

The complaint

Mr J says Clairville York Limited (CYL) provided very poor client management services despite charging him ongoing fees.

What happened

I start by noting CYL has failed to provide its business file despite several requests from this Service. It hasn't given any explanation as to why this is the case. Nor did it respond to the Investigator's view.

Mr J has provided documentation contemporaneous with the events he complains about, including a copy of the terms of business he signed up to in 2020. He's also provided a copy of CYL's final response to his complaint and information from his pension provider (X).

I'll now summarise the background to Mr J's complaint based on the available evidence. In February 2021 CYL advised him to transfer a defined benefit pension into his existing personal pension with X.

Unfortunately X was responsible for many errors and Mr J says he received little assistance from CYL in trying to get these resolved. He says it left him to correspond with X and make a formal complaint. When X sought to provide redress he had no way of checking the final calculations and he says CYL simply said that they seemed right. He says a lot of the information he was chasing for from X had been provided to CYL, but it failed to forward this onto him.

Mr J says he also discovered he wasn't receiving interest on his cash accounts within his portfolio. He raised this with CYL but when it failed to respond he raised the matter directly with X. He then found the cash account had various transactions that couldn't be verified. He raised the issue with CYL and was told everything was as it should be.

Mr J raised a formal complaint on 1 December 2022 setting out his concerns with everything that had happened. CYL responded on 26 January 2023, concluding in the following terms:

"You are now in the position you would have been had the errors not occurred in X's systems. Our error was in not keeping you updated about the progress of the work we were doing to get this resolved for you, which no doubt contributed to your trouble and upset for which I sincerely apologise."

CYL went on to offer to suspend his fees for six months, worth around £1,800, in recognition of the things it got wrong. Mr J wasn't satisfied with the offer. He noted it failed to address some of his complaint points. And that it hadn't delivered the service he was paying for, including an annual review. He brought his complaint to this Service to consider.

An Investigator reviewed Mr J's case and upheld it. He found that CYL had failed to provide the service he'd been paying for. He required the firm to refund all of the ongoing fees it had charged since March 2021. He said it should pay Mr J £350 for the trouble and upset it had caused. And that if Mr J wanted to switch his financial adviser it should pay to cover the costs incurred for doing so.

Mr J accepted the Investigator's view. CYL didn't provide any substantive comments but requested a second opinion. As such Mr J's complaint has been passed to me to review afresh. I issued my provisional decision in December 2023. Mr J provided further comments which I've considered in arriving at this 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.

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr J's complaint, but I'm departing a little from the Investigator's recommendation on redress. I'll explain why.

The first thing I've considered is the extensive regulation around the services like those performed by CYL for Mr J. The FCA Handbook contains twelve Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 2.1.1 R in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 6, which requires a firm to pay due regard to the interests of its customers and treat them fairly.
- Principle 7, which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms. As such, I need to have regard to them in deciding Mr J's complaint.

Although CYL hasn't provided a case file or argument in support of its position, I can piece together some information from its final response to Mr J and documentation from X which he's supplied. There's evidence in these which explains what happened from its perspective. For example, I can see that when responding to Mr J's complaint in January 2022, X confirmed:

"Firstly, I would like to assure you that your financial adviser has been in regular contact with us to ensure these issues were resolved and the right outcome for you was reached. They have been instrumental in ensuring you were not financially disadvantaged by our mistakes, and we have worked closely with them to resolve the issues."

Mr J says that X's statement doesn't provide all the context. In responding to my provisional decision he said:

“...The errors started in April 2021. You will have seen from my email to CY dated 26 October 2021 that NO progress had been made at that time. The formal complaint to X was raised on 4th October 2021 and I was advised that it would take eight weeks to resolve the errors. This does not indicate that any progress had been made. Any regular contact made was after I initiated a formal complaint.”

I understand the point Mr J makes, but I can see from the available evidence that CYL had been in contact with X before October 2021, for example requiring it to check some of the redress calculations it had made which had been incorrect. It wasn't passive in the matters he raises. It was working on his behalf to get things put right.

Nevertheless, it's a problem for CYL that it has failed to engage with this Service not only in terms of submitting its file, but also by not addressing our questions, requests or the recommendations of the Investigator. This coupled with its acceptance that it didn't provide Mr J with the service he should expect leads me to conclude that his complaint should be upheld.

What remains is for me to consider fair redress.

Putting things right

The purpose of redress is to put Mr J back into the position he'd have been in now, or as close to that as reasonably possible, had it not been for Clairville York Limited's failings. The first point to make is that Mr J has brought a separate complaint against X, which it seems from the paperwork available to me has already tried to return him to the position he'd have been in but for its mistakes.

Clairville York Limited was paid an initial fee of around £6,400 by Mr J for advising on the transfer of his defined benefit pension to X. There's no sense from his complaint that he's unhappy with any aspect of this transaction. And such work when undertaken properly requires considerable groundwork, research, analysis and supporting documentation. He's had the benefit of all the initial work undertaken on his behalf.

In responding to my provisional decision Mr J acknowledged that the initial work had been undertaken by CYL professionally. But he went on to say:

“The process of establishing a new relationship with another financial adviser will involve gathering background financial information and a full KYC this will involve additional costs that would not have applied if CY had not chosen to stop communicating with me and tried to rebuild the broken relationship.”

The Investigator concluded that Clairville York Limited's should cover the initial costs Mr J incurred as a result of moving to a different adviser.

While I understand Mr J's point that moving to another adviser will mean he incurs costs. That is an inevitable consequence of the breakdown in the relationship with Clairville York Limited. I think it did try to make sure he didn't lose out as a result of X's failures.

While I've concluded Mr J shouldn't bear any exit costs, which would need to be absorbed by Clairville York Limited, I don't believe it would be proportionate in the circumstances of this case to require it to cover the costs for him to take on the services of another financial adviser.

Mr J signed up to Clairville York Limited's ongoing advice service in March 2021. He said he paid these fees up until January 2023, when it agreed that in light of its performance these should be suspended. In responding to my provisional decision Mr J said:

"I don't believe that I have received value as we did not get past the stage of the initial set up. I feel they should be refunded in full. This was a monthly charge in the region of £350 (0.5%)."

Further, this Service has asked Clairville York Limited to provide evidence that it met the service agreement it had with Mr J. A key element of that was an annual review. He says these should've taken place in October 2021 and 2022, but never happened. CYL hasn't provided evidence to the contrary.

The Investigator also thought that Clairville York Limited should return all the fees it had charged Mr J since March 2021.

I don't think it would be fair to require Clairville York Limited to refund all Mr J's fees. I say this because although it has failed to submit its evidence, it is clear to me from its final response to Mr J and contemporaneous third party testimony that it had tried to help resolve the failings of X for him. It was looking after his interests, in accordance with what had initially been agreed. And it expended a lot of energy doing so.

I do accept however that Clairville York Limited wasn't initially as proactive as it should've been and its communications with him were poor. While it did undertake some important works for Mr J, it didn't fulfil the contract in full. So, I think a fair outcome here would be for it to refund the bulk of his ongoing fees, from October 2021 until January 2023. To this sum it should add 8% simple annual interest from the point the fees were paid until it settles.

Finally, when I'm considering a complaint like Mr J's I think about whether it's fair to award compensation for distress and inconvenience. This isn't intended to fine or punish a business – which is the job of the regulator. But when something's gone wrong, recognition of the emotional and practical impact can make a real difference.

We're all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses and organisations. When thinking about compensation, I need to decide that the impact of a firm's actions was greater than just a minor inconvenience or upset. It's clear to me that this was the case here.

The Investigator recommended Clairville York Limited pay Mr J £350 for the distress and inconvenience it had caused him. I think that was a reasonable proposal in the circumstances and I see no reason to disturb his conclusion here.

My final decision

For the reasons I've already set out, I'm upholding Mr J's complaint. I now require Clairville York Limited to put things right for him in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 11 March 2024.

Kevin Williamson

Ombudsman