

The complaint

Mr H complains that Bruce Bennett trading as Beneficial Financial Management ('BB') has failed to carry out the ongoing advice service and reviews he was paying for in relation to his investments and is seeking a refund.

What happened

There is limited information available in this case, so the following is a summary of the background leading up to this complaint based on what is available and to provide some context.

Mr H held an existing investment Individual Savings Account (ISA) and pension with a provider I shall call 'Firm A.' I understand Mr H took out both investments in 2011 following advice provided by another business. Mr H says that prior to BB's involvement in matters, his investments were supported by another regulated firm who was providing him with ongoing services including annual review meetings. And investment statements provided by Firm A show that ongoing advice fees were being deducted from Mr H's investments to pay for this ongoing service.

I understand that around March / April 2016, the adviser who was providing the ongoing service to Mr H left the regulated business they were working for and introduced him to BB. BB has told us that it entered into an agreement with this individual, who was by this time now unregulated, to act in an introducer capacity. Their unregulated status did not change throughout the relevant period. BB says this individual was contracted to assist in the servicing of clients' accounts under the supervision of a regulated adviser.

Following the introduction to BB, Mr H asked Firm A to transfer the servicing rights and ongoing adviser fees to BB. While BB has not been able to provide an actual signed copy, I understand, and it seems likely based on the example evidence provided, that on or around the same time, Mr H signed a "Service and Payment Agreement – Advised Services" agreement between him and BB. This type of agreement was a necessary requirement to set out what services it would provide to Mr H in exchange for ongoing fees.

The example agreement provided said 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."

On 13 July 2018, BB's records show that Mr H contacted and then met with it, following which all the assets in his pension and ISA were transferred to cash.

In July 2024, Mr H instructed Firm A to remove BB as his adviser and cease the ongoing advice charges. And shortly afterwards, he complained to BB saying that the ongoing adviser charges he'd paid were excessive and had been to his detriment because he'd not received the level of advice or services to justify them.

In response, BB said that the introducer was paid 50% of the fees it received to provide a similar service to the one Mr H was familiar with previously. But it said that because it had been removed as Mr H's servicing agent (and he'd declined to give it his authority to obtain details from the investment provider) coupled with the introducer's failure to co-operate with it and provide relevant documentation, it couldn't confirm the servicing activity provided. BB had earlier indicated that it was taking legal action against the introducer. BB said for this reason it didn't uphold the complaint. It also said it felt his complaint was time barred.

Mr H then referred his complaint to us. He said that he didn't understand why BB needed to contact his investment provider for information when it should already have the details about the work it carried out. And he said he felt it was more concerned about dealing with legal matters, which were unrelated to his particular complaint.

BB provided us with additional background and detailed information about its dispute with the introducer and how it felt it was unfairly bearing the brunt of the incorrect and potentially fraudulent actions of an unregulated party. In relation to the time barring, it said that it had been given several different interpretations of the rules and what this meant for complaints, and it asked us a number of related questions.

One of our investigator's looked into the complaint. They concluded that we could only consider part of Mr H's complaint – about the fees charged in the six years prior to the complaint being made and not earlier. In respect of the merits of the complaint, the investigator upheld it. BB didn't agree with the investigator's opinion.

I issued a decision in relation to our jurisdiction and which parts of Mr H's complaint we could and could not consider and why. I decided we could consider Mr H's complaint about BB's failure to provide the ongoing service he was paying for from 15 August 2018 onwards, but not before.

This decision deals with the merits or substance of Mr H'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, regulatory rules, guidance and standards, codes of practice – much of which can be found in the Financial Conduct Authority (FCA) handbook under the Conduct of Business Sourcebook (COBS) and Principles for Businesses (PRIN) as they were at the time of the advice – and (where appropriate) what I consider to have been good industry practice at the relevant time.

And where the evidence is incomplete or inconclusive I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened, given the available evidence and wider circumstances.

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

COBS 6.1A.22: 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 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 2014, the FCA produced guidance in the form of a factsheet (For investment advisers - Setting out what we require from advisers on how they charge their clients). The factsheet said:

‘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.’

While the factsheet wasn’t published until late 2014, it didn’t mark a change to the rules firms like BB were already expected to follow. In my view, it re-enforced or reminded firms of the standards already in place when providing on-going advice services.

COBS 9A.3.9 (from 3 January 2018 arising from MiFID II): For some products, investment firms providing a periodic suitability assessment shall review, in order to enhance the service, the suitability of the recommendations given at least annually.

Having considered all of this and the evidence in this case, I agree with the conclusions reached by the investigator for the following reasons.

As I said above, BB hasn’t been able to provide an actual copy of the paperwork Mr H signed setting out the agreed ongoing services it would provide in exchange for its fee. But it’s not disputed that Mr H transferred the servicing rights to and so paid BB for an ongoing service. It also doesn’t appear to be in dispute what that service ought to have been, based on the example agreement it has provided us with. Primarily, Mr H was paying for and expected to receive contact from BB at least once a year to offer him a meeting to review his current circumstances, needs and objectives – an ongoing suitability review.

This was in line with the service Mr H had been receiving from the previous regulated business prior to being introduced to BB, and the level of service BB indicated to him that he should expect to receive going forward.

So, on the basis that Mr H transferred servicing rights to BB around April 2016, and he likely signed the agreement around the same time, annual reviews ought reasonably to have

taken place on or around the anniversary of the agreement being signed – so every April – until Mr H ended the agreement in July 2024. This means for the period I'm considering, BB should have offered / carried out six reviews between April 2019 and April 2024.

Mr H says he hasn't received any ongoing advice or had any review meetings. And BB has been unable to provide any evidence to show that either reviews were conducted with Mr H, or evidence that it made attempts to invite him for a review, or that he declined any invitations.

BB has explained that it entered into an agreement with the introducer to assist it with the administration and ongoing servicing of its clients, in exchange for a percentage of the ongoing advice fees it received. It says the information about annual reviews was held or stored by this individual. It says the lack of information available in this case is because it hasn't been able to get the information from the individual concerned – they're unwilling to cooperate because of the ongoing dispute between the parties. It also says it has been unable to get information from Firm A because it's no longer the servicing agent.

Firstly, it's unclear to me why Firm A would hold any information about the ongoing reviews carried out – it's the product provider not the adviser. It was BB's responsibility to provide this service and keep records of it. And secondly it seems odd that records of annual reviews carried out were held by the unregulated introducer, notwithstanding that BB says it appointed one of its regulated advisers to oversee these activities.

Any commercial decision BB took and any agreement it entered into to effectively outsource services to an unregulated third party, does not, in my view, alter the fact that BB, as the regulated entity, was responsible for providing the contracted services to Mr H, which it was receiving a fee for. The introducer was not a party to the agreement here – it was BB that was obliged to provide ongoing services to Mr H. BB that needed to ensure it had robust systems and controls in place to make sure its clients received the ongoing service it committed to. And I would have expected it therefore to have been able to clearly evidence the service it provided to Mr H.

But ultimately, and regardless of the reasons why, in this particular case BB has not been able to give us evidence that it offered or provided the ongoing service Mr H paid for. So, on the basis that Mr H says he didn't receive the service and BB can't demonstrate otherwise, I think it's likely Mr H did not get what he paid for. In these circumstances, I think it is fair that Mr H gets a refund of the fees he paid from 15 August 2018 to the point servicing rights ceased.

Putting things right

I think fair compensation in this case means BB should refund Mr H the fees he paid for the identified missed reviews. In a case like this where the agreement was to have annual reviews, I think it's a fair assumption that the fees pay for the reviews in advance. So, the start date for the refund should be 15 August 2018. BB should also add growth or a return on the fee amounts. Because the fees were taken from the investment, I think it's fair that if they'd not been taken, they would have remained invested and Mr H's investments would therefore have been higher.

So, to put things right, BB should do the following:

- Refund the ongoing advice fees Mr H paid from 15 August 2018, to when they ceased in July 2024, on both his ISA and pension investments.
- Add a return on the fee amounts from the date the fees were paid to the date of my

final decision. The lost return on the fees should be calculated by using the actual return generated by the investments they were taken from to the date of the transfer of servicing rights away from BB. And then from that date to the date of my final decision, adopting a pragmatic approach, the return should be 8% per year simple interest.

- Pay the compensation due to Mr H for his ISA directly to Mr H.
- The compensation amount for Mr H's pension should be paid into his pension plan if possible. 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 payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr H as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.
- If Mr H has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So, making a notional reduction of 15% overall from the loss adequately reflects this.
- Provide Mr H with the details of the calculations in a clear, simple format.

If payment of compensation is not made within 28 days of BB receiving Mr H's acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If BB deducts income tax from the interest, it should tell Mr H how much has been taken off. BB should give Mr H a tax deduction certificate in respect of interest if he asks for one, so she can reclaim the tax on interest from HMRC if appropriate.

My final decision

For the reasons above, I've decided to uphold this complaint and I instruct Bruce Bennett trading as Beneficial Financial Management to put things right in line with the approach above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 11 February 2026.

Paul Featherstone

Ombudsman