

The complaint

Mr S complains, via a legal representative, that Shand Associates Ltd failed to provide him with the agreed ongoing advice service. Mr S wants the annual fees he paid to be refunded for the years he received no service.

What happened

Mr S received financial advice from Shand Associates in 2017 regarding the transfer of a personal pension to his current pension plan. Mr S agreed to ongoing financial advice from Shand Associates and agreed to an ongoing annual advice charge of 0.5% of the pension's fund value.

Shand Associates explained, in its recommendation to Mr S, that it would provide him with the following:

- A comprehensive review of all of his financial circumstances.
- A review of the continued suitability of the advice it had given him.
- Any work specified in its service proposition.

It told him that the next review was planned for 12 months from that report in January 2017.

On 1 February 2018 Shand Associates emailed Mr S inviting him for a review of his pension. Mr S responded to explain that he was happy with the accounts and wished to continue as it was. He was happy to meet later unless there was anything crucial. Shand Associates explained it would contact him again in 12 months and that he could get in touch himself if he wanted a review sooner. In June 2018 Mr S contacted Shand Associates for information about taking a drawdown from his pension.

On 12 March 2019 Shand Associates emailed Mr S again to arrange an appointment for his annual review. Mr S responded to the invite to explain that his wife was unwell and that he would be in touch when he was able to in order to arrange the review. But he confirmed that he was happy with the way his pension was performing.

On 28 May 2020 Shand Associates conducted a telephone review with Mr S. It sent a follow up written report of the review along with a recommended fund adjustment to rebalance the investments.

On 14 July 2021 Shand Associates emailed Mr S inviting him for his annual review and enclosing its annual review documents. It then sent a follow up on 19 July 2021 when Mr S didn't respond. Mr S's wife then responded to explain that Mr S had been unwell but that he would be in contact soon.

On 22 July 2022 Shand Associates emailed Mr S again for his annual review. Mr S did not respond to this invite and Shand Associates did not contact him again about it.

On 10 May 2022 Shand Associates emailed Mr S to explain to him that, as he had been in direct contact with Quilter making withdrawals and had failed to respond to recent invites for

review it would remove its ongoing advice charge.

Mr S complained in July 2024 via a legal representative. The complaint was that Mr S paid for annual reviews that did not always take place. He asked that, where Shand Associates could not evidence that a review took place, the fees should be refunded.

Shand Associates responded to Mr S's complaint to set out how it had tried to provide the agreed service. It didn't think it had done anything wrong so didn't agree to refund any fees.

Mr S didn't accept Shand Associates' answer so referred his complaint to our service. Our investigator was unable to resolve Mr S's complaint informally so it was passed to me to give an ombudsman's decision.

I issued a provisional decision to let both parties know the extent to which I thought Mr S's complaint should be upheld.

What I said in my provisional decision

"Before I can consider the merits of a case, I first need to consider whether the circumstances allow me to do so. I say that because the rules that govern our service, which are set out in the Financial Conduct Authority Handbook under the DISP section, set the rules about when we can and cannot help.

Relevant to this case is the question of how long a consumer is allowed to wait before referring their complaint. And this is set out in DISP 2.8.2R.

In summary, it allows a consumer up to six years after an event to complain about it. I will refer to this as the 'six-year rule'. But where a consumer complains outside of that allowed period, we may still be able to consider the complaint if I decide that it was referred within three years of the point that the consumer became aware or, ought reasonably to have become aware, that they had cause to complain. I will refer to this as the 'three-year rule'.

Mr S's complaint was made to Shand Associates on 19 July 2024. The six-year rule means that any of the fees that were taken for annual reviews in the previous six years – so from 19 July 2018 – can be considered by our service. In a case like this, I don't think that the three-year rule gives any longer than that as Mr S ought reasonably to have known whether or not the service he received each year was what Shand Associates agreed to.

DISP 2.8.2R therefore likely means that we would not be able to look at the events before 19 July 2018 unless Shand Associates consented to us doing so, or there were exceptional circumstances. In this instance I haven't considered that further though because I don't think that it matters to the outcome of this complaint.

I say that because I think that the evidence indicates that Shand Associates made genuine attempts to deliver the annual review to Mr S in February 2018. It contacted Mr S and has shown us that it was prepared to provide the review. Mr S responded and declined it, but confirmed he was satisfied. I don't think it was unfair for Shand Associates to accept Mr S's response. It had done more than make itself available. And, given that Mr S made contact in June 2018 for ad hoc advice about drawdown convinces me that he understood that. So I don't think it would be fair or reasonable to expect Shand Associates to refund fees in this year, even if Mr S had made his complaint sooner.

I think that Shand Associates demonstrated its ability and willingness to deliver an annual review for Mr S in 2019 as well. The invite for this was in March 2019. Unfortunately, this review did not take place either. Mr S responded to Shand Associates to explain that he was

happy with the investments as they were, but said he would make contact to arrange a suitable date for a meeting with Shand Associates. Which it appears that he did not do.

I am mindful that this was the second year running when, in spite of trying, Shand Associates had not been able to speak to Mr S to perform a review. But I think, on balance, the prompt response showed engagement from Mr S, and an understanding of, and importantly satisfaction with, the circumstance with his pension. In reaching this conclusion I have considered the way that Shand Associates explained its service offering and the value of regular reviews. Which I think it made clear at the outset. So I think that, although I would expect Shand Associates to be looking at whether or not its service offering remained suitable for Mr S at this stage, I am not persuaded that it's fair or reasonable to say that it should have cancelled its client agreement with him at that time. Or that Shand Associates should refund the fees in this year either.

Shand Associates have shown us that the 2020 review was carried out. It was done in May which I think was late. But in this year, national restrictions were put in place because of the covid pandemic from March. So I don't think it was unreasonable, in those circumstances, that the review was delayed. And that review was carried out over the phone. Which, given the covid restrictions was a reasonable approach. Mr S was sent the documented update from that review. And has raised no issue with what Shand Associates has done where reviews were carried out. So I don't think there was anything here that amounts to unfair treatment of Mr S.

On July 2021 Shand Associates sent Mr S his annual review documentation and invited him to meet to discuss his review. On 19 July 2021 Shand Associates contacted Mr S again to remind him of his review, and try to arrange to meet. Mr S's wife responded on his behalf to say that Mr S was unwell and that he would be in contact soon. I don't think that Shand Associates should have taken this as an indication that Mr S was no longer engaged or that he did not want its service. It had evidently done much of the work and research necessary for the annual review and sent Mr S its documented findings. So, even though Mr S chose not to meet with Shand Associates at that time, I don't think it's fair or reasonable to say that Shand Associates should refund the fees for that year or that it should have been considering cancelling its agreement with Mr S.

On 28 July 2022 Shand Associates emailed Mr S for that annual review. And it received no response from Mr S. It isn't apparent that it sent any written review documentation to Mr S. Or that Shand Associates made any effort to follow that up with Mr S. This was the first time that Mr S had not responded to Shand Associates. And it was the second consecutive year that it had no in person or over the phone review with Mr S.

Since it gave Mr S its final response to his complaint, Shand Associates has reconsidered the circumstances. It's told us that it now thinks that, when Mr S failed to respond to its contact of 28 July 2022 it should have contacted him to explain that it no longer appeared suitable to continue with its ongoing advice agreement. So, although it did that the following year, I am inclined to agree Shand Associates should have taken Mr S's failure to engage in July 2022 as the point at which it should have notified Mr S that it would give notice that it would terminate its client agreement. I think that would have been fair, as Mr S would, presumably still have had the opportunity to respond if he disagreed.

Given that, when Shand Associates cancelled its agreement with Mr S in 2023 he didn't respond, I think that he would similarly have allowed his agreement with Shand Associates to lapse if it had written to him about that in July 2022."

Responses to my provisional decision

Shand Associates accepted what I had said in my provisional decision and provided no further evidence or arguments for me to consider.

Mr S's representative acknowledged my provisional decision and offered no further evidence or arguments.

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 been asked to consider any additional evidence or arguments that I had not already considered in reaching my provisional decision. Having reviewed everything again, my final decision remains the same as the decision that I provisionally reached and set out above. My reasons for upholding Mr S's complaint are as set out in that decision above. I will now set out what Shand Associates must do to put things right, which is also the same as I proposed in my provisional decision.

Putting things right

Overall, I agree that Shand Associates ought to have given Mr S notice of terminating its client agreement in July 2022. So I agree that its offer of refunding the fees it took after 1 September 2022 is broadly fair.

Shand Associates should refund these fees, plus the investment returns that each deduction from the SIPP would have had, from the date of the deduction to the date of my final decision, based on the returns on Mr S's SIPP portfolio between those dates (excluding the effect of any contributions or withdrawals).

The compensation should if possible be paid into Mr S's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection allowance implications, it should be paid directly to Mr S as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

All of the compensation amount would be taxed according to Mr S's marginal rate of tax in retirement – presumed to be 20%.

My final decision

I uphold Mr S's complaint for the above reasons and direct SHAND ASSOCIATES LIMITED to compensate Mr S as set out above.

SHAND ASSOCIATES LIMITED must pay the compensation within 28 days of the date on which we tell it Mr S accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 14 August 2025.

Gary Lane
Ombudsman