

The complaint

Mrs P has complained about the lack of service she received from All Saints Financial LLP, an appointed representative of ValidPath Limited ('ValidPath'). Mrs P was paying ongoing fees to ValidPath but didn't receive the statements she asked for, face to face meetings, regular financial reviews nor a pension check on her birthday.

What happened

ValidPath had taken over management of Mrs P's portfolio from a predecessor business in November 2015. A review meeting was held in January 2016. After the meeting Mrs P agreed to ValidPath's recommendation in its suitability letter of 2 June 2016 to transfer her existing investments plus an additional £175,000 into a discretionary managed portfolio provided by a third party. Mrs P agreed to pay fees for the initial and ongoing advice.

Mrs P says she didn't have any review meetings and raised her complaint with ValidPath in March 2023

ValidPath responded to Mrs P's concerns. It said;

- Following the initial review meeting in January 2016, annual face to face review meetings were held each year until COVID in 2020 where meetings were held by phone.
- A checklist was completed confirming Mrs P's current financial position and if there were any changes in circumstances. It provided Mrs P with copies of those checklists.
- The adviser also spoke with Mrs P whenever she called.
- It was agreed that only six-monthly valuations would be sent and ad hoc when requested as monthly statements wouldn't represent a true performance of the portfolio.
- It didn't uphold the complaint but offered £750 in full and final settlement of the complaint as a gesture of goodwill.

Mrs P wasn't happy with the outcome and brought her complaint to the Financial Ombudsman Service. Our investigator who considered the complaint said the following;

- He confirmed the complaint was brought to this service within the time limits that apply.
- He detailed the MiFID II (Markets in Financial Instruments Directive II) rules and that financial advisers are required to provide clients with an annual suitability assessment if they charge an ongoing fee for their services.
- ValidPath had provided checklists of review meetings that it said took place from 2017 to 2022 but didn't provide any further supporting evidence. The investigator thought the checklists weren't sufficient to refute Mrs P's claims that no meetings took place.

- It was agreed that Mrs P would receive six monthly and ad hoc statement as monthly statements wouldn't represent the true performance due to fluctuations. He thought this was reasonable.
- The investigator didn't think Mrs P had received the service she paid for and so should be refunded the annual charges back to 2017 plus interest. The £750 offered by ValidPath could be taken into account in the calculations.

ValidPath didn't agree. It said;

- The review checklists included commentary and weren't 'simple' checklists, but evidence of actions agreed during discussion with Mrs P.
- The fact that the 2017 to 2019 (pre-COVID) valuations were signed by Mrs P was evidence that face-to-face meeting took place.
- After the pandemic Mrs P suffered health issues so phone reviews were undertaken after this point.

As the complaint couldn't be resolved, it has been passed to me in my role as ombudsman.

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.

After doing so, I've reached the same conclusions as the investigator and broadly for the same reasons.

When considering what is fair and reasonable, I've taken into account the relevant laws and regulations as well as the regulator's rules, guidance and standards. Where appropriate I've also considered what was good industry practice at the time of the advice.

As a regulated firm, ValidPath had many rules and principles that it needed to adhere to when providing advice to Mrs P. In the investigator's assessment of the complaint, he referred to the regulatory requirements and in particular MiFID II which came into effect on 3 January 2018. That directive outlined the requirement of a financial adviser to carry out an annual suitability assessment for clients paying an ongoing charge. That directive would only be relevant to part of the dates of the complaint period. So, I've considered the earlier rules and regulations. Many of these were found in the regulator's handbook under the Conduct of Business Sourcebook ('COBS') and Principles for Businesses ('PRIN').

The most relevant rules for this complaint are;

'COBS 6.1A.22

A firm must not use an adviser charge which is structured to be payable by the retail client over a period of time unless (1) or (2) applies:

(1) the adviser charge is in respect of an ongoing service for the provision of personal recommendations or related services and:

(a) the firm has disclosed that service along with the adviser charge; and

(b) the retail client is provided with a right to cancel the ongoing service, which must be reasonable in all the circumstances, without penalty and

without requiring the retail client to give any reason; or

(2) the adviser charge relates to a retail investment product for which an instruction from the retail client for regular payments is in place and the firm has disclosed that no ongoing personal recommendations or service will be provided.'

COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

Principles for business

Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly.'

The regulator also produced guidance in 2014 in the form of a Financial Conduct Authority's ('FCA') factsheet called 'For investment advisers – Setting out what we require from advisers on how they charge their clients'. The factsheet said;

'Ongoing adviser charges

Ongoing charges should only be levied where a consumer is paying for ongoing service, such as a performance review of their investments, or where the product is a regular payment one. If you are providing an ongoing service, you should clearly confirm the details of the ongoing service, any associated charges and how the client can cancel it. This can be written or orally disclosed. You must ensure you have robust systems and controls in place to make sure your clients receive the ongoing service you have committed to.'

In assessing this I will be considering the guidance that the regulator put in place prior to the events complained of here. The regulator didn't set out the extent of the service an adviser should provide for an ongoing advice charge. Only that a firm should clearly confirm the details of its ongoing service. So, it will be the ongoing service that ValidPath chose to offer that I will be considering.

ValidPath's fee as agreed with Mrs P was 1% of the fund value for setting up the investment and 'then 1% per annum [of the fund value] for ongoing service and reviews.' There was an initial cost of £1,750. I'm satisfied that ValidPath made its annual costs clear to Mrs P and dealt with her appropriately in disclosing its costs.

The Client Agreement detailed the 'Obligations of The Parties';

'The Company shall provide to the Client the following services:

- (1) Financial planning advice as requested by the Client:
- (2) Review meetings at the Client's request, and on such items as supplied by the Company, in order to review the client's circumstances:
- (3) Implementation of agreed actions as documented to the Client...

...

All advice given and recommendations made will be confirmed by us to you in written form, but only after we have assessed your needs and considered your financial objectives and attitudes to any risks that may be involved...'

Mrs P complied with her part of the client agreement as the fees were collected in full by ValidPath. So, given that Mrs P kept to her end of the agreement, I need to decide whether ValidPath did enough to keep to its end of this agreement.

In deciding this I've weighed up the evidence that I have been provided. Where that is incomplete, I will make my decision on a balance of probability or what I think is most likely in the particular circumstances of the complaint. I will now consider the documents ValidPath has provided of its service provision.

In the main they are made up of the 'Annual Review' checklists which ValidPath says evidences the annual reviews took place. The Annual Review documents all take the same format which lay out a list of boxes detailing income, assets, attitude to risk and health etc followed by tick/cross boxes under the heading of 'No change'. The second page of the documents refer to 'Changes since Last review' for the same headings as the boxes on page one and with an 'Outcome' section for notes;

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| 22.12.17 | <u>Annual Review</u> – All the 'No change' boxes are ticked. At the end of page two there is the comment 'No changes recommended at the time.' |
| 28.12.17 | Miss P signed a risk profile questionnaire. |
| 16.01.18 | ValidPath provided a suitability letter as Mrs P had a further £180,000 to invest and wanted to add it to her current portfolio. |
| 29.06.18 | <u>Annual Review</u> – No changes were recorded and '[Mrs P] happy with level of risk. No significant changes so leaving portfolio with risk rating at 8.' |
| 08.04.19 | <u>Annual Review</u> – 'Cash holding' was marked as a change and '[Mrs P] has a reduced emergency fund so would like to [?] capital.' The outcome was '[Mrs P] [?] to increase her emergency fund and give her more money should she need it.' |
| 29.12.20 | <u>Annual Review</u> – 'Health' was recorded as the only change 'Having some issues with health.' And the 'Outcome' was 'No change to [?] or attitude to risk. No change considered at this time.' |
| 02.03.21 | The platform provider wrote to Mrs P with transaction confirmations. |
| April '21 | <u>Annual Review</u> – 'Cash holdings' and 'Health' were recorded as having changed. For the cash Mrs P 'would like cash to do home improvements and ... emergency fund' and Mrs P was 'having health issues.' The 'Outcome' was '[Mrs P] would like to withdraw £50,000 to help with home improvements and to top up on emergency fund.' |
| | ValidPath sent an undated letter which refers to a withdrawal of £50,000 so I assume it relates to the above as it said it had been good to talk with her over the phone. |
| 16.04.21 | Sales were made from Mrs P's account and confirmation sent by the platform provider on 22 April 2021. |

- 28.04.21 An internal file note with Mrs P's phone number for a call back about the withdrawal.
- 07.11.21 The platform provider wrote to Mrs P about a benefit crystallisation event for her SIPP.
- 04.12.21 The platform provider wrote to Mrs P confirming transactions had been completed.
- 25.01.22 Annual Review – 'Health' was marked as a change. Mrs P was 'still having health issues'. The 'Outcome' recorded 'No recommendations as risk unchanged. No significant withdrawals planned. Valuation sent in post.'
- 06.05.22 The platform provider sent Mrs P her annual report.
- 01.12.22 Annual Review – 'Health' is marked as a change and it's recorded that Mrs P was 'still having health issues' and further noted 'Phone Review. We discussed market fluctuations. Portfolio done well considering recent markets. [Mrs P] happy with current risk profile. Sent out valuation in post.'
- 03.04.23 The platform provider wrote to Mrs P with a transaction confirmation.

ValidPath has told us the 'Annual Review' documents are evidence that the annual reviews took place. However, it's clear these weren't regularly spaced 12 monthly reviews as they were taking place over differing months throughout the years. And the only evidence of any changes made were at the instigation of Mrs P – the addition of £180,000 in January 2019 and the withdrawal of £50,000 in 2021.

I do accept that other changes may not have been necessary, and the rules allowed ValidPath discretion in what service it elected to provide. But, for an ongoing service I would expect to see a meaningful suitability review that took place at least once a year to ensure that the investments were still appropriate based on the client's current financial situation, investment objectives, and risk tolerance. I think that is reasonable for a business which offered review meetings as part of its service. So, I've borne this in mind when looking at what ValidPath agreed to and what was reasonable in the circumstances.

As referred to above, Mrs P agreed to 'Review meetings at the Client's request, and on such items as supplied by the Company, in order to review the client's circumstances.' My reading of this is that Mrs P could ask for a review, but that ValidPath would also review the investments it had already recommended. While Mrs P could have asked for a review, ValidPath still had an obligation to provide an annual review of the current investments as part of its ongoing service. While it's clear that some contact was had with Mrs P and some statements were sent, I'm not satisfied there is sufficient evidence that contact was at a level I would expect to see for a customer such as Mrs P paying 1% annually for an ongoing service.

In response to ValidPath's assessment of her complaint Mrs P said she had no memory of a face-to-face meeting after 2016. And that ValidPath's claim she had an annual phone review from 2020 onwards was inaccurate. She had no recollection of such calls and there were no records of such in her phone supplier's account.

I am persuaded by her argument here. With the exception of January 2018 when Mrs P had additional funds to add and April 2021 when she wanted to withdraw some funds, there's no evidence of any genuine engagement with Mrs P.

I say this because for any annual review, face to face or otherwise, I would expect to see correspondence or diary notes arranging times, dates and place of meeting etc followed up with the adviser's file note of that meeting or confirmation with Mrs P about what was discussed, such as assessment continuing suitability of risk and the investments plus the performance of the portfolio and market conditions as examples. ValidPath hasn't been able to provide any of this. And for the calls there's no evidence of the timings or the length of them etc and no record of follow up letters confirming what was discussed or agreed.

The evidence ValidPlus has provided – and it has told us it doesn't have any further supporting evidence – strikes me as a box ticking exercise with very limited and generic accompanying notes. If any substantial engagement had taken place, I would expect to have seen that recorded appropriately. I'm of the opinion this supports Mrs P's assertion that these meetings didn't take place or if discussions were had, I don't think they fulfilled the requirements of an annual review.

But even if I am wrong on this point and annual reviews did take place as ValidPath is saying, the information recorded is extremely limited and not to the level of detail I would expect. There's no evidence of a review of the investments to ensure they remained aligned to Mrs P's goals or a suggestion of any changes to reflect market conditions or adjustment to Mrs P's strategy if that had proved necessary. And there's no evidence of assessment of Mrs P's attitude to risk, investment objectives or circumstances after the investments were made.

Based on the evidence presented to me I'm not satisfied that ValidPath complied with its obligations to provide an ongoing service to Mrs P in the provision of its services in the form of annual reviews or 'on such items as supplied by the Company, in order to review the client's circumstances.' From the evidence I've been asked to consider, and have summarised above, I have to conclude that ValidPath did not fully provide the agreed service in any of the years after 2016.

Putting things right

It follows that I uphold Mrs P's complaint and ValidPath needs to put the matter right. And to do so, it needs to repay Mrs P all of the annual ongoing charges from 2017 onwards. It should add interest at a rate of 8% simple per year to those amounts from the dates the charges were taken from Mrs P's account to the date of payment.

If payment of compensation is not made within 28 days of ValidPath receiving notice of Mrs P's acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If ValidPath deducts income tax from the interest, it should tell Mrs P how much has been taken off. ValidPath should give Mrs P a tax deduction certificate in respect of interest if Mrs P asks for one so she can reclaim the tax on the interest from HMRC if appropriate.

My final decision

For the reasons given, I uphold Mrs P's complaint about ValidPath Limited and ValidPath Limited should put the matter right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 3 January 2025.

Catherine Langley
Ombudsman