DRN-5321227

The complaint

In 2020 Chase de Vere Independent Financial Advisers limited ('CdV') acquired a firm called Ferguson Oliver ('FO'). Earlier, in August 2018, FO issued a financial planning report which recommended a specific Discretionary Fund Management ('DFM') model portfolio for Mr T's pension. He says since CdV took over, it has failed to properly manage his pension under the Ongoing Advisory Service ('OAS') it inherited from FO, leading to a loss of value in his pension between 2021 and 2023 – "… *from £157,363.20 on 02/10/2021 to £148,390.63 as at 28/11/2023*".

What happened

The August 2018 Service Agreement ('SA') between Mr T and FO confirmed a 0.5% annual fee to be deducted from the pension's portfolio in return for the OAS (mainly annual financial reviews, plus email and telephone access during office hours and portfolio valuations).

CdV says it switched off this arrangement shortly after its acquisition of FO because there was an impending change in Mr T's circumstances which meant it could not provide an OAS to him. For this reason, it says there was no new agreement with him for continuation of the OAS.

However, it accepts the following – that it received from the portfolio the total Ongoing Advice Fee ('OAF') of £174.16, for the OAS, before the arrangement was switched off (the last payment was received on 29 April 2020); there is no evidence that the annual review of the 2018 advice was conducted in July 2019 (when it was due); between then and the acquisition, the total OAF of £830.19 was received by FO; it is prepared to refund both £174.16 and £830.19 (totalling £1,004.35) to Mr T for the undelivered OAS, along with a payment of £750 for the trouble and inconvenience the matter has caused him.

One of our investigators looked into the complaint and concluded that it should be upheld in relation to the OAF refund(s) for the OAS that was not delivered after the 2018 advice. He found that redress should include a refund of the OAF deducted between 2018 and 2020, plus interest on the total refund amount.

However, the investigator, did not uphold the part of Mr T's claim alleging an obligation upon CdV to deliver the OAS. He found that it had switched off that service in 2020, and that other than the £174.16 it received in April 2020 (and has offered to refund), there is no evidence of CdV thereafter receiving OAFs deducted from his pension portfolio. The investigator also used this as ground to conclude that because Mr T's claim about loss of value in the portfolio relates to a period (between 2021 and 2023) when his portfolio was not entitled to an OAS from CdV, there is no nexus between the claim and CdV. Furthermore, he said it does not automatically follow that any loss of value would have been avoided by a portfolio review, and that there is no evidence that the portfolio's investments would have been switched if they were reviewed.

CdV accepted the investigator's view and shared with us a calculation of redress (including interest). Mr T disagreed with the investigator's findings.

A separate matter about him potentially making a complaint about the DFM provider's role in his pension portfolio was briefly addressed between him and the investigator. Arising from this, he shared with us communication from the DFM provider which he said supports his allegation that FO/CdV was responsible for the suitability of the selected model portfolio. Another investigator looked into, and briefly addressed, this. He noted that the matter of suitability was never raised in the present complaint against CdV, only the OAS was/is the subject of the complaint and that has been addressed, so suitability of the model portfolio is beyond the scope of the complaint.

Mr T believes that CdV's offer confirms its negligence in his case, for which it should be responsible for his pension losses in addition to the full OAF refund(s).

He mainly says he was happy with FO's service until CdV took over in 2020; he had been investing through the DFM provider's model portfolio, based on FO's recommendations, since 2015; soon after the acquisition a new adviser was appointed, he was difficult to contact, he did not respond to numerous contact attempts and he did not advise him on the portfolio (in terms of performance or suitability); this happened despite CdV charging the OAF to his portfolio; and he believes that but for the absence of advice from CdV, switches would have been conducted in the pension portfolio to avoid losing as much value as it lost.

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.

I echo what both investigators have told Mr T in relation to a separate complaint about the DFM provider and about suitability of the model portfolio recommended for his pension. The former is a separate and distinct matter outside the scope of the present complaint, and the latter has not been an issue raised in the present complaint. The complaint referred to me is about CdV and the OAS, so I make no comments or findings about the DFM provider or about suitability of the 2018 model portfolio recommendation.

I acknowledge that ongoing suitability of the model portfolio, in the context of the annual reviews under the OAS, sits within the case about delivery of the OAS, and I will address this later.

It appears to be Mr T's position that he was happy with the OAS provided by FO, that the failure of service began when CdV took over, and that the alleged service failure was manifested between 2021 and 2023 during which it caused a loss of value in his pension portfolio.

As CdV says, there does not appear to be evidence of a review of the portfolio by FO in 2019. Despite that, the complaint focuses on CdV, not FO, so it might be the case that some form of engagement between Mr T and FO, other than a formal review, took place in 2019 and he deemed that sufficient service, and/or perhaps he has not found cause to be unhappy about the portfolio's performance in 2019 (contrary to the cause(s) to be unhappy he found in its performance between 2021 and 2023).

In any case, whether considering the period between 2019 and 2023 or the period between 2021 and 2023, a failure to deliver the OAS is one thing, but the notion that a delivered OAS (including ongoing reviews of suitability of the 2018 advice) would have avoided the loss of value he has cited is a different thing.

The matter of the undelivered OAS, starting from 2019, is undisputed. CdV concedes this and has offered compensation, by way of a refund of the OAF deducted from Mr T's pension portfolio. I will address this further below, but it means that other than ensuring the compensation is properly approached and calculated, the matter is essentially resolved.

With regards to whether (or not) missed/undelivered annual reviews caused detriment to the portfolio, the scope for consideration is inherently limited to the period between July 2019 (when the first review, after the 2018 advice, should have happened but did not) and April 2020 (when the OAS was switched off by CdV).

There is no basis to consider any liability on CdV's part for failing to provide the OAS after April 2020. It might also be said that there is no basis for it being potentially responsible for any loss of value in the pension portfolio between 2021 and 2023 because it had no responsibility to provide the OAS during these times. Mr T could counter argue that rebalancing of the portfolio before the OAS was switched off could have put it in good standing to avoid losses in later years, so FO's/CdV's failure to do that could still mean such losses in later years are CdV's fault. Depending on the circumstances this could be a point to consider, but for the reasons I give further below I do not find that he has established it in his case.

This decision will be published, so it is important to maintain Mr T's anonymity and to avoid referring to information that might breach that. For this reason, I will not go into the details of the change in his circumstances in 2020 that meant CdV could not provide an OAS to his portfolio after the acquisition. Both parties are aware of these details. The conclusion to draw from it is that he would have been aware that both the OAS and OAF deductions had ceased. There appears to be no documentation in which this was confirmed to him at the time, but the circumstances that feature have been described by both parties, so I consider it more likely (than not) that there would have been mutual knowledge between them that both had ceased. I would imagine that Mr T would have noticed the OAF was no longer being deducted from his portfolio thereafter.

In terms of the period between 2019 and 2020 when the OAS was still in place, I have not seen any evidence of a change in Mr T's circumstances, since 2018, which could or would have made it probable for a review of his pension portfolio to have resulted in change(s) to the initial model portfolio recommendation. It does not automatically follow that every annual review must result in investment switches. Such a step would usually depend on there being cause for a switche(s), for example, a change in the investor's circumstances/profile and/or a change in the adviser's views, with the latter often being influenced by the former. I have not seen reason to say that, had a 2019 review happened, the adviser's recommendation would have been to alter the 2018 advice. Furthermore, that could be viewed as unlikely given the proximity of the initial advice and the absence of a change in Mr T's circumstances.

In other words, and on balance, I am not persuaded to conclude that a review of Mr T's pension portfolio between 2019 and 2020 would have made any difference to its composition.

Even if I am wrong, the considerations that naturally follows are that if a review had changed the pension portfolio, 'what would the new portfolio have looked like?' and 'would the new portfolio have performed better?'. There is no evidence in Mr T's case to answer these questions. If he argues that a rebalancing of the portfolio before the OAS was terminated would have avoided the 2021 to 2023 losses he complains about, there is no basis, on balance, for this conclusion. Investment performance is rarely guaranteed and is commonly unpredictable, so an obvious competing argument is that a rebalancing of the portfolio before the OAS was terminated could just as well have led to worse performance.

Overall, on balance and for the reasons given above, I do not find in favour of Mr T's claim about his pension portfolio's loss.

However, as I have also stated above, his claim about the undelivered OAS between 2019 and 2020 has been conceded by CdV, and it is supported by the absence of evidence to the contrary, so I uphold it.

As the investigator said, the refund of the fees alone does not take into account the potential loss of growth on the fee payments had they not been deducted from the portfolio (and had they been left exposed to investment performance in the portfolio). CdV agreed with his proposal to reflect this by applying 8% per year simple interest to the OAF refund, and in the calculations it shared with us it also agreed to apply the interest calculation to the total OAF refund as a whole. I will endorse this application of interest in my redress orders below. In addition, I will endorse CdV's offer of £750 for the trouble and inconvenience caused to Mr T by the undelivered OAS.

Our service's guidance on how we approach awards for trouble, distress and inconvenience can be found on our website, at the following link – https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-for-distress-or-inconvenience. Under this guidance, awards up to £750 can be considered where a firm's wrongdoing has caused a complainant considerable distress, upset and worry, and where it has caused significant disruption. In the present case, I am not persuaded that the lack of an OAS between 2019 and 2020 caused, to Mr T, the full extent of such effects. After all, the focus of his complaint about this service failure appears to be the period between 2021 and 2023. However, £750 has been offered by CdV and I am prepared to endorse it in my orders below.

Putting things right

what must CdV do?

To compensate Mr T fairly, CdV must:

- Calculated the total of all the OAF payments deducted monthly from Mr T's pension portfolio from August 2018 – after which, according to the August 2018 SA, the OAF for the OAS was to be deducted by FO on a monthly basis (as reflected in the pension's transaction statements) – and up to 29 April 2020 (the date of the last OAF deduction, as received by CdV). This is because no review/OAS was provided during this period. The result is 'A'.

- Calculate interest on A at the rate of 8% simple from 31 August 2018 to the date of settlement. The result is 'B'.

- Pay the total of A + B (jointly 'the compensation') to Mr T.

- Pay the compensation into Mr T's pension plan to increase its value by the total amount of the compensation. The amount paid should allow for the effect of charges and any available tax relief. The compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If CdV is unable to pay the total amount into the pension plan, it should pay that amount direct to Mr T. Had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the total amount should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an

adjustment to ensure the compensation is a fair amount, it is not a payment of tax to HMRC, so Mr T would not be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using his actual or expected marginal rate of tax at his selected retirement age. If he would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

- Provide the details of the calculation to Mr T in a clear and simple format.

- Pay Mr T £750 for trouble and inconvenience.

Income tax may be payable on any interest paid.

My final decision

For the reasons given above, I uphold Mr T's complaint about the OAS, and I order Chase de Vere Independent Financial Advisers limited to calculate and pay him redress and compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 24 March 2025.

Roy Kuku
Ombudsman