DRN-4967447

Financial Ombudsman Service

The complaint

Mr H complains that Sage Financial Management Limited (Sage) did not look after his pension arrangements sufficiently and ended their working relationship without notice. The original complaint has been split into three separate complaints. Mr H and his partner Mrs M 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 Mr H's personal investments.

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 Mr H's personal funds rather than just G's.

My understanding is that Mr H and his partner Mrs M had an existing relationship with their adviser at Sage, they were family friends and in 2015 Mr H decided to enlist the adviser with regards to their personal investments and the businesses as well. Mr H had investment products with Hargreaves Lansdown but was disappointed with the performance and high charges. And was looking to amalgamate them, making it easier to manage and administer.

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. Within this form it said Mr H wished to retire at 65 – which forms one of the complaint points, Mr H says his intention was always to retire at 55. 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 G's directors 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 the directors 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 the directors being "*close friends".*

It appears the directors revisited their concerns about charges. On 12 August the adviser gave them a breakdown of all charges in percentages which he hoped would suffice. The directors 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 do think if all the monies had been converted to cash then we would have limited the further negative effects of the fall in markets for all our investments. We expected you to anticipate a further reduction in the markets which is the very reason you converted the company money into cash. We would have been in a better financial position to begin again. We would have been able to take better advantage of the subsequent recovery and certainly be in a better financial position now by drip feeding back the monies into the market as they improve.

You also advised that the NHS Pension can only be moved to another occupational pension and could not be able to be moved to say the Aviva platform although previously this could be done.

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.

We have studied the Witan fund's performance graph and it's fall in value. We believe that you may well have made measures too late to convert to cash and limit our losses. 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. 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. 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.

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 Mr H's personal investments and didn't think 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.

Mr H remained unhappy with the outcome and so asked for a 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.

Mr H and Mrs M have sent us lengthy submissions. And indicated they wanted a forensic review of all of Sage's dealing with them. For example following Sage's final response, Mr H and Mrs M sent us their comments which were 55 pages long. We are an informal dispute resolution service tasked with settling disputes quickly (I appreciate this complaint hasn't been settled quickly) and informally. Our role is to get to the heart of the matter when a customer has a particular point(s) of complaint. We are unable to provide a forensic review of everything Sage did whilst engaged by Mr H and Mrs M, this isn't what we were set up to do. Instead I will pick out the key themes and issues that get to the heart of the matter and comment on these. The complaint is born out of unhappiness with the investment performance, this in itself isn't a reason to uphold a complaint. I will need to see evidence

that Sage did something wrong and that this had a material disadvantage to Mr H that can be quantified.

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 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 sought or recorded in writing of what was discussed.

Protecting Mr H's fund value during the market turmoil in March 2020

Mr H and Mrs M have already received a final decision which they accepted relating to their business's investments. The complaint can broadly be summarised that he and Mrs M were unhappy that Sage moved G's investments out of more volatile funds and into cash in March 2020 as a reaction to market turmoil due to covid 19. They were unhappy the funds were not re-invested sooner and questioned the timing of the switch to cash.

Our ombudsman upheld the complaint on the basis that Sage likely didn't communicate clearly the switch to cash for the company's investments to the directors (Mr H and Mrs M). The ombudsman commented a more defendable complaint would've been to advise G's funds to remain invested due to the unpredictability of the markets. Rather than taking the funds out of the market and trying to time the re-investment. The directors accepted the outcome and redress payable to G for this complaint.

One of key points of complaint brought by Mr H relating to his personal investments is the adviser should've done more to protect his and his partner's individual assets.

'It is true that if we were given the choice of immediately protecting our assets from their inevitable demise and opportunistically drip feed this cash back, we would have considered this option. This would be better than the uncertainty and hope the devalued assets would eventually come back up, if ever. This would have afforded immediate protection of the assets from further falls and subsequent drip feed would capture the momentum of the recovering markets improving the ultimate performance of the cash by selecting more dynamic better performing funds. Some funds did very well and were rising rapidly as they were good funds to begin with, initially artificially dragged down by the crash. Many funds did recover towards September 2020. The recovery would have been taken advantage of by investing this disinvested protected cash. We are now not sure if Sage would be able to do this for us as part of the regulator thing but he did offer to do this for our company's cash."

This is essentially in direct contradiction to the reasons G's complaint was upheld and redress accepted by Mr H and Mrs M. And immediately brings the fairness into question of upholding two linked complaints for contrary reasons. Whilst of course there can be differences in strategies required for different portfolios and different individuals, the key point here is that what Mr H expected quite possibly wouldn't have been a suitable strategy and would've been come with risk attached. And secondly what he expected here was not in line with the role the adviser had agreed to play. The adviser did not agree to act as a discretionary fund manager (DFM). This is also a service that is typically charged at a higher rate than the 0.5% initially agreed with the adviser. Whilst this may have been Mr H and Mrs M's expectations, it wasn't a fair expectation in my view and isn't based on the terms of service.

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 said

'*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 Mr H'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 Mr H 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 G's 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."*

So the expectation that the adviser would manage the investments to the level of essentially acting as a DFM isn't a fair one. And there is no guarantee that this would've brought about better investment performance in any event. This complaint point (that the adviser should've timed the markets dipping in and out) has no basis on which I can uphold it and so I won't spend any more time discussing it further.

Fund switches carried out

Somewhat linked to the above, is Mr H and Mrs M's unhappiness with some of the funds selected/not selected. And the adviser's communication around this. As the ombudsman on the case of G already established in relation to the switch to cash of G's investments, the adviser certainly didn't communicate this thoroughly and insist the instructions were provided in writing. It appears in that instance he made the switch without first seeking consent of Mr H and Mrs M before later explaining what he had done. With regards to the personal investments the evidence trails are not in line with Sage's conditions set out above, which makes unpicking what happened more difficult.

As I've mentioned previously, it appears the relationship between the parties and their familiarity seems to have blurred the lines of the professional agreement entered into. The adviser did not record everything as I'd expect and in line with Sage's terms. But at the same time I think Mr H and Mrs M placed unfair expectations on the adviser, expecting any investment switch to provide market leading returns and for switches out to be made at the perfect time – whilst getting his services below the market rate. The lines between financial adviser and investment manager or DFM were pushed by Mr H and Mrs M and it appears the adviser worked on their behalf in excess of the terms agreed. He took responsibility it at times to make fund switches without consent (in terms of G) and in the personal investments made decisions about what to do based on incomplete answers by the customers – and without confirmation of the exact switch in writing.

That said it is also difficult to separate hindsight from some of what has been complained about. For example what caused Mr H and Mrs M complaint was the performance of their investments, the Witan fund was one reason for the perceived poor performance (it had fallen significantly around this time). However, it subsequently recovered, and Mr H has latterly complained that his holding in that fund should've been higher and the adviser didn't act on his instructions to invest.

I note that Aviva sent regular statements (approximately quarterly) clearly showing Mr H's investments and any switches made in that time. So if Mr H had been unhappy with or unsure of anything the adviser did regarding the funds invested in, he could've raised this at the time. I appreciate it could be argued it's not a client's job to check an adviser had carried out the switches as he agreed. However looking at the correspondence between the adviser and Mr H regarding fund switches, he placed a lot of weight on the adviser deciding what is best and so gave rather unclear instructions or instructions with caveats regarding what the adviser felt was best. I don't know if after the adviser made the switches, he confirmed this verbally to Mr H – but if he didn't as looks most likely, Mr H could see all the switches made via the statements or in real time online.

Mr H has also complained that the adviser didn't tell him he could view his investments online and didn't set this up for him. But I can see on the statements sent to his home address by Aviva – it clearly states they can be viewed online and provides a link to register for it. I think it was reasonable of the adviser to expect that Mr H would set this up himself if it was something he was interested in having access to.

With regards to the Witan fund and Scottish Mortgage Trust fund that Mr H initially complained hadn't been invested in as per his instructions, I can see that the adviser (according to Mr H following his suggestion to look into it) said that the Witan fund had produced good performance but was volatile and so suggested a small investment.

Mr H then replied to say.

'If you think from your research Witan would benefit the portfolio for both my ISA and

company money then I will go along with your advice.

There are however other contenders whose performance has been even better I.e. 'Lindsell Train IT plc' and others. I leave this for your further consideration and apportion appropriately for both ISA and company monies.'

The adviser said:

'I propose an investment of 10% each into the witan fund and attach Scottish mortgage investment trust. These funds are investment trusts and therefore are deemed riskier. The Lindell fund we discussed when we spoke is nearly three times riskier than the FTSE 100. The attached fund has consistently performed well but does carry 1.8 times more risker than the FTSE 100.

In your pursuit of capital growth we have to adopt a more riskier approach. Please let me have your thoughts?'

Mr H said:

'I am happy if you are able to invest 10% in each Witan and Scottish Investment Trusts if you believe they will provide better capital growth as long as you are able to monitor closely despite previous consistent good performance.'

I can see that investment was made in Witan and Scottish Mortgage Investment Trusts in April 2019 at the same level – so these switches were made.

Mr H has also raised the question as to whether the adviser sold the Scottish Mortgage Investment Trust without his knowledge and purchased another fund that he doesn't recollect giving his instructions to buy. This didn't form part of the original complaint, and so I cannot comment on this point as Sage hasn't had the opportunity to investigate this.

Mr H has complained that following a later bit of contact from the adviser suggesting additional investment in the Witan fund which was then agreed, wasn't actioned. But Sage has said this was a mistake by the adviser and in fact he had meant a different fund and other evidence supports this. In any event the evidence shows this relates to the company investment and not Mr H's personal investments and so I cannot consider this here.

Mr H has also complained about investment in the Woodford fund, he believes the adviser ought to have been aware of the problems with it and pulled the investment before it was suspended. Mr H says that he had raised concerns over this fund but no advice was forthcoming. There is no supporting evidence of him raising concerns but this isn't to say it didn't happen because as I've said I'm aware there was contact that hasn't been recorded. However, the fund was suspended without warning by the fund administrators. Whilst it had performed poorly in the months before the suspension, what Mr H is expecting here is a DFM type of action and this isn't something the adviser could reasonably have been expected to carry out. Many people were caught out by the suspension of the fund and I've seen nothing to suggest the adviser did anything wrong here. It is not a fair expectation that the adviser would actively trade in and out of funds at the correct point each time to provide optimum performance. These were meant to be long term investments that would suffer some ups and downs along the way. So I don't think the adviser did anything wrong here, the investment in the Woodford fund was only a small proportion of the total funds and was part of a diverse portfolio.

Mr H's retirement age

Mr H says that Sage was aware of him planning to retire aged 55 but had instead recorded his retirement age as 65. And he believes this mistake has contributed to the lack of consultation around limiting losses during the economic downturn.

I can see there is evidence that Mr H wished to retire at age 55. In an email to the adviser, he made a comment on retiring at 55 in relation to his NHS pension and his pension with the previous provider was set to age 55. However, the undated client form completed shows a retirement age of 65. Mr H has raised questions around the authenticity of this document and given there were also concerns about the legitimacy of a letter relating to G's investments that was supported by the ombudsman in that case, I can understand why. However, there is a quotation provided by Aviva on file (from the outset of when Mr H became a customer of Sage's) that shows a chosen retirement age of 65. So it appears the adviser was under the impression at least that Mr H would look to take his benefits at age 65 and so requested an illustration of benefits from Aviva set to this age.

Whether this was agreed by Mr H or a mis-understanding or issue of poor communication I am not sure. But ultimately I don't think I need to decide this as I am not persuaded that it will have caused a material loss to Mr H. I say this because the point being made by Mr H is that the adviser ought to have been able to make fund switches to protect his investments and that the adviser should've acted differently in relation to his retirement age being 55. I don't agree with either point.

It isn't unusual the closer someone gets to retirement for funds to be switched into safer or less volatile funds to protect the investment value. However, firstly this is usually done when purchasing an annuity but I doubt this is the route Mr H was looking to take for his retirement. But further he has suggested his funds should've been moved into safer funds such as Bonds and Gilts (which is the sort of funds usually selected to reduce risk) yet these were the funds that suffered big losses around March 2020. So had the adviser done this, its likely Mr H would've suffered larger losses around this time.

Mr H was 53 at the time, less than two years away from when he said he planned to retire. But I cannot see anything from the time where Mr H said to the adviser about planning to take his benefits. This has only been raised after the relationship broke down and the complaint has been made. And retirement doesn't necessarily mean he will take benefits from all his plans at once. Furthermore, as is often the case now with the flexible options available, taking benefits allows the remaining funds to stay invested. So I wouldn't necessarily expect any big changes to be made prior to retirement age in any event. Mr H also had the option to take his benefits from his NHS pension and to delay taking benefits from this plan or vice versa, so suitable advice could conceivably have different retirement ages set to his different investments. Ultimately regardless of whether or not the retirement age should've been set to age 55, I don't think the adviser believing the retirement age to be 65 can be said to have caused Mr H a loss.

NHS pension transfer opportunity missed.

In 2015 Mr H completed a transfer request form from his NHS pension. Part A is completed by him but it says Part B needs to be completed by an adviser, this section has not been completed.

An email on 9 March 2015 to the adviser says:

'Phoned up nhs pensions today. They are still accepting applications although they can't guarantee we will be on time as up to 3 months for processing, although they are working on these applications as a priority. They may say 'no more applications' any day now so I just need to get it in.

What we have to do is to fill out form and send in, they will process and send back out to us and we have to resubmit it again by 5th April.

What I need is to look at the receiving scheme and this is where I need your help. Can it be paid into Hargreaves landowne as a cash sum and we can sort it out thereafter? There will be a further delay if we leave receiving scheme as 'unsure' which is also an option on the form and we would be certain to miss the deadline then. Can you look at this when you can and get back to us.

A response is received the same day it says:

I am almost certain Hargreaves Lansdowne will not accept the transfer; please check and I can recommend an alternative provider. I will be working on your file later today so will come back to you with some recommendations.'

A further response is received the same date but it only concentrates on what I assume is the discussion relating to the undated client form referred to above:

It says (and it's directed at Mr H and Mrs M)

'*Further to our meeting last week and completion of the risk questionnaire I can confirm your attitude to accepting risk is 'highest medium' (profile 7/10). This means that you are above average in how much risk you want to take in your investments/pension. You are likely to be more comfortable and better able to adapt to losing money on your investments than someone whose attitude to accepting risk is 'low' or 'medium', for example, someone in profiles 1 to 6.*

Higher-risk investments such as equities (shares) generally offer higher returns over the long term, but the investments also fluctuate more (go up and down in value).

Pensions

I recommend we move the existing pension from Hargreaves Lansdown to Aviva Wrap. My research confirms Aviva Wrap has a lower charging structure , offer a complete range of funds and offer very good service levels….

I will also prepare paperwork for your ISA for when we meet this Friday. Please can you kindly bring either your passport or driving license with you.'

In an email dated May 14 2020, Mr H said:

We have at last after several attempts received the NHS Pension Annual Benefit Statement but not sure of what it all means. I am advised that you are still able to transfer the NHS Pension monies to another suitable scheme.

Since I have not contributed to the NHS pension since March 2012, the fund has not grown at all during this time as would with a conventional pension. I plan to retire at 55yrs age and I do not know if it is worth transferring the NHS pension into a suitable private scheme. I am wondering what are the advantages as well as disadvantages of moving the NHS pension into a private scheme at this time. Please advise.

The adviser responded in relation to this and other points – I've just included the relevant NHS part here:

Please can you kindly scan and email me the NHS pension statement and then we can

decide on making pension contributions.

I will come back to you once I have studied the NHS statement.

He then responded to say:

'Hope you are all well.

Please note you can only transfer your NHS pension to another from the "transfer club" – you can't transfer this to your existing Aviva or any other private arrangement.'

Having looked into this, I am satisfied the adviser and Sage were correct in their response. The NHS online resource says 'since *6 April 2015 a transfer of pension benefits to a defined contribution scheme is not possible. Which members are affected by the changes? Members affected by the change are members with deferred benefits then.'*

This relates to Mr H as he had not contributed since March 2012. The only option he had was to transfer to purchase an annuity, but this wasn't an option he would've considered at the time as he wasn't intending to take his benefits.

In relation to whether the adviser delayed matters meaning this deadline was missed, I note Mr H asked for help regarding finding a receiving scheme, the adviser asked that he check with Hargreaves and if not, he can recommend a scheme. The next contact from Mr H is after the deadline had already been reached and the adviser said that the transfer couldn't be made to anything but another OPS scheme which Mr H didn't have.

So I can't say that the adviser did anything wrong. It seems Mr H had difficulty in getting the required paperwork from the NHS in time. And when he did receive the required paperwork, he then asked for advice about whether or not transferring was the best course of action. The adviser explained it was now too late. But even if the adviser had done as Mr H seems to think he should've done – and got the information from the NHS himself, he would then have to give advice to Mr H about whether or not transferring was in his best interests (I note Mr H didn't ask for this until after the deadline had expired). And this would've been very difficult to do within the timeline required as it would've needed a full advice process. And there is no guarantee the adviser would've recommended transferring in any event. I therefore cannot uphold this complaint point. And furthermore, it's quite possible Mr H will be better off for not transferring his NHS benefits. Mr H may wish to revisit his NHS pension benefits to gain a better understanding of what it will provide, as I don't think his understanding of his deferred benefits is correct.

Lifetime Allowance – applying for Fixed Protection 16

On April 1 2020, the adviser contacted Mr H and Mrs M after it appears Mr H had contacted the administrators of the NHS scheme regarding an *'annual allowance pensions savings statement'*

The adviser said:

'below which seems to indicate that Mr H can contribute £40K for this year and £40K for three previous years. Just a couple of things to bear in mind – there is a lifetime allowance of £1.055m. So when he takes his benefits the total pension, Aviva and OPS has to be below this amount. The lifetime allowance is increased every year by RPI.

Please confirm how much Mr H wants to contribute?'

The response was £40k to be transferred to the Aviva bank account from Mr H.

In May 2020 the adviser emailed Mr H after he had provided him with a statement from his NHS pension. The adviser looked at the values of this alongside his Aviva plan and said Mr H was close to the lifetime allowance limit, he said:

‘Any amount over your lifetime allowance that you take as a lump sum is taxed at 55%.

Any amount over your lifetime allowance that you take as a regular retirement income – for instance by buying an annuity – attracts a lifetime allowance charge of 25%.

As we are very close to the lifetime allowance it would make sense not to make an additional contribution.’

He then stated:

‘If you are content with not making any further contributions it would make sense, we apply for Fixed Protection 2016. This will increase your lifetime allowance to £1.25m but moving forward NO contributions can be made. Please see link below:-…

Hope the above makes sense, please call me when free to discuss action point above.’

Mr H has since complained that he planned to invest via his company earnings for the April 2020 tax year and the previous 3 tax years, however the adviser advised against this in view of exceeding the lifetime allowance limit. He says his pension would’ve benefited greatly had he been advised to do so. Mr H said the lifetime allowance limit hadn’t been exceeded yet and preparations could’ve been made if the limit had not yet been exceeded. If and when the limit was exceeded then he would taken professional advice to consider his tax position. And despite informing him of the lifetime limit the adviser did not assist him in completing the HMRC form to access Fixed Protection 16.

Sage said in response ‘ *The firm made you aware of potential protection for your lifetime allowance but was not asked to assist or complete the forms. Had you requested further advice of support on this, this would have been forthcoming.’*

Our investigator said:

Sage emailed Mr H on 1 April 2020 about making use of unused pension tax relief from the 3 previous years. But it didn’t get a reply. So, there’s no evidence it advised him not to contribute to his pension plan to avoid breaching the LTA limit then. And there’s no evidence Mr H asked for help filling in a form to apply for protection or evidence Sage refused to help him. So, there’s no evidence Sage did anything wrong.

Mr H said in response, he wasn’t given the forms and he didn’t know how to complete them. He says Sage should’ve done it on his behalf and the advisers email said ‘*we’* which suggests Sage was going to do it for him.

My view:

Looking at the documented evidence provided, the adviser did make Mr H aware of the possibility of using the carry forward contribution method, but Mr H responded to advise he wished to make the annual contribution only. And the adviser also brought to Mr H’s attention the lifetime allowance limits and the effect of going over this.

I don’t agree with Mr H that the adviser stated he was going to apply for fixed protection for

him. Instead the adviser is clearly asking Mr H a question, *'If you are content with not making any further contributions it would make sense, we apply for Fixed Protection 2016'* and '*Hope the above makes sense, please call me when free to discuss action point above.'*

There's no evidence that Mr H replied to this. I don't think the adviser should take it upon himself to go and do the work without Mr H's consent. And the relationship had broken down before the start of the next tax year, when another annual review ought to have been carried out. So it wasn't revisited. As Mr H said himself '*Unfortunately, we then started our disagreement around this time and Sage did not engage further with any further retirement planning and then self disengaged.'*

The adviser perhaps should've done more to chase Mr H for a clear response but there is also an obligation on customers to mitigate their circumstances. If Mr H was interested in applying for fixed protection he should've responded. And if he wasn't sure whether the adviser had done so, he could've enquired as to what happened or what he needed to do.

Furthermore, there's no evidence that since this point Mr H has done anything more to seek advice or mitigate his circumstances. Mr H after the disengagement could still have looked to make use of the carry forward option and I understand fixed protection is still available to apply for. So its possible Mr H hasn't lost out on this option in any event.

In conclusion of this point, I think the onus was on Mr H to get back to the adviser to discuss this matter further, he didn't. It may have been revisited, it appears it wouldn't have been too late to do so, but soon after as Sage was entitled to do it ended the relationship. It doesn't appear in the years subsequent Mr H has done anything in relation to this matter (his testimony suggests not) so I don't think the adviser can be responsible for any consequences that may arise from Mr H not seeking fixed protection.

Charges applied to Mr H's investments

The adviser initially agreed to provide his services discounted from 1% to 0.5% per year and then later to 0.38% - which the adviser commented to be well below the market rate. He also arranged a special discount with Aviva, which was said to be the lowest fee paid by a client.

Mr H said in response to the investigators view, that he had no specific evidence that his charges applied were incorrect but he wants them to be checked. And that Aviva, in the context of Mrs M's complaint, confirms that charges were incorrectly applied and Mrs M was given a refund by Aviva.

Mr H said he believes the onus is on Aviva and Sage to prove their reduced charging was correct. He said: '*Charges varied during the period of engagement for both Sage and Aviva, with different percentages applied and for different durations with varying investment balances. This would therefore be very difficult for me to calculate.*

Sage negotiated the reduced charging for all our plans so it was Sage's responsibility to ensure the reduced charging was correctly applied by Aviva then. The adviser said he made enquiries but we were not told the outcome. We only learned after Sage's disengagement, that Mrs M's pension contribution was incorrectly charged. Aviva had initially maintained that Mrs M's was charged correctly but later refunded an amount.

We asked Aviva to check if they correctly charged us for the remaining plans. I believe Sage should do so for my plans.'

Our investigator asked Aviva for clarification around the charges applied to Mr H's plan, it told us it had applied the special discount which had come to an end three months after the

disengagement as per its terms and conditions. And I've seen nothing to suggest Sage didn't provide the charging structure agreed to.

I think Mr H received competitive charges from both Sage and Aviva. Sage have said the insistence on lowering charges further, caused it to disengage as there was little value in the work they were doing for them. And I'm satisfied the adviser did agree the charges with Aviva, if Mr H believes this wasn't applied correctly this is something he needs to take up with Aviva.

We are not here to do a forensic review of every part of his relationship with the adviser, and with no specific evidence or arguments to suggest the charges applied were incorrect, I don't think I need to comment on this aspect of the complaint further.

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.

Mr H 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

It is simply not practical to comment in detail on all the points raised by Mr H, many of which have evolved during the complaint. But most relate back to his belief that the adviser did not act as a DFM and buy and sell to protect his value. Other points have been made without taking into account that Mr H didn't act at the time and has now looked back with hindsight at what he thinks the adviser should've done.

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.

Mr H seems to blame the adviser for his inability to retire at 55 but I've not seen anything to suggest the adviser did anything wrong that materially affected Mr H. The only error I could fairly assign to Sage was the failure to serve the disengagement notice in line with the terms of the contract. And I think £100 is a fair and reasonable figure to settle this complaint point.

Putting things right

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

My final decision

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

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

Simon Hollingshead
Ombudsman