

## **The complaint**

Mr T complains that Radiant Financial Planning Limited ('Radiant') didn't provide the ongoing annual review service that he paid for.

Mr T would now like Radiant to refund the ongoing advice fees that he paid out of his pension.

## **What happened**

In April 2019, Mr T met with an adviser from Clarkson Wayman Ball (CWB) to look at his retirement planning needs. At that meeting, Mr T decided to opt into CWB's review service; that offering was designed to provide an annual meeting with Mr T to check that his pension arrangements were working in line with his objectives and to make any changes as necessary.

In 2020, CWB merged with Radiant and all services from that point forward came under the Radiant brand. In April and September 2020, Radiant undertook a periodic suitability review with Mr T and following the latter meeting, they issued a suitability letter to him setting out a summary of the meeting.

In February 2021, Radiant telephoned Mr T to schedule a review meeting but he wasn't available to speak. A subsequent review meeting was then booked in with Mr T on 13 December 2021, but he failed to attend the appointment, later explaining that he'd overlooked the meeting.

No further interactions occurred between Mr T and Radiant in 2022 but on 26 January 2023 and 17 March 2023, Radiant issued emails to him inviting him to contact them to schedule a review meeting.

In March 2024, Mr T decided to formally complain to Radiant. In summary, he said that he didn't think it was fair that he'd paid for an ongoing service to which he'd not benefited from.

After reviewing Mr T's complaint, Radiant partly upheld his complaint. They said, in summary, that in 2019 and 2020, they did deliver the service that Mr T had paid for. However, Radiant said that because they'd made contact twice in both 2021 and 2023, it was Mr T's choice not to have scheduled an appointment with them. Radiant went on to say that they didn't believe it was reasonable to refund any fees taken covering those two years but they said, given a review wasn't undertaken in 2022, they were going to refund his fees for that year covering £946.89.

Mr T was unhappy with Radiant's response, so he referred his complaint to this service. In summary, he said that he didn't think it was reasonable that Radiant had levied a fee when he'd not used their service.

The complaint was then considered by one of our Investigators. He concluded that Radiant hadn't treated Mr T fairly because whilst they'd attempted to contact him to undertake the annual reviews in 2021 and 2023, that wasn't enough to justify charging him for the service in those two years.

As Radiant didn't respond to our Investigator's view, the case comes to me for a decision.

After carefully considering the complaint, I explained that I was issuing a provisional decision on this case as whilst I was in agreement with our Investigator that the complaint should be upheld, I added wider context as to why and reached a different view of how Radiant should put things right for Mr T. The provisional decision gave both parties the opportunity to provide any final comments before I reached a conclusion.

#### What I said in my provisional decision:

I have summarised this complaint in less detail than Mr T has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts. Instead, I will focus on what I find to be the key issue here, which is whether Radiant need to refund any fees beyond what they've already reimbursed to Mr T.

My role is to consider the evidence presented by Mr T and Radiant in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, I'm upholding Mr T's complaint - I'll explain why below.

Before I do, I think it's important to acknowledge that whilst Mr T has been a customer of CWB's and then subsequently Radiant for five years, I'm of the view that there's only two years that that I need to focus on, 2021 and 2023:

- 2019 – was the year that Mr T started his relationship and received advice.
- 2020 – review meetings took place.
- 2021 – contact made but no review meeting occurred.
- 2022 – Radiant have already conceded that they didn't provide the annual service that they should have.
- 2023 – contact made but no review meeting occurred.

As a regulated firm, Radiant had many rules and principles that they needed to adhere to when providing advice to Mr T. Many of these are found in the regulator's handbook under the Conduct of Business Sourcebook (COBS) and Principles for Businesses (PRIN). The most relevant rule to 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.

The regulator also produced guidance in the form of an FCA factsheet ('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."

I've been provided with a copy of the 'Fee Agreement and Client Declaration' that Mr T signed on 10 May 2019. In the section covering ongoing services it states:

"Typically, the delivery of ongoing services to you would include:

- Periodic reviews of your circumstances, needs and objectives to ensure that your financial plan is kept up to date
- Ongoing monitoring of investment managers used in the portfolio
- Managing accessibility and liquidity requirement for withdrawals
- Re-assessing your risk tolerance and re-balancing your investment
- Tax planning
- A review of your estate planning requirements including consideration towards your wills and Powers of Attorney
- Simplifying administration as far as is possible
- Ensuing investment costs are market competitive
- The provision of portfolio reports"

The agreement then sets out four different service delivery propositions. Mr T selected the 'Standard Service' offering with gave:

- “Annual review meeting with your personal Financial Planner to discuss your situation and plans
- 1 investment portfolio report per year
- Limited portal access”

It seems the agreement sets out several clear services that Radiant would provide to Mr T in return for the ongoing advice fees. So, I have considered whether Radiant delivered the services they promised to Mr T in their agreement with him.

Radiant attempted to contact Mr T in early 2021 to provide him with an annual review, and then later in the same year an appointment was booked that he didn't attend. Radiant then contacted him twice in 2023 but Mr T didn't respond. Whilst I appreciate that Radiant attempted to contact Mr T, I don't think they provided him with the services he'd agreed to. I'll explain why.

Radiant's agreement is worded in such a way that suggests a review will be completed – not simply offered. I also take the view that I'd only expect Radiant to take the ongoing charge for a service being given, and not simply just offered. I say that because the regulator's rules say the charge must be in respect of an ongoing service – so the service must actually be provided if the charge is going to be made.

I've thought about the services Radiant said they would provide to Mr T in their client agreement, but I've not seen any evidence that his investment performance and holdings were reviewed. And because Mr T was never spoken to there was no opportunity for his personal circumstances, goals and objectives to be reviewed. So, a report was never sent to Mr T outlining these things and therefore, I have to conclude that Radiant didn't provide Mr T with the ongoing service he paid for in 2021 and 2023, despite Radiant accepting the fees from his pension plan.

#### Responses to my provisional decision:

After receiving my provisional decision, neither party provided any further comment.

#### **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 neither party provided any further evidence for me to consider, it therefore follows that I have reached the same conclusion for the same reasons that I set out above and as such, I require Radiant to put things right for Mr T in the manner that I've set out below.

#### **Putting things right**

My intention is to put Mr T back into, as close as possible, the position he would have been in but for Radiant's mistake. So, that means putting Mr T's pension fund into the position it would have been in had the fees not been taken for those two years. The pension would

have been higher by the value of the fees and any investment returns that the fees would have gone on to benefit from.

Radiant must calculate the loss in value of Mr T's pension due to the deduction of the fees taken in 2021 and 2023. To be clear, this will mean calculating the lost investment returns on each fee, based on the actual investment strategy of Mr T's pension, from the date the fees came out to the date that Radiant are told that Mr T accepts my final decision.

If information about Mr T's investment isn't forthcoming, Radiant should use this benchmark – FTSE UK Private Investors Income Total Return Index to calculate the lost investment returns on each fee. I've chosen this method because the FTSE UK Private Investors Income Total Return Index is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It is reasonable proxy for the type of return that could have been achieved over the period in question.

When Radiant have calculated this total loss to Mr T's pension (from the fees that should not have been paid, and the lost investment returns from those amounts) they should, if possible, pay that total loss amount into Mr T's pension. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension if it would conflict with any existing protection or allowance.

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

If Mr T has a remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to 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.

If payment of compensation is not made within 28 days of Radiant receiving Mr T'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 Radiant deducts income tax from the interest, it should tell Mr T how much has been taken off. Radiant should give Mr T a tax deduction certificate in respect of interest if Mr T asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

## **My final decision**

I'm upholding Mr T's complaint, and I require Radiant Financial Planning Limited to take the actions that I've set out above to put things right for him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 3 January 2025.

Simon Fox  
**Ombudsman**