DRN-6108735

The complaint

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

What happened

Mrs C holds a pension with a provider that I'll call 'Firm N'. The pension was opened in 2011. A different regulated business recommended Mrs C open the pension with Firm N and the application shows a financial adviser working for that other business, who I'll call 'Adviser Y', was the one who advised her.

I understand Adviser Y left the regulated business they were previously working for and introduced Mrs C to BB in 2016. BB has separately confirmed that it entered into an agreement with Adviser Y, who was by that time unregulated, in 2016 that they would act as an introducer to BB. BB became the servicing agent, and began receiving ongoing advice fees from Firm N, around September 2016. And Mrs C's complaint is that BB has failed to provide the agreed ongoing services since that then, until she moved to a different adviser in early 2025.

BB disputed that we could consider all of Mrs C's complaint. And I issued a decision earlier this month in relation to our jurisdiction and found that we could only consider part of Mrs C's complaint – whether the services Mrs C paid BB for from 8 January 2019 onwards had been provided or not. With that in mind, I've only summarised below relevant events from 8 January 2019 onwards.

I've seen a copy of an email sent in September 2023 in which BB provided Mrs C a quarterly summary of her pension investments. The email said there were suggested adjustments to be made and asked Mrs C to confirm ifs she was happy to go ahead with these. And she replied the same day confirming she was happy with the fund switches.

BB sent Mrs C a similar quarterly summary of her pension in December 2024. It stated that there were no suggested adjustments to her portfolio at that time.

On 6 January 2025, Mrs C emailed BB to say she was in the process of switching advisers. Mrs C said her new adviser had been surprised to learn she hadn't been receiving annual reviews, and she asked BB whether she should have been under their agreement.

BB replied noting that there had been email correspondence and Mrs C's pension had performed well. It said there had been some dialogue about face-to-face meetings but acknowledged these had not happened.

Mrs C replied on 8 January 2025 acknowledging there had been some email correspondence over the years and stating that she didn't have concerns about the performance of her pension. But she wanted to complain that despite paying regular fees she hadn't received any annual reviews or advice from BB over the years.

BB didn't uphold the complaint. It said that Mrs C had been receiving its 'bespoke

rebalancing service' with quarterly reports and rebalancing suggestions being provided. And there had been ongoing email contact between the parties. So, it didn't agree that Mrs C had not received an ongoing advice service.

Mrs C asked our Service to consider her complaint. In its response to our service BB provided us with additional information about an ongoing dispute it had with Adviser Y which it said had resulted in it only having access to limited information. It also said that Adviser Y was supposed to have assisted with the provision of ongoing services.

One of our Investigator's looked into the complaint. They thought it should be upheld as they couldn't see that BB had provided Mrs C the agreed ongoing advice. So, they thought all fees charged for ongoing advice in respect of services due since 8 January 2019 should be refunded.

BB disagreed with our Investigator. As I've mentioned, I previously issued a decision in relation to our jurisdiction to consider the complaint. As however there remains a dispute, this decision will now deal with the merits of Mrs C'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 firms like BB were already expected to follow. Rather it re-enforced or reminded firms of the standards already in place when providing on-going advice services, which were covered in COBS.

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."

I haven't seen a copy of the document Mrs C signed to transfer servicing rights to BB in September 2016. But I've seen a copy of the document signed by her husband, doing the same. And I've seen copies of similar documents signed by several other consumers who transferred servicing of their investments to BB, following introductions from Adviser Y. These all took a similar format, and all explained to Firm N that they wanted to transfer *"full servicing rights together with any ongoing adviser renumeration and adviser charging"* to BB. On balance, I think it is likely the instruction Mrs C signed had the same wording. And I'm satisfied she did likely sign such an instruction, as without this I don't think Firm N would have begun paying fees to BB.

I've been provided a copy of the agreement between Mrs C and BB which was sent to Mrs C in January 2018. This was titled "Service and Payment Agreement – Advised Services". This included a section about the services which BB agreed to provide. It said Mrs C had asked it to provide *"ongoing services as part of our advised service offering"*. And it said Mrs C had elected to receive ongoing service which would include BB contacting her "*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 the service Mrs C should expect to receive quite clearly. The service was described several times as being 'advised'. And the ongoing service primarily involved BB contacting Mrs C to provide a review at least every twelve months – which is consistent with the relevant rules I've referenced.

Mrs C says she didn't receive any advice or annual reviews from BB. And I haven't seen or been provided any evidence of annual reviews having been conducted by BB with Mrs C. I can see that there was quite regular email correspondence between BB and Mrs C's husband – who was also introduced to it by Adviser Y in 2016. But evidence of direct correspondence with Mrs C is limited.

BB hasn't evidenced – through information such as emails, diary entries or telephone notes – that any of its advisers held meetings (either in person or virtually) with Mrs C to carry out annual reviews. And nor have I seen evidence that these were offered but declined by Mrs C. And in addition, BB hasn't evidenced any fact-finds being completed with Mrs C in order for it to understand her circumstances (and any changes to those) each year, nor any assessment or re-assessment of her attitude to risk.

None of the quarterly statements or other correspondence that I've seen demonstrated any analysis of Mrs C's pension and whether this remained suitable for her, based on her specific circumstances. And I haven't seen any evidence of the results of a review having been communicated to Mrs C. So, it appears BB has not carried out annual reviews with Mrs C.

BB has provided us with information and commentary about its previous relationship, and ongoing dispute, with Adviser Y. It has said that this has affected its ability to provide information to support its position in respect of the complaint – as Adviser Y retained relevant information after their agreement ended. And it has said Adviser Y was involved in the provision of ongoing services.

I've seen template information BB sent to customers which were introduced to it by Adviser Y. This said that Adviser Y would be working with BB to "maintain continuity". But Adviser Y was unregulated. As I've said, I've not seen a copy of Mrs C's instruction to Firm N. But the one completed by her husband, and those that I've seen completed by other customers in a similar situation, all said that servicing rights were to be transferred solely to BB, with no mention of Adviser Y. And again, I think the instruction Mrs C gave was likely to have contained the same wording. The agreement about ongoing services was also between BB and Mrs C – Adviser Y was not a party to the contract.

So, while I've taken on board what BB has told us about its relationship and dispute with Adviser Y, any commercial decision BB made to engage with or 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 the party which had the contract with Mrs C. BB was responsible for providing the contracted services to Mrs C, for which it was receiving fees. These were described as 'advised services' and primarily involved annual reviews. Advice and those reviews – which were to look at Mrs C's *"current circumstances, needs and objectives"* – required an assessment of the ongoing suitability of the products Mrs C held. Any such assessment and personal recommendation (advice) required an adviser to be regulated and hold the relevant FCA permissions. And again, Adviser Y didn't hold these permissions. So, any annual reviews provided under BB's 'advised service' needed to be conducted and carried out by BB.

As the regulated advising business, BB needed to have robust systems in place to ensure reviews happened and were documented. 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, as BB suggests, held with Adviser Y, the unregulated introducer. But whatever the reason for the decision that was taken about data retention though, we are an evidenced based service. And BB hasn't been able to provide evidence that it carried out annual reviews with Mrs C – something it should be able to demonstrate.

Taking all of this into account, based on what I've seen I can't reasonably say that BB has provided Mrs C the core element of the ongoing service that the agreement between the parties outlined. And so, a refund of the amounts she paid for this service, would in my view be fair.

BB says Mrs C has benefitted from its 'quarterly rebalancing service'. And as noted above, I've seen evidence of some quarterly statements being issued to Mrs C, including some where changes to the investment portfolio were suggested. But the agreement around ongoing services between Mrs C and BB didn't refer to these summaries and this 'rebalancing exercise' as forming part of the service to be provided. And I've seen no evidence of the agreement between the parties having been altered to replace the agreed annual reviews with this quarterly exercise.

I also don't think the quarterly rebalancing suggestions can fairly be said to represent advice based on Mrs C's personal circumstances. I've been provided no evidence of BB undertaking fact-finds or other information gathering to understand Mrs C's circumstances before these summaries were issued.

From information BB has provided in response to other complaints, I also understand that the suggested changes to portfolios had been analysed and suggested by a 'highly regarded' third party business. And even where changes to investments were suggested, these appear to have been stock changes to investments and portfolios for all customers, based on economic conditions and their impact on markets in general rather than being specific to Mrs C.

So, while BB has questioned the fairness of a refund of fees as Mrs C has received this quarterly rebalancing service, I can't see that this was something that Mrs C asked for or agreed to, either alongside or in place of the ongoing annual reviews and advice. So, I don't think it would be fair to retrospectively attempt to apply and attribute a cost, from the fees charged, to this service, as one was not agreed.

Putting things right

For the reasons I've explained, I think BB has failed to provide the core part of the agreed ongoing service – annual reviews and advice - in respect of Mrs C's pension. And so, I believe it is fair and reasonable that all fees that were charged to her pension in respect of reviews due from 8 January 2019 onwards be refunded to account for the service not having been provided.

These amounts should be adjusted for growth had the fees remained in the pension (invested in the same way to the rest of the balance), from the date the fees were deducted to the date of my final decision.

The compensation amount should be paid into Mrs C's pension if possible.

However, if is not possible to do so, for example if a payment into the pension would conflict with any existing protection or allowance, the compensation should instead be paid directly to Mrs C as a lump sum.

If a lump sum payment is made to Mrs C, 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 C 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.

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

My final decision

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

To resolve matters, Bruce Bennett, trading as bfm, should compensate Mrs C 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 C to accept or reject my decision before 24 February 2026.

Ben Stoker
Ombudsman