

The complaint

Mr K has complained that Bruce Bennett (“BB”), trading as bfm, did not provide the ongoing advice and regular reviews he paid for.

What happened

Mr K holds a pension with “Firm N”. The pension was opened in 2012 with funds transferred in from other pension providers. A different firm recommended that pension to Mr K. On 2 June 2016, Mr K wrote to Firm N to transfer the servicing rights for his pension to BB. On 11 October 2016, Mr K signed an agreement with BB to pay it 1.0% p.a. of his funds under management in return for BB providing him with “ongoing advice services”, including annual reviews of his pension.

On 28 November 2024, Mr K complained to BB because he didn’t think he had received the ongoing advice that he had been paying for. He wanted BB to refund his ongoing advice charges. He requested Firm N remove his adviser from his Firm N account.

On 19 March 2025, BB responded to Mr K’s complaint. It didn’t think it had done anything wrong. Briefly, it said it had provided excellent service to Mr K, had delivered “considerable” returns on his investments, had helped him with various matters over the years and had invited him to get in touch at various points to no avail. It also said Mr K had complained too late under the rules the Financial Ombudsman Service must follow.

Mr K referred his complaint to us. Our investigator concluded we couldn’t consider Mr K’s complaint in its entirety because the rules we must follow mean there are limits on how much time someone has to complain. Our investigator’s view was that Mr K complained too late about any missed reviews prior to November 2018. However, he considered any missed reviews thereafter weren’t “timed barred” in this way. He went on to conclude BB hadn’t provided the ongoing advice that Mr K had paid for. He asked BB to refund Mr K’s ongoing advice charges from November 2018 onwards.

Mr K agreed with our investigator’s assessment. BB didn’t respond, so it falls to me to make a final decision.

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.

Why I can look into this complaint in part

We can’t look at every complaint that’s referred to us. Our investigator has already explained what this means for this case. Mr K accepted what our investigator said and BB didn’t respond, so there’s no longer any dispute about this. Nevertheless, for completeness and to provide context for what follows later, I will cover this briefly.

What we can look at is defined in the Dispute Resolution (“DISP”) section of the Financial

Conduct Authority Handbook, the relevant section of which is DISP 2.8.2R. It says, in summary, that the ombudsman cannot consider a complaint if it was made more than six years after the event complained of or (if later) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that there was cause for complaint.

My starting point here is the “Service and Payment Agreement – Advised Services” that both parties signed on 11 October 2016. I quote the relevant sections below:

The Services

We agree to provide you with the following services:

Ongoing advice services

Following our initial services, you have asked us to provide ongoing services as part of our advised service offering. You have selected to receive the following ongoing service level:

- We will 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 and 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.”*
- We will provide you with telephone and e-mail support if you need it; our offices are open every weekday between 9am and 5pm, except Bank Holidays.*

Paying by fee: *You will be charged a fee for our services and this fee is known as an Adviser Charge. This Adviser Charge will be taken from the financial product(s) being arranged for you.*

Ongoing payments – *We will take 1.0% of the value of the funds under advice each year (or the monthly equivalent) from the agreed product(s)*

Mr K’s complaint is that he hasn’t received any annual reviews despite having paid regular fees – the “ongoing payments” outlined above – for this. Mr K complained to BB about this on 28 November 2024.

Each missed annual review is a different event “complained of” and subject to the time limits set out above. Under the six-year rule, this means we can consider any missed reviews from 28 November 2018 onwards because they relate to events “complained of” that were within six years of the complaint. But what happened before then falls outside that six-year window.

The three-year limb of the rules gives someone more time to complain to allow for situations when someone wouldn’t reasonably have known they had cause to complain within the six years afforded them. They allow someone three years to complain from the date on which they became aware (or ought reasonably to have become aware) that they had cause for complaint.

Mr K signed an agreement on 11 October 2016 to pay BB ongoing fees in return for annual reviews. Those reviews were to be instigated by BB contacting Mr K “at least every 12 months”. I can see from a Firm N transaction statement that advice charges were taken from

Mr K's pension between 2016 and 2024. Firm N also sent Mr K statements every six months that showed advice charges had been taken from his pension, including a statement sent to him in May 2017 which is after the agreement with BB had been running for some time.

Each annual review was paid for by the preceding 12 months of ongoing advice charges. So at the time of the first anniversary of his agreement with BB, in October 2017, Mr K ought reasonably to have known he had made the "ongoing payments" to BB as agreed meaning he ought reasonably to have had cause for complaint from that point if BB hadn't fulfilled its side of the agreement – conducted an annual review or tried to arrange one – in that time. It's reasonable to say most people, being aware that they had paid for a service but not received it, would understand that they may have reason to complain. Likewise, Mr K ought reasonably to have had cause for complaint about a similar lack of action on BB's part at the time the next review was due, in October 2018. Exceptional circumstances don't explain why Mr K didn't complain about these missed reviews until 28 November 2024. So we can't look at these reviews because Mr K didn't complain about them within six years or within three years of when he ought reasonably to have had cause for complaint about them.

In summary, we can't consider any missed reviews prior to 28 November 2018, but we can consider missed reviews from that date on.

The merits of Mr K's complaint

The relevant points of contact between the parties for the period under review are as follows:

- **25 March 2019** – A telephone call from Mr K to BB instructing BB to decrease the monthly income from his pension to £3,100 and a letter sent the same day from BB to Mr K confirming his instruction.
- **14 September 2021** – A portfolio report covering the preceding year sent from BB to Mr K.
- **16 September 2021** – A letter from BB to Mr K recommending changes to his portfolio following an update from a third party (an investment manager). The letter also confirmed the ongoing adviser charge of 1.0% and said Mr K didn't need to do anything if he was happy with the recommendation and continuing with BB's remuneration.
- **30 June 2022** – An email from BB to Mr K requesting his permission to rebalance his portfolio.
- **16 March 2023** - An email from BB to Mr K attaching a quarterly review of his portfolio and requesting his permission to rebalance it.
- **23 March 2023** – A letter from BB confirming Mr K's instructions to reduce the monthly income from his pension to £2,500.
- **11 August 2023** – A letter from BB to Mr K warning him that there were clients on the Firm N platform with disproportionately high levels of cash deposits, that may have resulted from a maturing structured product. The letter goes on to warn of the downsides of holding too much cash and to invite Mr K to get in touch to discuss his options.
- **14 September 2023** - An email from BB to Mr K attaching a quarterly review of his portfolio and requesting email confirmation of his instructions.

- **14 March 2024** – An email from BB to Mr K attaching a quarterly review of his portfolio and requesting his permission to rebalance it.
- **18 June 2024** – An email from BB to Mr K attaching a quarterly review of his portfolio and requesting his permission to rebalance it.

The above may not be a complete record of the relevant interactions between the parties. But it does include everything of relevance both parties have provided to us so I'm satisfied it's a comprehensive enough account of what happened and is unlikely to exclude anything the parties consider significant to the outcome of the complaint.

I set out the agreement the parties signed above. The service to be provided by BB was described as "ongoing advice services". This was to be delivered primarily through annual reviews instigated by BB contacting Mr K "at least every 12 months". I also note that there are numerous other mentions in the agreement to this being an advisory arrangement.

Mr K says he didn't receive any annual reviews from BB. And the catalogue of contact between the parties outlined above confirms that – it doesn't include any meeting notes, fact finds, reassessments of Mr K's attitude-to-risk, follow-up letters and the like. And none of the quarterly statements or other correspondence that I've seen indicate any analysis of Mr K's pension, and whether it remained suitable for him based on his specific circumstances, had been completed by BB. I'm therefore satisfied BB has not carried out annual reviews with Mr K or provided any ongoing advice outside of that annual cycle.

I also haven't seen evidence that annual reviews were routinely offered to Mr K but declined by him. All I've seen along those lines is an invitation to Mr K in 2021 to get in touch with BB if he wasn't happy with a portfolio rebalancing and with continuing his remuneration agreement with BB, and another invitation in 2023 to discuss his options if he had large cash balances. Neither of these were followed up. And whilst I recognise there was at least one similar invitation before the period under review, and there may have been similar invitations not included in the above list, I'm satisfied there was no concerted effort on BB's part to get in touch with Mr K every 12 months in order to set up an annual review meeting.

I recognise the above shows BB asked Mr K to rebalance his portfolio at regular intervals. But these interventions don't, in my view, represent advice. As far as I'm aware, BB didn't conduct a fact-find to understand Mr K's circumstances before it wrote to Mr K about rebalancing. The rebalancing also seems to have been prompted by a third party's view of economic and market conditions, with BB simply forwarding on those views to Mr K. Indeed, some of the emails it wrote to Mr K about rebalancing were asking for his permission to proceed with the rebalancing rather than BB advising him to do so. And the updated portfolio appears to have been for all customers rather than being based on Mr K's specific circumstances and needs at the relevant time.

Similarly, BB's August 2023 letter to Mr K about its clients holding large cash deposits doesn't represent advice. The letter wasn't specific to Mr K's circumstances – it wasn't clear whether Mr K held large cash deposits or whether he received a letter that went to all BB's clients. And if he did hold a large amount of cash, BB just asked Mr K to get in touch to discuss his options. As far as I'm aware, there was no follow-up to that. So if Mr K did hold a large amount of cash, BB's view was that it would likely have been to his detriment. And yet it didn't follow-up with Mr K about this, and it didn't conduct the annual reviews that would also have remedied the situation. Clearly, BB wasn't advising Mr K as it should have done.

With the above in mind, BB should refund the "ongoing payments" it charged Mr K from November 2018 to the point he stopped paying them.

I note here that in the period after November 2018, BB acted on Mr K's instructions in relation to the amount of monthly income he wanted to receive (as it did before November 2018). And, in this respect, BB could be said to have delivered on one aspect of its agreement with Mr K – that of “telephone and e-mail support”. This, in addition to the prompts to rebalance his portfolio, would have been of some use to Mr K. So I've considered whether it would be reasonable to reduce Mr K's compensation to allow for that.

The agreement between the parties doesn't separate out Mr K's overall charge into a series of smaller charges for different services. But having reviewed the “Service and Payment Agreement” between the parties, I consider the ongoing advice delivered through annual reviews was the most important part of what BB was supposed to do for Mr K. I also think it's fair to say responding to a small number of instructions about Mr K's income in the period under review, and forwarding on rebalancing information and portfolio reports to Mr K, wouldn't have been especially time consuming for BB. In that light, and in the absence of any compelling evidence or arguments on this from BB, I don't think it would be fair and reasonable to reduce Mr K's compensation to allow for those services that BB did provide.

Finally, I note BB has pointed to a commercial arrangement with the individual who had previously advised Mr K. That arrangement has been the subject of a separate dispute that, in BB's view, has relevance to how (or whether) this complaint should be considered. However, Mr K instructed Firm N to transfer servicing rights to BB. The “Service and Payment Agreement” that I've outlined previously was between Mr K and BB – Mr K's former adviser wasn't part of that agreement. BB was the regulated party here (his previous adviser no longer being authorised by this point). And BB was the firm Mr K agreed to pay. So I'm satisfied any arrangement BB had with Mr K's previous adviser doesn't have any bearing on its obligations to Mr K – obligations it failed to meet for the reasons given above.

Putting things right

In assessing what would be fair compensation, my aim is to put Mr K as close as possible in the position he would now be in if BB had not unfairly taken the “ongoing payments” from his pension. For the reasons given above, even though those payments had been agreed by the parties, BB didn't provide the services that were part of that agreement – specifically annual reviews, or any ongoing advice outside of that cycle.

The first missed annual review I can consider would have taken place in October 2019. I think it's reasonable to say annual reviews are paid for in advance in situations such as this. So BB should refund Mr K's “ongoing payments” for the twelve months up to, and including, October 2019 and for the entire period thereafter until Mr K stopped paying them to BB. These amounts should be adjusted for the growth the fees would have generated had they remained in Mr K's pension rather than paid to BB, from the date each fee was deducted to the date of my final decision.

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

BB must also provide Mr K with the details of its calculations in a clear, simple format.

BB must make the payment within 28 calendar days from the date it is informed by us of Mr K's acceptance of my final decision. If BB does not pay the compensation by this date, it should pay 8% simple interest per year on the compensation for the period following the deadline to the date of settlement.

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

My final decision

For the reasons explained above, I uphold Mr K's complaint and require Bruce Bennett trading as bfm to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 2 April 2026.

Christian Wood
Ombudsman