DRN-5511673

The complaint

Mr B's complaint is about Thorntons Wealth Management Limited trading as Thorntons Wealth ('TW').

Until late 2023 TW provided an Ongoing Advisory Service ('OAS') to his pension portfolio. Its service to the portfolio began after its December 2020 acquisition of the previous firm that provided the OAS – Matheson Financial Consulting ('MFC').

He has referred to a good service from MFC for around a decade prior to the acquisition, and to service delivery failings since TW's takeover, culminating in a complaint he says he was prompted to make by TW's attempt to change the service in August 2023. His complaint to TW of 1 September 2023 confirmed he had removed its agency for his portfolio and that he was exploring new advisers.

The complaint he has referred to us alleges a complete failure by TW, since its takeover and until he terminated its service, to deliver the OAS he paid an annual fee rate of 1% for. In terms of remedy, he says – "… *as I have paid Thornton's 1% of my (pension) funds value for the 'advice' (which I never, in any way received) over 3 years, I feel that I am entitled to a refund of all costs which I have incurred' (approx£12,000.)*"

TW vehemently disputes the complaint and allegation(s).

What happened

I issued a Provisional Decision ('PD') for the complaint on 10 April, and I provisionally concluded that it should not be upheld. Both parties were sent copies of the PD, so they will be familiar with its contents.

The PD's summary of the complaint's background included the following –

"*A letter was sent by MFC/TW to Mr B in December 2020 inviting him to make contact and arrange his annual review meeting, as it was time to conduct the review. The OAS provided to his pension portfolio was called the Your Wealth Portfolio Service ('YWPS') and as part of this service a copy of the portfolio's annual valuation report (dated 15 December 2020) was enclosed with the letter.*

Shortly thereafter, in its letter to him of 19 January 2021, MFC/TW presented a pension drawdown recommendation and a recommendation that he continues to use the YWPS. An attached detailed report set out the assessment of suitability of the recommendations and information on them. The remuneration section of the report confirmed that there was no initial advice fee for the recommendations, it referred to the 1% annual fee rate for the YWPS, and it included the following – "For this fee you will enjoy Your Wealth Portfolio Service with annual valuations, regular quarterly reviews and more active fund management. There is no obligation to take this up but if you do not you will not receive Your Wealth Portfolio Service with regular reviews".

Available evidence shows that January 2021 was somewhat eventful. There is a client

agreement issued on the 7th and signed by Mr B on the 12th, a completed client information form signed by him on the same date, a completed attitude to risk document signed by him also on the same date, a completed income drawdown checklist document also signed by him on the same date, and a completed personal information form along with another attitude to risk document signed by him on the 13th.

A section of the client agreement contained the four available OAS options. The 1% fee rate applied to them all, but service contents differed. For funds under management valued between £350,000 and £750,000 (defined as 'Tier 2') the service was "… six monthly client contact with an annual investment valuation and an annual review meeting with your adviser in our offices", and for funds under management valued over £750,000 (defined as 'Tier 1') the service was "… quarterly client contact with six monthly valuations and face to face meetings with your adviser in our offices".

The December 2020 valuation for Mr B's pension portfolio was around £455,000. In his complaint submissions, he has referred to a separate investment bond (worth around £400,000 at the time of his complaint) also being under TW's OAS/advised management. The first investigator enquired into this. TW confirmed the following – "Regarding the Aviva Bond which the complainant refers to, this was not advised or set up under Thorntons Wealth and I can confirm we have not charged or received any remuneration for this investment". It shared with us documentation on the bond's set-up and said – "You can see from the information provided the investment was set up in 2004, the advisers noted are aviva-for-advisers.co.uk, and there was no ongoing service/remuneration arrangement in place".

None of the annual portfolio valuation reports shared with us appear to refer to the Aviva bond, they only appear to refer to the pension portfolio.

TW also shared with us a document (from 2016) that defines contents of the OAS. The document includes the following –

"We will be in contact every six months and you are entitled to one review meeting each year. This will be with your dedicated financial adviser at Matheson Financial's offices."

"At other times you have access to your adviser for additional meetings, as may be required either face to face in Matheson Financial's offices, by telephone, or email."

"Once a year you will receive either by email or post, a personal valuation of your investments as looked after by us."

"On a quarterly basis the investment committee at Matheson Financial meet with our investment researchers to discuss and review all the funds held within your chosen portfolio. This research will be published and is available to you, along with a document setting out any recommendations we may make. This will cover which funds we recommend be retained, which replaced, and also which ones we are monitoring more closely, perhaps with a view to making changes in future. This applies to clients who have chosen to be invested in one of our range of five Your Wealth Portfolios."

"Your investments will also be available for you to view securely on our online investor portal, Your Wealth Manager."

TW's position is that from the fact-finding and advice/implementation events in January 2021 onwards, and until its service was terminated in September 2023, – or 'the complaint period' as I call it hereinafter – it delivered to Mr B (and his pension portfolio) the Tier 2 OAS/YWPS that he was entitled to. It has referred us to evidence of ongoing portfolio reviews and advice

to him, and particularly fund switch advice to him in September 2021 and September 2022 – including emails from Mr B on 4 September 2021 and 2 September 2022 confirming his acceptance of fund switch recommendations made to him each time.

It has also referred to the following (covering the complaint period) – annual valuations issued for the portfolio, the quarterly Investment Committee Reviews ('ICRs') applied to the portfolio, Mr B's ongoing access to its client portal, and his ongoing access to an adviser at any time (which, it says, he regularly used). TW also notes that, despite being a matter beyond the OAS/YWPS, it assisted him in an isolated fund research matter for the Aviva bond around May to July 2022.

In contrast, Mr B maintains that there has been no meaningful engagement with or service from TW since its acquisition of MFC. He disputes its claims and evidence, and he suggests that some of them have been fabricated, highlighting that most of its communications were by email but he was unable to access those emails. In particular, he says the September 2021 and September 2022 emails claimed to be from him are false, and are not his emails.

The PD's main findings were –

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- *The December 2012 regulatory Retail Distribution Review, as was/is applicable to new retail investment products/services from the beginning of 2013 onwards, created a requirement for transparency, to consumers, in the fees and charges applied by firms. Following from this, fees for investment advice had to be charged separately and openly.*

- *For fees connected to an OAS (or for Ongoing Advice Charges ('OACs')), the Conduct of Business Sourcebook ('COBS') section of the regulator's Handbook (at COBS 6.1A.22 R, applicable since October 2020) 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:
  (2) 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
  (3) 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."

- *Following MiFID II related changes in 2018, and with regards to the provision of an OAS, COBS 9A.3.9 [UK] says:*

  "Investment firms providing a periodic suitability assessment shall review, in order to enhance the service, the suitability of the recommendations given at least annually. The frequency of this assessment shall be increased depending on the risk profile of the client and the type of financial instruments recommended."

- *Guidance in the regulator's Factsheet No.010, on 'Adviser Charging', says:*

  "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."

The above Factsheet guidance essentially summarises the basic regulatory requirement, and expectation, with regards to a firm's provision of an OAS (for which it applies an OAC) – put simply, the firm must ensure the client receives the OAS it has committed to deliver.

Evidence of the OAS that TW committed to deliver to Mr B is presented in the 19 January 2021 report and the signed client agreement. There is also additional helpful evidence on the components of the OAS in the 2016 document I mentioned earlier. As stated above, available evidence shows that only the pension portfolio was under TW's OAS. Therefore, and given that the portfolio's value was between £350,000 and £750,000, it was the Tier 2 version set out in the client agreement that applied to Mr B's client account.

Altogether, Mr B was entitled to annual portfolio valuations, the benefits of the ICRs, an annual review meeting, contact at least twice a year, and access to the client portal.

I have seen the annual portfolio valuation reports prepared for Mr B in December 2020, December 2021 and January 2023. The last appears to have been the December 2022 report issued a month late, but it was issued nevertheless. By September 2023 TW's service was terminated, so there was no basis to issue a valuation for December 2023. I have also seen evidence of notice to Mr B that the valuations had been uploaded to his client portal, and confirmation from what appears to be the client portal provider – Moneyinfo – that he last accessed the portal on 23 September 2023. I have not seen a log of all the times he accessed the portal during the complaint period, but, on balance, the evidence from Moneyinfo is enough to conclude that the portal was accessible to him and that he used it.

Thus far, I am satisfied that the annual portfolio valuations and client portal components of TW's OAS were delivered to Mr B during the complaint period.

As I noted above, there was considerable engagement between TW and Mr B in January 2021 – from factfinding and onboarding related activities, to the recommendations made to him and to the implementation of those recommendations. For this reason, I do not consider that there is any doubt over delivery of the client contact and annual review/annual review meeting components of the OAS in 2021. No initial advice fee was applied, so all these activities must have happened under the OAS.

The same conclusion about delivery applies to the benefits of the ICRs. Copies of the quarterly ICRs issued to clients during the complaint period have been shared with us, with some of them making fund switch recommendations and seeking instructions for implementation (whilst others confirmed there was no cause for change). On this basis, I am satisfied that Mr B received them in 2021 and throughout the complaint period. The events I refer to next add further support for this conclusion.

There is an email from Mr B dated 4 September 2021 in which he responded to an ICR fund switch recommendation and said – "Please accept this as my authority to switch my Portfolio in accordance with your September 2021 recommendations". Following the activities in early 2021, it is clear from this that, later in the same year, he received, agreed with, and benefited from an ICR recommendation for his portfolio.

With regards to this email, I have noted Mr B's claim that it is fake. There is another email

from him dated 2 September 2022, which said "Please accept this as my authority to switch my Portfolio in accordance with your September 2022 recommendations" in response to another ICR recommendation at the time. He says this is also fake. Neither of these emails present characteristics or grounds in support of his allegation. They look legitimate, and it is noteworthy that no complaint appears to have been made in relation to the instructions they conveyed to TW – which would likely have been the case if they were not legitimate instructions – so the implication would be that the emails and the instructions within them are reliable evidence.

Of course, I am not personally in a position to vouch for their authenticity. However, the point is that in the absence of evidence that they are fabricated and in the absence of cause to doubt them, I cannot reasonably conclude that they are fake. On balance, and for the reasons given above, I am persuaded to accept them as being emails from Mr B to TW at the relevant times. The second email also shows that he continued to benefit from the ICR recommendations in 2022.

It does not appear that any review related meetings between the parties happened in 2022 or 2023. The second investigator was particularly concerned by the lack of such meetings, and this influenced the view he presented. I understand his approach, and, depending on circumstances, in another case I could follow the same approach. In many OAS arrangements, annual review meetings can be the main or only source of portfolio reviews and/or fund switches within them. In such cases, if review meetings are missed, there is a tangible and direct impact on service to the portfolio, in the form of the portfolio missing the opportunity for its investments to be reviewed and, if appropriate, changed.

However, in Mr B's case, it is quite clear that the ICRs essentially provided ongoing quarterly portfolio reviews for his pension. This was a very meaningful component of the OAS, and the two fund switches in his pension portfolio prompted by the ICR recommendations (with the first less than a year after the activities and transactions in January 2021) testify to this. I do not say or suggest that the ICRs made the annual review meeting component redundant. They did not. The annual review meetings were also a meaningful part of the OAS, but the points to note are that, with regards to task of reviewing the pension portfolio, both complemented each other, and the ICRs happened more frequently every year. Therefore, on balance, in the particular circumstances of this case and with specific regard to the ongoing reviews of the pension portfolio, I am not persuaded that Mr B was denied the review service he paid for.

With regards to updating information on Mr B and his profile during the complaint period (with the potential for any such update prompting a suitability review), there is ground to say the lack of annual review meetings left a gap in the OAS. The second investigator made a point broadly about the difficulty in properly monitoring whether (or not) a suitability review was needed without holding such meetings and obtaining updates from Mr B about his circumstances. I agree, but it is also true to say that no evidence has been presented of material changes in his circumstances that TW was unaware of. There is also the consideration that he had ongoing and seemingly unlimited access to his TW adviser(s) throughout the complaint period and, if needed, he could have informed TW of any such changes whenever they occurred.

Despite the lack of meetings, it should be noted that TW sent Mr B invitations for annual review meetings. I acknowledge that the rules and guidance I referred to earlier required more than an invitation. They require/required delivery of the review meetings. However, with specific regard to changes in circumstances, the December 2021 invitation included the following –

"We believe it is very important that you take this opportunity to discuss with us your up to

date situation. We want to hear about any changes in your personal circumstances as well as reviewing the continued suitability of the specific investments with which Thorntons Wealth have involvement. With your agreement, this would then allow us to make any revisions to our recommendations that might be felt to be advisable."

In a letter to Mr B, dated 6 February 2023, TW again invited him to arrange a review meeting, and said (in bold) –

*"**We encourage clients to keep us informed of material changes in personal and/or financial circumstances - that way we can inform you if an updated assessment of suitability might be necessary. Please note we will not be liable in the event of you failing to let us know of any change that may affect the ongoing suitability of your current arrangements.**"*

These invitations show that Mr B was constantly reminded to give notice of any changes in his circumstances, and he had ongoing access to his adviser in order to convey such changes. There appears to be no evidence of this being necessary or happening during the complaint period. An example of the access he had for this purpose exists in relation to his Aviva bond, for which, as TW has described, he made contact and engaged with the firm, around May 2022, for a fund research matter. Had there been need for him to convey changes in his circumstances, I am persuaded that he was able to do so within the OAS and that TW would probably have reacted positively to that by conducting, if necessary, a profile/suitability review. As a comparator, it appears to have reacted positively to, and assisted with, the Aviva bond matter for which Mr B sought help, and that bond was not even under the agreed OAS.

None of the above serves as an excuse for TW not holding review meetings with Mr B in 2022 and 2023, but overall, on balance, and for the reasons given I am not persuaded that this missing aspect, alone, justifies the conclusion that there was a failure to deliver the OAS he paid for. It should not be forgotten that he continued to benefit from the ongoing quarterly ICRs until the service was terminated. On the same overall basis, I am also not persuaded to conclude that this creates a ground for any form of refund of the 1% OACs he paid.

In the main, and for all the reasons addressed above, TW delivered the OAS that Mr B was entitled to (and paid for), so it would not be fair to uphold his complaint or to order any refund of the OACs he paid."

Both parties were invited to comment on the PD. TW confirmed that it accepts the PD. Mr B confirmed, by telephone, his disappointment with the PD, but also his acceptance of it.

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 have also reviewed the complaint and the PD. Having done so, and given the parties' acceptance of it, I retain its findings and conclusions and I incorporate them into the present decision. For the reasons given in the PD, and as quoted above, I do not consider it fair to uphold Mr B's complaint.

My final decision

I do not uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or

reject my decision before 26 May 2025.

Roy Kuku
Ombudsman