

The complaint

Mrs D has complained that Rathbones Investment Management Limited (Rathbones) has charged her fees for financial planning services, but that she hasn't received this service. Mrs D has also said that the communication she's received from Rathbones has been unclear.

Mrs D has further said that Rathbones had itself conceded that its service had fallen below the standard expected of it, and that it failed to meet the response deadline to her complaint in 2023.

What happened

Mrs D has been a client of Rathbones for around 20 years and, by June 2016, Rathbones were managing the investments within her Self Invested Personal Pension (SIPP) only. In July 2017, a file note recorded that a new adviser had taken over the provision of financial advice to Mrs D and would make contact with her.

In September 2017, Mrs D attended a meeting with her investment manager and new financial adviser, in which her adviser explained that he would need to review her and her husband's assets to help further. Though her adviser provided some generic information about the tax rules on pensions and inheritance tax, no advice was provided at that time.

In June 2022, Mrs D complained about the charges which had been levied on her pension plan, amongst other things. Mrs D's investment manager responded and explained that her financial planner had been involved in a couple of meetings and had offered to review her entire financial circumstances – but Mrs D hadn't taken him up on that. The investment manager also explained the investment management fees, but didn't explain the fees paid to her financial planner.

Rathbones sent Mrs D a final response on 4 May 2023 (where it dealt with some of Mrs D's other complaints which she hasn't asked our service to investigate). It didn't uphold her complaint and said, in summary, that Rathbones was authorised by the Financial Conduct Authority (FCA) to provide financial planning advice but didn't offer any explanation as to the financial planning service it had provided, nor any agreed costs.

Mrs D was unhappy with this response and so she referred her complaint to our service.

Having considered the matter, the investigator thought that the complaint should be upheld, saying the following in summary:

- Rathbones offered two separate services, Rathbones Financial Planning (RFP) and Rathbones Investment Management (RIM), each with its own set of terms and conditions. For the RIM, the investigator was satisfied that Mrs D was receiving the service for which she paid, which was active asset management.
- But the investigator hadn't seen the terms relating to RFP, nor did the available evidence support the position that these had been provided to, or agreed by, Mrs D.

- But she also considered that, as a minimum, when providing financial planning services to a client, a firm would need to:
 - Complete and regularly update a 'fact find' to find out more about the customer, and
 - Complete an application form and agree the terms and conditions, service agreement, as well as costs, and
 - Ascertain and regularly update the customer's attitude to risk.
- Despite requesting information from Rathbones, the investigator had yet to receive any of the above. There were emails since 2016 which indicated that in one meeting the adviser had offered a financial review, which Mrs D had declined.
- The evidence didn't support the position that there was any agreement in place for Rathbones to provide the financial planning service to Mrs D – as such, she shouldn't have been charged for it.
- The investigator then set out a table of fees which Mrs D had been charged from June 2016 to December 2020, which amounted to £7,651. She considered that this should be refunded to Mrs D.
- The investigator also thought that Rathbones' response to Mrs D's complaint hadn't dealt with the issues involved, but rather simply explained the permissions held by RFP. The communications hadn't been clear.

To put things right, the investigator recommended that Rathbones should calculate how much each fee would be worth had it not been charged, and had been invested instead. The resulting total amount should be paid to Mrs D, she said.

Additionally, Rathbones should pay £250 to Mrs D in respect of the poor communication and the distress and inconvenience caused by the matter.

Rathbones disagreed, however, saying the following in summary:

- It offered further background to the manner in which the financial planning unit had evolved, and said that, in July 2017, a new adviser took ownership of the financial planning relationship with Mrs D following the departure of her previous adviser.
- That adviser undertook a financial review with Mrs D in September 2017, within which a fact find and risk questionnaire were completed.
- Several attempts were then made to arrange the 2018 review with Mrs D in June and July (as per attachments which Rathbones included) and as confirmed in a letter dated 10 December 2018, Mrs D ultimately declined to participate in a review. As a result, a "base pack" was sent to Mrs D, which included her client information form (fact find), financial summary and schedule of fees in line with the Rathbones process for declined reviews.
- Annual reviews were then offered to Mrs D in December 2019, January 2020 and February 2020 (as also indicated by further attachments). The adviser then offered a further review in a call with Mrs D on 18 August 2020, but Mrs D said that she didn't see the advantage of having the meetings with RFP and the adviser consequently offered to disengage Mrs D from the RFP service if she didn't value the service.

- Mrs D agreed to this and a letter was sent the same day confirming the removal of RFP, but that RIM would be retained.
- The evidence didn't suggest that Mrs D responded to this, and so a decision was made that Mrs D should in any case be disengaged from the RFP service. This was confirmed in a letter to Mrs D on 10 December 2020.
- Mrs D then queried the level of service she'd received through RFP from 2012 to 2017 with her RIM adviser in December 2022.
- In accordance with time barring rules, as Rathbones considered that Mrs D ought reasonably to have been aware that she had cause for concern by 2016, Rathbones investigated the issues raised from that point onwards. And as the evidence didn't suggest that Mrs D had been offered a review in 2016, it offered to refund to her the fees (plus growth) amounting to £1,922.
- Its position was that, from 2017 onwards, Mrs D either benefited from, or had the option of, the RFP service. As Mrs D was aware that she was a client of RFP and the fees involved, it was decided that a refund of the fees for 2017 to 2020 wasn't warranted.
- With specific regard to the investigator's findings, Rathbones said that a meeting was arranged and held with Mrs D on 20 September 2017. Although the investigator had said that no advice was provided, the fact find, risk questionnaire and asset summary were completed, and further that the adviser had discussed Mrs D's and her husband's pensions, including their tax implications.
- Whilst no actions were recommended during the meeting, the records indicate that Mrs D's circumstances were considered.
- RFP representatives were sent to meetings from 2017 to 2020, as confirmed by Mrs D herself.
- A completed application form and client agreement had now been located, and were attached.
- Fee schedules had also been sent to Mrs D in November 2018 and August 2020, and so Mrs D would have been aware of the charges being applied to her plan.
- Regarding the recommendation to pay Mrs R £250 in respect of the confusion the investigator had said Mrs D would have been caused by the final response letter, it felt that the explanation of the permissions held by RFP was appropriate as Mrs D had said that she felt the charges didn't fall within Rathbones' terms of business.

The investigator wasn't persuaded to alter her view, however, saying the following:

- Mrs D's risk profiling was undertaken by RIM and the client agreement and profile form was completed by RIM (the form was headed with that name). Although RPAS was mentioned as the financial intermediary, it said that that section was mandatory, and so Mrs D had to include a financial intermediary.
- Further, there was still no evidence of an agreement for RFP to provide a service to Mrs D – nor details of what that service was, or what she would be paying for.

Rathbones had sent details of the “financial planning fees only” but there was no indication of what these were charged for, or that Mrs D had agreed to pay for them.

As agreement hadn’t been reached on the matter, the investigator notified both parties that the matter would be referred to an ombudsman for review.

Mrs D then submitted further commentary on the complaint, which can reasonably be summarised as follows:

- She signed a client agreement and profile document with the forerunner of RFP on 26 July 2011, which covered the management of her SIPP and general investment account, along with the provision of financial intermediary services.
- She heard nothing from 2012 onwards – the provision of financial planning services simply lapsed. And she hadn’t agreed to the reinstatement of these services after 2016, nor had any record of that agreement being formalised after 2016. If Rathbones was relying upon the agreement in 2011 to justify the fees taken, then this would be an abuse of process.
- The meeting held in 2017 centred around the poor performance of the SIPP and how to improve it.
- Although she received an invitation for a meeting in November 2018, she’d said that the proposed date wasn’t convenient. She hadn’t declined a review. And if Rathbones had reinstated the service which had in any case lapsed between 2012 and 2016, then she wasn’t made aware of this. Had she been, she would have responded.
- During the call which preceded the letter of 18 August 2020, she reiterated her disappointment at the performance of the SIPP and the seemingly excessive charges which were being levied for its management. But rather than her saying that she didn’t see the value of meetings with RFP, it was the RFP adviser who offered to “pull out” as he felt he wasn’t adding any value.
- But as far as she was concerned, the RFP adviser had never in fact been formally engaged – the objective of improving the SIPP performance (which was the only investment left with Rathbones) lay with the RIM adviser. It was only during the 2022 review of the historic costs which had impacted the SIPP’s performance that she realised that RFP had been charging for a service between 2016 and 2020, which she considered to have long since lapsed.

As agreement couldn’t be reached on the matter, it was referred to me for review.

I issued a provisional decision on the matter on 26 September 2024, in which I set out my reasons as to why I didn’t think the complaint should be upheld. The following is an extract from that decision.

“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 different conclusions to the investigator, for the reasons I’ll set out below.

I’ve firstly considered what Mrs D has said about her assumption that the financial planning

aspect of the service had, by 2016, lapsed, as this hadn't been provided up to that date. And I accept that, if Mrs D hadn't been receiving reviews up to 2016, and there was no actual provision of a recommendation letter in 2017, she may reasonably have thought the RFP agreement no longer applied.

But there are other aspects here which leads me to the conclusion that Mrs D would have been, or ought reasonably to have been, aware that she was still subject to the RFP agreement. For example, Rathbones sent Mrs D fee schedules on 19 November 2018 and 10 August 2020 setting out the applicable financial planning fees.

The quarterly valuation reports also set out the advisory charges within the "cash movement" section of the reports. The fees and charges section of the reports also said the following:

"Any further fees that you agreed to be deducted from your portfolio on behalf of your Financial Intermediary will be itemised separately within the Statement of Cash Movements pages within this pack."

And so Mrs D's attention was drawn to the specific section which dealt with the financial planning fees.

I appreciate that different individuals pay differing levels of attention to such valuations. But even if Mrs D hadn't been aware from those valuations that financial planning fees were being taken, there's a further, and what I consider to be crucial, part of the evidence here, in that Mrs D was aware from the email of 29 September 2017 - following the meeting held - that she was being charged for RIM and RFP, hence the specific proposal to streamline costs.

The RFP cost was specifically mentioned and the proposal was that this would be unchanged. Rather, there would a reduction in other parts of the tariff to reflect a "partnership rate".

Nothing appears to have happened after this, and the "activity" was closed by Rathbones following several chasers and responses from Mrs D in which said that her husband would be looking at the proposal but was at that time busy with work.

I therefore don't think it could reasonably be argued that Mrs D wouldn't have been aware that fees were being charged for RFP, or that the level of these fees hadn't been set out.

And although I've noted the letter of 20 January 2023, this didn't concede that the RFP agreement had lapsed, but rather just that the review of 2016 hadn't taken place.

I also think that, from 2017 up to the point that it confirmed that the RFP service would be cancelled, Rathbones did what it needed to do when inviting Mrs D for a financial planning review. Mrs D may not have been able to capitalise on the invitations, but they were nevertheless issued.

But I've also thought carefully about the matter of the agreement between Rathbones and Mrs D to charge the fees for the financial planning service in the first place. Rathbones has referred to the document signed by Mrs D in 2011. This is indicative of what Mrs D was agreeing to, but as noted by the investigator, there's no actual description of the services which she might expect to receive or the amount she would be paying for those services – nor is there a signed copy of that agreement.

Rathbones has said that this is due to the passage of time, but has pointed to the fact that, in order for Mrs D to be a RIM client, she would have needed to agree to the financial planning

service as well.

In the absence of the specific agreement in which the services, and cost for those services, was clearly set out, along with a signature attesting to the client's agreement to this, I might ordinarily conclude that there would be insufficient evidence that the client had in fact agreed to pay the charges.

But I think this case is different, for several reasons – one of which is that, as set out by Rathbones, Mrs D simply couldn't have become a client of RIM without also accepting the RFP service as well. And I don't think it can reasonably be disputed that Mrs D agreed to the RIM service. Further, as set out above, when Mrs D was made unambiguously aware that she was being charged for the financial planning service in 2017, I can see no evidence that this was challenged by her.

And so, on balance, although a copy of the signed agreement isn't available, I think it's more likely than not that Mrs D had agreed to RFP – and at the very least as a necessary part of RIM.

Overall therefore, and whilst I know this might disappoint Mrs D, I don't currently think it would be fair or reasonable to uphold the complaint. I accept that, on a historical assessment of what Mrs D paid for, the return in terms of actual financial planning services rather than invitations to planning reviews might seem to have been rather lacking.

But I don't think I can consider the reviews, or lack thereof, before 2016, due to the time which has elapsed since the point at which Mrs D would have been, or ought reasonably to have been, aware that she was paying for a service which she may not have been receiving. And my understanding is that Mrs D has confirmed her understanding of this.

Rathbones offered to refund the fees for the lack of the review in 2016, and then, as set out above, the evidence strongly supports the position that discussions were held in 2017 as to how costs could be streamlined. Mrs D didn't capitalise on Rathbones' proposal at that time, and again I accept that in hindsight, Mrs D may consider that she paid for little to no actual financial planning service.

But again, as set out above, I don't think this was for the want of trying to arrange reviews on Rathbones' behalf. Mrs D may not have been in a position to meet at the times proposed, but I do still need to consider that fact that Rathbones attempted to provide the service.

I've then thought about the investigator's recommendation that Rathbones pay Mrs D £250 in respect of the poor communication in response to the concerns she'd raised with it.

In thinking about this, I must take into account the likelihood that, even if Mrs D had received a response tailored to her specific concerns, she would in any case have referred the matter to this service. I don't think Mrs D would have accepted Rathbones' position, as set out in its response to the investigator's assessment, that the fees were justified, and would in any case have wanted us to consider this.

But I do agree with the investigator that Rathbones' response wasn't clear and didn't address the concerns she'd raised. It instead focussed on an explanation of the functions of RFP and RIM. It was only in response to the investigator's assessment that Rathbone's provided a response in terms of the actual charges made and its view as to why, after 2016, these had been justified.

And so I think that a payment in respect of the frustration and inconvenience that this would doubtless have caused Mrs D would be warranted here. And taking into account the types of

award which this service might typically make in similar circumstances, I don't think £250 is necessarily unreasonable."

Rathbones had no further comments to make. Mrs D disagreed, however, and having considered the matter further, I issued another provisional decision dated 9 December 2024.

The following is an extract from that decision, in which I addressed Mrs D's further comments and set out my revised conclusions.

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The statement of complaint is incorrect

Mrs D has said that this should reflect the comments she made in her email to the investigator on 21 April 2024. This set out three main complaint points upon which Mrs D said she was focussing, firstly that Rathbones charged her excessive fees between 2016 and 2020, and in fact longer than this (going back to 2012), but that she acknowledged that the complaint couldn't be considered any further back than 2016 due to time barring issues.

Mrs D then also said that Rathbones had admitted that its service had fallen below its expected standard, but that it had then retracted the small amount of compensation it had offered in respect of this. Mrs D added that Rathbones had failed to meet the response deadline to her complaint earlier in 2023.

To address this point, I'd say that I acknowledge that Mrs D's complaint extends to the fees which were taken from before 2016, but that as the focus was then on those taken from 2016 onwards for the reasons Mrs D has herself identified, I referred to this date in the original summary.

Further, in my provisional decision I considered the overall service provided by Rathbones. But as Mrs D will note, I've amended the summary above to reflect these specific points.

Mrs D has further said that the email of 29 November 2016 which referenced amended terms and conditions, and which also said that RFP excluded pensions and life assurance policies, hasn't been considered in the provisional decision.

But although not specifically set out in the provisional decision, I had noted that the pension planning was mentioned in at least one invitation for Mrs D to attend a financial planning meeting specifically referred to pension legislation and planning. I don't think it would be an unreasonable conclusion therefore that a review of Mrs D's SIPP was being offered.

The following is taken from the email from the RFP adviser on 16 February 2020:

"Thank you for your email. As your query is about the investments [RIM adviser] will be in touch to update you with the data. I can then pick up the financial planning issues with you e.g. pension legislation and planning."

With regard to the amended terms which were sent to Mrs D in November 2016, Rathbones has confirmed that the terms to which Mrs D has referred were those for Rathbones Investment Management, rather than for Rathbones Pension & Advisory Service, which also applied here.

Errors relating to the description of the context within which the complaint arose

I've noted what Mrs D has said in this regard, but I don't think this is at variance with what I set out in the provisional decision. Mrs D has added additional context, but this was information of which I was already aware and was factored into my provisional findings.

Other material factual inaccuracies and omissions

Again, I've noted what Mrs D has said, but some of the points raised, such as her husband's affairs being discussed in meetings, either have little relevance to the crux of the matter being considered here – i.e. whether Mrs D is due a refund of the fees which have been charged for services which weren't provided – or have already been considered within the provisional decision.

I've noted what Mrs D has said about data protection issues arising from what she considers to be Rathbones' claim that it was ever in a position to discuss her husband's financial affairs, and this is something which she may raise as a separate matter, and also refer to the Information Commissioner's Office if she considers there's been a breach or misuse of his or her data.

Mrs D has further said that my description of the meeting held in June 2022 was factually inaccurate. But having read Mrs D's own description, I can't see that how this is the case – Mrs D has explained that the meeting was via video and that she questioned dealing and management fees, along with the RFP fees which had been charged since 2016 (notwithstanding Mrs D's own correction of the characterisation of the complaint as being about fees charged before this point). But this simply adds context – it doesn't in my view render the description in the provisional decision, or the investigator's view, of what happened inaccurate.

Mrs D then said that she had an audio recording of that meeting, and at no point did the investment manager say that the financial planner had offered to review her entire financial circumstances, nor was this offer extended in the follow up email of 25 June 2024.

But in terms of previous offers to review Mrs D's finances, the absence of any commentary in that meeting around reviews having previously offered wouldn't negate Rathbones' position that reviews had previously been offered. It just means that this particular point wasn't discussed. Nor, I'm afraid, can it negate the actual documentary evidence of reviews being offered to Mrs D in 2017, 2018, 2019 and 2020.

And in terms of future financial planning reviews, as the RFP fees ceased in 2020, then this wouldn't seem to be relevant to the crux of the complaint at issue here. It may have been the case that no service was being offered or provided, but no fees were being charged.

Specifically relating to a point which Mrs D has made around the £1,922 refund offered by Rathbones, however, Mrs D has said that this was incorrectly described in the provisional decision as being entirely fee based, when it was in fact positioned by Rathbones as being redress for the poor standard of service. I don't think this is quite right, though. Rathbones said the following about the refund when it was offered:

"We have obtained details of the financial planning charges in 2016 and the sum of these charges was £1,514.06 including VAT.

At the same time, we obtain the performance figures for your recommended portfolio over the timeframe specified. This allows us to calculate the loss of growth that the fees incurred. The additional growth stands at £408.05.

Therefore, the total redress payment we would like to offer you is £1,922.11."

Indeed, a sum of £1,922.11 would be oddly specific if offered in respect of general service failures rather than referring in particular to the failure to provide the advice service. I don't therefore think it was unreasonable to characterise this as a refund of the fees charged.

Mrs D has also said that the suggestion that she needed to become an RFP client to be an RIM client was inaccurate and misleading, as she is still a RIM client but doesn't receive the RFP service. But I think this discounts the possibility that terms of business may change over time. And Rathbones has confirmed that this did indeed happen in 2018, and so Mrs D was able to have RIM without RFP.

Addressing my finding that, following the email of 29 September 2017, Mrs D was aware that she was being charged for RFP, Mrs D has said that Rathbones had cherry picked the detail of its correspondence to suit its position. She further said that she was in any case entitled to challenge the charging of fees between June 2016 and June 2022. Mrs D further challenged the statement in my provisional decision that she would have been unambiguously aware that she was being charged for the RFP service by 2017. Mrs D considers that there was much ambiguity in Rathbones' communications.

But the only extent to which the email of September 2017 has been "cherry picked" within the provisional decision was to illustrate that Mrs D was either aware, or (to address the point about her being unambiguously aware raised above) ought reasonably to have been aware, that she was being charged fees for RFP. I acknowledge that Mrs D is entitled to complain about them, and that she considers that she has a clear legal position that she wasn't made overtly aware of the RFP fees. But for the reasons set out in the provisional decision, it was also open to me to conclude that a refund of those fees, in view of the facts of the case (including the offer to "streamline" the fees payable which wasn't taken up, the lack of challenge from Mrs D about the RFP fees being charged, and that reviews were offered in 2017, 2018, 2019 and 2020), wouldn't be fair or reasonable.

Mrs D has added that the evidence referred to in the 2017 discussion pertained to the level of dealing commissions levied against the portfolio and so were irrelevant to the RFP charges which persisted and were challenged by her in 2022.

I'm afraid that isn't the case though. The email of 29 September 2017 said the following:

*"On a separate but relevant matter, I have also considered how we could improve on the overall cost of the portfolio; at the moment, you pay a fee for investment management, **a fee for financial planning** and commission for each sale or purchase I make on your portfolio."*
(my emphasis)

Rathbones then set out the charges, including a flat RFP fee of 0.5%, in a subsequent table.

Mrs D has further said, with regard to my finding that the letter from Rathbones dated 20 January 2023 didn't concede that the RFP had lapsed, that a lack of investigation of events prior to 2016 didn't mean that the RFP agreement hadn't lapsed. But this wasn't the point which was being made in the provisional decision. Mrs D had previously asserted that Rathbones had itself confirmed that the RFP agreement had lapsed – but this wasn't the case. And it may be that RFP wasn't provided between 2012 and 2015, but again, although I acknowledged in the provisional decision that Mrs D may quite reasonably have considered that it had lapsed, up until she was disabused of this notion in 2017, this doesn't mean that the RFP agreement had in fact lapsed. And clearly, as fees were still being taken up to 2020, it's Rathbones' position that it hadn't.

Further consideration of the provision of the service being paid for

Notwithstanding the above, however, I've considered further the matter of the fees paid by Mrs D from 2017 to 2020, and the fact that she didn't receive reviews for which she was paying. My overall view on the position of whether reviews were offered remains the same, and as set out above, I think that the evidence supports the position that they were.

But the fact remains that Mrs D didn't receive those reviews, and as such, she was paying for a service which, although offered, she didn't receive.

And in my further thinking on this, I've taken into account the COBS rules which applied from 31 December 2012, and specifically COBS 6.1A.22, which said the following:

"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." (my emphasis)

But also the factsheet from the same time entitled "For investment advisers - Setting out what we require from advisers on how they charge their clients", which said the following:

"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.**" (my emphasis)*

I think the above is sufficiently clear that it is the provision of the service which is key, rather than it simply being offered.

And so, as Mrs D didn't receive the reviews for which she was paying between 2017 and 2020, my current view on this is that they should be refunded.

Putting things right

In the same way that Rathbones Investment Management Limited refunded the fees taken for 2016, i.e. the amount charged with the addition of any growth which would have applied, it should also refund those charges made between 2017 and 2020 for the financial planning reviews which Mrs D didn't receive. In the first instance, if possible, this should be paid back into Mrs D's SIPP. 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 or allowance implications, it should be paid directly to Mrs D as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

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

For the reasons given in my provisional decision, I also think that the further payment of £250 is warranted in this instance.”

Mrs D has accepted my provisional findings, but Rathbones submitted the following further comments:

- A full refund of Mrs D's fees wouldn't be appropriate. An annual review was held in 2017 and whilst Mrs D didn't receive financial advice following that meeting, a fact find, risk questionnaire and asset summary were completed and the financial planner discussed Mrs D's and her husband's pensions, including the respective tax implications.
- It was therefore Rathbones' position that it had carried out activities in relation to the service provided to Mrs D in 2017.
- In 2018, much effort was expended in attempting to provide Mrs D with a review, but this was ultimately declined. Rathbones said that it had therefore carried out an adequate level of work and reasonable endeavours to conduct the review.
- This was replicated in 2019, 2020 and August 2020, and Mrs D was aware that the fees were being charged in relation to the financial planning service. Any shortfall in the service wasn't due to a lack of activity on Rathbones' behalf. This was echoed in my comments in the first provisional decision.
- Therefore, whilst Mrs D didn't receive the full financial planning ongoing service between 2017 and 2020, the evidence supported the position that it did perform activities relating to the service provided to Mrs D during this period. And so a full refund wouldn't be appropriate in this instance.

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.

I'd firstly say that I do appreciate the point made by Rathbones about the attempts which were made to provide the financial planning service to Mrs D, as noted in my previous findings. But the fundamental issue is that the actual service being paid for – the provision of financial advice – wasn't being received.

And as set out in the most recent provisional decision, it is the provision of that service which matters, not attempts to provide that service. Put simply, in line with COBS 6.1A.22 and the content of the factsheet referred to in the provisional decision, if the service hasn't been provided, it's not reasonable for fees in respect of that service to be charged.

And whilst I accept that the COBS 6.1A.22 also refers to “related services”, I think this would reasonably refer to the provision of something connected to financial planning advice – again, not the *attempt* to provide that service. The “provision” of the personal

recommendations, or the related service, is key here.

And I think this also addresses the point Rathbones has made about the 2017 review. I accept that there was preliminary activity relating to the provision of personal recommendations, not least the review itself, and that there were attempts to reconfigure the charging arrangement, but this didn't ultimately result in personal recommendations being made. And even if Mrs D didn't respond on the point relating to the future charging arrangement, given what Rathbones has said about the preliminary actions and the meeting itself, I think that it ought to have been possible to set out financial planning recommendations on the basis of what was known and what had been discussed.

On the other hand, if insufficient information was known to be in a position to make those personal recommendations, then I don't think it could reasonably be concluded that, in any meaningful sense, the service Mrs D was paying for had in any case been provided.

As such, although I acknowledge the steps taken by Rathbones in attempting to provide the service, the lack of the provision of the financial planning recommendations means that this would also fall foul of the requirements of COBS 6.1A.22.

As such, my view remains that the complaint should be upheld for the reasons previously set out.

Putting things right

As set out in the provisional decision, in the same way that Rathbones Investment Management Limited refunded the fees taken for 2016, i.e. the amount charged with the addition of any growth which would have applied, it should also refund those charges made between 2017 and 2020 for the financial planning reviews which Mrs D didn't receive. In the first instance, if possible, this should be paid back into Mrs D's SIPP. 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 or allowance implications, it should be paid directly to Mrs D as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

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

For the reasons given in my initial provisional decision, I also think that the further payment of £250 is warranted in this instance

My final decision

My final decision is that I uphold the complaint and direct Rathbones Investment Management Limited to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 14 February 2025.

Philip Miller
Ombudsman