DRN-5904394

## The complaint

Mrs M complains that Bruce Bennett, trading as bfm, ('BB') has not provided ongoing services and regular reviews of her financial products despite receiving regular fees to do so.

## What happened

Mrs M holds a pension, investment ISA and general investment account (GIA') with a provider that I'll call 'Firm N'. These accounts were opened between March and May 2015. Mrs M has confirmed that a financial adviser, which I'll call 'Adviser Y', assisted her in setting these accounts up. Adviser Y worked for a different regulated business at the time of advising on the products and I understand they (Adviser Y) worked in a regulated role. Mrs M says in her dealings with Adviser Y before the involvement of BB that they *"provided a proactive and comprehensive financial planning service, including regular annual reviews and written follow-ups".*

Fees for ongoing services were paid from Mrs M's investments with Firm N. I've seen copies of statements issued by Firm N, directly to Mrs M, which showed these fees being deducted. The fees are described in the statements as 'Advice charge – annual'.

I understand Adviser Y left the regulated business they were previously working for in 2016. BB has stated, and provided evidence to support, that it entered into an agreement with Adviser Y in 2016 to act as an introducer to BB. Adviser Y did not become an employee of BB.

Adviser Y was acting in an unregulated capacity by the point they began introducing customers to BB. And, from the information I've seen, that did not change and they did not go on to become regulated again by the Financial Conduct Authority ('FCA') following their commencement of their introducer role. They also do not appear on the FCA register entry for BB as either an agent, appointed representative ('AR') or an introducer appointer representative ('IAR'). So, when acting as an introducer, they were doing so unregulated.

On 22 March 2016, Mrs M signed a letter of authority addressed to Firm N, asking it to transfer *"full servicing rights together with any ongoing adviser renumeration and adviser charging"* to BB. This was after Mrs M was introduced to BB by Adviser Y.

BB has provided a template copy of an acknowledgement letter to customers, which it says was used after the introductions from Adviser Y. This explained that BB was aware customers *"have been used to an excellent level of service from* [Adviser Y] *and we will do our utmost to maintain these standards"*. It went on to explain *"Although* [Adviser Y] *is not authorised at this time to provide Independent Financial Advice we are delighted to confirm that* [they] *will be working with us to maintain continuity and ensure we meet your expectations."*

I've been provided a copy of an agreement titled "Service and Payment Agreement – Advised Services" between BB and Mrs M. This was signed by Mrs M on 1 June 2017.

On 19 August 2024, Mrs M informed BB that she had instructed Firm N to remove BB as her

financial adviser. She said she wanted to make a complaint about the level of fees that had been received by BB (which she said totalled approximately £18,700). Mrs M says that she has never had a meeting or discussion with one of BB's advisers since it began receiving fees.

In response to the complaint, BB said, partly because it had now been removed as Mrs M's agent, it had limited access to documents. It said that part of its agreement with Adviser Y was that Adviser Y was to contribute to the provision of ongoing servicing. But, because its contract with Adviser Y had ended, and not amicably, it also didn't have access to documents from Adviser Y to support what service was provided. BB indicated that it was taking legal action against Adviser Y.

Mrs M asked the Financial Ombudsman Service to consider her complaint. She said BB was suggesting her complaint stemmed from the legal issue it was having with Adviser Y. But Mrs M said that it was BB's responsibility to provide the services she'd paid for.

BB provided us with additional, detailed information about its dispute with Adviser Y and said it felt it was unfairly bearing responsibility for Adviser Y, an unregulated party, acting incorrectly. It also said it thought Mrs M's complaint had potentially been raised too late for our Service to consider, as it stemmed from events that took place more than six years before the complaint was made.

One of our Investigator's looked into the complaint. They concluded that we could consider part of Mrs M's complaint – about the fees charged in the six years prior to the complaint being made. And they thought her complaint should be upheld as there was no evidence to indicate that BB had conducted annual reviews and provided the agreed services to Mrs M.

BB didn't agree with the Investigator's opinion – in respect of the extent of our jurisdiction or that it should be upheld.

I issued a decision earlier this month in relation to our jurisdiction and which parts of the complaint we can consider. I found that we could consider Mrs M's complaint about all advice fees charged and whether the agreed services were provided from 19 August 2018 onwards.

This decision will now look at the merits of Mrs M's 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.

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 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.

The following also provides useful context for my assessment of the ongoing services that ought to have been provided.

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, published in late 2014, didn't mark a change to the rules which businesses 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."*

And in January 2018, the COBS rules were updated and defined the minimum service that should be offered in relation to ongoing advice, by requiring an annual review of suitability for relevant products (COBS 9A.3.9 – arising from MIFID II).

As I've mentioned, Mrs M signed a 'Service and Payment Agreement – Advised Services' on 1 June 2017. This document confirmed it was an agreement between Mrs M and BB. Under the section headed 'The Services' was a summary of the services BB agreed to provide.

The first heading was simply called 'Advice' and said *"You have chosen to receive advice from us, whereby we will offer advice, make recommendations and arrange investments where appropriate after we have assessed your needs"*.

There was then a section called 'Initial advice services' and another titled 'Ongoing advice services'. The ongoing advice section is the most relevant here.

The opening sentence of that section said *"you have asked us to provide ongoing services as part of our advised service offering."* It went on to talk about the service level that Mrs M had selected. This was summarised in two bullet points. One explained that BB would provide telephone and email support if Mrs M needed it. The other said that BB would *"contact you at least every 12 months to offer you a meeting to review your current circumstances, needs and objectives. During this review we will also provide you with a*

*summary (either verbally or in writing) of the performance status of the policies and investments on which we provided you with initial advice. If you specifically ask us to do so, we may review the ongoing suitability of other policies or investments which were not part of our initial advice and an additional payment may be agreed for this. If we recommend any changes we will implement them with your agreement."*

In my view, this set out what could be expected quite clearly. It said BB was to provide its 'advised service' and the ongoing service was to include it contacting Mrs M to provide a review at least every twelve months. BB has mentioned that a concession ought to be made for the pandemic. But I'm not saying the review meetings needed to take place in person when arranged, and I think it would be fair if these were done virtually where appropriate. But I am satisfied they ought to have occurred each year.

And I think this is in line with the service that Mrs M has said she expected to receive. Mrs M confirmed before being introduced to BB, Adviser Y was acting for her. She says she was receiving comprehensive and proactive financial planning and regular annual reviews with written follow ups. And Mrs M says she was led to believe by BB and Adviser Y, that she would receive the same level of service from BB.

Mrs M transferred servicing rights to BB in March 2016. Yet the service agreement I've been provided wasn't signed until June 2017. It is unclear what the reason for this delay is but, bearing in mind I'm only looking at events from 19 August 2018 onwards, I think it would be reasonable to say that the annual reviews ought to have taken place around the twelve-month anniversary of the agreement being signed – so every June – until Mrs M ended the agreement in August 2024. So, for the period I'm considering, six reviews ought to have taken place annually from June 2019 to June 2024.

Mrs M says she didn't receive any annual reviews from BB (or invitations to such reviews). And she says she didn't have any contact with any of its advisers over the time that it was receiving servicing fees. So, she says BB has failed to provide the agreed service.

In its submissions to our Service, BB has provided a significant amount of information about its relationship with Adviser Y. And it has been open about an ongoing dispute between it and Adviser Y, the impact of this on BB and that it believes this is connected to Mrs M's complaint as well as having impacted its ability to respond. I'd like to reassure the parties that I have considered all of the information that has been provided. And I have briefly summarised what BB has said about its relationship with Adviser Y below. But I'm not going to repeat that information in detail here. This isn't meant as a discourtesy. Rather it reflects the fact that the complaint I'm considering ultimately concerns the agreement between Mrs M and BB.

As I've said, BB has provided a template copy of a letter it says was sent to customers after they were introduced to it by Adviser Y. This said that Adviser Y would be working with BB to "maintain continuity", whilst also acknowledging that Adviser Y was unregulated.

Mrs M says she did receive initial correspondence from Adviser Y, after the introduction to BB in March 2016. But she says she didn't receive any annual summaries, statements or further communication from Adviser Y, on behalf of BB, after that initial correspondence – despite it being indicated they'd remain involved in a support capacity.

BB has said that Adviser Y was being paid a percentage of the ongoing advice fees BB was receiving and that Adviser Y's role was to assist with the administration for clients. It has also referred to administrative staff that were overseeing clients that had been introduced to it through Adviser Y – and BB says these administrators methodically monitored investment performance and provided regular valuations to customers. BB says it believes therefore

Mrs M would have received regular contact. It has also said a regulated adviser from BB had oversight and was responsible for activities that an authorised adviser was required to undertake. However, at the same time, it has indicated Adviser Y's involvement, and the existing relationship they had with clients, also undermined BB's position and made it difficult to engage.

In terms of record keeping, BB says that details of portfolio rebalancing and regulated advice was stored on its systems. But records of other actions or activities were stored by Adviser Y. But Adviser Y is unwilling to co-operate and provide it with information because of the ongoing dispute between the parties. BB has indicated that the information held by Adviser Y included annual reviews.

The letter of authority that Mrs M sent to Firm N in March 2016 instructed it to transfer "*full servicing rights together with any ongoing adviser renumeration and adviser charging"* to BB. And the Service and Payment Agreement signed in June 2017 also clearly states it is between Mrs M and BB. Adviser Y was not a party to that agreement or named on the instruction to Firm N. And it is BB that was obliged to provide services to Mrs M.

Any commercial decision BB made to outsource services to an unregulated third party, and any contract it entered into with that third party to that effect, doesn't change the fact that BB, as the regulated entity, was responsible for providing the contracted services to Mrs M, for which it was being paid.

As I've explained, the service agreement is also very clear that the services to be provided by BB were 'Advised Services'. That was stated in the title of the document. It was confirmed that Mrs M had chosen to receive advice from BB, in exchange for the ongoing fee. And the ongoing services were described as 'ongoing advice service' and included an annual review. Bearing in mind the products Mrs M held and the requirements in COBS, I'm also satisfied that the annual review ought to have included looking at the ongoing suitability of her arrangements and providing personal recommendations about those arrangements – whether to retain them as they were or make any changes based on an updated review of her circumstances and objectives.

Providing a personal recommendation or advice about the suitability (ongoing or otherwise) of the products Mrs M held required an adviser to be regulated and hold the relevant FCA permissions. Adviser Y didn't hold these permissions. So, any annual reviews needed to be conducted and caried out by BB. And it needed to have robust systems in place to ensure this happened (which also in my view ought to have extended to those reviews being documented for the benefit of when the following annual review became due). But BB has been unable to provide any evidence to show that reviews were conducted and that these were carried out by the regulated adviser that it says has oversight. There is also no evidence of it attempting to contact Mrs M to carry out a review and this being turned down by Mrs M.

Again, BB has indicated the lack of available evidence is because it has been unable to access information from Adviser Y or Firm N. I can't see how Firm N, the provider, would hold information about annual suitability reviews, as it was not the adviser. And it isn't clear why records of any reviews, which for the reasons I've explained should have been carried out by BB – the regulated party, were apparently held with Adviser Y – the unregulated introducer. It's also unclear whether BB is suggesting that Adviser Y was responsible, under the agreement between those two parties, for conducting the reviews. This seems to be implied in some of its submissions. But again, Adviser Y was unregulated and not authorised to advise on suitability.

Ultimately though, whatever the reason for the decision that was taken about data retention,

we are an evidenced based service. And, in Mrs M's particular case, BB hasn't been able to provide evidence of any activity it has carried out as part of the ongoing services she was paying for – annual reviews or other services such as rebalancing or other regulated advice.

As a result, I can't fairly say, based on the available information, that BB has provided Mrs M the services she paid for. So, I think her complaint should be upheld and the payments she made for the services that ought to have been provided since 19 August 2018, should be refunded.

Mrs M has also said that she thinks BB has made an error by not recording and treating her as a vulnerable customer – mentioning a health condition she is suffering from. But she has said that she received no contact from BB, until making a complaint. There doesn't appear to have been any information from the point of the introduction to BB in 2016 indicating she ought to be considered vulnerable. And there was nothing in the complaint she made to BB in 2024 that I think ought to have made it categorise her as such. So, I don't think it has made an error on this point.

Mrs M has also said that the way that BB has handled the matter has caused her distress and inconvenience, particularly given her health condition. But I don't think BB acted unfairly in dealing with her complaint. It acknowledged receipt and responded promptly. It did ask for her to sign a letter of authority so it could obtain some information and kept her informed about its dispute with Adviser Y. But I don't think it was unreasonable for it to do so – as in my view this represented it being transparent. Ultimately it didn't agree with her complaint, which it was entitled to do. But just because I've now found that I think it should be upheld, doesn't mean BB acted unreasonably by not agreeing with her complaint from the outset. So, I don't make any further award for this.

**Putting things right**

For the reasons I've explained, I think BB has failed to provide the agreed ongoing review service in respect of Mrs M's pension, ISA and GIA in June 2019, 2020, 2021, 2022, 2023 and 2024. So, I believe it is fair and reasonable that all fees that were charged and applied to her three products in respect of the services not provided be refunded.

These amounts should be adjusted for growth had the fees remained in the existing products (and investment funds), from the date the fees were deducted to the date of my final decision.

The compensation amount should be paid into Mrs M's pension, ISA and GIA if possible.

However, if is not possible to do so in the case of each account – for example if a payment into the ISA would mean Mrs M exceeded her annual ISA contribution allowance, or if a payment into the pension would conflict with any existing protection or allowance, the compensation should instead be paid directly to Mrs M as a lump sum.

If a lump sum payment is made to Mrs M in respect of redress due on the pension, BB can make a notional reduction to allow for future income tax that would otherwise have been paid when funds were drawn from the pension. Mrs M would be entitled to tax-free cash from the pension. So, 25% of the loss would be tax-free and 75% would have been taxed according to her likely income tax rate in retirement – presumed to be 20%. So, making a notional reduction of 15% overall from the loss adequately reflects this.

For the avoidance of doubt, no notional deduction should be made from redress in respect of the ISA and GIA, where paid to Mrs M as a lump sum.

BB should also provide details of the calculations of the redress to Mrs M in a clear, simple format.

## My final decision

For the reasons I've explained, I uphold Mrs M's complaint.

To resolve matters, Bruce Bennett, trading as bfm, should compensate Mrs M in line with the putting things right section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 21 November 2025.

Ben Stoker
**Ombudsman**