

The complaint

Mrs D complains about Farley & Thompson (“F&T”) in relation to its management of her portfolio.

In summary, she says she is unhappy about the following:

- The performance of her investments since investing with F&T in 2019.
- The costs and charges on her investments.
- The treatment of her concerns previously raised with F&T.

To put things right, Mrs D would like a refund of the fees/charges taken from her.

What happened

F&T didn’t uphold the complaint. In summary, it said:

- Since the investment, the portfolio returned 5.9% after reinvested income, costs and charges compared to other indices – such as the FTSE 100+1.3%, FTSE 250 - 12.6%, S&P 500 +43.5%.
- Mrs D’s attitude to risk (ATR) was agreed, there was no change in objective or capacity for loss, so the portfolio was deemed suitable.
- The charge schedule was signed and dated (11 November 2019) along with the personal registration, fact find, and terms and conditions.
- Costs and charges statements were also sent regularly. A duplicate fee taken from June 2023, in the sum of £806.32 was refunded.
- The Advisory Managed Service contains advice fees, transaction costs, and fund charges which aren’t paid to F&T. It couldn’t find any agreement that Mrs D shouldn’t be charged advisory fees and custody fees.
- Its sorry for not transferring Mrs D to a different investment manager, after she said she was unhappy with the previous one. However, this isn’t a basis to pay compensation.

One of our investigators considered the complaint and thought it should be upheld. In summary, he said:

- F&T carefully considered Mrs D’s circumstances – namely her age, health, and vulnerability. It also considered her financial aims and objectives. It acted responsibly throughout its consideration of Mrs D as an investor.
- Mrs D provided only two examples of what she thought were the worst examples of trades, and that she was unhappy with.
- A review from 31 May 2022 showed the portfolio contained 28 holdings – of which 13 had made a loss, 11 had made a profit and 2 were in cash. The book cost at the time was £198,558 and the value was £208,854.
- An earlier review from 31 March 2020 showed that there were 26 holdings, of which 24 had a made a loss, 2 had made a profit. This was during the period where the FTSE 100 dropped from 7,402 92 (on 21 February 2020) to 5,415 50 (on 3 April 2020). She didn’t specify which transactions she was unhappy with and why they

shouldn't have behaved the way they did.

- The statement of 31 May 2023 showed a book cost of £204,872 and a value of £199,055.
- The investigator has seen no evidence that F&T wasn't managing the portfolio in line with expectations, or that it had placed excessive trades.
- The portfolio wasn't unbalanced given Mrs D's ATR. There were some changes in funds over the two years, but these aren't "excessive".
- Mrs D was subject to the following charges:
 - Advisory fees: this is a charge for investment advice set by F&T.
 - Custody fees: this is a charge for holding investments on the platform.
 - Ongoing charges on funds: this is a charge applied by individual fund managers for the running of each fund. This is not a charge applied by F&T.
 - Transaction commission: this is a charge for making transactions set by F&T.
 - Stamp duty: This is a 0.5% charge for buying shares for electronic trades set by HMRC. This is not a charge by F&T.
- The fees – namely the ongoing charges on funds, transaction commission and stamp duty – were all explained in s12 of F&T's terms of business, which Mrs D agreed to.
- The advisory service is described as follows:
"with our advisory service we will give you investment advice as and why you ask for it and we will contact you to discuss our recommendations. We will not deal on your behalf without contacting you beforehand. When we provide portfolio advice we will consider the suitability of the investment taking into account your investment objectives, attitude to risk and any restrictions you may impose as set out by you on the registration form. Where appropriate we will provide you with a suitability report in a durable medium before the transaction is concluded. This report will specify the advice given and how the advice meets your preferences and investment objectives."
- Despite what Mrs D says about reading an article in the Saturday papers (money section) – warning her/customers not to allow firms to charge for advice and therefore owing her a refund in commission, he can't say F&T has done anything wrong by charging for services provided.
- Mrs D says she shouldn't be charged for advisory or custody fees, but he's seen no evidence to suggest that this should be the case. On the contrary she signed the terms and conditions allowing for this.
- Invoices from F&T confirm that Mrs D has been charged 0.4% every six months for advisory and custody charges, so a total of 0.8% a year.
- In the semi-annual valuation (14 December 2021) Mrs D was informed that F&T were making changes to its 'Advisory and Discretionary Services'. As an existing Advisory client, she will be migrated to their 'Advisory Managed' service but there will be no changes to the charges she pays.
- Mrs D signed the relevant declaration on 10 November 2019 agreeing to the advisory service. The advisory account personal registration and fact find document was completed and signed on 11 November 2019. This confirmed her circumstances, objectives, ATR, and capacity for loss amongst other things.
- The requirements under the Retail Distribution Review (RDR) were introduced to ensure transparent fee structure.
- The ongoing advice charge is consistent with the Financial Conduct Authority's ('FCA') Conduct of Business Sourcebook ('COBS') rules, namely 'COBS 6.1A.22R' from the time, as well as the FCA factsheet.
- Having read the following:
 - Ongoing annual suitability reviews from:
 - 4 August 2021,
 - December 2021,
 - 18 April 2023,
 - As well as the semi-annual valuations (with commentary) from:

- 30 November 2019,
- 11 December 2020,
- 17 June 2021,
- 14 December 2021,
- 17 June 2022,
- 19 December 2022, and
- 15 June 2023,
- he's satisfied that the annual (and semi-annual) reviews are reasonably comprehensive, covering circumstances, objectives, health, ATR and rebalancing of the portfolio, as well as proactively suggesting meetings to discuss.
- The account opening was roughly at the start of the pandemic. The 2019 (semi-annual) valuation could be said to represent the 2020 valuation.
- Following this (semi-annual) reviews took place in 2021, 2022, and 2023.
- Annual reviews took place broadly every year, with four reviews in a 50-month period before Mrs D transferred to a different provider.
- F&T partially upheld the complaint on the basis that it should've treated Mrs D's dissatisfaction as a formal complaint. In a meeting dated 12 April 2023 Mrs D was told that another adviser would take over her portfolio, but this didn't happen. Mrs D continued to be contacted by the original adviser (whom she had concerns about), until she moved in December 2023.
- In the circumstances, Mrs D should be paid £150 compensation for the distress and inconvenience caused by this error.
- The semi-annual valuation from 17 June 2021 confirmed that Mrs D considered her risk profile to be in the "Upper Medium" risk category and that she wanted to invest for growth and income with a diverse portfolio. This was re-confirmed in the semi-annual review dated 14 December 2021.
- Upper Medium is defined as: *"you fully understand risk and reward and know that your investments will fluctuate in value. You accept that there is a real risk of loss of capital, but this is balanced with the prospect of greater growth."*
- The ongoing suitability review from 18 April 2023 confirmed that Mrs D still had an investment objective for growth and income and had a long-term horizon – she wanted to provide high end care for herself if needed.
- Mrs D was an experienced investor, with experience of investing in various asset types. She confirmed that she held £60,000 in cash, had solid rental income and pensions. It was agreed that she had a high capacity for loss, substantial assets, and secure (non-investment income) of £48,000 a year and wasn't drawing on her investments.

Mrs D disagreed with the investigator's view and asked for an ombudsman's decision. In summary, she made the following key points:

- She's currently 91 years of age and living alone. She's hoping that our service can obtain compensation for her, from F&T, for the way it treated her.
- She didn't say that as commission was paid, there'd be no charge for advice. She accepts that there's no relationship between the two.
- F&T has taken a total of £8,660 from her portfolio over the years that she's been with it – "for the advice they said I had given them". She shouldn't be charged for giving advice as she had no advice to give.
- She made clear to the people – right from the start - that she didn't understand any of the paperwork. She just signed papers in trust.
- She sent evidence of losing purchases. She's unhappy that a lot of money was paid by her, in fees, for these purchases.
- The valuation of her holdings at F&T were as follows:
 - December 2020 - £197,537

- February 2021 – added £10,000.
- June 2021 – £212,216
- December 2021 - £216,616
- February 2022 - £208,854
- December 2022 - £203,879
- April 2023 - £204,802.
- June 2023 – £199,055
- Mrs D agrees with her ATR and that's not what she's complaining about or wants to hear about.
- She questions whether the £806.32 (duplicate) fees refunded to her would've been found, had she not started this complaint.
- F&T choose to ignore what she wanted, much like the time she asked to have a new adviser to deal with. So, it should've stopped the adviser fees.
- She doesn't agree that F&T has carefully considered her circumstances when it has lost her so much money. The investigator must've just copied this all out of his study book.
- Of the two examples supplied, 24 purchases were sold at a loss.
- There were occasions like the 31 March 2020 review, when the portfolio was doing well, but overall, there was a loss. Her expectation was for at least a small increase in the value of her portfolio, but F&T didn't even achieve this.
- She knows that shares can go up and down, but they don't end up as a loss, as in her case.
- The losses derive from money F&T has taken from her, she pays a fee – and shouldn't have to – but she is.
- She pays a fee to have her investments looked after, but the more she trades, the more commission she has to pay.
- Despite F&T's obligations, she's not interested in the trades done, but only wants to know (occasionally) when her portfolio has advanced.
- She doesn't feel like F&T has carried out its obligation under COBS 6.1A .22R, which she feels is the most important part of her complaint.
- There's no mention of Mrs D making several visits to see the directors to express her concerns about the various fees, and that when she was asked if she'd like to change her manager – and she agreed – nothing was done and no notice was given to her concerns.
- There are only two issues to Mrs D's complaint:
 - Her being charged for giving advice.
 - Her manager buying too many poor-quality items which made a loss.
- There's no need to go over her ATR again. Having capacity for loss – and having other money – doesn't mean it's ok for her to lose money.
- She can't agree that the investigator's view is fair and reasonable in the circumstances – he simply adopted F&T's approach.
- To put things right, she'd like a refund of £8,660 taken in fees from her portfolio.

As no agreement had been reached, the matter was passed to me for review.

In early June 2024, I issued my provisional decision, a copy of which is stated below and forms part of my final decision. In the decision I said:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.
Having done so, subject to any further submissions, provisionally I'm going to uphold this complaint. I do so, for the following two reasons:*

1. *I've seen no evidence that the 'ongoing annual suitability review' was carried out in 2020 and 2022 therefore I can't safely conclude that they were. Unless F&T can*

provide evidence to the contrary, I think it should refund 50% of the advisory fees taken for those two years (because it has provided other services including the semi-annual valuations between 2020 and 2023) along with 50% of any investment returns based on the actual growth of Mrs D's investment, from the date each fee was taken to the date of settlement.

- 2. I can't safely say that F&T behaved reasonably in respect of agreeing to change Mrs D's adviser, but failing to do so, after she expressed concerns about its management of her portfolio. I appreciate that F&T concedes this point, however it didn't offer any compensation for the distress and inconvenience caused which I think it ought to. So, to put things right, I think F&T should pay Mrs D an £250 compensation for the distress and inconvenience caused, by this but also its error in relation to charging Mrs D a fee twice before this was spotted and rectified.*

If my findings remain unchanged in the final decision, I intend to use the above redress provisions.

The above notwithstanding:

- I don't think that Mrs D is entitled to a full refund of all fees charged – between 2019 (when she started her investment) and 2023 (when she moved her portfolio away) – because of this or because the portfolio made a loss or didn't grow as Mrs D would've liked.*
- I don't think that Mrs D was being asked for (her) advice, or being charged for it, I think there's been a misunderstanding in relation to this specific point.*
- I'm unable to safely say that F&T is responsible for "excessive" trading or mismanaging Mrs D's portfolio.*
- I'm satisfied that F&T is entitled to charge a fee for services provided, and where it hasn't provided the service agreed Mrs D is entitled to a refund.*

But before I explain why this is the case, I'd like to thank the parties for their considerable patience whilst this matter has awaited review by an ombudsman, due to the current demand for our service.

I also think it's important for me to note I very much recognise Mrs D's strength of feeling about this matter. She has provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope she won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

I appreciate that Mrs D responded to the investigator's view, paragraph by paragraph, but the purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by her and F&T, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case.

Refund of advisory fees for 2020 and 2022

On the face of the evidence, and on balance, despite what F&T says I'm not persuaded that in this instance it was reasonable to charge an advisory fee but not provide an 'ongoing annual suitability review' for 2020 and 2022.

I appreciate Mrs D had 'access' to advice but she didn't receive an ongoing annual suitability review. I note that perhaps she could've done if she asked for one but that's not the point. In the circumstances I don't think it's fair that Mrs D had access to a service she paid for but didn't receive. In my opinion, it's crucial that the service was provided, and not just offered, for the advisory fee charged.

I'm aware that from 31 December 2012 the Retail Distribution Review (RDR) meant that commission payments to advisers were prohibited in all new investment products. So, from the start of 2013 payments for investment advice should be arranged and paid as a separate fee between the financial adviser and the consumer. But this means that a service must then be provided to receive the fees, which wasn't the case here.

The Financial Conduct Authority's (FCA) Conduct of Business Sourcebook (COBS) at 6.1A.22 – that applied from when the RDR came into force on 31 December 2012 – states:

- *“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.”*

This requires that unless the ongoing charge came from regular premiums, any agreement to collect ongoing charge must be from the provision of personal recommendations 'or related services' on an on-going basis. In this instance Mrs D wasn't in receipt of the ongoing suitability review in 2020 and 2022, therefore under COBS 6.1A.22R F&T isn't entitled to the entirety of this money.

The above notwithstanding, I'm satisfied that F&T did provide the June 2020 semi-annual valuation at which time Mrs D's portfolio was valued at £183,538 – which means between 2020 and 2023 it provided semi-annual valuations twice a year, each year. This is why I'm not asking it to provide a full refund of the adviser fees in 2020 and 2022, only 50%.

COBS is also consistent with the guidance at the time, namely the FCA factsheet titled “For investment advisers – Setting out what we require from advisers on how they charge their clients” which, under the heading ‘Ongoing charges’ states:

- *“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 note in particular, the FCA's factsheet included that advisers “must ensure you have robust systems and controls in place to make sure your clients receive the ongoing service you have committed to”. In the circumstances and on balance, I'm unable to say that this was the case. Despite what F&T might say, I still think it should've provided a service for the advisory fees.

I note the 2018 Markets in Financial Instruments Directive (MiFID) II changed the rules so that a minimum service would have to be offered in relation to ongoing advice. I note it

required an 'annual' review of suitability for some products, which further supports my point that F&T in this instance should have provided (and not just offered to provide) this service, and by failing to do so has behaved unreasonably.

In the circumstances I'd like F&T to refund 50% of the advisory fees taken for 2020 and 2022, and also refund the growth of the investment if there hadn't been a deduction for the advice charge. That's why I've not asked it to pay the 8% interest, which I think is reasonable in the circumstances. This redress is in addition to the refund of the fees.

By way of explanation, F&T needs to calculate the actual growth of the investment, from the date 50% of each fee was taken – but as if the deduction wasn't made – every month, until the complaint is settled.

For example, if we're looking at a £100 fee taken in January 2020 and F&T can show that Mrs D's portfolio has grown a total of 32% between January 2019 and now – then the refund for that fee ought to be 50% of £132 – then that process needs to be completed for each fee taken for a missed annual review.

Charges/Fees

The above notwithstanding, I'm satisfied that the relevant fees were made reasonably clear to Mrs D, and she agreed to go ahead on this basis. I'm mindful that not all fees/charges related to F&T, but I don't think this necessarily matters to her as she's looking at things in the aggregate. However, I am only looking at fees attributed to F&T.

I note Mrs D says she's paid a lot of money in fees – totalling around £8,660 – which she isn't happy about. I note that amongst the charges and fees, she's paid for advisory, management and custody fees to F&T – for the four-year period that she's been with it (which isn't a short period either) – but these are the kind of charges/fees she'll have to pay, whichever provider she's investing with.

Despite what Mrs D says, these aren't fees that she can avoid paying, or demand a refund for, just because her portfolio hasn't done better or has lost money. Unless an error has been made, or a specific service not provided - which I've considered above - it's entitled to charge fees for services provided.

In other words, these are fees that must be paid for the services provided, regardless of how the investment might perform. Despite what Mrs D says, for the reasons explained above, I also don't agree that the fees paid caused her loss.

I note that there was also ongoing charges applied by the individual fund managers for the running of the funds, which is separate to the above and not linked to F&T. Similarly, there's also a stamp duty which also isn't related to F&T either but to HMRC.

I note Mrs D might not be happy about the amount of fees paid. But the level of fees is a matter for the business, so long as it has made this reasonably clear to the customer, which I believe it has in this instance. This is not something that our service would get involved in. I note F&T maintains that Mrs D has been charged in line with its standard terms and conditions of business for its advisory managed service, like all its customers.

The above notwithstanding, I've seen nothing to suggest that Mrs D would have to pay to give advice? I've seen no evidence that this was the case, and in any case it's highly unusual that a customer would pay a business and offer it advice. I note she says "for the advice they said I had given them" but it's more likely (than not) this is a misunderstanding on her part, and F&T was referring to charging for advice it had given her.

Performance

Poor (portfolio) performance is not something that I can blame F&T for, because it's not something that it could predict or control. Performance is down to a multitude of factors, including risk (which I don't think was unsuitable given her circumstances, aims and objectives at the time) and the global geopolitical climate, that F&T has no control over. I appreciate Mrs D was hoping for greater growth, but the portfolio growth not meeting her expectation doesn't mean that F&T did something wrong. I note that no guarantees were given as to how the investments would perform.

The above points are fundamental as to why I can't safely say that F&T is to blame for the performance of Mrs D's portfolio, and/or why it shouldn't refund the fees. The two key points, as I will clarify below, aren't connected.

I think Mrs D's complaint is primarily about the value of her portfolio decreasing overall, thus her unhappiness about the management of it, and consequently about the fees paid, which I will address further below.

I note Mrs D concedes that market performance (and share price) can fluctuate – but according to her, they don't end up with nothing but losses as in her case. Despite what she says, there were no guarantees given that the portfolio would leave her better off. Mrs D will be aware that investors, depending on their level of risk, can find themselves in a position where they end up with less money upon surrender than what they put in.

I note Mrs D says that she wasn't interested in the trades as such, but wanted to just know when her portfolio was growing, and trusted F&T to look after her investments and do the right thing – which is what she paid it to do. But the portfolio not performing as hoped, doesn't (automatically) mean that it was mismanaged. I can't say that performance and management as such was connected in this case.

I note that Mrs D wasn't without investment experience, and she was willing to take a (high medium) risk to achieve her objective of growth and income. I note that Mrs D, in response to the investigator's view, accepts that she put her money in F&T's hands trusting it to "help raise more money". In other words, I'm satisfied that she was aware of the risk involved and accepted fluctuations, as well as the risk of not making any growth and enduring a loss instead. The fact that the portfolio didn't perform as she'd hoped, and she still had to pay fees isn't evidence of mismanagement or of F&T doing anything wrong.

Overall, and on balance, despite what Mrs D says, I'm satisfied she knew that the portfolio investment came with a risk, and at a cost, and with no guarantees. In other words, her capital wasn't protected, the service wasn't free, and the charges/fees weren't dependent on her making money.

Awareness

Despite what Mrs D says, I'm not persuaded that she didn't know what she was doing and/or didn't know what she was signing from the outset. I'm mindful that in the second meeting with F&T (in November 2019) she was accompanied by her solicitor and was keen to transfer over her holdings from a previous business to F&T. I note an internal business note (relating to client interaction and history) confirms the following: "I presented our services and all associated charges, with comparisons, to Mrs D and her solicitor. I walked her through the welcome pack and they were keen to complete the client registration paperwork together to get the ball rolling. ...Mrs D was very grateful for the introduction and is looking forward to working with us going forward."

I'm persuaded that Mrs D could afford to invest and was in a good position to do so. I note she had an independent source of income (from commercial rental properties) that was separate to her portfolio investment. She also had access to a reasonable amount of money (in case of emergencies) and had capacity for loss.

The latter of course doesn't mean that just because she could afford to lose money (or had means to replace any losses) it was 'ok' for her to lose money. I agree that capacity for loss doesn't excuse the business from doing what it was paid to do, in this case to manage her portfolio which I believe it has done.

Trading

Despite what Mrs D says, I'm unable to agree that there was "excessive" trading, and/or trading just to generate fees for the business without any regard to her portfolio.

I note she was with F&T during the Covid-19 global pandemic, which was a very volatile, unpredictable and unprecedented time for the financial markets and consequently for investors alike. I think F&T did what it thought was best for the portfolio during this period.

On balance, I'm satisfied that the transactions were carried out in good faith with Mrs D's authority, as the account was managed on an advisory basis. I note she didn't always have to take F&T's advice, and she wasn't obliged to, if she didn't feel it met with her objective. It's arguable that this suggests that she wasn't made to do something that she didn't want to or was unhappy with.

I think without the benefit of hindsight, it's impossible to know which shares should've been sold and which should've been kept. Nevertheless, I'm satisfied that F&T acted within its authority and in an effort to do what was in Mrs D's best interest. I note that an approach might not have always worked out for the better, but this isn't something I can blame F&T for. Without the benefit of hindsight, it's difficult to know which trade was guaranteed to succeed.

I note Mrs D says of the two examples supplied – each had 24 purchases sold at a loss.

Even if that's the case, it's not something that F&T has done deliberately with the intention of causing Mrs D loss. It was entitled to do what it thought was in her interest for the benefit of the portfolio.

I note F&T says that it generally prefers to move stock in-specie but the transfer that Mrs D authorised requested cash only. It therefore disposed of 24 lines of stock and funds to fulfil the transfer request and her signed authority is her consent for it to act upon her new provider's instructions.

I agree that Mrs D was caused some distress and inconvenience for which I think F&T should pay her £250 compensation, in addition to what I've said above, which is broadly fair and reasonable.

In conclusion I don't believe payment for services provided is unfair, nor do I consider F&T to have acted in bad faith or capriciously such that it knew or should reasonably have known that it was causing Mrs D foreseeable harm by its management of her portfolio. However, it can't charge for a service not provided and not offer any compensation for distress and inconvenience caused.

I appreciate Mrs D will be unhappy I haven't agreed with her argument that F&T should repay her the fees she has paid. Furthermore, I realise my decision isn't what she wants to hear. But on the face of the available evidence, and on balance, I think the conclusion I have reached and the redress I have awarded is fair and reasonable in all the circumstances." I gave the parties an opportunity to respond to my provisional decision and provide any further submissions they wished me to consider before I considered my final decision, if appropriate to do so."

I gave the parties an opportunity to respond to my provisional decision and provide any further submissions they wished me to consider before I considered my final decision, if appropriate to do so.

F&T responded but accepted only a part of my provisional decision – in relation to the distress and inconvenience payment. It doesn't accept my decision regarding costs and charges. In summary, Miss M, on behalf of F&T made the following key points:

- A request for a manager change only happened at the April 2023 meeting with its senior partner, and within six weeks of this it had received a transfer request from EP, expressing Mrs D's intention to move.
- She personally advised against the movement of a disgruntled client to another investment manager. However, F&T said it would, but didn't, so perhaps should've – so learning taken on board in respect of this and the double charged fee. It agrees to pay the £250 compensation as directed in the ombudsman's provisional decision.
- The above notwithstanding, it agrees that performance – which is down to a multitude of factors – isn't something that F&T can be held responsible for.
- It doesn't agree with Mrs D's assertion that F&T failed to carry out its obligations under "COBS 6.1A.22R" because this didn't form a part of her complaint.
- The ombudsman added a new compensatory element together with a percentage calculation for lack of undertaking of the ongoing review precisely to a calendar date.
- Three reviews were conducted in four years, there will always be reviews that don't fall precisely in the calendar years because real life isn't like that. In 2020, it was the pandemic period, and months after she joined the service.
- There have been seven phone contacts with Mrs D in 2020, this was in addition to
- the quarterly statements, and six-monthly portfolio packs. As well as the "critically important advice" given to Mrs D in March 2020 not to panic sell during the pandemic low, which had she done would've resulted in significant losses. This demonstrates F&T providing ongoing accessible client support.
- The 2022 review is "missing", but the contact information highlights a conversation took place in the July, registering the intent to hold a review meeting in December 2022, however Mrs D was away for that period. It is being penalised for something that's outside of its control.
- Advisory services don't just include annual reviews, it's more than this. Every client like Mrs D has a named investment manager, who will only act with express agreement. The services include, amongst many other things, monitoring of investments to ensure they remain appropriate, making portfolio recommendations, processing dividend and income payments and generally supporting clients achieving their objectives.
- All of the above combined demonstrates that F&T was managing the relationship with Mrs D and providing a service – which relates to portfolio administration, advice and ongoing suitability, not just calendar based annual review – for which it is entitled to be paid.
- The ombudsman service is "irrationally penalising" F&T because Mrs D went abroad, and the review date slipped.
- F&T doesn't accept the provisional decision and "financial penalty" in respect of the

2020 and 2022 “non reviews”.

- Mrs D is no longer a client of F&T and it doesn't know the state of her current portfolio. However, if it is the ombudsman's final decision is to “penalise” F&T along the lines of provisional decision, the date should be up until the date of exit. It has no data beyond this period.
- Whilst Mrs D's complaint has in some ways been instructive, she (Miss M) nevertheless reiterates the “fallacious nature” of Mrs D's complaint being rooted in the “mistaken belief” that she lost money and was being overcharged.
- If I continue to uphold this complaint, she will have to notify the Personal Investment Management & Financial Advice Association (PIMFA) – as it fundamentally changes the way the industry manages advisory clients.

In a revised provisional decision dated 19 March 2025, which forms a part of this final decision, I said:

“...in light of the response from F&T, I'm persuaded to change the redress element of my decision, which is why I'm issuing a further provisional decision giving the parties an opportunity to respond before I proceed to a final decision, if appropriate to do so.

In terms of the 2022 review, on the face of the evidence, and on balance, in light of our latest guidance I'm unable to safely say that F&T should refund the cost of the 2022 missed review. Based on F&T's response, I'm satisfied that there was contact and communication regarding a review meeting to be held in December 2022 – in other words, registering the intent to hold a review meeting in December 2022 – however Mrs D went away for that period. So, in the circumstances, and on balance, I can't safely say that F&T is to blame for that missed review. I'm satisfied that had Mrs D not away, it's more likely than not the meeting would've taken place.

In terms of the 2020 missed review, despite what F&T says, I still think it ought reasonably to have carried out a review in 2020 at or around the 12-month calendar point. By failing to do so it acted unreasonably, therefore it should refund the full cost of that missed review along with any investment returns. However, it should do so from the date of payment to the date Mrs D moved her investment away, and not to the date of settlement as I had suggested previously.

In other words, I agree with F&T regarding the period of compensation, which is why I've amended it. So, as well as refunding the cost of the 2020 missed annual review, F&T should do so along with any investment returns on the fees if they had remained in the portfolio based on the actual growth of Mrs D's investment, from the date the advisory fee was taken, to the date Mrs D moved her investment away.

The above notwithstanding, F&T should still pay Mrs D £250 compensation, which I note F&T agrees with.

Whether or not F&T agrees with the specific wording of Mrs D's complaint – which it says didn't include “COBS 6.1A.22R” – the provision is relevant and that's probably why it was mentioned and considered by the investigator.

In any case, our service has an inquisitorial role which allows it to consider a wider relevant subject matter as it were. Nevertheless, I still maintain that F&T can't charge for a service – in this case the 2020 ongoing formal annual review – and not provide it, subject to my findings above.

I've carefully considered F&T's additional objections to my awarding any refund at all for

missed reviews, I appreciate that other services provided including the phone calls, quarterly statements, and portfolio packs – probably amounting to ongoing accessible client support – but these are not a substitute for the ongoing formal annual reviews.

These are things that F&T should've been doing anyway – such as monitoring investments, providing regular statements, and helping a client to achieve their objective. In short, the provision of an advisory service doesn't just include an annual review, in the circumstances I'm unable to make any concessions for any additional services provided.

I also make clear that this isn't a financial penalty, it's not part of our role to punish a business for any mistakes made, that's the role of the industry regulator.

Despite what F&T says, I think Mrs D is entitled to make a complaint if she feels she's been treated unreasonably. This isn't something I can hold against her."

I gave the parties an opportunity to respond to my revised provisional decision and provide any further submissions they wished me to consider before I considered my final decision, if appropriate to do so.

Mrs D responded but didn't accept my provisional decision. In summary she maintains her position and would like a refund of all fees paid as well as investment loss. She maintains that *she* shouldn't be charged for providing advice.

F&T also responded and agreed with my revised provisional decision. It said:

"Thank you for your email dated yesterday. We have no further information to add about this complaint and we accept the Ombudsman's revised provisional decision."

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.

Having done so, in light of F&T accepting my revised provisional decision, and no new material points from Mrs D, my decision to uphold this complaint remains the same, principally for the same reasons, as set out in my latest provisional decision.

In other words, despite being given further time and opportunity to respond to my latest provisional decision, I'm satisfied that no new material points have been made that persuade me I should change my latest decision.

Despite what Mrs D says, I have already made clear in my previous provisional decision that she wasn't being charged for providing F&T advice. In other words, I still don't think that Mrs D was being asked for (her) advice, or being charged for it, I think there's been a misunderstanding in relation to this specific point.

I appreciate that Mrs D will be unhappy that I haven't agreed with her entire complaint. Furthermore, I realise my decision isn't what she wants to hear. But on the face of the available evidence, and on balance, I think the conclusion I have reached and the redress I have awarded is fair and reasonable in all the circumstances.

Putting things right

To put things right, Farley & Thompson should do the following:

- Refund the advisory fees taken for the 2020 missed review, along with any investment returns on the fees if they had remained in the portfolio based on the actual growth of Mrs D's investment, from the date the advisory fee was taken, to the date Mrs D moved her investment away.
- Pay Mrs D £250 compensation for the distress and inconvenience caused.

My final decision

For the reasons set out above, and in my latest provisional decision, I uphold this complaint.

Farley & Thompson should pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 24 April 2025.

Dara Islam
Ombudsman