

## The complaint

Mrs M complains that Sage Financial Management Limited (Sage) did not look after her pension arrangements sufficiently and ended their working relationship without notice. The initial complaint has been split into three separate complaints. Mrs M and her partner Mr H have separate complaints and there has already been a complaint decided by an ombudsman about their companies' investments. The background to these three complaints is all very similar, and so cross referencing will need to be made. However, this decision only relates to Mrs M's personal investments. Under a separate reference I have also considered Mr H's case.

## What happened

The ombudsman who decided the complaint relating to, G (the company that both Mr H and Mrs M were directors of), set out some background to the complaint which neither party disputed. So I have adapted this and made it specific to Mrs M's personal funds rather than just G's.

My understanding is that Mrs M and her partner Mr H had an existing relationship with their adviser at Sage, they were family friends and in 2015 Mr H and Mrs M decided to enlist the adviser with regards to his personal investments and the businesses as well.

A client record form was completed but it is undated and Mr H and Mrs M have questioned some of the legitimacy of the data recorded. It was recorded that Mr H and Mrs M both had an attitude to risk of 3 out of 5 and they had three dependant sons.

From December 2019 onwards there's evidence of Mr H and Mrs M asking to reduce the overall fees they were paying (Sage and Aviva's). One of the plans was already on a special deal with Aviva of a 0.18% annual management charge (AMC). Aviva confirmed in a message, "*Based on both clients topping up their ISA's we can reduce all plans down to 0.14% AMC*", and the adviser was then successful in getting a slight further reduction to 0.13%.

However they weren't happy with this reduction and asked if Sage would reduce its own 0.5% pa fee. Sage said that 0.5% pa – a significant discount from the 1% it normally charged for ongoing service – was already in view of them being "*close friends*".

It appears Mr H and Mrs M revisited their concerns about charges. On 12 August the adviser gave them a breakdown of all charges in percentages which he hoped would suffice. Mr H and Mrs M still weren't happy and sought a breakdown of all monetary charges from Sage and Aviva.

In March 2020, due to the market downturn caused by Covid 19, G's investments were sold into cash with the plan of re-investing them as the markets rose. However, the personal investments of Mr H and Mrs M remained invested. As the ombudsman accepted in the case of G, Mr H and Mrs M were somewhat confused by this strategy and weren't particularly happy with it.

Later in September 2020 Mr H and Mrs M wrote to the adviser to say:

*'You explained that the market dropped over a period of 3 days and that it was now a case of wait and see until the market recovers especially in the case of the Witan fund which mainly deals in equities. The fund would be expected to improve with the rise of the FTSE in time. There was also another equity based fund which also dropped significantly.*

*We are not happy that the funds were parked as cash for the company but not for our personal investments and consequently we have lost a lot of money. This is not good and is a fundamental error...*

*We have not heard further to our email dated 10/8/20 requesting to quantify all charges made for both yourself and Aviva, over the period of your engagement. We need this information and portfolio values then and now to put into context the gain in the value of our investments. This would also put into perspective the actual net gain since your engagement. We are very conscious of the very significant investment amount entrusted for you to manage...*

*This is what we expected and employed you to do. We are wondering what you are going to do to remedy our losses, of which are extremely significant.'*

The adviser responded to say:

*Equities markets fell in value earlier this year following the Covid pandemic.*

*When making the decision to move some of the money to cash a broad approach was taken considering your whole investment portfolio as opposed to one plan in isolation.*

*You have previous experience in investing as you had plans with Hargreaves Lansdown and other riskier investments such as EIS and VCT's; therefore you should appreciate that investments can fall as well as rise in value.*

*I have regularly reviewed your plans and provided you with the best possible recommendations which has resulted in the following growth of your investments :-*

**AS OF 12TH SEPT 2020 TOTAL GROWTH OF ALL INVESTMENTS AFTER CHARGES IS £156,550 (NET GAIN SINCE ENGAGEMENT). YOU CAN VERIFY THESE FIGURES BY TELEPHONING AVIVA.**

*When I take on a new client we, like most Financial Advisers charge a fixed percentage (usually 3%) for our initial work and recommendations. For you I did all the work completely free of charge with a NIL fee.*

*We charge all our clients a fixed 1% annual management charge but this was reduced to 0.5% from outset because of our close family friendship. This was further reduced at your request to 0.35%; which is considerably lower than any other client.*

*I spent a great deal of time renegotiating your Aviva charges and managed to get them reduced by a half; which goes unnoticed.*

*I attach details of plan charges for all the above investments. The system at present only allows me to go back one year but you should have been sent regular statements from Aviva from outset showing all charges. PLEASE REMEMBER THE GAINS ABOVE OF £156550 ARE AFTER ALL CHARGES.*

*Please find attached our formal letter of disengagement. I suggest you seek advice from another Independent Financial Adviser with immediate effect. Redacted at Aviva will assist you in the interim;.*

*I will also write to Aviva separately informing them we will no longer be acting as your advisers and to stop all ongoing adviser charges immediately.'*

Mr H and Mrs M contacted Aviva directly, and then complained to Sage in April 2021.

The complaint was answered by an external compliance officer that Sage had asked to consider the complaint. The complaint was mostly not upheld. One point was upheld, when Sage disengaged it still collected fees for a short time – however this was dealt with under the G complaint by our service.

Mr H and Mrs M remained unhappy with this and submitted a complaint to our service for G's, Mr H's and Mrs M's investments.

Another ombudsman at this service upheld the complaint points relating to G and the funds being sold down to cash.

Our investigator looked into the points raised about Mrs M's personal investments and didn't think the majority of the complaint should be upheld. However, he felt Sage didn't act fairly in disengaging immediately and awarded £100 for the distress and inconvenience caused.

Mrs M remained unhappy with the outcome and so asked for a final decision. She has said that she should've been given advice to contribute to a pension earlier than she was. She is unhappy that her reduced charges with Aviva weren't applied correctly – she says Sage should've overseen this. And she is unhappy with the immediate disengagement.

### **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.

There was a pre-existing relationship between the adviser and Mr H and Mrs M. It appears this familiarity has in part led to quite a difference in the expectations of the service that would be provided. But also a lack of formality in the provision of the service. This has led to incomplete evidence trails as its clear conversations were had that weren't recorded – and confirmation wasn't always sought in writing of what was discussed.

### **Should Mrs M been given advice to contribute to a pension earlier?**

Whilst Mr H and Mrs M say they weren't given separate terms for their personal arrangements and G's, the copy of the terms they've retained matches the terms given to us by Sage. I note neither set have been signed, dated or even filled in to select the particular service required. I suspect this may be because of the trust/familiarity between the parties involved. But I did note, further information was provided about what had been selected in the recommendation made to G in 2017 – this matches the same as what was recorded in the advice given to Mrs M in 2020 as well.

### ***'Future Contact and Ongoing Services***

*You have selected service level 1 as an ongoing level of service. The current charges for this service are 0.5% per annum of the amount of your investment as per the terms stated in*

*our Service Proposition and Engagement. For example, if your Investment is worth £100,000 this would equate to £500 per annum.*

It seems all parties are in agreement that there was no separation of terms between those agreed for G and the personal accounts. So I am satisfied it is fair to refer to this evidence in relation to Mrs M's personal investments.

The ombudsman in the case of G commented on the terms of business between Sage and Mr H and Mrs M, I have included them below. In response Mrs M said that the terms didn't have any set limitations. As I agree with the ombudsman's summary and comments, for ease I've recreated this below but relevant to the personal investments:

- Sage's standard charges were a 3% initial charge on lump sum investments (which it didn't take in this case) and 1% pa for ongoing review services. The latter was described as being to *"review your financial situation annually"* and broken down into providing annual statements, ongoing access to adviser's expertise, and an annual review of objectives, risk profile, and asset allocation.
- Sage agreed to reduce the ongoing charge to 0.5%pa from outset, but nothing was documented to suggest it would provide any greater level of service to include proactively switching funds.
- Each time a switch was proposed, Sage was obliged under the regulator's rules to recommend that switch to and obtain agreement – as it didn't have the regulator's permission to carry out the separate activity of *'managing investments'*.
- To review a portfolio more regularly than this would typically involve a higher charge and is usually delegated to a discretionary fund manager (who can make switches without advising on them first and having to give individual reasons).
- Within reason annual reviews may take place more or less frequently – such as if changes might be needed in reaction to global events. That doesn't mean that funds will always be changed if they're delivering satisfactory performance.
- The terms of business also described this as *'structured reviews to give you peace of mind; an assessment of your circumstances and any changes to your plans that are needed'*.
- *"We (Sage) prefer our clients to give us instructions in writing, to aid clarification and avoid future misunderstanding. We will, however, accept oral instructions provided they are confirmed in writing."*

There is very little in the way of documentation regarding the arrangement entered into between Mrs M and the adviser specifically. As I've said above the client form (which I think the adviser purports is from the initial meeting going back to 2015) is undated and there are question marks regarding its veracity – Mr H and Mrs M say it cannot be relied upon – and I've chosen not to place any weight on it. Looking at the evidence as a whole across the three cases, it appears separate agreements weren't entered into and the initial advice focused on Mr H and the companies investments. The evidence also suggests that Mr H and Mrs M saw their companies and personal wealth as joint.

But I think it's fair to say that all parties would've thought Mrs M to be a client of the adviser from the moment Mr H received advice about his pension in 2015.

I've also looked at the earlier bits of advice given to Mr H and the company before the specific advice to Mrs M. It appears Mr H initially transferred his investments to Aviva under the advice of Sage but we don't have much documentation regarding this. In 2017 advice was given to Mr H and Mrs M about the proceeds from their limited company which was sitting in their business bank account and they were advised to invest it in an Open-Ended Investment Company (OEIC). It was said that they wanted the opportunity to call on this money at short notice if the company needed it so they needed some flexibility. And Mr H and Mrs M wanted the advice to be limited to this area.

The adviser also said:

*'I recommend you seek further advice from you Accountant who will be best able to provide you with guidance on taxes payable by companies.'*

Similar advice is also given in 2018 with more of the company's money invested in the same product – again the adviser noted that Mr H and Mrs M wanted the advice to be limited to this area.

Then as I said in April 2020, advice is given to Mrs M to setup a pension and invest £40,000 – this said:

#### ***'Your Objectives and Priorities***

*You confirmed;*

- *You want to save corporation tax by making a lump sum contribution of £40K into a pension plan.*
- *You have a family run limited company which makes considerable profits and you wish to minimise the amount of corporation tax you pay.*
- *In addition to the above it will provide you with an income in retirement.*
- *You wanted me to limit my advice to this area only*

*You understand the need to fund sufficiently for your retirement provision, however, at this time it was your decision to commence contribution of £40K gross employer contribution only. You have confirmed this is affordable.'*

*Mrs M says: 'we invested £40K in April 2020 for various reasons including end of tax year and tax advantages to the company. We were even encouraged by adviser then to make further investments as mentioned in our complaint. It suited our purpose to make this pension contribution for Mrs M through the company. We believe that Mrs M should have been given pension advice earlier during Sage's tenure to make timely investment contributions. The greater investment potential of making earlier contributions were denied.*

*We were totally reliant on Sage to provide best timely advice being aware of all our finances. We should not be having to tell him what advice we wanted as we do not know what advice was needed and required! Sage is after all the professional here and should be offering the advice to us in the first place. It is an obvious point that Mrs M didn't have pension to begin with. Any financial advisor worth their salt, should have offered pension advice, especially if our company was to fund her pension. This would be as a legitimate business expense and for the obvious tax advantages. Mrs M would have benefitted from this for retirement. We therefore consider Sage's tenure to have been detrimental to Mrs M finances in terms of pension planning.'*

As I've set out above it is difficult to establish what has been said and when between the parties – the documented evidence is sparse. But its clear advice was given to Mr H in 2016 and that Mr H and Mrs M saw their finances as joint. She was also given advice about their companies excess earnings rather than them remaining in a standard business account. And Mrs M would've been aware she didn't have a pension at this point but said she wanted to keep advice limited to that area. Mr H did have a pension and had previously transferred his, so I think he will have had some knowledge of the benefits of having a pension – and also would've known Mrs M didn't have one. I think had Mrs M wished to look into taking out a pension, it could've been discussed with the adviser at any point during their relationship. There would've been no downside to the adviser in setting one up for her, as the more money invested by Mr H and Mrs M the more he'd earn as part of his annual fee.

Furthermore when the advice was given to take out a pension in 2020, Mr H and Mrs M had been given information about using carry forward to make additional contributions to their pensions for previous tax years. However, the evidence shows Mrs M only wanted to make a contribution for that tax year of £40,000. So this brings into question whether Mrs M would've wanted to put more money towards her pension in any event, even if it had started earlier.

Mr H and Mrs M have commented that Mrs M's pension performed well when it started as they'd managed to time it with the uptick in the market around then. And they've complained about the downturn prior to that not been effectively managed by the adviser, with both myself and another ombudsman finding that this was an unreasonable expectation of the adviser. Had Mrs M taken out a pension earlier, her investment would've gone through this period of downturn. And given there was the chance to make more contributions to her pension but she chose not to, there is nothing to say more money would've been added to her pension if it had started earlier.

Generally, it is advisable to take a pension out as early as possible and if the adviser hadn't mentioned this before in relation to Mrs M, then there's definitely an argument to say he should've done. But as I've said in Mr H's complaint, there is also an obligation on customers to mitigate their circumstances. And I think it was well within Mr H's and Mrs M's understanding to bring up the possibility of Mrs M also taking out a pension if it's something she was interested in. The complaint seems to be framed more in terms of it being a way of saving corporation tax (again evidence of the joint nature of Mr H and Mrs M's finances) and previously the adviser had recommended investing the company's money into an OEIC to improve its performance. So, there were clearly conversations had about their finances relating to the companies money (which Mrs M was a director of) and Mrs M also had an ISA managed by the adviser. Whilst it may have been a good idea for the adviser also to introduce the idea of a pension for Mrs M earlier, as we've explained it is not our role to do a forensic review of all the adviser did and then put Mr H and Mrs M in the best possible position if everything had been done perfectly with hindsight. Which I think defines a lot of the complaint points made by Mr H and Mrs M (across the three complaints). So I don't think it would be fair and reasonable to uphold this point. Mrs M wasn't given advice earlier, but she didn't ask for it. The adviser perhaps should've introduced this idea earlier but the evidence suggests whilst she was a client of Sage's, Mrs M wasn't willing to make additional contributions beyond the £40,000 she did. And Mrs M still has many years left until retirement and so has the opportunity to mitigate any lack of pension provision.

### **Charges applied to Mrs M's pension with Aviva**

I understand Mrs M's pension with Aviva was found to have been overcharged. The deal arranged by the adviser hadn't been correctly implemented on the plan. However, Mrs M has said that Aviva has now resolved this, so there is nothing to put right. And it appears it was Aviva's mistake in any event and not Sage's.

## **Disengagement**

Mr H and Mrs M were unhappy that Sage disengaged with immediate effect. And Sage has said this was an oversight and it should've applied its seven-day notice period. It agreed to pay back the fees it had received after the disengagement, and this was paid as part of the G complaint redress.

Sage admitted its fault and our investigator said it should've provided a notice period and felt the immediate disengagement caused distress and inconvenience and awarded Mr H £100 for the trouble and upset this caused.

Mrs M doesn't think this figure is anywhere near appropriate for the mistakes made by Sage. However, I agree with the investigator that the mistake that Sage was made was disengaging without the required notice period. As this notice period was only seven days – and not much realistically would've changed in this time – and secondly it was within its rights to disengage, I don't think an award of more than £100 is warranted.

## **Conclusions**

I do think there are aspects where the adviser could've done better, the record keeping was poor. And as the compliance person who carried out the review pointed out there are learning points in terms of dealing with clients especially where the client is also a friend/neighbour. And an acceptance on the adviser's part that less formality is appropriate in these situations when in reality it isn't – as has been evidenced here when the relationship broke down. But by the same token Mr H and Mrs M used this relationship to their advantage to secure lower fees and placed pressure on the adviser to do more than the agreed terms. There is of course some fault that can be applied to the adviser for this. He should've set their expectations about what he could reasonably do. But ultimately I've seen nothing to say he made a material mistake that will have meant Mrs M has suffered a loss.

## **Putting things right**

Sage should pay Mrs M £100 in relation to the distress and inconvenience caused by immediately disengaging. This should be paid upon Mrs M's acceptance of the decision.

## **My final decision**

For the reasons explained I require Sage Financial Management Limited to pay Mrs M £100 for the trouble and upset caused upon her acceptance of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 10 September 2024.

Simon Hollingshead  
**Ombudsman**