DRN-4833109

The complaint

Mrs S complains that Julian Harris Financial Consultants ("Julian Harris") has unfairly charged her for its initial and ongoing advice despite her not going ahead with it.

What happened

Mrs S received pension advice from Julian Harris in 2019. Mrs S had an annual review with Julian Harris in January 2020. It was during this review that Mrs S explained that she had additional funds she was looking to invest.

Julian Harris conducted a review of Mrs S's circumstances and as part of its fact finding, it established that:

- She had around £740,000 in savings held in current accounts but around £250,000 of this was required for renovations works on her property.
- She wanted to retain an emergency cash fund of £250,000 and so was looking to invest around £240,000.
- The purpose for investing was for the funds to form part of her retirement strategy and she was therefore looking to invest for a period of ten or more years.
- Her risk profile was medium.
- She had a high capacity for loss as she had significant levels of cash holdings, together with her pension.

Julian Harris sent Mrs S a suitability report dated 21 January 2020 advising her to invest in the following:

- £20,000 into a fund within an Individual Savings Account ("ISA") wrapper.
- £217,120 into the same fund within a General Investment Account ("GIA") wrapper.
- £2,880 into a managed portfolio held within her pension.

It's accepted by both Mrs S and Julian Harris that she was not comfortable with proceeding with the advice. Mrs S says her brother, who is an investment manager, warned her about the timing of investing with the emerging concerns around Covid-19. However, Mrs S proceeded to transfer £240,000 into the GIA.

Mrs S complained to Julian Harris in February 2023 as she was unhappy to discover that she had been charged an initial advice fee and ongoing charges despite her believing her money was sat in a cash account. She says she was persuaded to deposit the funds but did so on the belief that she wouldn't be charged until she began investing.

Julian Harris considered Mrs S's complaint but didn't uphold it. In summary, it said:

- It provided Mrs S with a suitability report in January 2020 in which it explained that an initial adviser fee of 1.5% would apply, as well as ongoing charges.
- Mrs S was also provided with an illustration from the product provider in January 2020, which also confirmed the charges.
- It contacted Mrs S on several occasions after she had deposited the funds, informing her that she had a large amount of uninvested cash and tried to arrange a meeting to discuss investing this.
- Mrs S never engaged with its requests and it emailed Mrs S in January 2022 providing an annual review of her circumstances. In this, it reminded Mrs S of the uninvested cash and explained that annual adviser charges has been applied.

Mrs S remained unhappy and so she referred her complaint to this service for an independent review.

One of our investigators considered Mrs S's complaint and upheld it. In summary, they said:

- They were persuaded by Mrs S's testimony that she wasn't ready to invest her money, so it was unreasonable for Julian Harris to move the money into a cash only investment account and charge her charges.
- They didn't think it was suitable advice for her to have her cash uninvested when doing so meant she was guaranteed to make a loss.
- To put things right, they said Julian Harris should:
    - compare the performance of her investment to what she could have achieved had she been invested in fixed rate bonds and pay her the difference (including interest).
    - Repay her the advisor's charges together with simple interest at 8% a year, from the date the charges were paid to the date of settlement.
    - They also felt she was caused significant distress and inconvenience by trying to put the matter right and so Julian Harris should also pay her £200.

Mrs S accepted the investigator's findings, but Julian Harris didn't. In summary, it said its advice was not to invest in a cash fund in the long term. Instead it was always intended to be a short-term investment until the client felt comfortable implementing the recommended investment strategy. At the time of the advice, it was suitable for Mrs S. It said that with the benefit of hindsight, had it known that Mrs S was not going to implement the strategy recommended it would not have gone ahead with the advice. It said it was not its understanding that Mrs S's lack of readiness to invest was anything other than short-term. It also said that by Mrs S funding the account, she chose to accept the advice and act upon it later.

As no agreement could be reached, the complaint was passed to me to decide.

I issued my provisional decision on the matter in May 2024. I included a copy below:

What I've provisionally 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.

The crux of Mrs S's complaint is that Julian Harris shouldn't have invested her money without her permission and she shouldn't have been charged for doing so. In resolving the complaint, I think it's important to first consider the recommendation that Julian Harris gave to determine whether it was suitable for Mrs S's circumstances before deciding whether Mrs S should be refunded any charges.

Was Julian Harris's recommendation suitable?

The Financial Conduct Authority has set out rules called the Conduct of Business ("COBS") rules which explain that firms need to take reasonable steps to ensure that a personal recommendation is suitable for its client. COBS 9.2.1R explain:

> *''When making the personal recommendation or managing his investments, the firm must obtain the necessary information regarding the client's:*
>
> *(a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;*
> *(b) financial situation; and*
> *(c) investment objectives;*
>
> *so as to enable the firm to make the recommendation, or take the decision, which is suitable for the client…"*

At the time of the advice, Mrs S had significant savings and said her attitude to risk was medium. Julian Harris described a medium investor as:

> *"People in this category are balanced in their attitude towards risk. They don't seek risky investments but don't avoid them either. They are prepared to accept fluctuations in the value of their investments to try and achieve better long-term returns. These portfolios will be subject to frequent and at times significant fluctuations in value. Equity exposure is likely to range between 35-65% with the remainder in bonds, derivatives and money markets."*

I have no concerns with the risk profile for Mrs S as she had significant savings, had a sufficient emergency fund and was looking for growth in order to supplement her retirement fund.

Looking at Julian Harris's recommendation, it proposed Mrs S invest the majority of her funds into a fund held within an ISA and a GIA wrapper. Looking at the fact sheet for the fund, the asset breakdown appears to meet the risk profile Mrs S selected. I say this as the fund was invested predominately in equities (around 63%) and fixed income (around 32%), as well as alternatives (around 3%) and cash (around 2%).

So overall, I have no concerns around the suitability of the advice Julian Harris gave Mrs S.

Should Julian Harris refund the charges?

It's not entirely clear from the information provided why Mrs S decided to proceed with depositing funds into her GIA with the provider Julian Harris recommended. Neither is it clear when Mrs S told Julian Harris not to proceed with the invest.

Julian Harris says Mrs S deposited the funds after the recommendation had been provided on 27 January 2020. Mrs S says Julian Harris persuaded her to deposit the funds and reassured her that holding the cash with the provider was no different to keeping it in her bank accounts. Unfortunately, there are no records of this conversation. However, it's not disputed by both parties that Mrs S wasn't comfortable, at least initially, with implementing the advice. This was because she had concerns around the markets at the time, due to the Covid-19 pandemic.

It would appear from the limited information provided, that Mrs S agreed to deposit the funds *into the GIA but instructed Julian Harris not to proceed with implementing the investment strategy recommended. I say this as Mrs S did receive an illustration from GIA provider dated 21 January 2020. In this, it explained that Mrs S's funds would remain in cash and that she could earn interest of 0.58% AER. The illustration also confirmed that she had agreed to pay an initial adviser charge of 1.5%, as well as an ongoing adviser charge of 0.75%. The illustration also mentioned fund charges, but it seems that these wouldn't be charged until the cash was invested into the selected fund. I will consider both of these charges separately.*

In terms of the initial adviser charge, I have to consider that Mrs S agreed to receive advice from Julian Harris and as I find that advice to have been suitable, I think it would be fair for Mrs S to pay for the advice received. As such, I don't think it would be fair or reasonable to ask Julian Harris to refund Mrs S the initial advice fee she paid. I appreciate she didn't elect to implement the investment strategy, but I don't think it would be fair to ask Julian Harris to refund this when it undertook work to provide the recommendation.

Turning to the ongoing adviser charges, I don't think it can be argued that Julian Harris adhered to the FCA's best interest principle (PRIN 2.1.1.6) and acted in Mrs S's best interests by allowing her to deposit her funds into a charge-incurring account when she had no immediate intention to invest. Julian Harris ought to have been aware that she would earn less in interest than she would pay in ongoing adviser charges.

I've considered Julian Harris's argument that it wasn't aware that Mrs S's lack of readiness to invest was anything other than short-term. However, I think it ought to have been aware that Mrs S's concerns were longer lived when she didn't provide any investment instructions soon after investing.

I think Julian Harris ought to have been more proactive in making Mrs S aware that it was unsuitable for her to remain invested in cash when charges applied. I'm not aware of any contact being made with Mrs S until it emailed her a year later in January 2021. By this time, Mrs S had already incurred an ongoing adviser charge of £3,583.

Whilst it's not clear when Mrs S gave instructions not to invest her funds, I think it's fair and reasonable to say that Julian Harris should have at the earliest, giving her a clear warning that she shouldn't deposit her funds until she was ready to invest, as to do so would mean she would incur ongoing advisor charges. At the latest, it should have contacted her immediately after depositing the funds to give her the same warning and advised her to withdraw her funds until she was ready to invest.

If Julian Harris had been more proactive sooner, I think it more likely than not, that Mrs S would have withdrawn her funds before incurring any ongoing adviser charges. I'm not persuaded Mrs S would have invested these funds anywhere else as it's clear that Mrs S wasn't prepared to invest the funds during the time it remained in the GIA. However, I don't think Julian Harris has acted fairly and so it should refund any ongoing adviser charges incurred.

I appreciate the investigator felt that Julian Harris should pay compensation for the distress and inconvenience caused. However, I don't think an award is warranted in these circumstances. I appreciate Mrs S was shocked to find out that she had been charged for the ongoing advice, but I do think Julian Harris did make her aware of the charges, albeit much later than it should have done. Also, Mrs S is able to withdraw her funds quite easily as the funds remained uninvested and so I don't think it agree that she has been inconvenienced by rectifying this.

Responses to my provisional decision

Julian Harris had no further comments to add in response to my provisional decision.

Mrs S didn't accept my findings. In summary, she said:

- She never met with Julian Harris.
- She never received any advice or signed a contract to receive any advice. There was no due diligence, or any work done on her behalf.
- Her money was never invested and so she shouldn't have to pay for the initial advice.

As no agreement could be reached, the complaint has been passed back to me to issue my final 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.

As Julian Harris has no comments and Mrs S has no substantial comments, I see no reason to change my conclusions and I can confirm them as final. I will, however, respond to those comments provide by Mrs S regarding the initial advice fee.

I appreciate Mrs S believes she didn't speak with Julian Harris and that she never received any advice. However, I've seen evidence which confirms that Mrs S did speak with Julian Harris and that advice was given to her. Julian Harris has provided a risk profile report conducted in January 2020 in which it asked Mrs S questions regarding her appetite for risk. Furthermore, I've also been provided with a fact-find document dated February 2020 in which Julian Harris recorded all of Mrs S's circumstances. Finally, I've seen a detailed central investment proposition which Julian Harris provided to Mrs S. As such, it's clear to me that Julian Harris did undertake some initial work and, regardless of whether Mrs S followed that advice, I don't think it would be fair to direct Julian Harris to refund Mrs S for the initial advice fee.

Putting things right

Julian Harris should do the following:

- Refund Mrs S all ongoing adviser charges and add the interest rate she would have received on those charges had the amount remained invested in the GIA from the date the charges were made up until the date of settlement. I understand this was 0.58% AER. I think this is fair as, whilst I think Mrs S would have withdrawn the fund from her GIA had she been given a clear warning sooner, it's reasonable to assume Mrs S would have received a similar rate of interest had her funds remained in a bank account at that time.

My final decision

My final decision is I uphold this complaint against Julian Harris Financial Consultants.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 2 July 2024.

Ben Waites
Ombudsman