DRN-5880680

The complaint

Mr S has complained that Strata Financial Resourcing Ltd ("SFR") didn't carry out the ongoing reviews of his pension that he was paying for whilst it was his adviser during the years 2009 until 2024.

What happened

Mr S met with SFR in February 2009. At the time he was married and in good health. He was aged 43 and was a director of his own company. He owned his own home with a mortgage.

At the time held two pensions with a pension provider I will refer to as Provider S. These were both subject to a Market Value Reduction ("MVR") and had annual management charges of 1% attached to them. He also held another pension with a different provider, Provider E.

Mr S' priorities for meeting with SFR were investment choice and fund flexibility; consolidation of his pensions; and low charges and charging transparency.
SFR recommended that Mr S transfer his pension with Provider S to a pension with a different provider, Provider B, which had a 1% annual adviser fee for ongoing investment advice with SFR attached to it.

In August 2015 SFR advised Mr S to switch his pension from Provider B to Provider Q. At the same time Mr S signed a new client agreement which outlined how SFR's ongoing advice review service worked, specifying that he could expect to receive structured and regular reviews; ongoing assessments of his current circumstances; and potential amendments to Mr S' recommendations if required.

In terms of the reviews that took place, the switch of Mr S' pension triggered the application of post Retail Distribution Review ("RDR") Ongoing Adviser Charges ("OACs") – dealt with in more detail later in this decision. In June 2016 evidence shows SFR reviewed Mr S' pension looking over the previous year's performance and considered whether any changes needed to be made.

The next review that appears to have taken place was in July 2018. The notes completed at the time by SFR explained it had been two years since Mr S' last meeting and also that an up-to-date risk profile questionnaire had been completed. It also indicated that Mr S' past performance of his pension had been discussed.

In June 2019 SFR emailed Mr S inviting him for another review of his pension. However it seems Mr S didn't respond to this invitation and didn't take SFR up on its offer.

SFR sent additional invitations for reviews on 10 June 2020, 18 June 2020 and 8 July 2021 – Mr S appears not to have responded to any of these. In 2022 a review took place over Zoom video and notes show that Mr S discussed Brexit, lockdown, inflation and how these had impacted the performance of his pension along with what his current situation was.

In February 2023 SFR invited Mr S again for another review and also suggested that Mr S switch his pension elsewhere as the suggested new provider offered more attractive features and lower costs. Mr S didn't respond to this email and even though SFR sent another invitation in June 2023 Mr S doesn't appear to have responded.

In March 2024 Mr S switched his pension to a different provider and ceased his relationship with SFR. In September 2024 through his professional representative, he raised a complaint about SFR stating that he hadn't received the ongoing advice services that he had been paying for and that the advice SFR had given to him to switch his pensions in 2009, and thereafter, had not been suitable.

SFR didn't uphold the complaint. It felt that the advice given to Mr S was suitable for him and maintained that it had made attempts to contact him to undertake reviews over the years, but he had chosen not to respond.

SFR also objected to this Service considering the merits of this complaint as it felt it had been bought outside of the timescales set out in the Dispute resolution Rules ("DISP") contained in the Financial Conduct Authority ("FCA") handbook – rules which this Service must follow.

Unhappy with SFR's response Mr S referred his complaint to this Service where it was assessed by one of our Investigators. He was of the view that some of Mr S' complaint had been brought outside of the time limits referred to by SFR – the missed review of 2017. However any missed reviews from 2018 onwards along with the question of the suitability of advice had been brought within time and so their merits could be considered by this Service.

Neither party disputed the Investigator's findings in respect of jurisdiction.

In relation to the missed reviews, he was satisfied that a review was carried out in 2018 and in 2022. However, he felt that SFR hadn't made good enough attempts in 2019 and 2021 to contact Mr S and so should refund the charges it had received for the reviews that were missed in those years. He did however feel that SFR had done enough to try to contact Mr S in 2020 and in 2023 so SFR was entitled to retain the charges Mr S had paid.

In terms of the suitability of the advice given to Mr S the Investigator was satisfied the advice was suitable for him given his needs and objectives at the time.

Mr S, through his professional representative, agreed with the Investigator's assessment and accepted the findings. However, SFR did not agree with the Investigators findings in relation to the OACs. It felt it should only refund a proportion of the charges Mr S had paid for the reviews that were missed because it had carried out other work "behind the scenes" despite not carrying out face to face reviews.

As no agreement could be reached the complaint has been passed to me to decide.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice - many of these are found in the regulator's, the FCA's, handbook under the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). I've also thought about what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I

reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

Initially I want to make it clear that this decision is focused on only the matter of the OACs Mr S has paid and whether the annual reviews of his plan took place – this issue is the only one that remains unresolved. As mentioned earlier in this decision our Investigator found that we could only consider part of Mr S' complaint – the ongoing service that SFR was to provide from April 2018 onwards. He also assessed the suitability of the advice given to Mr S. He conducted a thorough investigation into this issue and found that the advice was suitable.

For both these points neither Mr S nor his representative provided any further arguments so I take from this, that Mr S has accepted the Investigator's findings on both these matters, so I don't intend on commenting on either of these issues any further.

In relation to ongoing advice charges, the following provides useful context for my assessment of SFR's actions here.

On 31 December 2012 the RDR, launched by the Financial Services Authority (FSA) the predecessor to the current FCA became effective. The aim was to improve the retail investment market and included banning commission-based payments to advisers, requiring higher professional qualifications for advisers, and improving the transparency of charges and services for consumers.

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

"Ongoing charges should only be levied where a consumer is paying for ongoing service, such as a performance review of their investments, or where the product is a regular payment one. If you are providing an ongoing service, you should clearly confirm the details of the ongoing service, any associated charges and how the client can cancel it. This can be written or orally disclosed. You must ensure you have robust systems and controls in place to make sure your clients receive the ongoing service you have committed to."

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

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

"A firm must not use an adviser charge which is structured to be payable by the retail client over a period of time unless (1) or (2) applies:

(1) the adviser charge is in respect of an ongoing service for the provision of personal recommendations or related services and:

(a) the firm has disclosed that service along with the adviser charge; and

(b) the retail client is provided with a right to cancel the ongoing service, which must be reasonable in all the circumstances, without penalty and without requiring the retail client to give any reason; or

(2) the adviser charge relates to a retail investment product or a pension transfer,

pension conversion or pension opt-out or arrangement with an operator of an electronic system in relation to lending for which an instruction from the retail client for regular payments is in place and the firm has disclosed that no ongoing personal recommendations or service will be provided."

In February 2025, the FCA published findings from a review it had conducted into whether financial advisers were delivering the ongoing advice services that consumers had paid for. Amongst the things that the FCA said it had found it said it recognised *"there may be circumstances where firms have made reasonable and proportionate attempts to engage with clients to conduct suitability reviews without success"*. And it said in those situations it thought the need for redress would be less likely but added that *"a firm should have considered whether an ongoing service is in a client's best interest if they've persistently not engaged."*

The advice given to Mr S and the commencement of the plan was before the implementation of OACs through the RDR. So at the start Mr S' investment was not subject to ongoing advice charges nor was there a separate charge for ongoing advice from inception of the plan and so there was no obligation for SFR at that time to provide ongoing advice or regular reviews.

However, the rules governing how advisers were paid changed on 31 December 2012 with the implementation of the RDR, as mentioned above. These changes meant that when a review service was to be provided, a separate charge known as an Ongoing Advice Charge should be agreed and deducted from the plan as a separate charge which could be turned off should the ongoing advice no longer be required. But this wasn't something that could be retrospectively applied and while Mr S' investments remained in place until after the implementation of RDR the ongoing adviser charge would only have been triggered and therefore applied to Mr S' investments if he had made any qualifying change to his investments after the RDR inception date – which he did in 2015.

So, it was only from 2015 that SFR was obligated to conduct regular reviews of Mr S' investment. And while before this date SFR was receiving ongoing trail commission from the time Mr S started his investment this was paid for from the product provider to the adviser and was not provided in exchange for a service - other than the initial advice and ongoing administrative services – not suitability or advisory services as per RDR.

So SFR was only obligated to provide regular reviews of Mr S' plan from 2015, for the reasons just explained. However, an additional consideration with these specific circumstances is that because of the time limits that apply to this complaint, as already dealt with by the Investigator, only reviews that should have taken place from 2018 can be considered.

Having looked at the information, I am satisfied that reviews of Mr S' pension were conducted by SFR in 2018 and 2022. So the years I must consider are 2019, 2020, 2021 and 2023.

I can see that SFR invited Mr S for a review in 2019. But in line with the FCA guidance, as noted above, a one-off invitation isn't deemed to be enough of an attempt by a business to make contact with a consumer whose review was due. I need to be satisfied that SFR made reasonable and proportionate attempts to engage with Mr S at this time. SFR only sent one email to Mr S inviting him for a review in 2019, but I think it could have done more (as it did in the ensuing years) to offer him a review of his plan. So I think the fees Mr S paid for what should have been the 2019 review should be refunded.

The same reasoning applies to the invitation sent to Mr S for the review that should have taken place in 2021. SFR again only sent one email inviting Mr S for the review and as I have said I don't think this was a reasonable attempt by SFR to contact Mr S so I think the charges Mr S paid for the review that should have taken place in 2021 should also be refunded to him.

SFR invited Mr S again in 2020 for the review of his pension. This time I can see that it sent more than one invitation email asking for Mr S to contact it so a review of his plan could be carried out. In my view this was a reasonable attempt on the part of SFR to reach Mr S – in sending two invitations SFR minimised the risk that the first invitation email wasn't delivered correctly or that Mr S hadn't seen the first invitation. At this time, it seems Mr S didn't respond so it seems that he was given reasonable opportunity to accept the invitation for a review, but he chose not to. Therefore, I am satisfied that SFR can retain the fees Mr S paid for the review that should have taken place in 2020. The same applies to the attempt SFR made to contact Mr S in 2023 – I can see Mr S was contacted several times by SFR but again he didn't respond. So, as I have already reasoned, in my view this was a reasonable attempt on the part of SFR to contact Mr S. So SFR is entitled to retain the fees paid for the 2023 review too. Furthermore, SFR's contact was re-established with Mr S in 2022 (as we know a review was carried out) so its reasonable to me that SFR sent the invitations in 2023 rather than take any other action, such as switching off the OAC charging.

SFR has strongly argued that the ongoing fees covered much more than an annual meeting, and it feels it's only fair that it calculate the cost of any other services provided, which in its opinion formed part of a continuous /ongoing process and arrive at a fair net overall position. And while I fully appreciate this point and agree that the OACs were used to provide a number of services, an annual review of the plan was something that SFR was contractually obliged to provide to Mr S as set out clearly in the client agreement both parties had agreed to but as evidenced this didn't always take place. Therefore, in not providing this service, even though some other services were carried out behind the scenes, I am of the view that SFR didn't fulfil its contractual obligations and therefore isn't entitled to retain the charges Mr S paid for the services that were not provided to him.

SFR has also stated that it feels it is unfair to take the stance whereby two points of contact are required to arrive at an outcome and that it made a reasonable effort to arrange a review meeting at all times and that it had proactively contacted Mr S when reviews of his plan were due. I don't disagree with this, however, this issue isn't about whether a business was proactive or whether one or two points of contact were made – rather it is about whether reasonable efforts were made by a firm to make contact with the consumer regarding an upcoming review that should have been due - in other words did SFR ensure that Mr S was in the best position to know when a review was due and whether he was in the best position to respond to SFR should he have wanted to. In this case I don't think that contacting Mr S once to invite him for a review can be considered to be SFR making reasonable efforts to contact him. I don't think that one contact attempt was enough, nor did this allow for any problems with the email delivery system, and I would have expected a follow up email to ensure he had received the first message (we all know that sometimes emails go astray or remain unread). At least by making more than one contact SFR could be sure that if the first one was missed then it's more likely that a second or indeed a third piece of contact would make it more likely that Mr S could have seen the emails.

In addition to this while Mr S didn't respond in the years that I think SFR did make reasonable attempts to contact him I don't think it can be said with any certainty that he definitely would not have responded to SFR in the years when only one contact attempt was made because reviews were carried out in the intervening years between no reviews. So I am not satisfied to conclude that even if SFR had made reasonable attempts Mr S would

have not responded anyway and therefore hasn't lost out due to the lack of the service provided.

Putting things right

In assessing what would be fair compensation, my aim is to put Mr S as close as possible to the position he would probably now be in if he hadn't paid ongoing adviser charges in 2019 and 2021.

SFR should repay the adviser's fees, adjusted for growth had the fees remained in the existing investment funds, from the date the fees were paid to the date of settlement.

- SFR should pay into Mr 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. SFR shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.
- If SFR is unable to pay the compensation into Mr 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 S won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr S' actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr S is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr S 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%.
- SFR must provide the details of the calculation to Mr S in a clear, simple format.
- Mr S transferred his pension away in March 2024. Therefore, the amount of compensation should be brought up to date from the date Mr S stopped paying ongoing adviser fees to the date of settlement. For simplicity, SFR can use the same index they used to establish the loss.
- SFR should also pay Mr S £150 to compensate for any trouble upset the missed reviews might have caused him.

My final decision

For the reason I have explained my final decision is to uphold this complaint. I direct Strata Financial Resourcing Ltd to pay Mr S the redress using he method detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 January 2026.

Ayshea Khan
Ombudsman