DRN-5362486

The complaint

Mr J complains that Bruce Bennett, trading as bfm, ('BB') has not provided ongoing services in respect of his pension and investment despite receiving regular fees to do so.

What happened

In 2013, Mr J opened a pension and ISA with a provider that I'll call 'Firm N'. The application forms confirmed that a financial adviser, which I'll call 'Adviser Y', assisted him in setting these accounts up. The applications also instructed Firm N to pay ongoing service fees to his adviser.

Adviser Y worked for a regulated business prior to 2016, in a regulated role. Mr J says that he was a client of that regulated business at the time of opening his pension and ISA and that it previously provided ongoing services in respect of his investments with Firm N. He said these consisted of *"regular annual review meetings and the provision of quarterly valuation statements. These interactions were proactive and included tailored advice and strategic guidance…"*

I understand Adviser Y left the regulated business they were previously working for in 2016. BB has stated, and provided evidence to support, that it entered into an agreement with Adviser Y in 2016 to act as an introducer to BB. Adviser Y did not become an employee of BB.

Adviser Y was acting in an unregulated capacity by the point they began introducing customers to BB. And, from the information I've seen, that did not change, and they did not go on to become regulated again by the Financial Conduct Authority ('FCA') following their commencement of their introducer role. They also do not appear on the FCA register entry for BB as either an agent, appointed representative ('AR') or an introducer appointer representative ('IAR'). So, when acting as an introducer, they were doing so unregulated.

Adviser Y introduced Mr J to BB in April 2016. On 8 April 2016, Mr J signed a letter of authority addressed to Firm N, asking it to transfer *"full servicing rights together with any ongoing adviser renumeration and adviser charging"* to BB.

Mr J says he was led to believe, by both Adviser Y and BB, that BB would be responsible for providing ongoing servicing and advice and that this would be a continuation of the arrangements he had with the previous regulated business, including the expectation of reviews at least annually.

I've seen a template copy of a communication BB prepared at the time for clients introduced to it by Adviser Y. This said, amongst other things, BB was aware customers *"have been used to an excellent level of service from* [Adviser Y] *and we will do our utmost to maintain these standards"*. It went on to explain "*Although* [Adviser Y] *is not authorised at this time to provide Independent Financial Advice we are delighted to confirm that* [they] *will be working with us to maintain continuity and ensure we meet your expectations."*

BB has provided a partial copy of a fact-finding document, also dated 8 April 2016, recording

some information about Mr J's circumstances at the time. And I've seen copies of annual statements sent by Firm N directly to Mr J in May 2016, 2017 and 2018. These all showed 'adviser charges' being paid from Mr J's accounts with Firm N.

An administrator for BB emailed Mr J on 3 February 2017, copying in Adviser Y. This said, further to Mr J's conversation with Adviser Y, they were enclosing an updated valuation of Mr J's holdings. I've also seen an email from the same administrator to an adviser at BB on 27 February 2017, confirming the Mr J wished to suspend contribution payments to the ISA and pension – which the annual statements from Firm N indicate happened as requested.

The same administrator sent another email to Mr J, copying in Adviser Y, on 21 September 2018. This again said it was to provide a valuation schedule following Mr J's conversation with Adviser Y.

The next correspondence I've been provided a copy of was an email to Mr J, copying in Adviser Y, from a different administrator at BB on 30 June 2022, enclosing a letter. The accompanying letter, dated 16 June 2022 and addressed to Mr J, said it was a quarterly review and explained as part of the ongoing service from BB it wanted to outline some important changes it was recommending to his portfolio with Firm N, including rebalancing, and set out the reasons for this. This was signed by an adviser at BB (not Adviser Y). An email was sent from BB to Adviser Y on 1 July 2022, confirming it had sent this letter to Mr J.

I've also seen an email from Adviser Y to Mr J on 5 July 2022, copying in the administrator and an adviser at BB, which said *"As discussed, we will action the rebalance for you."*

BB sent Mr J another email on 15 December 2022, providing a quarterly update and summarising suggested changes, which BB said it would make on Mr J's behalf if it didn't hear to the contrary.

On 16 March 2023, BB sent Mr J another quarterly portfolio review by email. This again recommended adjustments to his investments, setting out the reasons why, and asked Mr J to confirm if he wanted to proceed. Mr J sent a copy of this email to Adviser Y on the same day and asked *"Do I need to do anything?"*.

BB wrote to Mr J on 11 August 2023. The letter was titled "Warning – High Levels of Capital held in cash deposit on [Firm N] Platform" and said as part of its ongoing service BB had noticed there were clients with a disproportionate amount of their capital held in cash. It explained that over time there was potential for capital values to be eroded and invited Mr J to contact BB to discuss this. A copy of this letter was sent to Mr J by email on 15 August 2023. And BB has also provided an email it obtained from Adviser Y, sent by Mr J to Adviser Y on the same day, forwarding on this information.

BB emailed Mr J again on 14 September 2023, providing its quarterly review of his portfolio and again recommended some changes and asked him to confirm he was happy to proceed. And BB has also obtained and provided a copy of another email, sent by Mr J the same day, forwarding this information to Adviser Y.

Mr J emailed BB on 2 October 2023, asking for a summary of the fees that had been paid to it, since it took over the servicing of his portfolio.

BB sent the requested information in several emails over the two weeks following that request. I can see it also sent Mr J an email summarising the service agreement the ongoing fees (1%) covered.

I can see that on 12 February 2024, BB asked Adviser Y if he'd had any contact with Mr J

over the previous several months. Adviser Y replied on 22 February 2024 confirming he'd spoken to Mr J about a whole of life policy and that Mr J had asked for quotes for alternative sums assured and premiums. Adviser Y said these quotes were provided and Mr J had selected the premium and sum assured that he'd wanted, with no advice being provided.

Firm N received a letter from Mr J on 8 March 2024, signed by him on 1 March 2024, asking it to remove BB as his financial adviser.

Mr J emailed BB on 16 June 2024 to complain about the fees paid, which he said he felt were excessive, and that it had failed to provide the service that he had paid for. Mr J in turn asked our service to consider his complaint. He says he didn't receive any meaningful engagement from BB, only received generic emails and was not contacted for reviews or advice.

BB has said, partly because it had now been removed as Mr J's agent, it had limited access to documents held with Firm N. It also reiterated that part of its agreement with Adviser Y was that Adviser Y was to contribute to the provision of ongoing servicing. But, because its contract with Adviser Y had ended, and not amicably, it also didn't have access to all documents from Adviser Y to support what service was provided. BB has provided us with information about its dispute with Adviser Y, including an indication that it was taking legal action, and said it felt it was unfairly bearing responsibility for Adviser Y, an unregulated party, acting incorrectly and potentially fraudulently. BB also said it thought Mr J's complaint had potentially been raised too late for our Service to consider, as it stemmed from events that took place more than six years before the complaint was made.

One of our Investigator's looked into the complaint, they concluded that we could look into the complaint and believed it should be upheld and BB should refund the fees paid for ongoing advice as there was insufficient evidence that it had provided the agreed service.

BB didn't agree with the Investigator's opinion – in respect of the extent of our jurisdiction or that it should be upheld.

I issued a decision earlier this month in relation to our jurisdiction and found that we could only consider part of Mr J's complaint – whether the services Mr J paid BB for from 16 June 2018 onwards had been provided.

As BB also disagreed with our Investigator that the complaint should be upheld, this decision will now look at the merits of Mr J's complaint.

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've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice - many of these are found in the FCA's handbook under the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). I've also thought about what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The following also provides useful context for my assessment of the ongoing services that ought to have been provided.

In 2014, the FCA produced guidance in the form of a factsheet titled *"For Investment advisers - Setting out what we require from advisers on how they charge their clients"*. The factsheet said:

"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."

The factsheet, published in late 2014, didn't mark a change to the rules which businesses were already expected to follow. Rather it re-enforced or reminded firms of the standards already in place when providing on-going advice services.

There are also specific rules and guidance within COBS about ongoing advice charges. COBS 6.1A.22 says:

"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 or a pension transfer, pension conversion or pension opt-out or arrangement with an operator of an electronic system in relation to lending 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."

And in January 2018, the COBS rules were updated and defined the minimum service that should be offered in relation to ongoing advice, by requiring an annual review of suitability for relevant products (COBS 9A.3.9 – arising from MIFID II).

BB hasn't provided a signed service agreement confirming the details of what was agreed between the parties when BB began receiving fees from Firm N.

BB has provided a 'template' copy of a document titled 'Service and Payment Agreement – Advised Services'. Again, we don't have a copy signed by Mr J. But BB has indicated that this is the agreement that was in place in respect of customers introduced to it by Adviser Y. And indeed, I've seen evidence of similar agreements being signed in other cases.

Within the templated agreement the first heading was simply called 'Advice' and said *"You have chosen to receive advice from us, whereby we will offer advice, make recommendations and arrange investments where appropriate after we have assessed your needs"*.

There was then a section called 'Initial advice services' and another titled 'Ongoing advice services'. The ongoing advice section is the most relevant here.

The opening sentence of that section said *"you have asked us to provide ongoing services as part of our advised service offering."* It went on to talk about the service level that had been selected. This was summarised in two bullet points. One explained that BB would provide telephone and email support if needed. The other said that BB would *"contact you at least every 12 months to offer you a meeting to review your current circumstances, needs and objectives. During this review we will also provide you with a summary (either verbally or in writing) of the performance status of the policies and investments on which we provided you with initial advice. If you specifically ask us to do so, we may review the ongoing suitability of other policies or investments which were not part of our initial advice and an additional payment may be agreed for this. If we recommend any changes we will implement them with your agreement."*

However, when Mr J first began questioning the fees paid to BB and the service provided, BB sent him a different summary of the agreed services. In an email to Mr J in October 2023, BB said that the agreement Mr J had was its '1% ongoing service offering'. And it said, with regards to the investments held with Firm N this related to two types of investment product - Pension and ISA. BB said that the service included "*A quarterly rebalancing exercise for both your Pension and ISA"* which it said was conducted using a third party which was *"a highly regarded institution offering a comprehensive analysis of each clients portfolios".* BB said *"this was accompanied by the offer of a phone or face to face meeting with a Financial Advisor from BB at each time a rebalance is recommended to answer any queries that a client may have and take any further client instructions (these have been undertaken via zoom or teams since the days of the pandemic)".* It also noted that *"occasionally a rebalancing exercise is not recommended".* In addition it said the service included *"A minimum of an annual valuation sent out to you in your chosen format, access to your investment details etc. via the* [Firm N] *portal and ad hoc notices regarding regulatory matters that my affect you to include budget announcements, cash holdings and market condition warnings."*

The description of the ongoing services between the template and the summary email from BB, some seven years after servicing rights were transferred, are somewhat different. The template agreement clearly sets out an annual review of the customers needs and objectives with an adviser as the core part of the ongoing service. Whereas the description of the services in BB's in email in October 2023 places greater emphasis on quarterly rebalancing exercises, with no reference to an annual review.

BB's October 2023 description is similar to what the available evidence appears to suggest BB actually did from mid-2022 onwards – sending quarterly summaries with rebalancing suggestions. But again, I've not seen a copy of a signed agreement nor have I seen any other evidence, such as an alternative templated agreement from 2016, to show that the services BB described in 2023 were what was agreed at the outset.

And, on balance of probabilities, I think the services agreed between Mr J and BB were more likely in line with the 'template' agreement that has been provided. And I think this was clear that BB was to provide its 'advised service' and the main feature of the ongoing service was it contacting Mr J to provide a review at least every twelve months. Bearing in mind the description 'advised service', the products Mr J held and the requirements in COBS, I'm also satisfied that the annual review ought to have included looking at the ongoing suitability of his arrangements and providing personal recommendations about those arrangements – whether to retain them as they were or make any changes based on an updated review of his circumstances and objectives.

Mr J transferred servicing rights to BB in April 2016. Therefore, I think annual reviews ought to have been conducted in April each year. So, as I've found that we can only consider events complained about from 16 June 2018 onwards, I'm looking at whether BB has

provided the agreed service, particularly annual reviews, beginning in April 2019.

I've looked at the quarterly review letters that BB has provided (from 2022 and 2023). And I've thought about whether these could reasonably be concluded to represent annual reviews. The letters do refer to proposed changes to Mr J's portfolio. And they were signed by an adviser at BB, not Adviser Y. But the recommendations were solely in relation to how the funds were invested, not a consideration of whether the products Mr J held were still appropriate to his needs and objectives – indeed there is no evidence of updated fact finds or other records to show that BB enquired about whether Mr J's circumstances and objectives had changed. And the reasons given for the recommendations to make changes to the investments held are based on socio-economic conditions and their impact on markets in general – suggesting the changes were stock changes to investments BB recommended in general, not specific to Mr J and his needs, objectives or re-assessed attitude to risk. So, I don't think these rebalancing letters can fairly be said to represent tailored annual reviews.

Mr J says that he didn't receive any meaningful engagement from BB after he became a customer and that it didn't carry out annual reviews or provide him with advice. And I haven't been provided any evidence of reviews having been conducted by BB. BB hasn't evidenced – through information such as emails, diary entries or telephone notes – that any of its advisers contacted Mr J to carry out annual reviews. It has been unable to provide evidence of any further fact-finds it undertook, after April 2016, to understand whether Mr J's circumstances or attitude to risk had changed. I've seen no analysis by BB of the products Mr J held and whether they remained suitable for him at any stage. And I haven't seen any evidence of the results of a review having been communicated to Mr J.

BB has said that Adviser Y remained involved in servicing Mr J's account. And it has indicated Adviser Y's involvement, and the existing relationship they had with clients, also undermined BB's position and made it difficult to engage. In its submissions to our Service, BB has provided a significant amount of information about its relationship with Adviser Y. And it has been open about an ongoing dispute between it and Adviser Y, the impact of this on BB and that it believes this is connected to Mr J's complaint as well as having impacted its ability to respond. I'd like to reassure the parties that I have considered all of the information that has been provided. And I have briefly summarised what BB has said about its relationship with Adviser Y below. But I'm not going to repeat that information in detail here. This isn't meant as a discourtesy. Rather it reflects the fact that the complaint I'm considering ultimately concerns the agreement between Mr J and BB. The letter of authority sent to Firm N in April 2016, signed by Mr J, instructed it to transfer *"full servicing rights together with any ongoing adviser renumeration and adviser charging"* to BB. Adviser Y was not mentioned as being part of the agreement. And I've seen no evidence of any other agreement between BB and Mr J that involved Adviser Y.

Again, BB has provided a template copy of a letter it says was sent to customers after they were introduced to it by Adviser Y. This said that Adviser Y would be working with BB to *"maintain continuity"*, whilst also acknowledging that Adviser Y was unregulated. It has also provided information about the processes it says were put in place. BB said that it placed an administrator to work alongside Adviser Y, with the specific task of managing customers Adviser Y had introduced. It said there was a joint responsibility on the administrator and Adviser Y to maintain a satisfactory level of service with a regulated adviser appointed to deal with 'new business'. And BB has said that Adviser Y was being paid a percentage of the ongoing advice fees BB was receiving.

It is evident that Adviser Y did continue to have contact with Mr J. I've seen several emails to that effect. It appears in 2017 and 2018, Adviser Y forwarded an annual valuation to Mr J. And in 2022 and 2023, Adviser Y was made aware of the quarterly rebalance suggestions – with Mr J emailing Adviser Y directly to ask if anything needed to be done. This is contrary to

what Mr J has suggested, when he said he didn't have any contact with Adviser Y about the investments. And therefore, this does call his overall testimony, about the lack of annual reviews from BB, into question somewhat. But I've seen no evidence of the involvement of Adviser Y extending to annual reviews having been carried out by it.

And in any event, providing a personal recommendation or advice about the suitability (ongoing or otherwise) of the products Mr J held required an adviser to be regulated and hold the relevant FCA permissions. Adviser Y didn't hold these permissions. So, any annual reviews provided under BB's 'advised service' needed to be conducted and caried out by BB. And it needed to have robust systems in place to ensure this happened (which also in my view ought to have extended to those reviews being documented for the benefit of when the following annual review became due). Any commercial decision BB made to outsource services to an unregulated third party, and any contract it entered into with that third party to that effect, doesn't change the fact that BB, as the regulated entity, was responsible for providing the contracted services to Mr J, for which it was being paid. And again, I'm satisfied those services, agreed in 2016, reflected the template agreement that has been provided.

But as I've said, BB has been unable to provide any evidence to show that reviews were conducted by one of its advisers. And indeed, its description of the processes in place suggests that one of its regulated advisers would only become involved in giving 'new advice', not the ongoing service and that the administrator and Adviser Y were responsible for ongoing service. So, seems to suggest that BB acknowledges that it didn't conduct reviews.

BB has talked about the problems it has had accessing evidence. It says that details of portfolio rebalancing was stored on its systems. But records of other actions or activities were stored by Adviser Y. But Adviser Y is unwilling to co-operate and provide it with information because of the ongoing dispute between the parties. BB has indicated that the information held by Adviser Y included annual reviews. It also says it has been unable to access information from Firm N. Notwithstanding that it was BB that needed to provide the ongoing service, I can't see how Firm N, the provider, would hold information about annual reviews, as it was not the adviser. And it isn't clear why records of any reviews, which for the reasons I've explained should have been carried out by BB – the regulated party, were apparently held with Adviser Y – the unregulated introducer.

Ultimately, whatever the reason for the decision that was taken about data retention, we are an evidenced based service. And, in Mr J's particular case, BB hasn't been able to provide evidence that it carried out annual reviews – the service that on balance I'm satisfied was agreed at the outset. I acknowledge and accept, as I've said, that BB provided evidence of some service being provided – annual valuations being sent in 2017 and 2018 and some quarterly rebalancing recommendations being sent in 2022 and 2023. But as I've explained I don't think this is sufficient to say it provided the services which Mr J agreed to and paid for.

So, while I don't agree with Mr J that there has been no contact involving Adviser Y, I can't fairly say, based on the available information, that BB has provided Mr J the services he paid for. So, I think the payments made for the services that ought to have been provided since 16 June 2018, should be refunded. I'm aware that Mr J instructed that Firm N remove BB's authority in March 2024, before the April 2024 review would have been due. But I've seen no evidence that leads me to think BB was going to act differently in April 2024, and complete the review, to how it had in the prior years. So, I think any payments in respect of the 2024 review should also be refunded.

Mr J said, in response to our Investigator's opinion, that he thought BB should also address the distress and inconvenience he has been caused by this. But, given he has argued he

didn't know BB hadn't provided the services it should have until shortly before he complained, I can't see how he could have been distressed from the start of the agreement with BB to that point. I appreciate that Mr J is frustrated that he has had to bring a complaint to our Service. But I don't think BB handled his complaint unfairly. It didn't agree with his complaint. But it was entitled to do so. And just because I've now found that I think it should be upheld, doesn't mean BB acted unreasonably by not agreeing with the complaint from the outset. So, I don't make any further award for this.

Putting things right

For the reasons I've explained, I think BB has failed to provide the agreed ongoing review service in respect of Mr J's pension and ISA 2019, 2020, 2021, 2022, 2023 and 2024. So, I believe it is fair and reasonable that all fees that were charged and applied to his accounts in respect of the services not provided be refunded.

These amounts should be adjusted for growth had the fees remained in the existing products (and investment funds), from the date the fees were deducted to the date of my final decision.

The compensation amount should be paid into Mr J's pension and ISA if possible.

However, if is not possible to do so in the case of each account – for example if a payment into the ISA would mean M J exceeded his annual ISA contribution allowance, or if a payment into the pension would conflict with any existing protection or allowance, the compensation should instead be paid directly to Mr J as a lump sum.

If a lump sum payment is made to Mr J in respect of redress due on the pension, BB can make a notional reduction to allow for future income tax that would otherwise have been paid when funds were drawn from the pension. Mr J would be entitled to tax-free cash from the pension. So, 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.

For the avoidance of doubt, no notional deduction should be made from redress in respect of the ISA, if this is paid to Mr J as a lump sum.

BB should also provide details of the calculations of the redress to Mr J in a clear, simple format.

My final decision

For the reasons I've explained, I uphold Mr J's complaint.

To resolve matters, Bruce Bennett, trading as bfm, should compensate Mr J in line with the putting things right section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 12 December 2025.

Ben Stoker
Ombudsman