

complaint

Mrs J agreed to a holistic financial planning service with Financial Services Gateway Ltd (FSG). She has complained about a number of issues relating to that agreement. In summary, these are:

- FSG advised her to place the proceeds from the sale of her business on a platform. This money was not invested. FSG has continued to earn fees on the fund.
- She has been running an overdraft to pay fees.
- Various tools have had to be paid for. Total costs paid to FSG have been nearly £800 a month.
- Despite spending many evenings and weekends working on financial plans, progress has been glacial. This has been very stressful for Mrs J.
- Only one pension drawdown had been effected in April 2015. Two others that had been paid for had not been executed.
- Despite promises to speed up the drawdown nothing has happened.
- Mrs J had been diagnosed with health issues. At times the adviser has been verbally abusive and she feared complaining to him.
- Mrs J wanted advice about IHT issues. She started four policies, but has had to cancel three because she couldn't afford the premiums. She would also like FSG to be removed from these policies and not to receive any commission.

background

There has been a lot of evidence submitted by both parties for me to consider during the course of the investigation of this complaint. I set out all of the arguments in some detail in my provisional decision dated 27 February 2020. I have reviewed all of the evidence. What follows is a summary of the key points.

On 21 April 2009 Mrs J signed an agreement for holistic financial planning. This included a section on face to face sales. This explained what would happen if FSG arranged any investments. And there was a table of the fees that would apply.

The client agreement also included three levels of service. These were:

Level 1 said: *Do it yourself – Cost Effective Financial Planning – Coaching Service Agreement.*

The paperwork states that this is to provide customers with the knowledge to enter into financial agreements. This service cost £60 a month.

Level 2 said: *Assisted Financial Analysis Service Agreement*

This provides customers with an analysis of their circumstances and assistance with designing a financial strategy. This cost £79 a month.

Level 3 said: *Assisted Financial Strategies Implementation Service Agreement*

This level provides a full advice service at £120 a month.

Mrs J ticked boxes agreeing to all three service levels.

FSG also sent a letter to Mrs J dated 21 April 2009 setting out details of the different service propositions of financial planning and financial advice. The letter provided some detail about the proposition. It explained the difference between financial advice and financial planning as:

“The advice is more about product- focused-need - it has a more limited scope. It is a tactical approach whereby the adviser must ensure that the solution they recommend works for the client, the solution usually means recommending a product. It is not always the case but the engagement is likely to terminate after implementation of the solution at some point down the line. As a business case, this is flawed.

In financial planning, the process puts your goals, needs and objectives at its core. It's an integrated approach. It is strategic, and looks to balance the different strategies recommended in a way that puts you in control of your financial future with clarity. The solution is the financial plan creation and maintenance, augmented by the ongoing relationship and service that develops as a result.”

A letter from FSG to Mrs J dated 22 April 2009 set out her objectives. These were:

1. Cash for downsize and later general investment, maximised to ISA where possible.
2. Emergency
3. Refurbishment
4. Healthcare
5. Retirement

FSG provided a report titled “Financial strategies” dated 21 April 2009. The report is 38 pages long and contains details of Mrs J’s personal and financial circumstances. The report included analysis of Mrs J’s future needs and her financial position. One of those assumptions was that she would not retire until age 75. It appears that the assumption was about taking benefits from the pension plans. The conclusion was based on a number of different assumptions that Mrs J would have a shortfall in 2021.

A number of suggestions were made to deal with this shortfall, including reducing expenditure, refinancing loans and downsizing her home. It was also suggested that Mrs J could alter some of her investments.

Mrs J signed a letter dated 12 December 2010 addressed to FSG. In it she referred to discussions about assets held in cash and planning scenarios. She needed access to her funds for her plans. The assets should therefore be held in cash. Mrs J then outlined a number of steps to be taken to provide for her daughter and pay for her properties. Finally, she explained that she wanted to cancel her whole of life policies but keep on with the financial planning fees.

A number of client services agreements have been provided to us. One was signed on 24 June 2012. This included an extra two service levels. The agreement said about service level 4: *“It is designed to periodically collate information from all the other three levels and consolidate it into a holistic plan with reviews for you.”* And for level 5 is said: *“It is designed to give you a deeper understanding providing a greater control of your investments than our analytical implementation and review service.”*

Mrs J agreed to all five service levels.

Mrs J told us about her circumstances in 2009. She had funds available to be invested. These were placed on a platform with Transact. She had a commercial property. This provided an income which had been reduced by about £1,000 a year after the financial crisis in 2008 – 09. There were legal fees to pay. She had a buy to let property which provided income but there was a mortgage. Her home had a mortgage. The interest was offset by savings which varied. She had a State pension and a private pension providing income. A tax bill was due to be paid by 31 January 2010.

Mrs J said she started a company in May 2009. This was after advice from FSG that this would save tax on her income.

Mrs J paid £259 a month for the three services up until 12 August 2009; a further £50 a month was paid from that date. On 5 September 2009 another Client Agreement was signed. This added a fourth service level – ‘Comprehensive Plan Preparation’. This cost £50 a month and was designed to *“Collate from all the other three levels and consolidate it into a cohesive plan for you based on set assumptions.”*

A third Client Agreement was signed on 9 May 2010. On 13 December 2010 a fourth Client Agreement was signed. All four service levels (at the same prices) were chosen in both agreements.

All four amounts were paid from 12 August 2009 until 4 January 2011. On this date two additional monthly payments were added of £13 and £10 for financial tools. This totals £332 a month.

These payments continued until 23 June 2011 when a further payment of £85 a month was added for access to the Morningstar tool. The seven payments of £60, £79, £120, £50, £13, £10, £85 were paid until September 2011.

From 9 September 2011 a fee of £420 a month was paid as well as £42 a month for ‘financial planning’. In February 2012 £50 a month was added for ‘portfolio selection’ bringing the total monthly fee to £512 – which was paid until July 2012.

On 24 June 2012 a fifth Client Agreement was signed by Mrs J. The fees for the service levels had increased and a fifth service level was added as “Bespoke in depth Wealth Management”. It cost £200 a month and was defined as:

“It is designed to give you a deeper understanding providing a greater control of your investments than our analytical, implementation and review service. Creating for you Outcome Specific fund watch lists and maintaining them for you by researching with you interactively...”

All five levels were chosen although under the heading ‘Fee Variance’ it says that if the consumer is signed up as a business on the Cash Flow Management Service (“CFM”) the notional fees quoted may not apply. It lists Mrs J’s CFM fees for the 2012/2013 tax year as £420 for BTL (two properties from which Mrs J receives rent); £50 for one of Mrs J’s companies; and a further £55 for the same company.

From 9 July 2012 Mrs J said she paid £420, £50 and £54 a month until 10 September 2012. From this date she paid £420, £50 and £105 a month until 27 March 2013.

Mrs J has said that the following increases were made:

- 27 March 2013 - £105 increased to £130
- 18 June 2013 - £130 increased to £143
- 15 July 2013 - £50 increased to £75
- 14 November 2013 - £75 increased to £100

By November 2013 Mrs J was paying monthly amounts of £420, £100 and £143 - a total of £663.

A sixth Client Agreement was signed on 14 January 2014. This document said: *“Uniquely this service proposition, places greater emphasis on client education in order to make you capacitated to take investment decision. Therefore, there is no set end date and all activities will take place at your pace until you are tutored to become fully confident and decisive to make suitable choice(s). The meetings will be aimed to progress you forward from your current position a step at a time to reach your goals.”*

And:

“I believe that Investing without knowledge just on my recommendation alone is the biggest risk for you.”

This agreement also required Mrs J to write a suitability letter and take part in quizzes to demonstrate her understanding. Failure of these, or other listed requirements could result in ‘considerable delay or non-construction’ of Mrs J financial plans. This document said that Mrs J was paying the ‘Strategic Cash Flow Management and Guidance Service’ fees - £420, £143 and £100. These payments continued until the following increases were made:

- 9 May 2014 - £420 increased to £432
- 20 June 2014 - £143 increased to £155

This brought Mrs J's payments to £687 a month.

Mrs J began paying £205, £382 and £205 from 15 July 2015. The payment of £205 was increased to £208 from September 2014. Mrs J said she stopped some payments in October of that year due to lack of progress. In December 2014 the three payments resumed and a total of £798 was paid in monthly fees.

On 29 December 2014 the final Client Agreement was signed by Mrs J. It said the fees payable were £382 monthly for Strategic Cash Flow Management and Guidance service. This was said to include all five service levels. Other fees included booking support for BTL at £208 and Mrs J's company at £208.

Under the heading “Your Responsibilities” it said:

“Demonstrate your understanding, pre-implementation by writing me a primary suitability letter explaining benefits, pros and cons, retained risks, trade-offs, and Knock-on-effects including and of alternatives strategies to meet your goals and objectives.”

These payments were maintained until May 2015.

In addition to the above there were charges for the platforms and the funds on these. In both the December 2010 and June 2012 Client Agreements a fee of £13 and £20 respectively was payable for platform due diligence. Also, the Client Agreements of 14 January 2014 and December 2014 show a fee of £10 a month for a minimum of 12 months for the maintenance of the 'Client Relationship Management Tool'.

Platforms

After the sale of her business Mrs J placed £210,000 onto a Transact platform in 2009. However, she says she has remained largely in cash.

I have been provided with copies of the correspondence for the setting up of the platform with Transact in 2009. Mrs J signed a letter dated 1 April 2009. This explained why Mrs J wanted a platform for her savings and investments to hold on one digital dashboard.

FSG wrote to Mrs J on 21 April 2009 headed '*Reasons Why Not Platform*'. This explained that the platform had charges that had to be paid from the investments. The platform therefore wasn't suitable for Mrs J as she wasn't ready to invest. The letter went on to explain that suitable advice would be to gather funds and put these in a bank account that did not have charges. No other investments should be moved to the platform until Mrs J was ready to invest. Mrs J should also look to pay off loans. Risk warnings were also provided.

FSG then sent a letter to Mrs J on 22 April 2009 setting out Mrs J's objectives and referring to the letter dated 6 April 2009. Mrs J was asked to sign the letter if she still wanted to proceed, which she did.

FSG said that the use of a platform was beneficial for the business in accordance with its 'cyber service' and Mrs J's needs for holistic financial planning. It said Mrs J could have put the money elsewhere to avoid charges and wasn't under any compulsion to stay on the platforms.

Mrs J signed an application form for the platform on 22 April 2009. This included details of the adviser at FSG and the remuneration to be paid. This was for an initial 3% of the amount invested and 0.5% a year annually. If Mrs J made a switch of funds 0.5% of the amount switched would be charged.

A letter to Transact dated 23 November 2009 and signed by Mrs J increased the annual payment to FSG was increased to 1% a year except for cash which was set at 0.5%.

An instruction to amend adviser payment was signed on 26 March 2013. Any new payments into Transact had no initial charge, but 1.25% annual charge. Existing investments had an annual charge of 1.25%.

In 2012 Mrs J put a further £82,000 on a second platform with Elevate. This was from the proceeds of the surrender of an investment. That had been written in trust for the benefit of Mrs J and her daughters.

Pensions

Mrs J had three pensions. She also mentions creating a trust to hold her Skandia pensions for the benefit of her daughters.

The 'Retirement Options Questionnaire' dated 8 March 2015 list these as:

1. AXA Friends Life EPP
 - a. Started: 5 January 1995
 - b. Value as at March 2015: £87,037
 - c. With more than 25% tax free cash available
2. Clerical Medical (Retirement Annuity Contract)
 - a. Started: 10 May 1984
 - b. Value as at March 2015: £30,065
 - c. With a Guaranteed Annuity
3. Aviva (Personal Pension Plan)
 - a. 1 February 1989
 - b. Value as at March 2015: £30,420

In 2010 information was requested from the above three pension providers. In August 2012 FSG prepared a report comparing income drawdown and annuities.

A letter was completed, by Mrs J, on 23 August 2013. This set out her objectives to provide sustainable income and to pass on her estate without asset stripping. She wanted access to her enhanced tax-free cash to pay off debts and help her daughter financially. Mrs J says in this letter that she wanted to consolidate her pensions into one drawdown plan and continue to contribute to that plan.

FSG completed its recommendation letter on 10 April 2015. It confirmed Mrs J's financial objectives had not changed. And it categorised Mrs J as a 'Moderately Adventurous Investor' who was prepared to invest no more than £300 gross a month for her lifetime.

The option 'discussed and agreed' was for Mrs J to take the maximum tax-free cash from her EPP and move the remaining funds into a drawdown plan. FSG recommended Friends Life to prevent the loss of the enhanced tax-free cash. It said that before a suitable portfolio could be constructed the funds would be placed in a cash fund temporarily. It said that the cost of this advice would be £2,975 (although Mrs J had already paid £2,500).

Mrs J made a number of requests to withdraw funds from the platforms because she needed the money for mortgages or other payments. This included a payment to FSG for work done to implement the drawdown facility in 2013. I note this wasn't completed until 2015. Mrs J made several references to her need to access the tax-free cash from her EPP.

I have seen an invoice from FSG dated 13 January 2014 for £1,050 for 'Administration Fee for AXA Executive Pension Tax Free Cash'. I understand the EPP was moved into a drawdown plan in 2015.

Mrs J terminated the relationship with FSG in 2015. She then made her complaint. I set out the full details of Mrs J's complaint in my provisional decision. The summary of her complaint is at the start of this final decision.

One of our adjudicators investigated the complaint. She thought the complaint should be upheld. She said the fees were excessive and should be refunded. The pensions hadn't been arranged. And the platforms were invested in cash, which was unsuitable.

FSG did not agree. They made a number of points. I then issued a provisional decision. FSG argued that financial planning was not a regulated activity and we could not consider a complaint about financial planning or the fees Mrs J paid for that service. I issued a decision concluding that the activities were regulated and we were able to investigate a complaint from Mrs J. There were some activities we could not consider.

I issued my second provisional decision on 27 February 2020. I upheld the complaint and explained how FSG should compensate Mrs J. In summary, I explained my reasons for upholding the complaint as:

my provisional findings - jurisdiction

The rules about complaints that this Service can consider are set out in the FCA Handbook. The complaints handling rules are set out in the section under DISP.

DISP 2.3.1 of the FCA Handbook says:

"The Ombudsman can consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by a firm in carrying on one or more of the following activities:

1. (1) regulated activities (other than auction regulation bidding);

.....

Or any ancillary activities, including advice, carried on by the firm in connection with them".

"Regulated activities" include:

- Advising on investments
- Arranging (bringing about) deals in investments; and
- Making arrangements with a view to transactions in investments.

FSG still maintained that Financial Planning was not regulated and that I was not able to deal with a complaint about the fees. I said I had to decide whether the acts or omissions Mrs J was complaining about were regulated activities. I thought we could deal with some of the issues, but not all of them.

Fees paid for financial planning since April 2009

FSG said the fees were non-regulated. I explained the fees themselves were not regulated, but the activities they related to could be regulated. Mrs J had been a client of the adviser at FSG for some years. She had been receiving advice about her pensions; investments and mortgages. These were all regulated activities.

In April 2009 Mrs J signed the first of a number of client agreements. This was headed: "Client agreement for face to face sales". It explained FSG was regulated by the Financial Services Authority. And that it was permitted to advise on and arrange savings and investment products, pensions, mortgages and non-investment insurance contracts.

I explained that in my view, the agreement indicated Mrs J was paying the fees in the expectation that FSG would be advising and arranging investments. These were regulated activities. So, in my view we can consider complaints about those activities.

The agreement also included details of the different levels of service that could be provided by FSG. Mrs J ticked boxes to accept three levels of service. The first was a coaching service. The aim was to deliver teaching. This would enable Mrs J to make her own financial plans.

Service level 2 included analysis of Mrs J's circumstances and assistance with designing a financial strategy. It was not clear what that entailed, but my view was it involved some element of advice. Mrs J wanted advice on her pensions and investments. I thought it was likely that this level involved advising on investments. That was a regulated activity. This service can investigate complaints about advice on investments including the fees paid.

Service level 3 was for a full advice service. Even if I was wrong about service level 2, this level was for a full advice service. I explained we could investigate complaints about advising on investments.

I said I had seen evidence FSG confirmed in a workbook dated 11 May 2017 it was one service, a full workflow process of Financial Planning. As I had concluded we could consider complaints about some of the activities, this meant we could consider a complaint about the fees for financial planning.

Holistic Financial Planning

FSG was providing a holistic financial planning service to Mrs J. She signed the first agreement for this service on 21 April 2009. A number of different agreements had been signed since that date.

I said FSG explained in its final response to Mrs J's complaint that it did not provide just advice on IHT, pensions and investment in retirement. The service was for holistic financial planning. As such FSG took care of all of Mrs J's finances. This included the IHT, pensions and investments. The description of the service showed FSG gave advice about personal pensions and investments. This was specifically about the EPP and taking her pension benefits. I thought as part of the service Mrs J was expecting to receive advice about her investments, including her pensions.

Much of the complaint was about the lack of action in providing advice. This service can consider an act or omission to do with a regulated activity. Failure to provide the advice is therefore a complaint that we can consider.

I also explained advising on investments was not the only regulated activity FSG was providing.

FSG helpfully referred to the Perimeter Guidance in the FCA handbook. This sets out guidance about how different rules should be interpreted. In particular, I considered PERG 2.7.14 and PERG 2.7.7B. These deal with advising on investments and making arrangements with a view to transactions in investments.

PERG 2.7.7B says:

“The activity of arranging (bringing about) deals in investments; is aimed at arrangements that would have the direct effect that a particular transaction is concluded (that is, arrangements that bring it about). The activity of making arrangements with a view to transactions in investments is concerned with arrangements of an ongoing nature whose purpose is to facilitate the entering into of transactions by other parties. This activity has a potentially broad scope and typically applies in one of two scenarios. These are where a person provides arrangements of some kind:

- (1) to enable or assist investors to deal with or through a particular firm (such as the arrangements made by introducers); or*
- (2) to facilitate the entering into of transactions directly by the parties (such as multilateral trading facilities of any kind other than those excluded under article 25(3) of the Regulated Activities Order, exchanges, clearing houses and service companies (for example, persons who provide communication facilities for the routing of orders or the negotiation of transactions)).”*

I went on to consider whether these activities were carried out for Mrs J by FSG.

Arranging (bringing about) deals in investments;

Mrs J's objectives were recorded in 2013. I explained not all of these would amount to arranging investments, so that the activity was regulated. But taking the tax-free cash from her pension and consolidating into a drawdown facility meant that the investments were being bought or sold. That was a regulated activity. The wording of the client agreement signed in April 2009 indicated that FSG arranged investments.

I had seen emails between FSG and AXA about Mrs J's EPP. This had protected tax free cash. The emails explained how Mrs J would be able to take her benefits retaining the entitlement to the protected tax-free cash. I thought this indicated some of the work undertaken was to arrange an investment.

I was satisfied Mrs J was expecting FSG to arrange investments for her. This involved the transfer of her existing pension plans. These were specific investments that were being sold. That was a regulated activity and complaints about arranging those investments and the fees can be considered by this service.

Making arrangements with a view to transactions in investments

This regulated activity is very broadly written. I considered the activities carried out by FSG. The object of the service level 1 agreement was to provide Mrs J with knowledge and experience to contract into financial planning arrangements. It was not clear those arrangements would be investments that were regulated. But evidence provided by Mrs J indicated some of the sessions were about drawdown and consolidating her pensions. This included evidence of a meeting on 1 December 2013 entitled drawdown and pension consolidation. And it included investment models and templates with Transact. It was clear some of the activity was about investments and particularly the platform with Transact.

Having considered the regulated activities and the service that FSG said it was providing, as well as the activity that was actually provided, I was satisfied FSG was providing regulated activities.

FSG had also said it could not give advice on using drawdown until Mrs J had capacity for loss. When Mrs J appointed another advisory firm the groundwork had been done, but not yet implemented by FSG. In my view, the work FSG was doing was intended to allow Mrs J to move into drawdown. This must fall within the regulated activity of making arrangements with a view to transactions in investments.

Even if I was wrong about the fees being for regulated activities, I thought they must be ancillary to those activities. It was clear that the intention was to advise on pensions, investments and IHT.

I was satisfied we could consider the complaint made by Mrs J about the fees for financial planning.

I then considered whether an oral hearing was necessary. There was a vast amount of written evidence available to me, including contemporaneous evidence. I explained I did not require an oral hearing to fairly determine the outcome of this complaint.

I went on to explain my findings about Mrs J's complaint.

Client Agreements

I said Mrs J paid regular monthly fees to FSG for Financial Planning. It was not in dispute that Mrs J spent many hours with the adviser on activities set out in the agreements. Mrs J's complaint is wide ranging, but a major point is she paid fees with little or no progress

I explained I thought the purpose of Mrs J entering into the Client Agreements was for her to receive help and assistance in dealing with her finances. It was an unusual arrangement and not one I had seen before. Many of the tasks carried out appeared to have been to provide Mrs J with training, information or understanding to make financial plans. And I thought that involved investing her funds in investments. However, it wasn't clear to me what benefit Mrs J could really expect from this activity. She was invoiced separately for transactions following any advice from FSG.

Mrs J provided a large amount of evidence about what happened during her appointments with FSG. This includes her own handwritten notes as well as printouts from the tools being used and emails between her and FSG.

FSG also provided a significant amount of evidence. This included some reports titled "Financial strategies". One report was dated 21 April 2009. The report was 38 pages long and contained details of Mrs J's personal and financial circumstances. The report also included analysis of Mrs J's future needs and her financial position. One of those assumptions was that she would not retire until age 75. It appeared the assumption was about taking benefits from the pension plans. The conclusion was that using a number of different assumptions Mrs J would have a shortfall in 2021.

A number of suggestions were made to deal with this shortfall, including reducing expenditure, refinancing loans and downsizing her home. It was also suggested Mrs J could alter some of her investments.

The evidence showed Mrs J did start on a plan to downsize her home and buy some rental properties. However, this was some time after the report produced in April 2009. The action taken in April 2009 appeared to have revolved around Mrs J ignoring FSG's advice and placing money on a platform with Transact. I could not see any evidence of positive action being taken to address the shortfall FSG identified.

In 2010 Mrs J took action by cancelling three of the four policies intended to deal with an IHT liability. FSG advised against cancelling these policies. This was a regulated activity, but FSG's involvement did not assist with the cash flow shortfall identified in the report from April 2009.

The downsizing exercise was progressing in 2011/2012. Unfortunately, Mrs J became ill and those plans had to be stopped. I made two points about this. The first was that despite identifying the need to reduce expenditure this had not been achieved nearly three years later. The second point was that FSG was charging separate fees for arranging the mortgages. Most of those fees were not paid because the mortgages did not go ahead. I thought this all indicated there was very little being achieved as a result of the holistic financial planning.

The total fees paid for the holistic financial planning were over a six-year period. I had not been able to identify any tangible evidence of any results from this service. FSG invoiced separately for any transactional work. The fees charged for the transactional work appeared to be in line with fees charged by other firms for similar work. I could not see there was any need for the holistic financial planning fees to be paid as well.

Mrs J supplied a number of documents showing how difficult it was to have meetings with FSG. One of these was dated 17 November 2014. I thought showed the frustration she felt about delays. Having reviewed all of the evidence, I thought this was typical of the delays I had seen from FSG. But more importantly, the fact Mrs J had been a holistic financial planning client since April 2009 and very little had actually been achieved spoke volumes.

My conclusion was that the fees paid under the Financial Planning Agreements were all unnecessary. I had not been able to identify any evidence of a tangible benefit to Mrs J. So, I thought the fees paid under those Client Agreements should be refunded.

FSG made the point that I had taken the view that only regulated activities have any value. I did not agree. However, it was true that some of the activities in the holistic financial planning agreement were not regulated, but as I had said, some were. And the activities were all very closely linked so the fees were all linked to the regulated activities. For example, assessing the cash flow had to include income produced from investments and pensions.

FSG was paid separately for transactional services. That was regardless of whether the activity was regulated or not. I thought, FSG had been paid fees for the transactions actually completed. I did not see any value to Mrs J from paying the holistic financial planning fees; whether those fees were for activities that were regulated or not.

Mrs J paid fees of £60 a month using a standing order from her business account. Those fees appeared to have been for the services to be provided under the financial planning agreement. It wasn't clear to me why those fees were paid by the business, but the Client agreement was signed by Mrs J. It appeared to have been for services to be provided to her. Although as the principal for her business I thought it was likely Mrs J would benefit whether a service was to be provided to her personally or for her business. The regular fees paid should be refunded to Mrs J or to her business depending on which party paid those fees.

Advice to start a platform with Transact but the funds to be left in cash

I explained Mrs J signed a letter in which she requested a platform service to give her confidence in managing her investments and savings on one digital dashboard. This was followed by a letter from FSG headed "*Reasons Why Not Platform*". This referred to Mrs J's platform needs letter and explained a platform was not suitable for her. This was because of the charges and the platform was intended to be used for investments. If no investments were made then the returns on cash would be too low to offset the charges. The letter then went on to set out what would be suitable advice.

A letter dated 22 April 2009 was sent to Mrs J and signed by her. This explained that following Mrs J's Platform needs letter FSG had given advice not to use a platform. However, Mrs J wished to go ahead and FSG recommended Transact. FSG set out the reasons for Transact and the disadvantages, including the costs.

I explained we had asked Mrs J about this correspondence. She said it appeared to be written by FSG. The Platform needs letter used technical language written in the adviser's style.

I agreed with Mrs J that the correspondence used technical language. It appeared to me unlikely it was written without help from FSG. The style of the letter used phrases and language that were similar to those used by FSG. I explained this was one of the features I look for when deciding whether a consumer had genuinely been an insistent client. Although it might have been helpful to have a platform, I did not consider Mrs J was likely to request a digital dashboard. I was supported in this conclusion because FSG required Mrs J to write her own suitability letter for the pension drawdown. This showed FSG was used to asking Mrs J to write financial documents.

I was not satisfied Mrs J genuinely wanted a platform holding the investment in cash. I thought it was unsuitable and FSG caused the platform with Transact to be arranged.

Advice to start platform with Elevate

I explained Mrs J had an existing investment which was transferred to AXA Elevate. FSG received ongoing adviser payments. The original investment was held offshore and held in trust. The transfer was made to Elevate and I had seen evidence Mrs J wanted the funds held separately from those with Transact. A number of withdrawals were made from the platform until the funds had all been withdrawn. I understood those funds were used as Mrs J's income position was difficult and repayments were made to her mortgage.

I thought it was unnecessary to switch investments to a new platform. I thought the funds would have remained invested.

Delays in arranging pension drawdown

I went on to deal with the delays in arranging income from Mrs J's pension plans. Mrs J signed the first of the client agreements with FSG in April 2009. Information about her pension plans was requested on a number of occasions. The first plan was not put into payment until April 2015. That is a very long time to put pensions into payment. At first sight it appeared to be far too long and something must have gone wrong.

FSG had said following the death of her husband that Mrs J was well abounded with wealth. But FSG said it was not able to advise Mrs J about using drawdown until she had capacity to loss. A document completed on 21 April 2009 headed Financial Strategies and completed by FSG provided a significant amount of detail about Mrs J's circumstances. This document demonstrated that Mrs J had the capacity to accept the risk of using drawdown. I thought FSG should have appreciated this and then given suitable advice to Mrs J.

The work FSG was doing with Mrs J involved cashflow planning and educational sessions. One of the tasks for Mrs J was to write her own suitability letter. That was unique in my experience and not something I would ever have expected a consumer to have to do. I could not see what value there was for Mrs J to complete the letter. It was such an unusual approach to either financial planning or financial advice that I accepted Mrs J's version of events that she spent many hours on the phone and on the computer with FSG.

I said Mrs J's notes supported her version of events. These were not always easy to follow as they were her own notes, but they did show the delays being caused in arranging the pension drawdown. One task was shown as very high for drawdown and pension consolidation due 1 December 2013. I took this to mean very high priority. Mrs J's notes about an online meeting on 24 November 2013 also showed she was frustrated with the delays.

I thought Mrs J was able to withstand any loss arising from using a suitably designed drawdown plan. She had income from property and savings on the platform in addition to her pension plans. It was noticeable when she appointed a new adviser that they were quickly able to provide suitable advice to Mrs J after she terminated the agreement with FSG. I did not accept this had anything to do with the actions taken by FSG during the six years Mrs J had been a financial planning client. In particular, I thought as the new adviser identified and used a guaranteed annuity rate available with Clerical Medical. FSG could and should have identified that much sooner.

I said Mrs J had to request information from the pension providers on a number of occasions. I thought this should not have been necessary if FSG had provided suitable advice and acted on the information provided. Overall, I thought FSG had not provided suitable advice and took far too long to make progress. Mrs J paid fees for arranging the drawdown. Although one plan was arranged this was after a period of six years.

I concluded FSG did not provide the service or advice that Mrs J paid for. I then went on to consider the additional fees Mrs J paid.

Ad hoc fees

I explained FSG spent many hours with Mrs J. I thought much of this time spent was unnecessary. However, FSG also charged a number of ad hoc fees. Both FSG and Mrs J had provided a lot of information about the fees paid. Some of that information was in dispute. I provided an updated appendix with details of those fees attached to the end of my provisional decision.

Mrs J made the point that many of FSG's records were inaccurate or incomplete. She said the invoices did not necessarily relate to the work completed. I explained I had to base my decision on the evidence presented to me. Clearly, there were many areas of dispute between Mrs J and FSG. I needed to assess all of the evidence to decide what each payment was most likely to have been for. I went on to explain what I thought each payment was for and whether it should be refunded.

The three payments dated 22 May 2009 were for regular payments that had been missed. These have been dealt with above, so did not need to be separately refunded.

FSG provided a document titled: '*Costs paid to year end statement 2009*'. Total paid in the year 2009 £518. However, Mrs J has a copy of a document with the same heading showing three payments of: £100 on 4 April 2009; £150 on 27 April 2009 and £2,550 on 1 December 2009 totalling £2,800. This had been referred to as buy to let invoices, but Mrs J said this was supposed to be for pension work which remained undone. She had provided copies of her diary entries indicating this from November-December 2009. It appeared from these records that FSG's records were inaccurate or incomplete. Clearly, Mrs J had a copy of a statement that FSG had not provided to us. And it was surprising that two statements for the same year showed different payments. I thought Mrs J's evidence was credible and the three payments of £100; £150 and £2,550 should be refunded.

Mrs J's notes indicated she was to pay £3,000 as £1,000 + £1,000 + two x £500. This was headed pension T/fer. FSG provided a spreadsheet of payments received from Mrs J, but the payment of £2,550 does not appear on the spreadsheet for December 2009. I hadn't been able to identify the payment that these notes related to and could not say they should be refunded.

A cheque for £50 was paid to FSG on 31 March 2010. Mrs J said it was for a financial calculator. I did not have any details about that calculator. I could not say whether this was for something related to a regulated activity. I therefore did not intend to make an award to refund that payment.

I explained the payment dated 28 July 2010 was in dispute. Mrs J said an invoice to her business '*Costs paid to year end statement 2010*', 27 June 2010 for £528.75 was for three Pension Audits including VAT but was invoiced as "*Legacy Planning and exit strategies in respect of [her business]*". Her original document with the same heading also has a £417.50 charge dated 24 March 2010 '*1st meeting cost - legacy planning & exit strategies in respect of [her business]*', bringing the invoice total to £946.25. There were two statements for the year end 2010. Both of these referred to the £528.75 as legacy planning and exit strategies in respect of Mrs J's business. Although Mrs J pointed out that FSG's records are confused, I had not seen any evidence to support her assertion that the payment was for three pension audits. I did not intend to make an award for this payment to be refunded.

One point that Mrs J made was that items appeared to have been duplicated. For example, she quoted from a document headed "*Costs paid to year end statement 2010*". This had the same items listed as a document dated 30 December 2010 headed "*Invoice for your rented properties*". I agreed that the same item for £1,770 appeared on both of these documents. It appeared to me the documents served different purposes – one was an invoice for bills to be paid whereas the other was a statement showing details of payments actually made. It wasn't clear why the payment of £2,306 appeared on an invoice but not on the statement. This was another example of FSG's records being inaccurate or incomplete. I therefore treated the evidence as being unreliable; although I was satisfied some of the evidence was correct.

Mrs J provided a copy of an email she sent to FSG in July 2012 requesting details of invoices for payments made. This referred to a payment of £1,770 in December 2010 as a file review. The payment of £2,306 was referred to as pension transfer. A payment of £200 in May 2011 had a question mark I take it from that notation that Mrs J did not know what that payment was for.

The two payments in December 2010 for £1,770 and £2,306 were referred to by FSG as attribution analysis. FSG provided a copy of a statement on which only the payment of £1,770 appeared. A further payment in May 2011 for £200 was also described as attribution analysis.

Mrs J's notes indicated the payment of £2,306 was 5% of the value of her pension with Aviva. The notes also showed a calculation of the fee using the fund values. I accepted that the fee of £2,306 was for work related to the pension transfer. I thought the fee of £2,306 should therefore be refunded.

Mrs J's notes from December 2010 also referred to "pension analysis" and she needed to ask FSG for an invoice for the £1,770. Whilst this did not clearly show what the payment was for, I said it provided credible contemporaneous evidence. FSG also provided a spreadsheet with details of the activity under the financial planning agreement. There was a record of 223 minutes for pension and investment review on 15 November 2009 as well as 77 minutes on 21 November 2009 for financial planning investments and pension. There were also other records for December 2009 about investments and asset allocation. This suggested to me that time was spent dealing with the pensions at about the time of the payments being made. On balance, I thought the £1,770 was for pensions work and should be refunded.

Mrs J also had evidence from her email to FSG of 20 July 2012 that a payment of £1,205 made on 23 May 2011 was for drawdown extra charges. FSG provided a statement showing this was for planning and tax advice for properties. It was not easy to reach a conclusion about what that payment was actually for. I had found FSG's records were sometimes muddled, payments appeared to be duplicated and sometimes the reason given for work on an invoice did not match the other evidence available. Mrs J had a contemporaneous written record of the reason for the fee. On balance, I preferred her evidence on this point. The payment of £1,205 should be refunded.

The payment dated 7 December 2011 was in dispute. FSG provided an invoice showing this was for tips to help with the relationship with Mrs J's sister-in-law. Mrs J said this was for an asset protection trust for her pensions, but FSG supplied this description so that the invoice could be assigned to her company, through which Mrs J received rental income. Notebook entry 50 referred to the asset protection trust and the pension. And Mrs J said FSG had attempted to use this against her, to allege that she wanted to evict her sister-in-law, which has never been the case. Again, this invoice was not sent at the time. It represents £1,200 for the trust, less £23 for a previous overpayment, hence £1,177.

The evidence provided by Mrs J indicated the fee was paid for the asset protection trust. Her notes indicated she had been discussing an asset protection trust with FSG at about the time of the payment. Notes from Mrs J referred to the death benefits from pension plans. And there was a note that £23 could be deducted. FSG also referred to the pension file and related trust in an email to Mrs J dated 1 August 2012. This confirmed FSG was supposed to be arranging a trust for the pension.

In my view, the estate planning and pension trust is a more credible reason for the invoice than the one set out by FSG. I think it is unlikely a professional financial planner would be involved in providing tips for relationships about family matters. This fee of £1,177 should be refunded.

FSG provided a copy of an invoice with fees for videos dated 30 January 2011. This had details of charges of 3 x £85 in June 2011; and charges of £90 and £117 for video rendering and preparation in January 2011. I thought it was likely the invoice should have been dated 2012, as it was unlikely the invoice would have been issued in January 2011 for something in June 2011.

There was a dispute about what those fees were for. Mrs J said that payments of £85 were made for a tool with Morningstar. Mrs J produced contemporaneous notes which referred to Morningstar. Mrs J didn't remember agreeing to the other charges for video preparation and video rendering. However, she did remember some instructional videos being supplied in November 2011. Mrs J also believed some of the fees were paid for an electronic signature tool. FSG explained that various services were provided as part of its fee agreement. This included investor educational presentations, financial coaching and research.

My conclusion was that FSG provided some tools for Mrs J to use. Whether that was Morningstar, which is for professional investors, or videos I thought they were unnecessary for Mrs J. And these were all for regulated activities as the Morningstar tool is for professional investors and the videos are for investor education. I was not satisfied that the investor education was required; it was another cost Mrs J paid that she did not need. The payments of £255 and £207 should be refunded.

Mrs J made a payment on 20 June 2012 of £150. The email from FSG of 20 June 2012 was evidence this was for pension analysis. I was satisfied that this was for a regulated activity and the pension was not put into payment. That payment should be refunded.

The evidence from Mrs J also contradicted the invoices FSG had supplied. I took this into account when assessing which payments should be refunded.

Mrs J provided a copy of an email from FSG dated 1 August 2012. This referred to a trust form and a life assured. The costs totalled £1,005. I was satisfied this related to a trust and appeared to be for the pension funds. This was referred to in the email of 1 August 2012. The trust did not appear to have been arranged. The payment of £1,005 should be refunded.

A payment of £5,000 was made on 26 November 2012. There was a dispute about this payment. FSG said it was for debt management and strategies for investment properties. Mrs J said it was two payments of £2,500 paid for pension transfers that were never executed. Clearly, this was a large sum of money to pay for services; whether that was debt management or pension transfers. In either case, I would expect to see evidence of the work undertaken. I had not seen details of the debt management. Mrs J's notes indicated that the fees were for pension transfers. On balance, I thought the £5,000 was paid for pension transfers that were not completed. I thought those fees should be refunded.

Mrs J's bank statement showed a payment for £250 on 30 January 2013 annotated as 'investment advice'. It wasn't clear what this payment was for, but again, I had not seen any evidence it was for any other work. So I intended to make an award that the payment should be refunded.

A payment of £1,050 made on 26 February 2013 was in dispute. FSG said this was for Will advice and tax planning for corporation. I had not seen any evidence to show this work was completed. Mrs J's notes indicated this was for pension transfer analysis, drawdown analysis, portfolio optimisation and integration composite. Those notes are not easy to decipher, but they contained details I thought made them credible. I thought the payment was for work on Mrs J's pensions. That work was not completed and the fee of £1,050 should be refunded.

Payments made on 11 March 2014 and 27 April 2014 each for £420 were part of the regular payments made to FSG and have been dealt with above.

There were a number of other payments made to FSG. These appear to be for tax planning or related to the buy to let properties for Mrs J's companies. I thought these were unrelated to regulated activities. I did not intend to make any award for those payments should be refunded.

Distress and inconvenience

Mrs J provided a significant amount of evidence about her dealings with FSG. These included the complaint she made and the copies of notes and emails with FSG. In particular, I had taken account of the evidence from her psychotherapist.

One of the key points was the time taken for FSG to arrange any investments. There had been many appointments and meetings but very little tangible evidence of progress. During all of this time Mrs J was paying hundreds of pounds to FSG every month. I could see from her notes that she was frustrated and upset by the delays.

Many hours were spent on issues that did not appear to me to have any relevance to financial advising or planning. Asking Mrs J to write her own suitability report appeared to me to be so unusual I thought it was bizarre. A financial adviser is, and was, required to give suitable advice to their client. I have never before seen a situation where the client has to justify the advice they are being given. This is one example of the many times Mrs J had to carry out unnecessary tasks. I was satisfied by her evidence this was distressing and there was little or no progress being made.

One of the things that concerned me most was the behaviour of the adviser at FSG towards Mrs J and her daughters. This was illustrated in the correspondence sent to me. I appreciated that FSG was defending its position, but the language was certainly homophobic and probably sexist and racist too. It was certainly unprofessional.

Mrs J made the point about coercive control. I did not need to make a finding on that point, but it was clear to me that FSG kept Mrs J as a client by promising things were progressing. However, very little progress had been made after six years. I concluded that FSG were not acting in Mrs J's best interests.

I was satisfied that Mrs J had been caused a severe amount of distress and inconvenience. I intended to make an award for £2,000 to compensate her for the distress and inconvenience caused to her by FSG's dealings with her.

Finally, I set out how FSG should calculate fair compensation to be paid to Mrs J.

FSG did not agree. I set out all of the evidence and arguments in full in my provisional decision. I have briefly summarised the evidence and arguments above. FSG's position is:

- FSG is now in liquidation and the complaint should be passed to the Financial Services Compensation Scheme (FSCS).
- My response was based too much on confirmation bias. This means I have certain views based on my limited experience based on financial products rather than financial planning.
- Adding Mrs J's businesses into the complaint at this late stage was unfair.
- I had made some highly unprofessional remarks about FSG in my provisional decision. It is not the role of the ombudsman to make these remarks, but to impartially assess the evidence and adjudicate on the facts.
- It had taken me over a year to confirm the findings of the adjudicator. I had not properly taken account of the evidence FSG supplied.
- The fees I had said should be refunded were not related to any regulated activity.
- A spreadsheet prepared by FSG with details of the fees had been ignored in favour of the contemporaneous evidence from Mrs J. The fees and their objectives were set out in the spreadsheet.
- The overdraft was mainly due to excessive gifting by Mrs J.
- Mrs J did not pay for all of the services levels; for example, the £200 a month agreed on 24 June 2012.
- All invoices set out what they were for and Mrs J paid these knowing why they were being paid. Any other advisory work was for the existing products during reviews. I had tried to manifest this as unfinished work any fee charged for example say the Pension Audit was scaled and charged appropriately.
- Mrs J knew the difference between financial planning and transactional financial advice.

- The platform fees arose because Mrs J insisted on acting as an insistent client against advice from FSG.
- Mrs J did not invest £210,000 after the sale of her business. She repaid her commercial mortgage and only placed £21,000 on the platform.
- The aim of financial planning was stress removal. Mrs J engaged as a holistic financial planning client. There was no proof any stress was caused by the financial planning.
- The case needed a complete review because of my lack of understanding about financial planning.

Mrs J replied and submitted further evidence of fees paid to FSG over a number of years.

my findings

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I remain of the view that the complaint should be upheld for the reasons given in my provisional decision.

Our jurisdiction to consider the complaint

FSG told us it is now in liquidation and the complaint should therefore be passed to the FSCS. I may dismiss a complaint if the business has been declared in default by the FSCS meaning the FSCS is satisfied the business is unable to meet its liabilities. FSG has not yet been declared in default so I consider it appropriate to issue my decision.

The complaint is about a number of activities over a period of about six years. The evidence shows FSG was advising on investments; arranging investments and making arrangements with a view to transaction in investments. I remain satisfied that the client agreements involved regulated activities for the reasons given in my provisional decision and repeated earlier in this, my final decision.

FSG charged a number of ad hoc fees. I set out the detail of these fees in my provisional decision. I explained why some of those related to activities we can consider and some related to activities we cannot consider, in my provisional decision. I have again explained my reasoning later in this final decision.

Holistic financial planning

Mrs J signed a number of client agreements in which she agreed to pay for FSG's holistic financial planning service. I explained in my provisional decision it wasn't clear what benefit Mrs J could expect from the holistic planning service. Mrs J started paying £259 a month in April 2009. This increased over time until she was paying £687 a month.

In my view, the monthly payments to FSG were significant. I would expect to see evidence of some benefit for Mrs J. As I said in my provisional decision, I could not see any tangible benefit. The agreements involved financial education and allowing the process to become stress free. These objectives have not been met and I am satisfied from the evidence provided the whole experience has been very stressful for Mrs J.

FSG said I do not have the knowledge and experience to deal with this complaint. The response has been critical of the approach I have taken. However, I have reviewed all of the evidence provided by both FSG and Mrs J. FSG has not provided any new evidence for me to consider. I set out the reasons why I thought the holistic financial planning service was unnecessary for Mrs J in my provisional decision. I have not been persuaded by anything FSG said in response to my provisional decision to change my mind. Mrs J paid hundreds of pounds every month from April 2009 until May 2015.

FSG was paid a substantial amount of money by Mrs J. I would have expected to see some evidence to show how paying for the service was of any benefit to her. Although I have seen evidence of hours spent on various things, I cannot see this provided any value. And the example about Mrs J being required to write her own suitability report for the drawdown plan shows how unusual and bizarre the activity was. I have not seen any other investor being asked to write a suitability report. It is not required by the regulations. In fact, it is the adviser who is required to write the report. I remain satisfied the fees for holistic financial planning were unnecessary.

FSG said the payments of £200 a month for the fifth client agreement were not paid. I have not found evidence of the payments being made and accept no payments were made as a result of the client agreement. This appears to be the only agreement where no additional fees were paid.

Advice to start a platform with Transact but the funds to be left in cash

I explained why I did not accept Mrs J asked for a digital dashboard in my provisional decision. FSG has not presented any new evidence for me to consider about this issue. I remain of the view that the letter signed by Mrs J used technical language and is written in the style used by FSG. I am not persuaded Mrs J insisted on acting against any advice not to start the platform. I think FSG caused the platform to be arranged.

FSG said only £21,000 was invested after the sale of Mrs J's business. Statements issued by Transact show £210,000 being received. I am satisfied from this evidence £210,000 was placed with Transact.

Advice to start platform with Elevate

FSG has not provided any new evidence or made any new arguments about the platform with Elevate. I think the switch to Elevate incurred unnecessary charges. The platform with Elevate should not have been started.

Delays in arranging pension drawdown

I remain satisfied that FSG took too long to arrange to put Mrs J's pensions into payment for the reasons given in my provisional decision.

Ad hoc fees

Mrs J provided more evidence about fees she has paid to FSG. This was partly because some of the fees were paid by one of her companies. Some of the evidence had been sent to me before. I have reconsidered all of the evidence.

I explained that I intended to refund some of the fees paid by Mrs J and her companies, but other fees would not be refunded. I set out a summary of these fees in an appendix. Having reconsidered all of the available evidence my decision is that those fees I said should be refunded are to be refunded for the reasons given in my provisional decision.

Mrs J provided additional evidence about fees paid to FSG or the adviser. I have considered the evidence and explained what I think about those payments below.

A number of the payments were made in 2008. Mrs J first became a client of FSG in April 2009. The FCA's register shows FSG as being regulated with the FSA from 30 September 2008. The payments appear to have been made to the adviser before FSG was regulated on 30 September 2008. As they were not paid to FSG I cannot make an award for FSG to refund those payments.

Mrs J has provided a record of a payment of £720 in December 2008. FSG provided an invoice for this sum as taxation advice. Mrs J's notes refer to this as tax planning. Mrs J says this shows FSG was preparing her for financial planning before she signed the agreement in April 2009. I have carefully considered this point, but I cannot say the fee was paid related to an activity that was regulated. Taxation advice is not regulated and I cannot see that there is any other activity this relates to. Mrs J had not signed the client agreement when the fee was paid and so I cannot rely on the client agreements she later signed. I am not satisfied the payment is one I can consider.

Mrs J referred to another payment dated 24 March 2008 for £417.50. This was described by FSG on a statement of fees paid as legacy planning and exit strategies for one of Mrs J's businesses. Mrs J says her notes refer to the pensions audit and FSG will try to minimise the expenses. However, it isn't clear to me what the notes refer to. As FSG provided evidence the payment related to Mrs J's business, I cannot make an award as I am not satisfied the payment was for a regulated activity.

A payment for £528.75 has been annotated by Mrs J as "3 x pension audits" on her bank statement. Her notes indicate FSG carried out three pension audits for £450 + VAT. Another page of her notes indicates this was for 1) analysis paid for 2) file check £100 + VAT x 3 – Aviva /Clerical £250 + VAT for AXA? 3) submission to pension specialists for transfer.

I have reviewed these notes and with Mrs J's explanation for the notes, I can see where the £528.75 could have been for the pension audits, as Mrs J says they were. However, it was not as clear to me how the amounts were to be calculated as in the other examples where I have been satisfied the payment was for a regulated activity. It appears the payment could have been three x £100, plus £250 plus VAT. There is some doubt in my mind about what the payment was for. I am not satisfied the evidence is sufficient for me to conclude it was for pensions audits. I am not making an award for the payment to be refunded.

Mrs J provided additional evidence for a payment of £575 made on 17 September 2012. Her notes indicate this was for "checking plans/platts". FSG said the payment was a mortgage arrangement fee. However, Mrs J says this is unlikely as she paid £3,700 to FSG for a re-mortgage in April 2012.

In my view, the evidence on this point is not clear. The note Mrs J has now provided indicates the payment could be for reviewing plans and platforms. However, I do not think the note is clear on this point. FSG provided evidence the payment was for a re-mortgage. Whilst I accept Mrs J's point a payment had already been made for the mortgage arrangements, it is possible another payment could have been made as well. Although the payment was made when Mrs J was in ill health, I am not persuaded it is a payment FSG should refund.

Mrs J referred to her notes showing she paid £50 a month and her notes refer to a bespoke portfolio service. I think this is one of the regular payments to FSG I have already said should be refunded.

Mrs J has also provided a copy of her notes about a Trust for which she was charged £692 and £180 for a letter of wishes. She says this shows it was for the pension plans. However, the notes also have BT Lets in brackets. Whilst this is about a Trust, it is not clear what this trust related to. It could have been the pensions, but other assets can be placed in trust. The reference to buy to let indicates this could be Mrs J's properties. I am not persuaded the payment was for an activity I can tell FSG to refund the fee.

Mrs J also referred to a payment of £2,067.75 in March 2013. She says this was for the transfer of a pension drawdown plan. A calculation of 4.5% of £45,950 was mentioned. This was the amount left in the AXA EPP after taking the tax-free cash and results in the £2,067.75 paid to FSG. FSG produced an invoice describing the amount as being commercial mortgage advice and future planning for a property. I had not previously seen details of the reason for this payment.

In my view, the calculation that the fee of £2,067.75 is 4.5% of £45,950 is persuasive. It is an exact figure and is supported by Mrs J's contemporaneous notes. I am satisfied this fee was for a regulated activity. This fee should be refunded.

fair compensation

My aim is to put Mrs J in the position she would now be in if she had received suitable advice. That is not easy because there is not much evidence to show what that advice should have been.

There are many activities covered under the financial planning agreement Mrs J entered into with FSG. In my view, she did not need that service. The regular payments for this service should all be refunded.

Mrs J paid many ad hoc fees for different activities. I have explained in detail above what I think those fees were for. The payments I have listed in the attached appendix as being related to regulated activities should be refunded.

If Mrs J had not been paying the fees to FSG her need for income would have been significantly lower. I remain of the view that she would not have needed to take her pension benefits if she had not been paying those fees. However, she still had an outstanding mortgage and the investments with Transact and Elevate. Some of the funds with Transact and Elevate have been used to repay the mortgage.

I cannot say with any certainty what Mrs J would have done, if she had been given suitable advice. I think Mrs J would have invested differently. It is not possible to say *precisely* what she would have done. But I am satisfied that what I have set out below is fair and reasonable given Mrs J's circumstances and objectives when she invested.

what should FSG do?

To compensate Mrs J fairly, FSG must:

- Compare the performance of Mrs J's investment with Elevate with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.
- The funds placed on the Transact platform should have been used to meet living expenses including repayment of the mortgage. Any fees charged for the Transact platform should be refunded to Mrs J. This should have the effect of providing a return equivalent to the interest earned whilst the money was with Transact.
- FSG should also pay interest as set out below. Income tax may be payable on any interest awarded.
- Pay Mrs J £2,000 for the severe distress and inconvenience caused by FSG. She has spent a lot of time dealing with FSG. There has been minimal action. This has been very stressful for her. The unprofessional conduct of FSG has aggravated that distress.
- Repay the fees Mrs J paid to FSG that are listed in the sections payments that are related to regulated activities and payments that were for the regular financial planning fees. Simple interest should be added at a rate of 8% a year, from the date each fee was paid to the date of payment.
- Mrs J paid overdraft fees. These should be paid by FSG. Interest should be added to those fees at the rate charged by the lender.

investment name	status	benchmark	from ("start date")	to ("end date")	additional return
Elevate Platform	surrendered	FTSE WMA Stock Market Income Total Return Index	1 May 2009	1 June 2016	Any loss should be revalued using the benchmark to the date of my decision

Simple interest is to be added to my award at a rate of 8% gross a year from date of my decision to date of payment.

for each investment:

actual value

This means the actual amount paid or payable from the investment at the end date.

fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any additional sum that Mrs J paid into the investment should be added to the *fair value* calculation at the point it was actually paid in. Any withdrawal, income or other payment out of the investment should be deducted from the *fair value* calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

If there are a large number of regular payments, to keep calculations simpler, I will accept if FSG totals all those payments and deducts that figure at the end instead of deducting periodically.

why is this remedy suitable?

I have chosen this method of compensation because:

- Mrs J wanted income with some growth and was willing to accept some investment risk.
- The WMA index is made up of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mrs J's circumstances and risk attitude.

my final decision

I uphold the complaint. Financial Services Gateway Ltd must now pay compensation to Mrs J as set out in this decision. Simple interest is to be added to my award at a rate of 8% gross a year from the date of this decision to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 22 October 2020.

Roy Milne
ombudsman

<u>Payments that are related to regulated activities and should be refunded</u>			
<i>Date</i>	<i>Amount</i>	<i>Description</i>	<i>To be refunded</i>
04/04/2009	100		Yes
27/04/2009	150		Yes
01/12/2009	2550	Cheque annotated as Pensions Analysis	Yes
13/12/2010	1770	Attribution Analysis	Yes
22/12/2010	2306	Pension Analysis	Yes
23/05/2011	1205	Drawdown extra charges	Yes
07/12/2011	1177	Asset protection trust	Yes
01/06/2011	255	Fees for Morningstar	Yes
05/01/2011	207	Video preparation and rendering	Yes
20/06/2012	150	Pension analysis	Yes
01/08/2012	1005	Estate Planning	Yes
26/11/2012	5000	Pensions Transfers	Yes
30/01/2013	250	Investment Advice	Yes
26/02/2013	1050	Pension Analysis & Portfolio Optim/Integration Composite	Yes
15/03/2013	2067.75	Drawdown	Yes
13/01/2014	1050	Drawdown Administration Fee	Yes
16/04/2015	1450	Drawdown Fee - Subtotal of £2500	Yes
29/04/2015	475	Actuarial Advice for Drawdown	Yes
<u>Payments that were for the regular financial planning fees.</u>			
<i>Date</i>	<i>Amount</i>	<i>Description</i>	<i>To be refunded</i>
22/05/2009	240	Bill Payment – regular FP payment	As part of the regular payments
22/05/2009	158	Bill Payment – regular FP payment	As part of the regular payments
22/05/2009	120	Bill Payment – regular FP payment	As part of the regular payments
11/03/2014	420	Sales Invoice	As part of the regular payments
27/04/2014	420	Sales Invoice	As part of the regular payments

<u>Payments that were for the unregulated activities.</u>			
31/03/2010	50	Cheque annotated	No
28/07/2010	528.75	Pension Audits x 3	No
24/05/2011	200	Attribution Analysis	No
04/04/2012	675	Tax Planning	No
23/04/2012	2278.48	Business Planning	No
20/06/2012	268	G Ltd tax update	No
01/08/2012	240	Initial Capital raising feasibility work	No
17/09/2012	575	Transfer to "FSG" no annotations	No
26/02/2013	872	Trust- BTL Analysis and letter of wishes	No
08/07/2013	117	G Ltd tax update	No
29/11/2013	405	BTL Mortgage	No
11/03/2014	25	Bespoke Modelling	No
05/04/2014	129	Set Up of bookkeeping tool	No
05/04/2014	80	Set Up of bookkeeping tool for G	No
30/04/2014	12	Bookkeeping for G	No
30/04/2014	12	Bookkeeping for G	No
10/06/2014	12	Bookkeeping for G	No
10/06/2014	50	For G - Unsure of reason	No
17/09/2014	65	Bookkeeping upgrade from Arithmo to QB - BTL	No