DRN-5613735

The complaint

Mr O has complained that Radcliffe & Company (Life & Pensions) Limited charged him fees for annual reviews, but then in some years failed to provide them. Mr O has also complained that he wasn't provided with appropriate advice about issues relating to the lifetime allowance and small pension pots, which he says also caused him a financial loss.

What happened

The background and circumstances to the complaint were set out by our investigators in their assessments of it which were sent to Mr O and Radcliffe & Company. Both parties have seen the assessments and are aware of the circumstances, so I won't repeat them all again here. But to recap, Mr O was advised by Radcliffe & Company to transfer the benefits he held in a defined benefit pension scheme to a Self Invested Personal Pension (SIPP) in 2017. The suitability letter provided at the time confirmed that Mr O would pay Radcliffe & Company 0.65% + VAT for 'ongoing investment services'.

Mr O signed a Services and Payment Agreement in October 2017 which confirmed that he'd selected ongoing service level B, as defined in a Service Proposition Summary Document. The transfer took place shortly thereafter, with the funds received by the recommended investment manager in early December 2017.

In October 2019 it was agreed that Radcliffe & Company's ongoing advice fee should be reduced to 0.5% +VAT. The e-mail from the investment manager relating to this change confirmed that Radcliffe & Company would remain responsible for 'ongoing Pension Suitability and Advice', and that the Radcliffe & Company's adviser would meet with Mr O annually, with the next review due in June 2020.

Mr O crystallised his plan up to the lifetime allowance in July 2020. He also transferred some small value pensions to his SIPP.

The advice Radcliffe & Company had given to Mr O to transfer his defined benefit pension scheme was subject to a s.166 skilled person review in 2022, as ordered by the Financial Conduct Authority. The investigator said he understood that Mr O terminated the client relationship with Radcliffe & Company in June 2022.

Radcliffe & Company subsequently confirmed that the outcome of the s.166 review was that the advice it had given to transfer the defined benefits pension scheme was unsuitable. It went on to carry out a loss assessment calculation which showed that Mr O hadn't suffered a financial loss as a result of transferring.

Mr O had complained to the firm and subsequently referred a complaint to this service in January 2024. He complained about Radcliffe & Company's failure to provide an ongoing advice service, saying no reviews had been provided in 2018, 2020, 2021 and 2022. He said Radcliffe & Company should have done more to make him aware of lifetime allowance issues. He also complained that he should have taken benefits from his small pension policies under the 'small pots' rules, which would have meant they would not have been subject to the lifetime allowance.

Radcliffe & Company said that the ongoing advice charges had been accounted for in the loss assessment calculation following the s166 review, and so no further compensation was due to Mr O. In regard to the lifetime allowance, it said the suitability report had referred to it, and it didn't think Mr O had suffered a loss anyway. And it made an offer to Mr O in respect of the small pots issue.

The first investigator to consider the case thought the firm's offer to settle the complaint was fair. He thought the ongoing advice costs had been accounted for in the s.166 review redress calculation, and so no further compensation was due to Mr O. As regards the lifetime allowance, he pointed out that the suitability report had referred to the lifetime allowance and fixed protection 2016, and he felt Mr O hadn't suffered a loss in regards to it in any event. He felt the offer in relation to the small pots issue, which amounted to a refund of tax that would now be payable on 25% of the current value of the benefits arising from those sums, was fair.

Mr O didn't accept the investigator's assessment. He said, in summary, that he thought his complaint about lack of reviews should be viewed independently of the skilled person review carried out on behalf of the firm. And he thought he should receive a refund of 100% of the value of the small pots. Mr O made no further comment about the lifetime allowance issue.

On review, another investigator provided an updated assessment of the complaint to both parties on 7 March 2025.

The investigator said he understood the lifetime allowance issue might be resolved. However he said in his view regardless of what Mr O was or wasn't told about the lifetime allowance or protections available, it seemed likely he would have transferred in any event and was in the position (aside from the small pots) that he would always have been in. The investigator didn't think Mr O had suffered a loss in relation to the lifetime allowance issue.

With regards to the small pots, the investigator didn't think refunding 100% of their value with growth was fair or reasonable. He said the benefits wouldn't be taxed at 100%, and Mr O hadn't lost 100% of their value – he would however pay tax on the 25% tax-free allowance that he'd lost. So on that basis he agreed with the first investigator's opinion about fair compensation in relation to the small pots.

Radcliffe & Company had said that the redress calculation following the s.166 skilled person review had accounted for the ongoing advice charges, and that they should not be accounted for again. However the investigator said Our Service hadn't been asked to consider the suitability of the original advice to transfer, and indeed Mr O seemed not to believe that advice was unsuitable. The investigator said we had been asked to consider whether the ongoing advice Mr O had paid for had been provided.

The investigator referred back to the Financial Conduct Authority's Handbook which defined 'complaint' as *'…any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service…'.*

The investigator said the 'complaint' was about the provision of the ongoing advice, and not the earlier advice to transfer the defined benefits scheme.

The investigator said whilst he didn't have all the relevant documents defining the nature of the service Mr O was paying for, he understood Radcliffe & Company accepted that Mr O was paying for ongoing advice on suitability. He noted that one of the purposes of the FCA's Retail Distribution Review (RDR) in 2013 was to ensure that firms made clear what fees

consumers would pay and what services would be provided in return. Subsequent guidance had made clear that firms should have processes in place to ensure that the services they charged for were delivered in practice.

The investigator said our service needed to decide whether, taking all the available evidence into account and on the balance of probability, a genuine ongoing advice service had been provided to Mr O.

The investigator said Radcliffe & Company should have reviewed Mr O's circumstances, needs and objectives, and considered whether the products and investments remained suitable for him on an ongoing basis. He noted Radcliffe & Company had said the ongoing advice service brought other benefits. However, he said he thought this seemed to be the sort of ambiguity the RDR was intended to prevent. The investigator said Mr O paid the charges for an ongoing advice service and he should have received the agreed service in return.

The investigator said typically reviews would be carried out around the time of the plan anniversary, to coincide with annual statements. However that it wasn't unusual for them to diverge from the anniversary over time.

The investigator said the evidence available suggested that the first annual review took place in early 2019 – albeit this effectively related to the review that had been due around late 2018. And he thought the evidence showed another review had been completed in mid-2020. However he didn't think Mr O had received reviews in 2019 (effectively) and 2021. So he said overall, of the four reviews Mr O should have received from 2018 to 2021 inclusive, he'd only received two.

The investigator said he'd also considered whether ongoing advice charges from the anniversary in 2021 to the date Mr O terminated the relationship in 2022 should be refunded, as they would have been intended to pay for the 2022 review, which didn't take place. He said he'd considered this particularly in the context of the regulator's recent guidance.

The investigator said on the one hand Mr O chose to terminate the relationship, which in some circumstances could mean that it would be unfair to expect a refund. However, on the other, it appeared that no review had been provided since 2020, and that the relationship had effectively lapsed. On that basis, the investigator thought the ongoing advice charges for the 2022 review should also be refunded.

Overall, the investigator thought Mr O's complaint should be upheld.

Radcliffe & Company didn't agree with the investigator's assessment. It said, in summary, that it was confused by the investigator saying Mr O thought the advice (to transfer) was suitable, and didn't believe it was unsuitable, as Mr O had requested a review of the advice through the s166 exercise.

Radcliffe & Company thought the loss calculation completed for the s166 review - overseen by the FCA and conducted by an independent third party – took into account all costs and charges, and it had determined that Mr O hadn't been disadvantaged over time. So it didn't think Mr O was due further compensation as it would seem at odds with the main purpose of the FCA review.

Radcliffe & Company said there were other benefits to its ongoing service which shouldn't be ignored. It said contact with the adviser may have been sporadic, however the ongoing advice charge wasn't purely for such contact.

Radcliffe & Company said the main point of the argument appeared to boil down to adviser's time, and if there was no face to face or personal contact then no valid charge could be made. However the issue of adviser time didn't represent 100% of the ongoing advice charge. It said in other cases it had determined that about 30% of the charge best reflected an adviser's time, as it allowed for other fixed costs of services provided which Mr O could have benefitted from but chose not to. It said the larger proportion covered fixed costs including regulatory fees and levies, property, staff and other costs. It said the availability of advisers for personal consultation was a matter of choice and not a requirement. It said Mr O may have been happy to receive the updates and reports from the investment manager, and it also provided online valuations without the need for adviser intervention. It said requiring compensation of 100% of the ongoing charge didn't reflect this.

Radcliffe & Company said it hadn't recorded phone calls, and it wasn't aware what amount of calls Mr O had made to the investment manager over the relevant period. It said there was definitely contact and e-mail traffic to show the investment manager was managing the client's multiple income requests in the period from 2021. It said this wasn't free of charge and formed part of the OAC received.

Radcliffe & Company also said it thought any compensation should be paid into Mr O's pension rather than directly to Mr O.

Mr O made no further comments about the merits of the 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.

Having done so I've come to the same conclusions as the investigator, and largely for the same reasons.

One of the first things we are required to do is correctly identify the nature of the complaint referred to us. As explained by the investigator, 'complaint' is defined in the FCA's Handbook as *'any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service…'*

The financial service that Mr O has referred a complaint to us about is Radcliffe & Company's failure to provide an ongoing advice service. It wasn't about the earlier provision of a separate financial service – the advice given to Mr O to transfer his defined benefits scheme.

The complaint referred to us is therefore a separate matter to the advice given to transfer. When deciding on the outcome of a complaint and fair compensation, we can take into account all of the wider circumstances. Mr O has complained to us about Radcliffe & Company's failure to provide an ongoing service; a service that he had paid for. If he hadn't paid fees for a service that wasn't provided, the value of his personal pension would have been higher. I'm satisfied Mr O suffered a financial loss as a result of Radcliffe & Company's particular failure.

Radcliffe & Company has said it was confused by the investigator saying Mr O thought the advice (to transfer) was suitable and didn't believe it was unsuitable, given he had opted into the s166 exercise. However I don't think opting into such an exercise necessarily meant Mr O considered the advice was unsuitable – he could have opted in to find out, even if in his own mind he thought the advice to transfer had likely been appropriate.

Radcliffe & Company considers only part of the fees Mr O paid for the ongoing service were for the face-to-face advice reviews with the adviser. It said it thought this only represented about 30% of the fees. It said there were a number of other benefits provided by the service, such as fund discounts, provision of valuations and information about the investments, and arranging income payments from the pension amongst others. It said the larger proportion of the fees covered fixed costs including regulatory fees and levies, property, staff and other costs.

I note that the suitability letter from the time that Radcliffe & Company advised Mr O to transfer his defined benefits said that Radcliffe & Company would be paid an initial fee of £7,500 (albeit this amount was crossed out on the Services and payment agreement and £5,000 handwritten – so I assume this was what was ultimately agreed). It said, under 'Ongoing Adviser Charges':

I will be providing ongoing investment services for which we will charge 0.65% (eg £7,042 based on a fund value of £1,090,922) of assets under management.

The suitability letter said the SIPP provider made an annual charge of £175 plus VAT. And the Investment Manager's charge when averaged out was 0.69% of the fund value per annum.

The section in the Services and payment agreement headed Ongoing Service(s) said:

Advised Service

….You have selected to receive the following ongoing service level: 'B'.

Exact details of our ongoing service proposition, can be found within our Radcliffe & Co Service proposition summary document.

These services relate to: the pension portfolio you currently hold etc.

We asked Radcliffe & Company on a number of occasions for a copy of the 'Service proposition summary document' and for supporting evidence of the ongoing services that it said it had provided. Radcliffe & Company ultimately provided a copy of a document headed 'Client Service Commitment' which it said it believed was the document of relevance from the time. Clearly this has a different title. And there is no mention of service level B or what that entails. So it's not entirely clear it is the relevant document.

Clearly I recognise that Radcliffe & Company have fixed costs to pay. But Mr O paid a significant fee for the initial advice. And decided to pay an ongoing fee for a further 'Advised Service'. He wasn't paying this fee directly to pay Radcliffe & Company's fixed costs - he was paying it for the 'Advised Service' – which in turn Radcliffe & Company would have incurred costs in order to provide. Radcliffe & Company has said the 'Advised Service' provided lots of additional benefits over and above the face-to-face advice meetings.

As I've said, it isn't entirely clear what service level B entailed. However I note that several of the services that Radcliffe & Company has said were provided to Mr O in relation to the ongoing fees he was paying would have been provided to Mr O without him paying the ongoing fee. Valuations and information about the investment would have been provided in accordance with the Financial Conduct Authority's periodic reporting rules. And in my experience pension providers and investment managers will respond to clients' reasonable requests for information about the products held with them in any event. Mr O was paying fees to the pension provider and the investment manager and they would have provided some level of support irrespective of the ongoing fees paid to Radcliffe & Company.

As the investigator noted, an e-mail from the investment manager in October 2019 relating to a reduction in Radcliffe & Company's ongoing fee said Radcliffe & Company would remain responsible for 'ongoing Pension Suitability and Advice'. It said that the Radcliffe & Company's adviser would meet with Mr O annually, with the next review due in June 2020. It said "*There will be no extra charge for annual drawdown reviews or drawing benefits."* And that the investment manager would be responsible for the ongoing suitability of the underlying investments.

So it seems to me that a number of the additional benefits that Radcliffe and Company says its ongoing service offered to Mr O would have largely been provided in any event.

As I've said, it's not entirely clear whether the Client Service Commitment document that has been provided by Radcliffe & Company is relevant to the service level B that it had agreed to provide. However this document did start:

At Radcliffe & Co we believe that professional advice can add significant value to your financial planning, as an individual or as a business. It is because of this belief that we provide a comprehensive ongoing review service designed to create real value for our clients.

The document went onto set out the commitment in more detail, and the first heading was: *An annual mid-year review meeting with your adviser including - a complete review of your financial strategy and The Radcliffe financial health check.*

I do accept that the Client Service Commitment set out a number of other services. However, it seems to me that the ongoing service was promoted with its main benefit being the provision of regular financial advice from a fully qualified and experienced industry professional. And as I've said, a number of the other 'benefits' listed would have been provided to Mr O in any event, and without him paying for an ongoing service.

As noted by the investigator, the FCA's Retail Distribution Review (RDR) in 2013 aimed, amongst other things, to increase the transparency and fairness of adviser fees. The FCA published a factsheet which 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.*"

Ultimately, I have to decide what is fair and reasonable in the particular circumstances of a case. For the reasons set out by the investigator, I don't think Radcliffe & Company provided all the review meetings associated with the ongoing fees being paid by Mr O. Mr O was paying a significant fee each year for the ongoing service – thousands of pounds. I've seen no persuasive evidence that Mr O received a material benefit in relation to the fees paid for some years. And I don't think it would be reasonable for Mr O to pay Radcliffe & Company significant fees for services that would in any event have been provided to clients who didn't opt for an ongoing service.

Radcliffe & Company provided some reviews, and it will retain the ongoing charges associated with those reviews. But I think taking everything into account, for the reasons set out by the investigator and what I have said above, I do think it is fair and reasonable for Radcliffe and Company to refund the fees associated with the reviews that it didn't provide.

For completeness, I agree with the investigator's findings on the small pots and lifetime allowance issues.

Putting things right

Fair compensation

In assessing what would be fair compensation, my aim is to put Mr O as close as possible to the position he would probably now have been in if he hadn't paid annual ongoing advice charges associated with annual reviews in 2019 and 2021, and the proportion of fees up to when Mr O terminated his relationship with Radcliffe and Company.

As the investigator said, typically reviews are carried out around the time of the plan anniversary. However it's not unusual for them to diverge from the anniversary over time. But I think for pragmatic purposes Radcliffe & Company should assume reviews were due in December of each year. And refund 12 months' worth of fees for the (effectively) missed reviews in 2019 and 2021. And the fees from 1 January 2022 until Mr O terminated his relationship with it.

Radcliffe & Company (Life & Pensions) Limited should repay these fees, adjusted for the growth that would have been achieved had the fees remained in the existing investment funds, from the date the fees were paid to the date Mr O transferred servicing to a new adviser. It should then add further growth from the date of transfer of servicing to the date of this final decision in line with the FTSE UK Private Investors Income Total Return Index.

Radcliffe & Company (Life & Pensions) Limited should also calculate and compensate Mr O for the additional income tax he will now be liable to pay on 25% of the current value of the funds derived from the three small pots transferred (effectively equivalent to 5% of the current value).

Radcliffe & Company (Life & Pensions) Limited should pay such an amount into Mr O's pension plan to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. However Radcliffe & Company shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

If Radcliffe & Company (Life & Pensions) Limited is unable to pay the compensation into Mr O's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation 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 isn't a payment of tax to HMRC, so Mr O won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr O's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume that Mr O is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if he would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

Radcliffe & Company (Life & Pensions) Limited should also calculate and compensate Mr O for the additional income tax he will now be liable to pay on 25% of the current value of the funds derived from the three small pots transferred (effectively equivalent to 5% of the current value). This should be paid direct to Mr O.

Interest at the rate of 8% simple per annum should be added from the date of this decision to the date of settlement, but only if settlement isn't arranged within 42 days of us notifying Radcliffe & Company of Mr O's acceptance of this decision.

Radcliffe & Company (Life & Pensions) Limited should provide details of the calculation to Mr O in a clear, simple format.

Mr O may need to co-operate with Radcliffe & Company (Life & Pensions) Limited to enable it to obtain the relevant information to arrange settlement.

My final decision

My final decision is that I uphold Mr O's complaint. I order that Radcliffe & Company (Life & Pensions) Limited trading as Radcliffe & Co Independent Financial Advisers calculate and pay compensation to Mr O as set out above under 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 31 July 2025.

David Ashley
Ombudsman