

The complaint

Mr H complains that abrdn Financial Planning and Advice Limited (“abrdn”) has been deducting ongoing charges from his pension plan since 2011 but without providing him with any ongoing financial advice. He would like those payments to be refunded to him.

What happened

In 2011 Mr H became a member of his employers’ group personal pension scheme. The employer engaged an adviser to provide advice relating to the scheme and I understand the adviser also transferred a number of other personal pensions that Mr H held into the new plan for him. The initial charge for this advice was 2.5% of the fund along with an annual Flexible Adviser Remuneration (FAR) of 0.5%. In December 2015 Mr H was informed that a new financial adviser had been appointed to provide ongoing services to the scheme and was also able to continue as his appointed adviser. In 2020 that adviser became part of abrdn.

But in October 2023 Mr H became aware that he’d been paying a FAR to advisers from his pension plan since inception. And because he didn’t think he’d received any ongoing advice he complained about the charge and wanted it to be refunded to his plan.

Abdrn said this charge had been paid as a monthly “trail commission” and related to the initial advice he’d been given in 2011 – so it was reasonable that the various advisory firms had continued to receive the payments. It said that he could remove abrdn as his financial adviser which would stop the FAR. It also offered £200 compensation for the delay in providing a response to his complaint.

Mr H said his original application form noted that the FAR of 0.5% was for providing “*ongoing advisory services*” which he thought abrdn had failed to do – so he brought his complaint to us where one of our investigators looked into the matter.

She didn’t think the complaint should be upheld making the following points in support of her assessment:

- Before the Retail Distribution Review (RDR) of 2012 advisers generally charged an initial fee for their work often along with an ongoing charge – usually a set percentage of the fund – as “trail commission.” This was an agreement whereby the product provider would pay the commission to an adviser, but it didn’t necessarily mean that ongoing advice was offered.
- That was the situation here as demonstrated by the pension terms and conditions and pension application form. These documents noted that a FAR renewal payment was set up of 0.5% of the fund, payable for the lifetime of the plan.
- So abrdn, and the previous advisers who had set up and serviced the plan but who later became part of abrdn, were entitled to receive the FAR or trail commission.
- Trail commission which began before the RDR could be continued after the implementation of the new rules and could be re-registered to new advisory firms.
- She thought abrdn was entitled to receive the FAR and wasn’t obliged to provide ongoing advice – so hadn’t treated Mr H unfairly.

Mr H didn't agree because he thought the investigator's statement that abrdn "*was under no obligation to provide ongoing services*" wasn't consistent with the application form he completed which said, "*only complete this section for ongoing advisory services relating to this policy.*" He thought this supported his claim that abrdn ought to have provided ongoing advice in lieu of the FAR.

The investigator wasn't persuaded to change her view, but Mr H further explained that his complaint wasn't about being misled by application and agreement documents but that the adviser had breached an agreement by stating that it would provide ongoing advisory services as a condition of receiving a FAR. Abdrn hadn't provided that service, so he didn't think it was entitled to the fee. He asked for his complaint to be reviewed by an ombudsman – so it's been passed to me to review.

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 done so I've reached the same conclusion as the investigator. I know this is an outcome which will disappoint Mr H and I have some sympathy for that fact that he believes his pension fund has been eroded by charges – and the investment loss arising from them – for which he hasn't received corresponding ongoing advisory services. So I'll set out my reasoning below.

Was the implementation and ongoing collection of FAR fair and did it oblige abrdn to provide ongoing advice?

The transfer of Mr H's pensions to his new plan took place in 2011. At that time advisers received commission for products sold. Generally, that commission was paid for the initial advice consumers received with an option to also charge ongoing renewal or trail commission – referred to here as FAR – but without any obligation to provide ongoing advice or reviews. I've seen a copy of the application form Mr H signed on 17 March 2011 which set out the FAR. It noted that a renewal payment of 0.50% per annum was "*available as FAR only. Only complete this section for ongoing advisory services relating to this policy.*"

So I think the FAR was set up correctly and looking at a copy of the "unit transaction history" – specifically for the FAR – I think those fees have been deducted as instructed. The regulator allowed for FAR to be reallocated to new advisers who might take over the servicing of the plan, as confirmed in its consultation paper (CP) 11/26 which said, "*the rules on trail commission confirm that commission for pre-RDR advice can continue to be paid and that it can be transferred to a different adviser.*"

So I think abrdn was entitled to continue receiving the payments when it became responsible for the servicing of Mr H's plan.

Mr H has said that the clause within his application which stated, "*only complete this section for ongoing advisory services relating to this policy*" indicated that abrdn ought to have provided ongoing advice, which it didn't – so it should refund those fees. But I think that statement, which was actually set out by the provider and not the adviser, referred to any administrative type "services" Mr H might have required, such as statement requests, information on his plan, or any changes he might like to make. I don't think there was any obligation to provide ongoing advice and I haven't seen any evidence to support the idea that abrdn said it would provide any ongoing advice. If that were the case I'd expect to see some additional documentation setting out exactly what it would do, but there's no evidence to suggest abrdn would provide Mr H with ongoing advice.

At the end of 2012 the RDR was implemented. This meant that advisers were no longer able to be paid through commission from a provider – but instead were to be paid by way of fees rather than the commission payments. However, the rules around the RDR weren't retrospective and the regulator allowed for the continuation of FAR for existing (pre 2012) plans. And it didn't introduce a new requirement for ongoing advice to be provided in lieu of FAR either, so I think it was fair and reasonable for abrdn to continue receiving the payments and without offering advice – although I would still have expected it to deal with any of the “service” requests Mr H may have had – along the lines of those set out above.

But I note that both in 2015 and in 2020 there was a change of adviser for Mr H's plan – which he was made aware of – so I've gone to look at any requirements the advisers may have had at those points in terms of explaining what services it might provide and what fees it would charge on completion of those changes.

Should abrdn have reconfirmed its relationship with Mr H?

The regulators “principles” (PRIN) sets out that, amongst other requirements, it should “*pay due regard to the interest of its customers and treat them fairly*” and “*communicate information to them in a way which is clear, fair and not misleading.*”

So I need to consider whether the adviser (who was subsequently taken over by abrdn) acted in that way in 2015 when it advised Mr H of the change in his employer's nominated adviser. Because Mr H had used the adviser to transfer his personal pensions I believe it was incumbent on the new adviser to make Mr H aware of the change. So I've looked at the letter Mr H received in 2015 which said, “*(the employer) has recently appointed a new financial adviser to provide ongoing services for the above group pension scheme, to which you are a current member. You hold additional individual pension arrangements with xx, according to our records we are your appointed financial adviser for these pension arrangements and this can continue going forward. Should you have any questions, queries or require financial advice at any time now or in the future then please do not hesitate to contact me.*”

The letter explained the changes to Mr H and set out that it would continue as his adviser. It also explained that if he required any financial advice in the future the adviser would be happy to help. But it didn't confirm that ongoing advice would be provided automatically and didn't set out any new terms of the level of advice that was to be maintained. So I think this was fair, and not misleading, as it simply told Mr H that the previous arrangement could be continued.

As this was four years after the original advice Mr H ought to have been aware that he hadn't received any ongoing advice, so I don't think he was misled when he was told “*we are your appointed financial adviser for these pension arrangements and this can continue.*” There's no evidence to support the claim that there would be a continuation of “advice.”

I have considered whether Mr H should have been advised of the actual fees that would be applied, although I accept he was made aware of the FAR in 2011 and it didn't change in 2015. But looking at the same regulator's CP11/26 document and also another paper PS12/4, it was noted that “*The rules on trail commission confirm that commission for pre-RDR advice can continue to be paid and that it can be transferred to a different adviser. This can take place either through a bulk transfer of business (e.g. on retirement of the original adviser) or where the client chooses to move to a new adviser, and the new adviser decides to seek transfer of commission payable in relation to the client's existing products. In the latter case (but not in the case of bulk transfers), the new adviser must make certain disclosures to the client and provide an ongoing service to the client.*”

In this case the transfer was a bulk transfer of all the previous adviser's clients – it wasn't a choice made by Mr H. So I don't think there was requirement for the new adviser to make any disclosures (about fees) to Mr H – or to provide ongoing advice – at that time. And in 2020 the change of adviser was simply an internal transfer whereby the existing adviser came under abrdn's ownership, so I don't think any disclosures were required then.

In his response to the investigator Mr H said that his complaint wasn't that that he was misled as to the terms of the application and agreement but that there had been a breach in providing the ongoing advisory services that were a "*condition of being paid the annual commission fee.*"

But it's my view that abrdn was entitled to receive the ongoing trail commission as the successor business to the original adviser and that it wasn't obliged to provide ongoing service or advice to Mr H in exchange for this. So overall, I don't think abrdn needs to refund the trail commission paid to it. To reiterate, this was a legacy cost derived of the initial set up of the pension plan, not payment for an ongoing service or advice.

The compensation offer

I note that abrdn has offered Mr H £200 for the delay in completing its investigation into his complaint. Now that our investigation is complete, and I've reached my final decision, I'll leave it up to Mr H to decide if he now wishes to accept abrdn's offer.

My final decision

For the reasons that I've given I don't uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 27 February 2025.

Keith Lawrence
Ombudsman