

The complaint

Mr A has complained about the fees charged by Simpson Financial Services Ltd ('SFS') for ongoing advice, which he says it has failed to provide.

What happened

In 2014 SFS recommended that Mr A open a pension with a new provider to receive both employer contributions (Mr A being a self-employed director of a company) and a transfer in from an existing pension Mr A held. Illustrations for the new pension, from the product provider, confirmed an ongoing adviser charge of 0.75% per annum would be paid to SFS, as did an analysis and transfer report SFS produced.

Mr A signed an application form in respect of the new pension on 4 March 2014. This included another confirmation of the ongoing adviser charge of 0.75% and that he agreed to this.

Mr A also signed an SFS client agreement on the same day. This confirmed that Mr A wanted to subscribe to SFS' ongoing service. It included a section titled "*Ongoing Reviews and Changes to Existing Investments*". This document said that the ongoing services from SFS would include, but were not limited to, providing Mr A:

- *Structured Reviews to give you peace of mind;*
- *An assessment of your circumstances and any changes to your plans that are needed;*
- *Regular updates and information regarding your holdings;*
- *A choice of differing levels of support depending on your needs;*
- *On going support with correspondence and administration issues*

And it said full details of SFS' ongoing services were contained in its "*Terms of Engagement*".

SFS has provided a copy of its Terms of Engagement from the time, albeit not signed by Mr A. This had a section titled "*Ongoing Servicing and Reviews*" which said:

"Your financial objectives may change over time due to changes in your lifestyle or circumstances. We believe it is essential to ensure that your portfolio continues to meet your lifestyle and investment objectives. Our ongoing review and management service offers:

- *Our Professional expertise and governance of our advisory investment processes*
- *Re Assessment of your current circumstances and any changes to your plans that are needed*
- *Quarterly updates and information regarding your holdings*
- *End of tax year financial advice*
- *Mobile telephone access direct to your adviser*
- *Access to our experienced customer support team*
- *Regular portfolio rebalancing*
- *Liaison with your accountant and / or solicitor*
- *Regular newsletters and seminar invitations*
- *Social media updates on personal finance topics*
- *Annual face to face review meetings including a review of your financial circumstances and objectives, of risk profile, of Asset Allocation (if required) and of any tax changes.”*

SFS has provided us a copy of a 'portfolio report' it produced for Mr A dated 17 December 2014, which summarised his pension plan and the investments held within it. It's also provided a similar report it produced on 15 April 2015.

In May 2015 SFS wrote to Mr A's pension provider, relaying confirmation that regular contributions to the pension were to increase.

I've seen another portfolio report dated 12 January 2016, and a letter from SFS to Mr A on 15 February 2016 providing updated plan documents after a lump sum payment of £15,000 was made into the pension.

Another portfolio report dated 16 February 2017 has also been provided.

In November 2017, Mr A took some mortgage advice from SFS. And in February 2018 SFS recorded a change of address for Mr A.

SFS says it wrote to Mr A in September 2019 to discuss arranging a review of his mortgage – which again it had previously given advice on – as his fixed interest rate was ending. But it says Mr A did not respond to this invitation.

SFS has also provided a template copy of a mailer it says was sent to clients in 2021, including Mr A, who it hadn't heard from in some time. It has referred to this as its 'orphan client exercise'. The letter reminded recipients that SFS had a team of financial experts available to provide support and said to learn more about what SFS did, customers could read the enclosed brochure.

SFS says it also sent Mr A mailing campaigns, newsletters and invitations to webinars.

I've also seen copies of annual pension statements sent to Mr A by his pension provider from February 2018 to February 2024.

Mr A emailed SFS on 1 April 2024. He said he had been taking financial advice from another business about his pension and *"It seems you have been charging me for advice. I have had no financial advice from yourself for a number of years"*. So, Mr A asked SFS to explain why the charges had been made.

SFS replied saying the client agreement Mr A had signed in 2014 confirmed its fee structure and Mr A had been happy to sign up to this. It said it had reached out to Mr A to review his pension (and his mortgage) but hadn't had a response. And it said it had sent Mr A regular information and invites to events that might have been of interest. However, it said that the most appropriate thing to do seemed to be to stop the fees for ongoing advice as he was engaging another financial adviser.

SFS then responded to a complaint from Mr A about not receiving ongoing services. It said Mr A had been sent portfolio reports, had been in correspondence at times since the initial advice, had been sent information to access and had been invited to reviews but had not responded. So, it didn't think it had done anything wrong but said as a goodwill gesture it would refund 50% of the fee charged for 2023 / 24, which it said was £441.

Mr A asked our Service to look at his complaint. He was clear that he wasn't complaining about the suitability of the initial pension advice or anything to do with the later mortgage advice. Rather his concern was that he'd been paying for ongoing services in respect of his pension, which SFS hadn't provided.

SFS said that it believed we could not consider all of Mr A's complaint. And I previously issued a decision on our jurisdiction to consider the matter in which I found we could only look at Mr A's complaint in part – specifically whether ongoing services had been provided correctly from 1 April 2018 onwards.

One of our Investigator's subsequently considered the merits of complaint and said that they thought it should be upheld. They said there wasn't any evidence of Mr A having been offered or provided annual reviews of his pension by SFS after 1 April 2018. So, they thought all fees he'd paid for ongoing services from that date should be refunded.

SFS acknowledged that annual review meetings had not taken place. But it said it didn't think a refund of all fees was fair because its ongoing services, set out in its terms of engagement, were not limited to annual reviews.

The Investigator wasn't persuaded to change their opinion. So, because agreement could not be reached, the complaint has been passed back to me to make a decision on the matter.

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.

As I've said, it appears to have been accepted that annual face to face reviews, which the documentation from the time confirms were part of the agreed ongoing services, have not taken place. And based on what I've seen, I agree these have not been conducted during the period I'm considering – 1 April 2018 onwards – nor have I seen evidence that these were offered to Mr A.

SFS says its ongoing services included more than just annual reviews, noting the bullet points in its terms of engagement set out ten things.

I agree that the terms of engagement say the ongoing services were more than just annual reviews. But I'd first note that regular 'reviews' were given particular prominence in the documents from the time. When talking about ongoing services, both the client agreement and terms of engagement included 'reviews' in the heading of the relevant section. And both included bullet points highlighting 'reviews' as a key service. So, I think personalised reviews and services were the core part of the ongoing services.

I'd also note what the regulator, the Financial Conduct Authority ('FCA'), set out in the Conduct of Business Sourcebook ('COBS') about the standards for businesses when providing ongoing services and advice.

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 short, the expectation was that ongoing services provided by an advisory firm for a regular fee would largely involve the provision of personal recommendations – so personalised services specific to the customer. Providing personal recommendations would require an advising business to have up to date information about a consumer's personal circumstances (including attitude to risk). And this would usually be obtained through regular engagement and reviews.

In addition, while there were ten bullet points in SFS' terms of engagement in respect of ongoing services, these services were not exclusive of one another – there was a degree of overlap. For example, the annual review meetings would have involved and required a reassessment of Mr A's circumstances. Rebalancing of Mr A's portfolio ought to have taken into account his circumstances and needs – which would have been obtained through a review meeting or discussion and reassessment of circumstances. And likewise, end of tax year financial advice would have required understanding of up-to-date circumstances. And I've not seen evidence that any of these personalised services were provided to Mr A. So, I don't think it is the case that the only item listed which was not provided was annual reviews.

Taking everything into account, I can't see that SFS provided Mr A with the core part of any ongoing services – reviews of his circumstances and updated personalised recommendations on either products or investments – from 1 April 2018 onwards. And so, I think refunding the fees paid for these services would be fair.

In addition, I'd also note SFS clearly saw fit to categorise Mr A as an 'orphan client' by 2021 – a client that they apparently hadn't heard from for some time – yet continued to collect fees for ongoing services. I don't think that is necessarily a fair approach and I think an assessment of whether paying for ongoing services was still appropriate for Mr A should have been carried out. But this wasn't done until a complaint was made.

SFS has argued that it did provide other things listed in the terms of engagement as ongoing services. And because of that recommending a full refund was unfair. But I don't agree.

None of the documentation from the time apportioned cost to the different things listed in the terms of engagement. So, I think to do so now, retrospectively, wouldn't be reasonable. And, in any event, while I've taken on board what SFS has said about sending Mr A mailing campaigns, invites to webinars and regular newsletters, I don't think any of those things, which don't appear to have been personalised to Mr A, justify him continuing to pay for ongoing services. And indeed I think, had these general mailers and non-personal services alone been presented to him at the outset as what he was paying for, he wouldn't have agreed to do so.

SFS has also said that Mr A didn't respond to correspondence about potentially reviewing his mortgage. But that was a separate product to his pension. And I can't see that he was paying an ongoing fee from his mortgage for ongoing services – where he was specifically paying for ongoing services from his pension. And I haven't seen any evidence of him being directly offered any personalised services in respect of his pension – such as specific invites to meet – which he turned down.

Putting things right

I think SFS has failed to provide the key aspects of the agreed ongoing service to Mr A from 1 April 2018 onwards. So, I think it would be fair and reasonable that all fees charged by SFS for ongoing services that ought to have been provided after 1 April 2018 be refunded.

These amounts, which were deducted from Mr A's pension, should be adjusted for growth as if the fees had remained in the existing investment funds, from the date the fees were deducted to the date of my final decision.

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

Mr A 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 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.

SFS should provide details of the calculation to Mr A in a clear, simple format.

My final decision

For the reasons I've explained, I uphold Mr A's complaint.

To resolve matters, Simpson Financial Services Ltd should compensate Mr A in line with the putting things right section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 27 March 2026.

Ben Stoker
Ombudsman