were charged.

However, even if I'm wrong in my belief I haven't seen any evidence to show that Foster Denovo issued the annual reports to Mrs and Mr E's, apart from a covering letter confirming that a review had occurred and no changes were to be made to the investments.

Mrs and Mr E have acknowledged that their financial expertise and knowledge is "low," and they said that when they told the adviser they didn't require further advice they were referring to the idea of taking out new financial products. But I think if they were to understand their situation better and perhaps raise questions about what they might do to improve their position that would only have come about if they'd received the annual reports and could see what the "no further advice" outcome was based on.

I accept that Foster Denovo did compile annual reports and it would appear these required a significant amount of time to put together. I also accept that, apart from 2022, they did conduct an annual review on the telephone. But the ongoing service Foster Denovo set out in its fee agreement didn't suggest that Mrs and Mr E's were paying for annual reports to be produced (but not issued) but instead set out a number of metrics around reviewing Mrs and Mr E's investments and reviewing the progress it had made towards achieving their goals and objectives. I'm not persuaded that the reviews which took place did what Foster Denovo said they would do – based on these metrics – and I haven't seen any evidence to support the idea Mrs and Mr E's received these reports afterwards to help them decide if further advice and discussions might be needed.

I have also considered whether Mrs and Mr E's submissions support the claim that they were expecting more from the reviews than was set out. But I've concluded that they didn't, and I don't think Foster Denovo did enough to align the reviews to what was promised, and it follows that I don't think the reviews therefore justified the annual charges that were levied.

Putting things right

In his assessment the investigator recommended that the redress should be based on the premise of a refund of all the annual charges with simple interest added at 8%. I should first say that this approach wasn't unfair but, in the particular circumstances of this case, I believe that a reconstruction of the investments using a notional against actual comparison is a better approach. So I've set out below what I think should happen.

What must Foster Denovo do?

To compensate Mrs and Mr E fairly, Foster Denovo must:

Compare the current value of Mrs E's ISA investment and Mr E's drawdown plan with their notional value had each annual adviser fee not been applied at the time it was. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value there is a loss and compensation is payable.

Foster Denovo should also add any interest set out below to the compensation payable. This should be at the rate of 8% simple per year from final decision to settlement if not settled within 28 days of the business receiving Mrs and Mr E's acceptance.

Any compensation to Mrs E should be paid to her directly and in the case of Mr E's drawdown plan, in this instance, Foster Denovo should pay that amount direct to him instead of adding it to his plan.

But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair

amount – it isn't a payment of tax to HMRC, so Mr E won't be able to reclaim any of the reduction after compensation is paid.

The *notional* allowance should be calculated using Mr E's actual or expected marginal rate of tax at his selected retirement age.

For example, if Mr E is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr E would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

The notional income tax deduction should only apply to the drawdown money – not Mrs E's ISA money - as income tax obviously wouldn't be applicable to withdrawals from an ISA.

Income tax may be payable on any interest paid. If Foster Denovo deducts income tax from the interest it should tell Mr E how much has been taken off. Foster Denovo should give Mr E a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the SIPP should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Foster Denovo totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

My final decision

For the reasons given I uphold Mrs and Mrs E's complaint against Foster Denovo Limited.

My decision is that Foster Denovo Limited should pay the amount calculated as set out above.

Foster Denovo Limited should provide details of its calculation to Mrs and Mr E in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E and Mr E to accept or reject my decision before 11 June 2024.

Keith Lawrence
Ombudsman