

The complaint

Mr & Mrs T have complained that Attivo Financial Services Limited (Attivo) should have acted as their Independent Financial Adviser (IFA) for both Mr T's Self invested personal pension (SIPP) and other investments that they hold.

They believe this has resulted in a financial loss arising from higher charges on their investments of c£2,750. They would like to be compensated for this loss and also be awarded the sum of £2,750 in respect of their distress and inconvenience.

What happened

I issued my provisional decision in April 2024, the relevant parts of which are reproduced below and forms part of my decision:

There is a wealth of correspondence relating to this complaint. While I have reviewed all the evidence provided by both parties, for the purposes of brevity I have summarised what I consider to be the main elements here.

Mr & Mrs T engaged the services of an IFA in mid-2020, primarily to review Mr T's existing pension arrangements. As a result of their discussions, the IFA recommended that Mr T transfer and consolidate his existing pension benefits into a SIPP, for which he was paid an agreed fee.

Part of the financial review of Mr T's pension arrangements outlined the income and assets held individually and jointly by Mr & Mrs T, including a sizeable investment portfolio managed on a discretionary basis by a wealth and asset management company, to which they paid an annual management fee.

In June and July 2020, the IFA and Mr T discussed the provision of ongoing financial advice. A fee of £750 per annum was agreed. The IFA told Mr T

This can be charged to your pension fund so would be tax efficient. Our advice would look at all aspects of financial planning, IHT planning, working with your solicitors and tax efficient measures

In late July 2020, Mr T agreed to add the IFA as his representative for both his SIPP and the other investments. This would result in a lower annual percentage fee rate being charged by the wealth manager in respect of the annual discretionary management charges.

In mid-2022, the IFA informed Mr & Mrs T that he would be retiring and introduced Attivo, who would be taking over the servicing of his clients. On August 2022, the IFA wrote to say that

In a nut shell the only fundamental difference is the name over the door post. All fees and service arrangements remain the same.

On 27 October 2022, Mr & Mrs T attended a meeting with the IFA. He proposed to them that one of his colleagues, who was moving to work for Attivo, should assume the role of their IFA (Attivo IFA). The Attivo IFA then provided them a copy of Attivo's Terms of Engagement. This contained the assurance that:

You chose to take an ongoing service from your previous financial planner. With your agreement, if Attivo is appointed as the servicing agent of your plans/policies, we will continue to provide an ongoing service under the same charging structure as your previous financial planner.

In early November, the Attivo IFA sent Mr T a Change of Servicing Adviser letter of authority in respect of his SIPP. After discussion with the Attivo IFA, he signed and returned this on 3 November 2022.

On 19 December 2022, the wealth manager wrote to Mr T - about his SIPP – and Mr & Mrs T – about the other investments. Both letters gave details of new annual fee rates, on discounted terms which were due to take effect from 6 April 2023, and forms to sign and return to appoint the Attivo IFA as their representative for both the SIPP and other investments.

The wealth manager contacted Mr & Mrs T on 1 March 2023 to inform them that they were not eligible for the discounted fees on their other investments, as the Attivo IFA was only responsible for Mr T's SIPP. Mr T wrote to Attivo on 22 March 2023 to query this.

Attivo replied on 28 March to confirm that this was correct, and that as the Attivo annual fee of £750 was paid from the pension, Attivo was only providing ongoing advice in relation to the SIPP. This letter also apologised for the misunderstanding that had caused the situation to arise and outlined two options for proceeding:

- Continue to pay the flat rate fee for advice relating solely to the SIPP*
- Appoint Attivo to act in relation to the other investments for an additional fee, which would allow the discounted fees from the wealth manager to be obtained.*

Unhappy with this response, Mr & Mrs T made a complaint to Attivo on 13 April 2023.

Attivo responded to the complaint on 18 May 2023. In its response, Attivo rejected the complaint. It said that having reviewed the evidence, it considered that it was only contracted to provide ongoing advice about the SIPP. It also stated that the confirmation of ongoing fees document Mr T signed on 3 November 2022 referred solely to advice and fees related to his SIPP and made no mention of the other investments. It also went on to say:

I would also refer to the HMRC Pension Tax Manual PTM143200 which dictates that cross subsidisation of advice fees from pensions to pay for advice activity relating to non-pension products is not permitted:

Unauthorised member payments would be created if the payment was for costs that were not just for pension advice related to the registered pension scheme. For example, costs for advice about retirement income in relation to ISAs or other non-registered pension scheme property would not be covered. The amount of the unauthorised payment would be the amount of the costs that did not relate to pensions advice related to the registered pension scheme.

Any payment made from a pension which is not just for pension advice is therefore considered an unauthorised payment and can incur tax penalties. Attivo would not therefore

consider it suitable to take payment from a pension plan to pay for advice relating to non-pension investments.

Mr & Mrs T were unhappy with this response and brought their complaint to this service.

Our investigator reviewed the evidence and formed the view that the complaint should not be upheld. Attivo accepted their findings but Mr & Mrs T did not and so the complaint has been passed to me to make a final decision.

Both Mr & Mrs T and Attivo responded to my provisional decision.

Attivo responded to state that it believed it was the responsibility of the original IFA that Mr & Mrs T were given the expectation that the fee of £750 per annum taken from Mr T's pension would cover advice relating to both his pension and the joint investments. It also felt that the fact that only Mr T had signed an ongoing service declaration - which only referred to his pension – should mean that he was aware that the fee was only to cover advice in relation to his pension and excluded the other investments.

Mr & Mrs T also responded to say that the loss that they had suffered in terms of higher charges on their investments was the result of them trying to resolve the issue with Attivo prior to moving to a different IFA, which they did in October. They asked that I reconsider my decision to not award compensation for financial loss.

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.

In my provisional decision, I stated:

Having reviewed all the evidence in this case, I disagree with our investigator and intend to uphold this complaint. Given this, I think it is appropriate to give both parties the opportunity to comment before I issue my final decision.

I will now explain how I have reached my decision.

Firstly, I think it's important to reflect upon the role of this service. This is to impartially review the circumstances of a complaint and make a decision on whether a business has made errors or treated a customer unfairly.

Having said that, I'll cover each of the main complaint points in turn.

The first, and most significant point to address is whether Attivo should have provided Mr & Mrs T with financial advice across their entire portfolio, comprising Mr T's SIPP and the other investments held jointly, for the flat rate fee of £750 per annum.

When considering this point, I have carefully considered all the evidence and find that, on balance, it should not. On one side, I can fully appreciate Mr & Mrs T's points that they were entitled to expect that the fees and services would carry over from their original IFA to Attivo. It seems clear to me that the correspondence they had with both the IFA and Attivo would lead them to draw the conclusion that the fees would continue to cover advice relating both to the SIPP and the other investments.

Conversely, I agree that the HMRC guidelines make it clear that it is not acceptable for fees drawn from a pension scheme to be used to provide financial advice about matters unrelated to that pension scheme.

I must also consider that one of the principles this service operates on is that it does not expect a business to honour a mistake, but to correct it once it becomes aware of it.

In this situation, although Attivo had undertaken to maintain the fees and service levels undertaken by the original IFA, it was, of course, free to change the terms and conditions as long as it communicated this clearly to its customers. The customers are then free to choose whether to accept the new terms or move their business elsewhere. Indeed, the wealth manager introducing a new fee structure is another example of a business changing existing terms and conditions and offering them to its clients.

Once Attivo realised that Mr & Mrs T had an expectation that the flat rate fee drawn from the SIPP was to also cover the other investments, it told them that it could only provide this level of service for an additional fee. I believe that the fee levels it proposed are in line with industry norms and as such, I do not consider them to be unreasonable.

Furthermore, Attivo informed Mr & Mrs T of these options on 28 March 2023, ahead of the lower wealth management fees being introduced. They then had the option to either accept Attivo's fee proposal or move their funds to another IFA to take advantage of the discounted fees.

Consequently, I cannot agree that Mr & Mrs T suffered a financial loss as a result of Attivo's actions.

Where I think Attivo has been at fault here is in creating a false expectation with Mr & Mrs T about the level of service they would receive once they became clients. In particular, Attivo did not provide Mr & Mrs T any definitive description of the fees and service it was proposing to offer them. Instead it relied upon the general terms and conditions which clearly stated that fees and service levels would remain unchanged.

It's also clear to see that the Attivo IFA was copied into statements relating to their other investments, which would have reasonably reinforced Mr & Mrs T's belief that Attivo was acting on their behalf for all their investments.

I would have expected Attivo to recognise this false expectation and communicate the actual position to Mr & Mrs T as a matter of urgency, rather than them being made aware of the situation by the wealth manager. I find that this is contrary to the Financial Conduct Authority's Principles for Businesses, specifically

Communications with clients: A firm must 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. (Principle 7)

While I don't find that Mr & Mrs T have suffered a financial loss as a result of Attivo's actions, I do think that the lack of clarity surrounding the extent of the ongoing financial advice created a clear expectation for Mr & Mrs T that all their investments would be covered by the service. I think it's fair to conclude that this was Attivo's responsibility, particularly since Mr & Mrs T had sought clarification on more than one occasion.

Consequently, in the circumstances of this complaint, I find that Attivo should pay Mr & Mrs T £250 compensation for the miscommunication and the loss of expectation they experienced.

I've carefully considered the responses that both parties made in relation to my provisional decision. Looking first at the points Attivo raised in response to my provisional decision they do not change my decision. While it is true that the previous IFA provided advice on all Mr & Mrs T's investments for a flat fee taken from Mr T's pension, I find that Attivo did not adequately define the scope of the services that it was to provide aside from saying that fees and services would remain unchanged. I take its point that only Mr T signed a service agreement, but against that it also asked both Mr & Mrs T to sign the 'Sensitive data and ID consent form', which I consider would have reinforced their view that they were both now clients of Attivo.

In terms of the response from Mr & Mrs T, I appreciate the points they raise, but still cannot consider Attivo responsible for any financial loss they suffered.

Consequently, my final decision remains unchanged.

Putting things right

Attivo must pay Mr & Mrs T the sum of £250 in relation to the loss of expectation that it caused through its errors in communicating with them.

My final decision

For the reasons explained above, I uphold the complaint.

Attivo Financial Services Limited should pay Mr & Mrs T the amount set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mr T to accept or reject my decision before 17 June 2024.

Bill Catchpole
Ombudsman