

## The complaint

Mr T complains that Cowgills Wealth Limited (Cowgills) failed to provide him with his annual review in February 2021 and February 2022. He thinks this led to the underperformance of his pension investments and a financial loss.

## What happened

Mr T said he met with his Cowgills adviser in September 2019 to get pension investment advice. The adviser recommended that Mr T transferred his pension from his existing provider – provider P - to a provider I'll refer to as provider S. The pension was worth around £340,000 and the recommendation was for Mr T to invest in a low to medium risk portfolio chosen by Cowgills investment committee.

Cowgills produced its recommendations in October 2019. This recorded that Mr T was a Low Medium Risk investor with some capacity for loss. Cowgills recommended that Mr T invested in cash and four other funds. I'll refer to these as: fund V, fund L, fund O and fund B.

Cowgills said that its annual fee would be 0.50% of the value of the funds on an ongoing basis. Under the "Monitoring & Review" section of its advice report, it said:

*"It is essential to review your plan on an ongoing basis. We will meet at least annually to track your progress against this plan and take into account any changes, including tax changes as our advice is based on the current position and understanding. Further details of our ongoing services are in your Client Agreement."*

In January 2020, Mr T signed a fee agreement with Cowgills. This confirmed that the initial advice fee was £3,500. He also agreed to pay for ongoing advice for an annual fee of 0.5% of the value of the funds.

Mr T said that his funds were invested in February 2020, with provision for annual reviews. But that it was September 2022 before a review finally took place.

I understand that at the September 2022 review, Mr T voiced his concerns about not having had a review meeting in February 2021 or February 2022. He felt he hadn't had an opportunity to review his portfolio over this period.

Cowgills said that its investment committee finalised the decision about certain funds in which Mr T was invested at its meeting on 3 October 2022.

Cowgills wrote to Mr T on 6 October 2022 to tell him it had raised a complaint about his concerns.

I understand that Cowgills issued its review letter dated 13 October 2022 to Mr T. This said that it proposed some changes to the recommended investment strategies. It said that it recommended that two of Mr T's funds – fund L and fund O - be switched based on the performance of fund L, and a corporate takeover at fund O.

Cowgills issued its complaint response on 10 November 2022. It acknowledged that Mr T

hadn't received the ongoing reviews he should have received. And offered to refund the ongoing fees it'd charged him between March 2020 and October 2022. It said this totalled £3,759.59. It also offered an additional £240.41 compensation payment for the distress and inconvenience caused.

Mr T replied to Cowgills on 12 December 2022. He had calculated that the total fees Cowgills had charged him over the period in question was £7,146. He felt that the promised service hadn't been provided over the whole period, and therefore felt that this should be the amount refunded.

Mr T also felt that as Cowgills hadn't provided the promised service, he'd not been given the opportunity to review his investment strategy. He felt the first opportunity to have done this was in February 2021. But he'd not had a review until September 2022. Mr T felt that the performance of his portfolio had suffered as a result. He compared the performance of his portfolio to the FTSE100 and calculated that his fund's performance was 8.34% worse than it should've been. Mr T therefore felt that Cowgills should pay him the £23,205 he felt he'd lost in investment returns, as well as a fee refund of £7,146.

Cowgills replied to Mr T on 22 December 2022. It said it would treat his concern about investment performance as a complaint which it would investigate. It then issued its final response on the complaint on 3 February 2023.

Cowgills said that part of the fees it'd received in 2020 related to the initial advice delivery, which it didn't consider there were any grounds to return. It also said that it did conduct a review meeting in 2022, although that was held later than scheduled. It said that during that meeting, it had carried out work relating to Mr T's investment strategy and to income generation. It felt that its earlier fee refund offer was fair. But said that it would also turn off the ongoing fees for November and December 2022 and would refund the January 2023 fees if Mr T had been charged them.

In respect of Mr T's investment performance complaint, Cowgills said that his portfolio had been constructed in line with his agreed risk profile. It said that its Wealth Investment Committee had finalised its decisions about two funds which Mr T held – fund L and fund O - at its committee meeting on 3 October 2022. It therefore felt it was unlikely that Mr T's adviser would've made any changes to his underlying investments had a review meeting been held in 2021, or before the date of the September 2022 review meeting. It didn't consider that Mr T had been disadvantaged by the delay to his review meeting. It also explained why it felt that Mr T's use of the FTSE 100's performance as a benchmark was misleading. It also said that an investment in a FTSE 100 index wouldn't have matched Mr T's agreed risk position.

Mr T replied to Cowgills on 25 February 2023. He accepted its fee refund offer for ongoing services. But he still wanted Cowgills to refund the initial fee he'd been charged. He also still felt that Cowgills should compensate him for the worse investment performance he felt he'd achieved because of the lack of timely reviews. He explained why he felt Cowgills should also pay him £8,078 in respect of lost investment gains.

Cowgills didn't agree with Mr T's proposals. So he brought his complaint to this service. He said his main concern with Cowgills was that he'd paid upfront for its management services which he felt was supposed to include two full reviews of his pension investment. He said he was very disappointed and frustrated by Cowgills' complete lack of management.

Our investigator issued his view in July 2023. He felt that Cowgills offer to pay Mr T £4,222 as a refund for his ongoing advice fees and inclusive of £240.01 compensation for the distress and inconvenience caused was fair. He didn't think that Cowgills should refund the

initial fee to Mr T as he considered that fee related only to the initial advice he'd been provided with. He also didn't think that the performance of Mr T's investments had suffered as a result of not receiving ongoing reviews.

Mr T didn't agree with our investigator. He felt that the impact of Cowgills failure to carry out his reviews went beyond its failure to fulfil its contractual responsibilities. He made the following points:

- Cowgills had admitted it'd failed to provide the agreed services. He said that if Cowgills had failed to carry out any reviews but his portfolio hadn't underperformed the market, repayment of the fees would've been sufficient redress. But he said that Cowgills hadn't performed in line with the market, it'd performed significantly worse.
- He felt that as he'd not been given the reviews he was entitled to, he hadn't been given chance to consider Cowgills' underperformance or its explanation of it. He said that if he had, it would then have been up to him to take whatever action he considered appropriate. He felt the lack of reviews had led to him being stuck with a portfolio that was losing money. And that, if the reviews had gone ahead as intended, he would've had various options other than simply accepting Cowgills' advice and recommendations. He said this might've led to him ending his relationship with Cowgills and moving his investment elsewhere. Mr T felt that our investigator should've considered all of the potential options he might've had if the reviews had gone ahead.
- Mr T felt that Cowgills had failed to contact him to arrange reviews. And that this evidenced that it hadn't carried out internal reviews of his portfolio when they were due.

Our investigator considered Mr T's points. But said they didn't change his view. He still felt that Mr T's investments wouldn't have changed any earlier if he'd had all the reviews he should've had. He said that Cowgills' advisers based their investment recommendations on what its investment committee recommended. And therefore if the investment committee didn't recommend any changes, Mr T's adviser wouldn't have made any to Mr T's portfolio. He also said that the investment committee was unlikely to regularly chop and change funds because investments need to be given time. But this didn't mean that Cowgills was poorly managing Mr T's investments as the due diligence that the investment committee completed would still be taking place.

Our investigator felt that Mr T's complaint was based on poor service, and that it wasn't linked to the underperformance of his funds. He said that poor performance wasn't something that a financial adviser could control. He also confirmed to Mr T that he could still move away from Cowgills if he wanted. And that it wouldn't affect his complaint.

Mr T felt that Cowgills had known that its portfolio had significantly underperformed the market. And that if it had carried out investor reviews in line with its contractual obligations it ran the risk of losing a lot of investment from dissatisfied clients.

Our investigator asked Cowgills if it would apply investment growth to the fee refund it had offered Mr T. He said that if he hadn't been charged the fees, that money would've remained in his pension and benefitted from the growth.

Cowgills made an increased settlement offer for the fee refund. This was a total of £4,336.29. It calculated this from the fee refund total of £3,982.38, and then used the performance figure of 2.9% from its final response letter to get to £113.50 investment growth. And then added on the £240.41 it had offered for distress and inconvenience.

Our investigator put this revised offer to Mr T. While he didn't think this was a generous offer, he said he was prepared to consider a reasonable negotiated settlement.

Our investigator spoke to Mr T on 12 October 2023. He felt that Cowgills had tried to carry out a review in 2022. But Mr T said he'd not received any review offers. Mr T said he didn't have a relationship with Cowgills at the moment. He said that the funds in his portfolio had remained the same.

Our investigator told Mr T that Cowgills had said that its investment committee wouldn't have advised any changes. And that Cowgills had specifically looked at Mr T's holdings and confirmed that he wouldn't have been advised to change if he'd had an earlier review.

Our investigator then asked Cowgills to confirm whether or not it had changed Mr T's investments in line with the investment committees October 2022 review. He asked it to contact Mr T about this. I understand that Mr T is deciding whether or not he wants to make a separate complaint about this.

Mr T confirmed to this service in early January 2024 that Cowgills is no longer his adviser and that it's not charging him any fees.

Mr T also told this service in January 2024 that he understood that the management fees had apparently been repaid, but that he had no way of confirming this.

Mr T said he accepted our investigator's general point that Cowgills investment committee hadn't recommended any investment changes in the early stages of Cowgills continued failure to review his portfolio. But he still felt that this had denied him the opportunity to disinvest. He also felt that Cowgills had failed to change his underlying investments after the investment committee had recommended that some of them should be changed in late 2022. He said he was concerned that this failure had led to further financial loss for him.

Mr T still felt that our investigator hadn't fully considered his primary complaint, which was that Cowgills had failed to manage his pension fund from the outset.

Our investigator felt that Mr T's complaint related to the ongoing advice he received, for which he'd been offered a refund of the fees. He still felt it was likely that the only changes to his portfolio would've been after Cowgills investment committee recommended changes in late 2022. And that he therefore hadn't lost out financially because of the late reviews. He also said that if Cowgills hadn't made the recommended changes in late 2022 then Mr T should raise this as a new complaint.

Our investigator issued an updated view on 28 March 2024. He felt that although Cowgills had offered Mr T redress, it should also have allowed for the investment return Mr T would've received on the ongoing fees he'd paid if he hadn't had to pay them.

As agreement couldn't be reached, the complaint has come to me for a review.

### **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.

Having done so, I'm going to uphold it. I agree with our investigator that Cowgills should make the refund it has offered in respect of the ongoing fees, but that it should also compensate Mr T for the lost investment return in his pension because those fees were deducted. I know my decision will be disappointing for Mr T. I'll explain the reasons for my

decision.

Before I start, I acknowledge that Mr T is considering whether or not to make a separate complaint to Cowgills about the alleged failure to change his investments in line with the October 2022 recommendations. I confirm that I won't be considering that point in this decision, as it's a new complaint.

I first considered Mr T's complaint point that if he'd had the reviews he'd expected in February 2021 and February 2022, he would've been financially better off.

*Did the missed reviews cause a financial loss?*

Mr T feels that if his portfolio had outperformed the market, rather than underperforming, simply repaying the fees would've been enough. But he felt that the lack of reviews meant that he'd not had the chance to consider whether or not he wanted to stay with Cowgills after it'd explained why his portfolio had underperformed. And that this effectively meant that he was stuck with a portfolio which was losing money.

Mr T also felt that if the reviews had gone ahead as they should, he would've had options other than simply accepting Cowgills' advice and recommendations.

I do appreciate Mr T's position here. But I can also see that he now reluctantly accepts that because Cowgills investment committee didn't recommend any investment changes that would've impacted his portfolio before their October 2022 recommendation to change two of his four funds, any earlier reviews wouldn't have led to any earlier changes or different investment recommendations. However, Mr T still feels that the missed reviews meant that he'd been denied the opportunity to disinvest. So I've gone on to consider whether it's more likely than not that Mr T would've moved his investments elsewhere if he'd had the expected February 2021 and 2022 reviews.

The evidence shows that Mr T asked Cowgills for pension investment advice. Cowgills provided its four fund recommendations in October 2019. These were based on Mr T being a Low Medium Risk investor with some capacity for loss. The funds were then invested in February 2020.

As our investigator noted, Cowgills manages its investment portfolios through a centralised investment committee, which doesn't aim to frequently change funds. Although the notes from the October 2022 investment committee meeting state that the recommendation to replace fund L was made after a prolonged period of underperformance – which I agree with our investigator would likely mean at least a year – I'm of the view that if Cowgills had held a review with Mr T in February 2021 and February 2022, this either wouldn't have yet been evident, or would've only just started to be evident.

I also note that pension investment is by its nature a long-term investment. Therefore I'm not persuaded that Mr T would've made a decision to disinvest if he'd had a review in February 2021 and February 2022. I say this because the investments had only been in place since February 2020. And Cowgills investment committee was standing by the funds that had been recommended for him. I've also seen no evidence that his attitude to risk or his capacity for loss had changed since late 2019. So I think it's unlikely he would've decided to move his funds simply because of the short-term performance he was experiencing. I also say this because had Mr T made a decision to move, he would've been likely to need new advice about what to do instead. And this would've been relatively expensive to obtain. Overall, I don't think that the missed reviews were the reason Mr T stayed with Cowgills.

I acknowledge that Mr T also considers that Cowgills made a decision not to carry out

investor reviews to avoid the risk of losing a lot of investment from dissatisfied clients. But there's no evidence that that is the case.

I next considered whether Cowgills should refund the initial advice fee to Mr T.

*Should the initial advice fee be refunded?*

Mr T still considers that Cowgills should refund the initial advice fee. But I agree with our investigator that it doesn't need to do so.

I say this because the initial fee was charged for the work Cowgills did in respect of its initial advice for Mr T. He agreed to follow that advice. The initial fee wasn't in any way linked to the ongoing services that Cowgills separately agreed to provide to Mr T for an ongoing fee.

Mr T signed the fee agreement on 8 January 2020, indicating he accepted the fee. The client agreement also stated the following:

*"Our charges fall into the following categories:*

- a. Initial charges: these are the upfront costs of our services. We offer several types of initial service depending on your needs.*
- b. Ongoing charges: once your financial plan is in place it is important to keep it under review so it can be adapted, where necessary, as your circumstances change. Our ongoing services are designed to do this."*

I think this is clear that there are two separate charges for two separate services.

I've seen no evidence of fault in the provision of the original advice. So I can't reasonably ask Cowgills to refund that fee simply because it then failed to provide the ongoing services for which it had separately agreed a different fee.

I next considered whether Cowgills ongoing services fee refund offer is reasonable.

*Is Cowgills ongoing services fee refund offer reasonable?*

Cowgills offered to refund the following ongoing fees:

- £1,263.61 for the period from January 2022 to October 2022
- £2,495.98 for the period from March 2020 to December 2021
- £222.69 for the period from November 2022 to December 2022

It also agreed to refund the January 2023 fees if Mr T had been charged them. The total of these fees, excluding any in respect of January 2023, is £3,982.28.

Cowgills also offered to pay £113.50 in respect of lost investment growth on these fees.

I agree with our investigator that, had Mr T not been charged the ongoing fees over the period between March 2020 and January 2023, those fees would've stayed in his pension plan. And would've changed in value in line with the underlying assets held. Therefore I agree with our investigator that, rather than asking Cowgills to refund the ongoing fees and pay Mr T an additional payment of £113.50 in respect of his lost investment return, it should work out what his fund would now be worth if instead the ongoing fee had never been

charged over that period. I'll explain how to carry out this calculation at the end of my decision.

I finally considered whether the distress and inconvenience payment Cowgills has offered to pay Mr T is reasonable under the circumstances.

### *Distress and inconvenience*

Cowgills offered Mr T £240.41 compensation for the distress and inconvenience caused by its failure to hold review meetings.

I consider that, as it has offered to refund the ongoing charge for the reviews that were missed, this is reasonable under the circumstances of the complaint. And is in line with what I would've otherwise recommended.

I uphold this complaint. And require Cowgills to take the steps detailed below.

### **Putting things right**

#### *Fair compensation*

My aim is that Mr T should be put as closely as possible into the position he would probably now be in if he hadn't been charged the ongoing fee between March 2020 and January 2023.

#### *What I require Cowgills to do*

To compensate Mr T fairly, I require Cowgills to:

- Compare the performance of Mr T's pension with what it would've been worth at the date of my final decision if no ongoing fees had been deducted between March 2020 and January 2023. This is the fair value.
- If the fair value is greater than the actual value at the date of my final decision, there is a loss and compensation is payable. If the actual value is greater than the fair value, no compensation is payable.
- If payment of compensation is not made within 28 days of Cowgills receiving Mr T's acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

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

- If there is a loss, Cowgills should pay into Mr T's pension plan, to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

It's unclear from the evidence I've been provided with whether or not Cowgills has already refunded any ongoing fees to Mr T or not. If it has, Cowgills can deduct the amount it paid from any loss calculated.

- If Cowgills is unable to pay the compensation into Mr T's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to

*notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr T won't be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using Mr T's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr T is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr T would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- If either Cowgills or Mr T dispute that this is a reasonable assumption, they must let us know as soon as possible so that the assumption can be clarified and Mr T receives appropriate compensation. It won't be possible for us to amend this assumption once my final decision has been issued on the complaint.
- Pay Mr T £240.41 for the distress and inconvenience caused by the missed reviews.
- Provide the details of the calculation to Mr T in a clear, simple format.

Any additional sum that Mr T paid into the investment should be added to the fair value calculation at the point it was actually paid in.

Any withdrawal from the portfolio 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 is a large number of regular payments, to keep calculations simpler, I'll accept if Cowgills totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

### **My final decision**

For the reasons I've given above, I uphold the complaint. Cowgills Wealth Limited should pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 13 June 2024.

Jo Occleshaw  
**Ombudsman**