DRN-5039046

The complaint

Mr K complains that Belbury Financial Planning Limited ('Belbury') gave him unsuitable investment advice and that he paid ongoing advice charges but did not receive annual reviews of his portfolio's performance. Mr K argues that this cost him investment losses.

What happened

Mr K was a customer of Belbury and made contact with it in March 2019 for advice on his pensions ahead of taking retirement benefits from them. Mr K had defined benefits from an occupational pension scheme, but also held pension funds in defined contribution pensions.

Belbury recommended that Mr K transfer a pension into a personal pension plan with Transact. The rationale was that the fees were lower and that it would enable Mr K to access his benefits through a flexible drawdown, in line with his objective. Mr K accepted this recommendation and Belbury processed the transfer for him.

In September 2019 Mr K contacted Belbury explaining that he was ready to confirm his requirements for the £162,287 in his Transact pension. And asked whether or not an annual review of the portfolio was proposed. In an email response on 12 September 2019 Belbury included the statement, "*…an annual review to assess fund performance and your ongoing financial circumstances / requirements would be essential*".

In October 2019 Belbury provided its investment recommendations for his Transact portfolio. It sent Fund fact sheets for all of its recommendations. Mr K responded to confirm that he had considered all of the information he was sent and was happy with the recommendations. A fee of 3% of the fund value (estimated at £4,080) was agreed along with an ongoing advice charge of 0.5%.

In March 2020 Mr K made contact with Belbury regarding concerns with the performance of his Transact portfolio. Mr K explained that it had fallen in value by 28% since January. This coincided with the impact on financial markets as of the covid 19 pandemic. Belbury recommended that Mr K remained invested in the same way and waited for the investments to recover.

In January 2024 Mr K engaged the services of a different financial adviser and transferred his Transact pension to a different provider. On 30 January 2024 Mr K complained to Belbury. Mr K said that he'd been told in November 2019 to expect a 7-8% return, but that his calculations showed his portfolio returns had been around 3-3.5%. He had since been told that his portfolio investments were too adventurous for his balanced attitude to risk. He complained that he'd been promised annual reviews of his portfolio and said that he hadn't received those since 2019. He considered that his recent portfolio performance was unacceptable.

Mr K received no response from Belbury within eight weeks so referred his complaint to our service. Belbury then provided its response. It didn't think that Mr K's complaint should be upheld. It considered that Mr K's portfolio was appropriate for his objectives and attitude to investment risk. It thought that the context of the portfolio's performance needed to be seen in the context of the extraordinary market conditions. It said it had been in regular contact with Mr K, exchanging 182 emails as well as phone conversations. It did work on multiple income withdrawals and discussed fund performance with Mr K so would not agree to refund fees.

Our investigator was unable to resolve Mr K's complaint, so the case was referred for an ombudsman's 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.

Having done so, I have come to the same outcome as our investigator for broadly similar reasons. I have considered everything that has been raised in this case, but I will limit my reasoning to those points that I consider to be the crux of Mr K's complaint. This is because our service is intended to resolve disputes with a minimum formality. For ease of reading, I will refer to the same broad complaint points that our investigator set out in his view because I agree that is a fair summary of the issues Mr K referred to us.

Were the recommended investments suitable for Mr K?

I am aware that Mr K explained, in his response to our investigator, that he accepts that compensation for the performance of his portfolio is not possible. For clarity however, I will still explain briefly why I don't think it's fair to say that the recommended investments were unsuitable.

Mr K has said that he had a balanced attitude to investment risk. And that would seem to be corroborated by the attitude to risk questionnaire that Belbury sent Mr K to complete. Belbury therefore accept that the intention was to recommend an overall portfolio that was in line with that attitude to risk and Mr K's objective of both growth and short term income requirements.

Belbury recommended a diverse number of funds for the Transact portfolio. Initially investing around £139,000 (after Mr K took an initial tax-free cash payment of £25,000). Mr K was sent the fund factsheets for each of these and had the chance to consider them. And confirmed that he did. Most of the funds had moderate risk ratings with some being higher and some lower. Overall, I don't think the recommendation was unsuitable for Mr K's circumstances. It involved exposure to investment risk as all the funds invested in equities. But none had obvious exposure to high risk markets. I think that the context of the email correspondence makes it clear that Mr K had an expectation of reasonable fund growth. The investments that were recommended afforded an opportunity to achieve that without an exposure to a risk that was unsuitable for Mr K. Or to a risk that he did not have the capacity to take, with his other defined benefit pension.

Ongoing advice

Belbury have not been able to provide us with a copy of a signed client agreement with Mr K. I would expect such a document to clearly set out the service that it was providing Mr K and the fee it was charging. I therefore find Belbury's evidence here to be deficient. Mr K says he expected an annual review. And I think that was most likely what he was entitled to expect. I say that because Belbury was obliged to perform a service for the ongoing charge that Mr K agreed to pay. And, in its email to Mr K of 9 October 2019, Belbury told Mr K that the 0.5% annual charge would cover the cost of "*monitoring compliance and reviews"*. I don't think this was especially clear by itself. But followed on from a previous email where Belbury told Mr K "*an annual review to assess fund performance and your ongoing financial circumstances /*

requirements would be essential".

For this reason I think that Mr K was entitled to expect, at least, annual reviews that considered the fund performance and his circumstances. This could be delivered in a number of ways. And I make this point because Belbury does not appear to have put in place a formal structure that provided Mr K with specific correspondence that it made clear were his annual reviews.

Mr K argues that the lack of a clear report or summary means that Belbury were not providing him with annual reviews. But I have to consider all the circumstances to determine what I think is fair and reasonable. And in this case, I think that Belbury did certainly have considerable contact with Mr K. They provided him with assistance in arranging the drawdown payments he required and with the investment of the additional funds that were transferred and contributed to the Transact personal pension.

Mr K had contact with Belbury in March 2020 following concerns with the reduction in his Transact pension portfolio. Belbury responded providing commentary and a recommendation. Which I think is evidence of ongoing advice and review of the pension's performance. Even if the recommendation was to remain with the same investments. In June 2020 Belbury contacted Mr K because his pension contributions had stopped. I think this was further evidence of Belbury taking a proactive approach to Mr K's advice. There followed correspondence which is evidence that Belbury were aware of Mr K's changed circumstances - he'd stopped working.

In October 2020, in response to a request for advice from Mr K, Belbury provided commentary about another of Mr K's personal pensions. Belbury set out some options for it including the relative benefits of transferring its fund to his Transact pension. Belbury followed this up with Mr K in December 2020 when he didn't respond. Belbury then received a comprehensive update from Mr K about his intentions for the use of his pension funds to provide income. After which Belbury provided a recommendation to Mr K that he transfer his other personal pension to Transact to consolidate his funds and make the process of taking income more straightforward.

There was further correspondence whilst Mr K weighed his options before deciding to transfer his other pension to Transact in July 2021.

Whilst I have only highlighted specific key points of contact, I think that this collective contact, advice, review of circumstances and further investment consideration following the transfer of the second pension persuade me that Mr K broadly received the kind of service that he should have expected from Belbury. He was provided with regular commentary over that time about investments and pension drawdown options. This is why I don't think it would be fair or reasonable for Belbury to refund the fees it received for its work in those years.

I am far less persuaded that the type of contact and assistance that Belbury provided Mr K during 2022 and 2023 amounted to anything approximating an annual review. It had limited contact that related to the arrangement of income drawdowns on request. But Belbury has provided no evidence that it provided Mr K with any commentary or review of the performance or ongoing suitability of those investments in that period. As Belbury cannot evidence that it provided Mr K with this key part of ongoing advice, I don't think it was fair for it to charge him for that. And Mr K should be compensated for the impact of paying charges that he should not have.

Performance of Mr K's Transact portfolio

I understand that Mr K has been disappointed with the performance of his portfolio but it is not reasonable to hold Belbury responsible for that I this case. Its role was to provide a recommendation that was suitable for Mr K's objectives. And, as I have said, I think it did that.

In Belbury's email setting out its recommended investments (on 9 October 2019) Belbury explained that assets were equity based and that unit prices could fall as well as rise, with past performance no guarantee of future performance. I think Mr K understood that.

I understand that Mr K has said that he was told that he could expect 7-8% returns. What he is referring to here is an email that Belbury sent him on 11 November 2019, in response to a request from Mr K. Mr K had asked if Belbury could give a broad indication of what sort of return he should expect. But he also appeared to understand that might be an unfair question. Belbury provided an answer to that which acknowledged that the question was unfair. But went on to suggest that it wouldn't be unrealistic to generate a 7 or 8% return. In the overall context of the correspondence I don't think it's fair to consider this was in any way a prediction or guarantee of performance. Neither is it evidence that, in the circumstances, the portfolio's failure to achieve that is evidence of its unsuitability or of any fault of Belbury.

Putting things right

For the above reasons I think that Belbury should refund Mr K the ongoing advice charges that were taken from his Transact pension during 2022 and 2023. This should take into account the investment losses on each charge from the date it was taken until the date that Belbury is told that Mr K accepts my final decision. That investment loss should be calculated based on the investment performance of Mr K's pension fund (taking into account any withdrawals). Mr K has since moved his pension to a new provider so he will need to provide Belbury with the information it requires to enable it to complete this calculation.

The compensation amount should, if possible be paid into Mr K's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection implications, it should be paid directly to Mr K as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Mr K has remaining tax-free entitlement, then 25% of the loss would be tax free and 75% would have been taxed at his likely income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this.

Belbury should provide its loss calculations to Mr K in a clear format. It should also pay the compensation within 28 days from the date that it receives the necessary information regarding Mr K's pension fund performance. If it pays later than this it must also pay interest on the compensation from the date it was told that Mr K accepted my final decision until the date of payment at 8% a year simple.

My final decision

For the reasons I've explained I uphold Mr K's complaint in part and direct Belbury Financial Planning Limited to put things right as above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr K to accept or reject my decision before 2 May 2025.

Gary Lane
Ombudsman