DRN-5098540

The complaint

Mr P complains that Best Practice IFA Group Limited ("Best Practice") provided him with incorrect information about the charges that were included in the performance figures of investments that were recommended to him.

What happened

I issued a provisional decision on this complaint earlier this month. In that decision I explained why I thought part of the complaint should be upheld and what Best Practice needed to do to put things right. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

> *Mr P received advice from an independent financial advisor that is a member of Best Practice. Although all his dealings were with that sole advisor, it is Best Practice that is responsible for the advice, and for dealing with this complaint. In this decision, for ease, I will simply refer to Best Practice throughout, rather than the individual advisor.*
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> *Mr P received advice from Best Practice in June 2017 about the transfer and investment of his pension savings. In brief Best Practice recommended that Mr P transfer his pension savings into a new self-invested pension plan ("SIPP") and invest them across a number of investment funds. To support that recommendation Best Practice provided Mr P with fund factsheets showing key information about the recommended funds, and providing analysis of their past performance. And Best Practice proposed it should provide Mr P with on-going support and advice on his pension investments, for which he would need to pay an annual fee equal to 1% of their value.*
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> *Before accepting Best Practice's recommendation, Mr P asked a specific question about its charges and whether or not they would affect the performance figures he had been shown. Specifically he asked Best Practice whether the past performance examples were "net of all costs, including yours?". Best Practice confirmed that "the performance information shown is net of fees and costs." Mr P accepted the recommendation he had been given by Best Practice and his pension savings were transferred to the new SIPP.*
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> *In 2023 Mr P noticed a discrepancy between the published performance of the investment funds, and the investment returns achieved by his pension savings. So he asked Best Practice for some more information about the difference. Following those conversations it became clear that the charge Best Practice levied for its ongoing advice was not included in the performance figures of the investment funds. So Mr P complained he had been given misleading information.*
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> *Best Practice accepted that it gave some unclear information to Mr P about its charges. But it said that it didn't think that information had caused him to make a different decision, or lose out. So it didn't agree with his complaint. Unhappy with that response Mr P asked us to look at his complaint.*

In 2017 Mr P engaged Best Practice to provide him with some advice about the transfer and investment of his pension savings. He says that he also engaged other firms to provide him with similar advice so that he could consider which proposal was the best fit for his circumstances. Mr P says that one of the main aspects that he considered was the past performance of the investments being recommended by the firms. Mr P was given factsheets, produced by or on behalf of the recommended investment funds, that showed how they had previously performed.

Mr P says that, at that time, he was relatively inexperienced in financial matters. So he asked questions of the firms to help establish the actual returns he would have received had he held the recommended investments in the past. Specifically he asked Best Practice how any charges were accounted for in the returns that were shown on the factsheets, and whether the charges included those being levied by the firm. The answer that Mr P received reasonably led him to conclude that Best Practice's agreed 1% charge had been included before the net return of the investment funds were calculated.

Best Practice concedes that the information it gave to Mr P overlooked the separate fees that the firm would charge him. But it says that it was clear to Mr P that those charges would be payable, and that he agreed the 1% rate. It thought the other information it had provided to Mr P was sufficient for him to understand how the overall charges might impact the performance of the investments in his pension savings.

I am satisfied that the information Best Practice gave to Mr P in 2017, when answering his specific questions about the fund performance and the impact of its charges, was at best incomplete, and most likely incorrect. I do think that the exclusion of the 1% fee from the published performance data, when Mr P had been led to think it was included, might have unfairly induced him to accept the recommendation that Best Practice had made in preference to those he received from other firms. So on that basis I do think that this complaint should be upheld. As I will explain later, I think the incorrect information Mr P was given will have caused him some distress and inconvenience.

But, as I will now go on to explain, I am not persuaded that the lack of transparency about the exclusion of the advisor fees from the performance figures has otherwise caused Mr P to lose out.

Mr P accepts that the past performance information he was given on the recommended investment funds provided him with no guarantee of their future performance. So although he might have chosen to accept Best Practice's advice on the basis of what had happened in previous years, he should have had no expectation that performance would be repeated in the future. It is often seen that investments that have outperformed others in the past, underperform the comparative investments in the future.

I've looked carefully at the advice that was given to Mr P in 2017. The recommendation to move his pension savings into the new SIPP appears to have been reasonable and in line with Mr P's objectives. And the investments that Best Practice recommended were appropriate for those objectives and Mr P's measured attitude to risk. The report that was given to Mr P also clearly set out the charges he would need to pay to Best Practice, both for its initial advice and for its ongoing relationship service.

Given that the future returns of the investments were not guaranteed I think it makes little difference whether or not the historical returns were shown inclusive of Best Practice's fees. Ultimately, given that I think the recommended investments were suitable, Mr P would receive the market value less the charges that he had agreed to pay. Those returns haven't been at all affected by the poor information that he received from Best Practice at the outset.

I have seen that there is some discrepancy between the published returns of the investments and what Mr P has seen in his SIPP reporting. I am satisfied that any discrepancies cannot have been caused by something that Best Practice has done wrong. The factsheets showing the annual returns are published either by the investment fund or a third party. And Mr P's SIPP administrator reports its value, including completing the deduction of the agreed annual fees paid to Best Practice. So whilst Mr P might reasonably ask Best Practice to provide him some information about the performance of his SIPP, it has little control over whether it is matching performance information provided by a third party.

As I have explained, I do think that Best Practice failed to provide clear, and not misleading, information to Mr P when it provided its initial advice. But I am satisfied that the extent of the losses that caused was simply causing some distress and inconvenience to Mr P. So the only compensation I think is warranted here is in that regard. I currently think it would be fair and reasonable for Best Practice to pay Mr P £250 for his distress and inconvenience.

I understand that this decision will be disappointing for Mr P. But I am currently satisfied that the incomplete information he was given by Best Practice hasn't affected the fair value of his pension investments.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Best Practice says that it has nothing more to add. Mr P has provided some further comments on my findings. Although I am only summarising here what Mr P has said, I want to reassure him that I have read, and carefully considered, his entire response.

Mr P has asked for clarification about whether I consider the information he received from Best Practice to be misleading. Mr P says that he does think he has suffered a financial loss. He says the investments were recommended to him on the basis that he would receive any future growth shown on subsequent fund factsheets. But he says that wasn't the case and his returns have been less than the growth achieved by the funds.

Mr P says that he thinks that to put things right it would be fair for him to receive the growth shown on the fund factsheets. That would mean that he would be in the position he would have been if the information provided by Best Practice was correct.

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 I set out in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr P and by Best Practice. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I've thought carefully about the additional comments that have been made by Mr P. I'm sorry to tell him that what he has said hasn't caused me to conclude that I should change my provisional findings. But I would like to provide some more explanation about the matters he has raised.

In my provisional decision I said that "*I do think that Best Practice failed to provide clear, and not misleading, information to Mr P when it provided its initial advice."* Mr P has said he finds that statement a little confusing. So to be clear, I think the advice Best Practice gave to him was not clear, and was misleading.

If nothing had gone wrong, then Mr P would have been told that the performance shown on the fund factsheets would need to be reduced to take account of the ongoing charges he had agreed to pay to Best Practice. That means that he would not have had any expectation, or right, for his investments to grow at those published rates. So it wouldn't be appropriate for any compensation to be paid to reflect the lesser growth (because of the deduction of the ongoing fees) that Mr P has experienced.

I don't think that Best Practice gave Mr P any promises, or assurances, about the actual growth that his pension investments would achieve. So any expectations that Mr P had would have been entirely dependent on market performance. And, as was clearly set out on both the factsheets he has referred to and in Best Practice's advice report, past performance is not a guide to future performance.

So I am satisfied that Mr P's pension investments have performed in line with the expectations he should have been given had nothing gone wrong. He was aware that Best Practice would receive a fee of 1% for its ongoing support. And he should have been aware that there were no guarantees in respect of the future performance of his chosen investments. So I don't think the incorrect information given to Mr P has caused a financial loss – at most it has caused a loss of expectation.

I do acknowledge why Mr P feels let down by his relationship with Best Practice. As he says he engaged a highly qualified individual to provide him with sound advice. His reasonable expectations that the advice would allow him to understand a complex area of investments were not met. So I remain of the opinion that it would be fair and reasonable for Best Practice to pay Mr P £250 for his distress and inconvenience. But I don't think any further compensation is warranted here.

Putting things right

Best Practice should pay Mr P £250 for the distress and inconvenience he has been caused.

My final decision

My final decision is that I uphold a part of Mr P's complaint and direct Best Practice IFA Group Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr P to accept or reject my decision before 19 November 2024.

Paul Reilly
Ombudsman