

The complaint

Mrs P says Evelyn Partners Financial Planning Limited ('EP'), formerly Smith & Williamson ('SW'), failed to deliver the ongoing Wealth Management Review Service ('WMRS') she paid for. EP disputes the complaint, it mainly says Mrs P has misunderstood the terms of the WMRS and that she appears to have wrongly expected discretionary management in the WMRS, whereas at no time was such management intended, offered or agreed.

What happened

Background

Mrs P had been a longstanding client of SW for many years when, in 2022, it was rebranded to EP. She cites two key letters, sent to her by SW on 22 July 2021 and 1 December 2021, in support of her complaint. She says these letters set out the terms on which she understood, agreed to and engaged the WMRS.

The 22 July letter

This letter includes the following –

“The scope of our ongoing advice

In this service we:

- *Annually review your circumstances including your attitude to investment risk and capacity for loss to make sure what you have in place remains appropriate*
- *Advise whether your strategy and arrangements are suitable for you and sustainable*
- *Help you to use your annual allowances where possible and appropriate*
- *Deal with your pension and other plan administrators as appropriate*
- *Have an annual review meeting and respond to your queries during business hours*
- *Update and review advice you have previously been given*
- *Provide servicing and support for your existing plans*

The cost of providing our ongoing advice

If you want our ongoing advice and support of your SIPP arrangement, the cost for this service will be 0.5% plus VAT per annum based on the value of the funds on which we are asked to advise. As an example, if you have asked us to advise on your pensions and they are worth £100,000 then the cost for the Financial Planning Review Service would be £500 plus VAT (£600 including VAT) per annum. The value of the fee will increase or decrease depending on the value of the funds.”

The letter enclosed SW's terms of service, its services and charges document and a risk supplement document. Mrs P appears to have had an online meeting with SW on 9 November 2021. The letter of 1 December 2021 followed after this.

The 1 December letter

This letter refers to SW's review, on 9 November, of Mrs P's existing pensions and investments, and it refers to the fees it confirmed to her in the 22 July letter.

The letter then proceeds to set out SW's assessment of her profile and pensions arrangements. With regards to the latter, it summarised her Standard Life Stakeholder Plan ('SLSP'), two Occupational Money Purchase Schemes ('OMPSs') related to two previous employers, and a Group Personal Pension ('GPP') associated with her ongoing employment. However, the letter also says that she sought a review of only three out of these four pensions – those being, the SLSP and the two OMPSs.

The assessment also noted the Individual Savings Account ('ISA') and General Investment Account ('GIA') which she already held on the FundsNetwork platform, and which SW confirmed having access to.

SW recommended the transfer of the SLSP and the two OMPSs into a FundsNetwork Self-Invested Personal Pension ('SIPP'). The recommendation included the following –

"I recommend that you start a new FundsNetwork Self Invested Pension Plan. Fund platforms provide the facility to consolidate all your collective investment holdings in one place and allows us to administer your portfolio in a more efficient manner as changes to the portfolio can be made online ... your existing GIA and ISA can remain on the platform and the agency has been changed."

"Investment Recommendations

Historically, different types of asset classes, such as equities, property, or bonds have behaved in differing ways depending on prevailing economic conditions. We believe that the role of combining these assets, known as asset allocation, is fundamental to providing diversification and the management of risk within the investment portfolio, which will ultimately enable you to meet your investment objectives.

We are recommending you use an 'advised' approach, as explained above, and so while we have carefully researched these funds and continue to monitor how they are performing we will not trade in and out of them, except following an approximately yearly or half yearly review with you – specific asset changes are however made inside each fund by the managers to optimise long term growth."

"Portfolio reviews

It is important that you review the investment funds held within your portfolio on a regular basis to ensure they still meet your objectives. Over time, the funds within each asset class will perform differently. The proportions held in different assets will then change. As you are using our review service, I am satisfied that your assets on FundsNetwork will be reviewed on a regular basis because I will be helping you to do so each year."

Mrs P proceeded with the recommendation. Her adviser subsequently left SW and it does not appear that she was informed of this at the time. EP has apologised for this and it acknowledges that the adviser's departure also had the consequence of delaying the first annual review for her portfolio until 18 May 2023. It accepts that, but for the delay, the review should have happened earlier. It has also apologised for the manner in which it conveyed to, and discussed with, her its plan to close the WMRS and the need to identify a suitable alternative service for her. For its service failings EP offered Mrs P £250.

Mrs P essentially says she has been deprived the WMRS she paid for since the

implementation of the 1 December 2021 recommendation, that the May 2023 review failed to live up to what should have been delivered under the WMRS, that despite EP's references to its closure there has been no notice, to date, that the WMRS has been closed so it continues in place and that the service she has been deprived from it also continues.

Our investigation

One of our investigators looked into the complaint and concluded it should be partially upheld.

In the main, he found –

- that the complaint, as presented, is about delivery of the WMRS, not about suitability of advice, if suitability of advice is an issue for Mrs P she would need to raise a complaint for that;
- that the WMRS arrangement meant Mrs P was essentially paying for and entitled to annual reviews of her circumstances, profile and advised portfolio;
- that the May 2023 review delivered what she was entitled to;
- that EP's decision to stop a service like the WMRS is not uncommon, and in this respect it has offered to look into potential alternatives;
- that as Mrs P declined, in June 2024, EP's offer of a further review, how the ongoing service will proceed has yet to be agreed;
- that regulatory rules and guidance confirm that such a service must be delivered, not just offered, to justify the associated fee;
- and that for these reasons, EP should do three things – it should stop, as of July 2024 (when the investigator's view was issued), applying the ongoing fee for the WMRS (until a review is held and both parties agree on how the service is to be delivered), it should compensate Mrs P for the WMRS fees deducted from her portfolio (plus lost investment performance on the deduction) over the period between December 2022 and May 2023 when the first review was delayed and not provided, and it should pay her the £250 it has offered.

EP accepted the investigator's view, but Mrs P has disputed it. She restated the key submissions and claims in her complaint, and in response to the investigator's view she mainly said –

- With over 20 years' experience of SW's service, she is familiar with the different service levels it offered and she is reasonably certain in her understanding of the service she was entitled to in the WMRS.
- She has asked, on several occasions, EP for an explanation of any changes it plans to make to its services, but has yet to receive such an explanation. She is also yet to receive any confirmation that the WMRS has been terminated or replaced, so she has been and continues to be entitled to delivery of its service components.
- Her understanding of the *advised approach* mentioned in the 1 December letter is that fund switches might be suggested yearly or half yearly dependent on performance, the point of reviewing the portfolio would be questionable if changes are not advised. In this respect, she has not seen evidence of any monitoring of her portfolio's performance since the WMRS was put in place in February 2022. During the May 2023 meeting EP provided no evidence that her portfolio's performance had been reviewed.
- The May 2023 review, as documented in EP's letter of 16 August 2023, fell short of the components of the WMRS as captured in SW's 22 July and 1 December letters. For example – it failed to address pre-existing record (in the 1 December letter) of her plan to retire around 2023 (specifically around the time of the review), instead the adviser brushed this plan aside and suggested that she should continue working; and it failed to

review her GPP, which she wanted and was keen to have reviewed “... *as referred to in the letter of 01 December 2021*”.

- The annual financial planning review offered by EP in March 2024 – based on the scope of review set out in its invitation letter – also fell short of the components of the WMRS that she is entitled to (as captured in the 22 July and 1 December letters).
- In the circumstances of her case, the redress proposed by the investigator is too lenient on EP; it is also concerning that his proposal allows EP to make any resulting redress payment outside her SIPP and ISA, given the income tax implications of doing that (and expense she is likely to incur in appointing an accountant to assist in this respect); there is no mention of refunding VAT charged on the deducted fees; and, given the detrimental effects of the complaint matter on her physical and mental health, on her retirement plans, and on her ability to know whether (or not) her portfolio is presently on a good standing, given the considerable time, effort and inconvenience she has faced in pursuing her complaint throughout and thus far, and given the likely effort and trouble she will face if she now needs to seek alternative service elsewhere (or if she needs to revise her pension arrangements), EP’s offer of £250 is insufficient.

In terms of complaint outcomes, Mrs P says her preference is for EP to provide the WMRS as defined in the 1 December letter, pay compensation for any financial loss (based on an appropriate benchmark) and pay proper (and increased) compensation for the trouble, distress and inconvenience she has faced.

The matter was referred to an 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.

Having done so, I have reached broadly the same conclusion expressed by the investigator. I have paid attention, and given due consideration, to Mrs P’s submissions, and I consider that she has presented them with sincerity, but, on balance, I am not persuaded that her position on what she is entitled to from the WMRS is matched by evidence of what was offered (and agreed) in the WMRS. Like the investigator, I uphold the complaint, but not to the extent that Mrs P has claimed for.

The WMRS

I am satisfied with Mrs P’s submission that the core terms of this service are those set out between the 22 July and 1 December letters, but, for the reasons I explain below, I find that those terms were mainly set out in the former. It is also clear that there have been no changes to the WMRS since these letters and that, in the absence of evidence about notice of its closure (or about its closure), it continues to date – though, I also note that EP has declared its plan to terminate it at some point.

I quoted relevant sections of both letters above. The conclusions to be reasonably drawn from the letters (included the contents I quoted), about the true nature of the WMRS, are in the paragraphs that follow.

The WMRS was essentially an Ongoing Advice Service (‘OAS’). Such a service is commonly offered by firms, distinct from but also connected to any initial advice service they provide on a portfolio. This was the case for Mrs P. The 22 July letter set out to Mrs P the services that SW was capable of providing, and associated costs. I have not quoted the contents related to its initial advice service (and costs) because it is not part of the dispute in the complaint. However, both parties will be aware that the 22 July letter led with description of this initial

advice service and its costs, then followed with information about the OAS.

An OAS is also distinct from portfolio management, where a firm – either on a discretionary or advised basis – manages and transacts in a portfolio over time, and does so actively, passively or with an approach somewhere in between, depending on the agreed mandate and/or client's instructions. It is not uncommon for an OAS to be mainly defined by, and limited to, reviews of a client's profile, reviews of suitability of the initially advised portfolio and associated administrative, servicing and support responsibilities (related to the initially advised portfolio). I consider that these were broadly the main elements of the WMRS terms set out in the 22 July letter (as quoted above).

Mrs P's instruction and authority to proceed was sought in the 22 July letter, it was given thereafter, and then SW provided its initial advice in the 1 December letter. The former letter set out the core components of the WMRS (or OAS) and the latter letter expanded a little further on what the service would look like in reality.

It is clear from the 22 July letter that the service's feature was the 'annual review' (covering the individual's circumstances/profile and the portfolio under advice). The first bullet point – out of a total of seven bullet points – referred to the annual review. The two bullet points that followed (about advice on the suitability and sustainability of strategy, and usage of annual allowances) were expressed in the context of the annual review. The fifth and sixth bullet points referred to the annual review meeting and reviewing/updating advice previously given.

In other words, five of the seven bullet points defining the service all centred directly around the annual review. Of the remaining two, one referred to assistance in dealing with pension administrators as appropriate and the other referred to servicing and supporting existing plans, both of which were/are broadly administrative and support functions.

The terms for fees makes clear that the overall service was defined by the specific portfolio under advice, so it was not and was never intended to go beyond this remit. As quoted above, the terms said – *“... the cost for this service will be 0.5% plus VAT per annum based on the value of the funds on which we are asked to advise. As an example, if you have asked us to advise on your pensions and they are worth £100,000 then the cost for the Financial Planning Review Service would be £500 plus VAT (£600 including VAT) per annum.”*

Therefore, all seven bullet points must be read in this context, and the service extended only to the portfolio that was under advice. This also meant the servicing and support to 'existing plans' was to existing plans under advice.

The 1 December letter confirmed the portfolio that was under *initial* advice. It was the SIPP (based on the recommended transfers of the SLSP and the two OMPs), the ISA and the GIA. With regards to the ISA and GIA SW recommended fund switches and a 'bed and ISA' strategy. The GPP was not included. The letter confirmed the following – *“This plan will continue to receive your current contributions. I recommend that this plan remains ... When you retire I can review this pension again to ascertain the best options available to you”*. [my emphasis]

This meant the GPP would be subject to new/initial advice at the point of Mrs P's retirement, but it was not transferred into the SIPP and it was not part of the portfolio under initial advice. In terms of the portfolio under ongoing advice, Mrs P has confirmed that it consisted of the SIPP and the ISA. In her complaint she said – *“I paid a fee for the set-up of the new SIPP and ongoing charges have been deducted from the SIPP and ISA since February 2022”*. On this basis, the few submissions she appears to have made about EP not advising her on the GPP fall away. It was not contracted to give ongoing advice on, or apply the WMRS to, the

GPP.

Mrs P has highlighted a number of sections in the 1 December letter that she considers to be parts of the WMRS' definition. It is important to note that whilst some of the contents of this letter refer to aspects of the WMRS, the letter itself was/is mainly an initial advice document. Its purpose was not to set out terms for the WMRS.

I agree that some of what Mrs P has cited, in the 1 December letter, expands on what the WMRS will deliver in practice, but I have not found any contents which conflict with or override the core components of the WMRS as set out in the 22 July letter. In my view, the 22 July letter stands as the primary source for the definition of the ongoing service. As quoted above, the 'Investment Recommendations' and 'Portfolio reviews' sections of the 1 December letter refer to the ongoing review service. This is unsurprising, given that, as I noted above, the annual review was the main feature of the WMRS. I have found nothing in these sections to defeat the conclusion that the annual review was a core entitlement.

I accept that the sections refer to a 'half yearly review' and to a review of assets 'on a regular basis'. However, the first appears to have been a somewhat loose description adopted by the letter's author, as it refers to "approximately yearly or half yearly review". I am not persuaded that he intended to substitute a half yearly review for the *annual* review component (of the WMRS) explicitly confirmed in his earlier letter of 22 July. Indeed, this loose description also mentioned a 'yearly' review, so reference to the annual review remained present.

With regards to reviewing assets on a *regular basis*, I consider it wrong to conclude that this meant substitution of a more frequent review service (and/or a service akin to portfolio management) for the annual review component confirmed on 22 July. I find it reasonably clear from the full sentence in the 'Portfolio reviews' section of the 1 December letter – *"I am satisfied that your assets on FundsNetwork will be reviewed on a regular basis because I will be helping you to do so each year"* – that the author was referring to the annual review to be conducted *each year*. Had he intended something different, in line with active day to day monitoring and management of the portfolio (or something like and/or not too far from this) I consider that he would have expressly stated so – which is not what he did.

Overall, on balance and for the above reasons, I am satisfied that the WMRS had the specific definition mainly set out in the 22 July letter, that the 1 December letter expanded a little on its definition but did not conflict with or override the core components of the service set out in the 22 July letter, and that the service was essentially an OAS based mainly on annual reviews of Mrs P's profile and suitability of her portfolio under ongoing advice (the SIPP and the ISA) and administrative servicing of the portfolio under ongoing advice.

Delivery of the WMRS

As Mrs P has confirmed, the arrangement was set-up, and began, in February 2022. However, the initial advice happened beforehand in December 2021. I have not seen evidence of any additional review between initial advice and implementation, so it is reasonable to conclude that delivery of an annual review (under the WMRS) following the December 2021 initial advice would mean conducting such a review no later than the anniversary of the initial advice – in other words, no later than December 2022.

It is undisputed that no annual review happened in December 2022 or at any point before that. It is also undisputed that, after implementation of the initial advice, EP did not engage with Mrs P again until May 2023. On this basis, the investigator was correct to find that no WMRS was delivered between December 2022 and May 2023, despite being paid for, so the proportion (covering this period) of the annual fee for the WMRS deducted from Mrs P's

portfolio should be refunded to her/her portfolio, as should any calculated lost performance on the refund amount. I echo and endorse this finding, and I note that EP has accepted it.

The next matter to address is the engagement between the parties in May 2023.

There is dispute in this respect, with conflicting accounts on the meeting. EP maintains the meeting constituted a proper annual review and delivered what Mrs P was entitled to under the WMRS. It also relies on its 16 August 2023 letter as an accurate record of the May 2023 review's contents. Mrs P strongly disagrees. I have read submissions in which she highlights things that she says happened in the meeting that the letter does not mention, and things that the letter mentions which, she says, did not happen in the meeting. Her position that the meeting failed to deliver what she was entitled to under the WMRS (based on examples she has given in support) is very clear.

There does not appear to be a basis to independently verify the facts of the May 2023 meeting and I have not seen cause to doubt either party's credibility in the case, so, overall, it is not possible for me to properly determine who's account of the meeting is reliable. However, the fact, on which there is common ground, is that the meeting took place and it was, at least, intended by EP as delivery of the annual review meeting under the WMRS that Mrs P was/is entitled to.

Another finding I can reasonably make is that even where Mrs P says the 16 August letter refers to things that were not discussed in the review meeting, the fact that they were addressed in the letter holds some value. I do not condone in any way any misrepresentation that might or might not exist in the letter – which I have not and cannot determine, for the reasons previously stated – and I do not suggest in any way that mentioning a matter in the letter that was not properly discussed during the meeting is of equal value to proper discussion of the matter during the meeting. The point I make is that, depending on the circumstances, there is arguably more value in a subject unaddressed during a meeting that is then addressed in writing, than in a subject that is completely unaddressed. In this context, I summarise the main contents of the 16 August letter, as follows –

- It confirmed no changes to Mrs P's circumstances (including her income and expenditure).
- It referred to a review of her risk profile and confirmed her balanced risk profile (and associated performance benchmark).
- It advised on the insufficiency of her £30,000 emergency cash fund, recommended her attention to this and reflected her position on the matter.
- Under a 'Retirement Planning' section, it noted that Mrs P had said, in the meeting, that she was beginning to think about planning her retirement. It summarised EP's approach towards the matter and said it could expand further if she wished.
- It noted that her estate was potentially subject to inheritance tax and summarised the benefit of estate planning. The offer to expand further applied to this too.
- It concluded that no change to her portfolio or investment strategy was required.
- It mentioned that the WMRS was being closed and that she would then need to move to a suitable alternative.
- It promised another review in a year's time, but invited her to contact EP at any point during the year in the event of changes in her circumstances.

For balance, I quote the following descriptions from Mrs P about what happened during the May 2023 review meeting (in terms of the review itself) –

"I handed over comprehensive details of my income, outgoings, assets and workplace

pension. This updated the information contained in S&Ws letter, dated 01/12/2021, but didn't reflect a change in my circumstances, other than the passing of time, bringing me closer to retirement. I was given an agenda, a Valuation Report and a Risk Supplement. The financial planner (FP) offered some common-sense advice on Lasting Power of Attorneys, just get it done, and suggested moving my cash savings from my bank to an Easy Access Savings Account."

"The FP then told me that, based on the outcome of the risk assessment, I would need to choose from one of the two low risk Investment Strategies in the Risk Supplement that I'd been handed on arrival. The FP would then arrange for my funds to be moved from the current Fidelity platform to EPs own BestInvest Platform. He said that he needed to advise me that this represented a conflict of interest."

"I asked:

- What my options were if EP were not able to manage my existing funds?*
- What was I being charged for?*
- How long had this situation had been going on?*
- When did someone last review my investments?*
- Opting for investing using EPs Risk Strategy approach sounded rather like the default funds that my current workplace pension is invested in. Why would I want to continue to pay an ongoing fee of 0.5%, as was being suggested, when the workplace pension fee is considerably lower?*

The FP offered no answers to these questions."

She has also described the contents of an online Teams meeting she held with EP in July 2023, as a follow up to the May review meeting. Her description includes the following –

"I asked whether it was a good idea to sell all the investments in a SIPP that I had set up only 17 months earlier, for which I had paid set up fees and ongoing costs.

I said that it was likely that my responses to the risk questionnaire were emotional, based on the concerning events of recent years, and asked whether it might not still be appropriate for my funds to be invested in a medium risk strategy. I had previously told him that I would hope to be able to pass on remaining funds to my children.

There was no response from the FP to this.

I queried the error in the pension valuation and asked the FP to provide the correct values. A week later the FP sent me an 8.3MB email attachment. I wasn't asked if it was ok to send my financial information in email. I would never send any financial information in email, and I didn't feel it was safe to open the file. I consider this a breach under data protection."

The reasons for which Mrs P asserts that the 2023 review amounted, essentially, to nothing meaningful are clear from her submissions. I understand those submissions. I remain unable to determine the conflicting accounts of the May review meeting, and I am broadly in the same situation with regards to the July follow up meeting she has mentioned. These factors mean I am limited in addressing her reasons – because I do not know whose account of the 2023 engagements is accurate – but I consider it important to confirm that I am aware of the grounds on which she believes she has been deprived of the service she is entitled to.

However, I consider that, in the circumstances of her case, a distinction can fairly be drawn between the notion of non-delivery of the WMRS annual review she was entitled to in 2023

and potentially poor delivery of the WMRS annual review she was entitled to in 2023.

There is enough evidence to show, on balance, that the former (non-delivery) was not the case – because an annual review meeting took place in May, there was a follow-up meeting shortly thereafter in July and both her profile and suitability of her existing portfolio were reviewed.

I understand Mrs P point about being unconvinced that her portfolio and its contents had been properly reviewed, in the absence of transaction activity within it. However, it does not automatically follow that such absence means a portfolio has been neglected of required changes, or that a portfolio was unsuitable.

I agree with the investigator's observation that the complaint, as presented, is not about suitability of advice, so there are no issues of investment suitability within it to address. However, a somewhat neutral comment on Mrs P's point is that it is unlikely to have been suitable for EP to recommend a change in her portfolio solely or mainly for the purpose of being seen to be recommending a change in her portfolio. It is true that the 2023 review recommended no action or transaction in the portfolio. Unless, contrary to EP's view at the time, the portfolio needed rebalancing and was wrongly deprived of that – which is a matter of portfolio suitability, is beyond the scope of the present complaint and is a matter Mrs P can consider separately if she wishes – this does not automatically mean there was a failing. If her wider argument is about a general lack of investment related activity in her portfolio, the OAS delivered under the WMRS was not the sort of active, and perhaps discretionary, portfolio management that could include such activity.

It might be the case that the WMRS annual review in 2023 was poorly delivered. It is not quite clear if EP's apologies and £250 offer, for the "service failings" it conceded in its complaint response letter, extends to any of the specific review related failings Mrs P has alleged. However, I sense that EP acknowledges that its engagements with her in 2023 could, overall, have been handled better.

Even if the two review related meetings in 2023 were poorly handled – and, in this respect, I note Mrs P's perceptions that the adviser lacked competence – I have not seen enough to persuade me that they were poorly handled to the extent that there might as well have been no annual review. As stated above, the review happened, and it addressed two main aspects (Mrs P's profile/circumstances and suitability of her existing portfolio). There is also evidence of email correspondence, and sections within EP's complaint response, which addressed some of the issues raised by Mrs P after the two meetings (and issues raised in her complaint). I appreciate that she might question the value of the responses, but the point is that they were given and they add support to the conclusion that, on balance, it cannot reasonably be said that she was deprived an annual review, under the WMRS, in 2023.

No review has happened since May and July 2023. I am not persuaded that it is necessary to go into the reasons why. As the investigator said, the key point is that EP should not, and cannot reasonably, retain deducted fees for the WMRS when it has not been delivered. In this part of the complaint, it has not been delivered since May and July 2023. I consider that it is in this context the investigator correctly proposed that the fee deduction be stopped, until the parties can agree on if and/or how the ongoing service is to proceed.

However, it must be noted that the investigator conveyed this in his July 2024 view, at which point the partial refund of fees (and compensation for any associated lost performance) I mentioned earlier and stoppage of the WMRS fee deductions would have addressed the matter. This decision is being issued in January 2025, so if the fee deductions were not stopped in July 2024 then our approach must be updated with regards to the need for another refund of fees covering the period from July 2024 onwards (and compensation for

any associated lost performance).

This is not intended to be a criticism in any direction. The investigator's proposal was sound; EP was not expected to apply it unless and until it was agreed by both parties; and Mrs P was entitled to disagree with the investigator's view and ask for a decision. However, the update mentioned above is essentially a natural requirement given the passage of time, so I will address it in my orders below. In other words, in addition to the refund of fees (and compensation for any associated lost performance) between December 2022 and May 2023, if the WMRS fee deductions from Mrs P's portfolio were not stopped in July 2024 then EP needs to conduct the same redress for fees covering the period between July 2024 and the 'date of settlement' of the redress orders I give below.

As far as the future is concerned, both parties hold their respective discretions – Mrs P can determine from whom she wishes to receive ongoing advice on her portfolio and EP can determine, within the regulatory and legal remits, the type(s) of service it provides and to whom it provides that service. Presently, circumstances and evidence show that the WMRS still exists, so my findings above and below rest on that. Beyond this decision, it is for Mrs P to decide what is in her portfolio's best interests and, if possible, it is for the parties to determine individually or together what will or will not be the future arrangement between them.

Putting things right

Before setting out my orders on how to put things right, I address Mrs P's points on compensation and redress.

She considers the award of £250 for trouble and inconvenience to be insufficient. I have taken on board her reasons for this. I find that they are mainly premised on her assertion that she has been denied the WMRS she was entitled to at all times since December 2021 (or since the implementation in February 2022). For the reasons given above, my conclusion differs. To recap –

- Mrs P was denied the WMRS between December 2022 and May 2023.
- She had annual review engagements with EP in May and July 2023 and, as I have found, this, in the main, delivered the WMRS.
- EP invited her to an annual review in 2024, the invitation was in March and the review was to happen in May (to match the anniversary of the May 2023 review), but the disagreement between the parties on what such a review was supposed to be (and what the WMRS was supposed to be) meant it did not happen. It has not happened to date. Whilst there is a case for EP refunding WMRS related fees deducted from her portfolio covering the period since July 2024, because the parties cannot agree on the service and no WMRS has been delivered since, the facts show that it cannot reasonably be said that she has been "denied" this service since July 2024. That is not the case. Instead, the service could not proceed because of the seemingly deadlocked dispute between the parties over what it should be. I am not persuaded that either party can be blamed in this respect. EP offered the review. Having done so, it could not force Mrs P to attend against her will and against her position in the dispute, and she was entitled to that position.

In the above context, I am not convinced that EP should have to pay more than the £250 it has offered for the trouble and inconvenience caused to Mrs P. I am satisfied that this provides fair compensation for the trouble caused to her by being denied the WMRS between December 2022 and May 2023, and by her experiences in the meetings she had

with EP in 2023. I do not wish to be dismissive of the trouble, distress and inconvenience she has described in her case since 2024 and to date (including the pursuit of her complaint), but I need to be satisfied that EP caused that effect upon her before I can reasonably consider an additional award. I do not find that it has. The effect appears to have been caused by the impasse between the parties that I summarised above.

Mrs P has raised concerns about the notion of EP paying compensation/redress outside her SIPP and ISA, given potential income tax implications and the expense she says she is then likely to incur in engaging an accountant's assistance; about refunding VAT charged on the deducted fees; and about an appropriate redress benchmark.

My orders below direct EP to pay redress into the portfolio (which includes the SIPP and ISA) the fee deductions were taken from. I understand the potential income tax implications Mrs P has described, and her concern that EP could likely elect to pay redress to her directly, and subject her to those implications, because it is more convenient (for EP). Payment into the portfolio is primarily what EP will be ordered to do, and the circumstances in which it can do the alternative and make direct payment to her will be limited to the terms I set out below.

The calculation must be based on the full and actual fee deductions from the portfolio, so this should capture any VAT charge.

With regards to the redress calculation benchmark, the existing portfolio serves as the natural benchmark for the calculation. The idea being that the fees deducted from it would otherwise have remained within it, but for the deductions – so performance of the portfolio itself is the benchmark to use. I see no cause to consider an alternative.

Fair compensation

My aims are to redress any financial loss to Mrs P's portfolio (her SIPP and ISA) caused by the WMRS fees deducted from it between December 2022 and May 2023 – that is, deductions for the months of December 2022, January 2023, February 2023, March 2023 and April 2023 when she should have had an annual review of her portfolio, but did not – and since July 2024 (inclusive of July 2024) when the fee deductions should have stopped (for the reasons addressed above); and to redress any lost performance on the deducted fees that would otherwise have been retained in the portfolio.

For the reasons given above, I also endorse EP's offer to Mrs P of £250 for the trouble and inconvenience caused to her.

What must EP do?

To compensate Mrs P fairly, EP must do the following:

- Calculate the WMRS fees deducted each month from her portfolio from December 2022 to April 2023 (inclusive), and from July 2024 to the date of settlement (inclusive). The total of all fee deductions is 'A'.
- Calculate how each fee deduction would have performed had it remained in the portfolio, from the point of deduction to the date of settlement. Calculate the total of all growth that would have been achieved in the portfolio on all the fee deductions that would have gained growth. The result is 'B'.
- Pay the total of A and B into Mrs P's portfolio (into the components the WMRS fees were deducted from). With regards to payment into the SIPP the payment should

allow for the effect of charges and any available tax relief; it should not be paid into the SIPP only if it is not possible to do so or if it would conflict with any existing protection or allowance; if the payment cannot be paid into the SIPP, pay it directly to Mrs P; had it been possible to pay it into the SIPP, it would have provided a taxable income, so the payment should be reduced to *notionally* allow for any income tax that would otherwise have been paid; the *notional* allowance should be calculated using her actual or expected marginal rate of tax at her selected retirement age (for example, if she is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax); and if she would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

- Pay Mrs P £250 for the trouble and upset caused to her.
- Provide the calculation of the redress and compensation to Mrs P in a clear and simple format.

My final decision

I uphold Mrs P's complaint on the grounds set out above, and I order Evelyn Partners Financial Planning Limited to calculate and pay her redress and compensation as stated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 25 February 2025.

Roy Kuku
Ombudsman