DRN-3344477

The complaint

Mr and Mrs S complain to Wealth Planning Limited (WPL) about the administration, costs and charges relating to their investment portfolio. They also say they've been incorrectly charged VAT on some fees paid.

What happened

The background of this complaint is well known to all parties, so I will not repeat them again in detail here. Instead, I'll summarise what's happened, in my own words, before focusing on giving the reasons for my decision.

Mr and Mrs S were first clients of a firm (F1), that's since been integrated into the legal entity of WPL, before their accounts were switched over to another firm (F2). For ease I'll generally look to refer to WPL directly where possible throughout my decision.

Mr and Mrs S complained to WPL in July 2020 about advice previously received from F1. In short, the four main points they were unhappy about were:

- The payment of transaction fees to F1 in addition to ongoing advisor fees.
- The associated costs of their recommended investment account in comparison to available alternatives.
- The switchover from F1 to F2 resulting in their decision to appoint another advisor.
- The VAT payable on ongoing fees paid to F1.

WPL didn't uphold the complaint points raised, however while conducting their investigation found they'd overcharged Mr and Mrs S transfer out costs applied to the asset funds transferred in-specie by £525. To put things right, WPL compensated Mr and Mrs S £525.

Mr and Mrs S disagreed with WPL's response, so they referred their complaint to the Financial Ombudsman Service.

One of our Investigators looked into things and while she didn't think WPL needed to do anything to put things right in respect of the complaint points raised, she said Mr and Mrs S had been deprived of the £525 they'd been overcharged so WPL should pay interest at 8% from the date the fees were taken to the date the refund was paid.

Following questions raised by WPL regarding our jurisdiction to consider this complaint, our Investigator considered the time limit rules we must follow and said she thought Mr and Mrs S had raised their complaint in time, including their concerns about VAT applied to fees since 2014.

WPL accepted our Investigators opinion on our jurisdiction. Our Investigator looked into things further but remained of the view that aside from paying the interest I've mentioned above, WPL didn't need to do anything else to put things right. Mr and Mrs S disagreed with our Investigator. As no resolution could be reached this complaint has been passed to me to decide.

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 agree with the opinion of our investigator about Mr and Mrs S' complaint. I'll explain why.

But first, When Mr and Mrs S brought their complaint to our service, they confirmed their complaint points were in line with those I've set out in the *'What happened'* section of this decision.

These points are the issues WPL looked into and what our Investigator considered. During the course of the investigation some complaint points seem to have drifted away from the original issue. And even though we have an inquisitorial remit, I need to make a decision based on the issues that were originally raised and looked into by WPL.

I'm aware I've summarised this complaint in far less detail than has been provided, and I've done so using my own words. No discourtesy is intended by this. Instead, I've concentrated on the original issues complained about and on what I think are the key issues here. Our rules allow me to do this. This reflects the nature of our service as an informal alternative to the courts.

If there's something I've not mentioned, or if I don't comment on any specific point, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every detail to be able to reach what I think is the right outcome reasonable in the circumstances of this complaint.

I think it's also relevant and important to emphasise that The Financial Ombudsman Service isn't the industry regulator. That means we don't set the processes a business puts in place, enforce changes upon them or set out to punish them. My role is instead to consider individual disputes and decide if I think the business acted fairly and reasonably.

I consider the crux of this complaint to consist of four key points – the complaint points initially raised by Mr and Mrs S, including the addition of VAT being payable which appears to remain the point in most dispute. It's these I'll focus on, and I'll address each complaint point below.

The payment of transaction fees to F1

I've reviewed the annual disclosure of costs and charges letter Mr and Mrs S were sent in May 2020 and can see it included a '*Transaction Costs and Charges*' fee of £200. It is this charge in particular which Mr and Mrs S specifically questioned.

Mr and Mrs S have acknowledged and understand the response provided explaining these fees but remain of the opinion there was a more appropriate solution which would have avoided such costs.

I can see WPL have further explained the costs and charges were made up of fees charged by product providers, platforms, and fund managers for example. And that they'd always existed, however just not previously explicitly disclosed prior to MiFID II regulations.

I acknowledge Mr and Mrs S had concerns about the fees, which ultimately played a part in their move to another advisor. But that doesn't mean charges and fees were applied incorrectly. On balance I'm satisfied they were. And from the evidence I've seen, I'm also satisfied WPL disclosed the charges in a clear, transparent and not misleading manner, in line with the requirements of the regulations in place at the time.

I can see WPL have identified where fees were incorrectly charged and have looked to put this right. I understand Mr and Mrs S' frustration that this only came to light when they queried the costs and are concerned about previous fees that might've been overcharged both to themselves and others. But I must focus on the individual complaint brought to me. And I've not seen anything to suggest the overcharged transfer out fees incurred when the switch to a new adviser took place was anything more than a standalone error.

I don't think WPL need to do anything to put things right here.

The associated costs of their recommended investment platform in comparison to available alternatives

Mr and Mrs S understandably question why alternative, and cheaper, options weren't recommended instead of the platform they were sold. Especially as other elements of their portfolio were managed in a platform that demanded what they considered far more reasonable costs and charges. They say there's no reason why WPL's preferred investments couldn't have been accessed via the cheaper option.

WPL have set out why the investment platform recommended for specific portfolio's differed based on the capabilities of the platforms, the size of the holdings, the range of assets and type of investment.

WPL considered that Mr and Mrs S' investment portfolio which included their Individual Savings Accounts (ISAs), and the re-investment of tax-free cash was big enough to benefit from the bespoke discretionary service offered by the platform recommended.

In addition to the bespoke service, the platform recommended allowed the portfolio to be adequately diversified, had access to investment trusts and exchange-traded funds, and offered real time trading as opposed to only being rebalanced once each quarter. Features such as 'no capital gains tax management' and the ability to have managed consolidated accounts were also features of the platform.

Cheaper alternative options, such as the account used for a smaller element of their portfolio would have come without these features in comparison.

At the time, in 2015, due to the size of Mr and Mrs S' portfolio, WPL considered it justified the bespoke discretionary platform they recommended. The service gave greater management and investment flexibility than could be accessed through cheaper alternatives.

I can see WPL provided a detailed letter of recommendation setting out both the benefits and associated costs of the account. I'm satisfied information was set out in a clear and not-misleading manner prior to Mr and Mrs S proceeding.

Different accounts attracted varying levels of fees based on the functions offered. I understand Mr and Mrs S feel a greater level of understanding is needed to determine if the advice received was suitable and in their best interests. But WPL had to try and offer best advise based on the circumstances at the time, with a view to best achieving Mr and Mrs S' investment aims.

And I also must consider the suitability of the advice as it was at the time, without the benefit of hindsight. On balance I'm satisfied the advice given, and accounts recommended were suitable for Mr and Mrs S. So, I don't consider WPL need to take any action here.

The switchover from F1 to F2

It was unfortunate there was an unplanned acquisition by F2 of F1 in 2019, for reasons known and which I will not repeat in this decision.

Mr and Mrs S felt uncomfortable with the switchover, and I can understand why they may have felt that way. But it's evident from the notes recorded from Mr and Mrs S' annual review that year it was made clear the switch to F2 would incur them no additional costs.

I'm satisfied the costs and charges relating to Mr and Mrs S' accounts unrelated to the switch were made clear from the outset. And that any additional fees incurred were as a result of Mr and Mrs S deciding to appoint an alternative adviser. This was a decision they were entitled to make but I don't think WPL should be held responsible for those fees.

WPL have acknowledged Mr and Mrs S were overcharged on the level of transfer out fees applied to the asset's funds transferred in-specie, refunding £525 to them.

But on referral to the Financial Ombudsman Service, our Investigator said WPL should also pay interest on that sum. WPL agreed to our Investigators opinion. And I also agree.

WPL should pay Mr and Mrs S interest at 8% simple, from the date the fees were overcharged until the date they were refunded. This compensates Mr and Mrs S for the time they were without those funds.

The VAT payable on ongoing fees paid to F1 prior to 2015

Mr and Mrs S say they are of the understanding VAT shouldn't have been payable on the ongoing fees paid to F1 because VAT should not be charged on an initial fee if there's a product which is planned to be entered. In addition, if the ongoing advice relates to the initial advice and the product recommended, then no VAT should be payable.

In addition, Mr and Mrs S say whilst it's been agreed VAT is payable on discretionary services, this is not the service they received at the outset as the platforms provided didn't have such permissions in place.

WPL disagree regarding the platform permissions and have confirmed the platform assets were held on from the outset did offer a discretionary investment management service.

I can see on Mr and Mrs S' initial investment advice invoice; VAT wasn't added to the amount charged. I'm satisfied this was because it was deemed a product and was advised. But it was the subsequent quarterly investment fee's where VAT was added to the amount due.

WPL say the portfolio was managed under a discretionary arrangement and the introduction of clients to a discretionary manager isn't an exempt transaction. Whilst the manager may have chosen to subsequently invest in exempt assets, this didn't impact the VAT treatment of the service provided. Both ongoing advice and investment management fees were subject to VAT.

I've seen the holistic report written in 2014 which clearly explains after the initial fee, based on the value of Mr and Mrs S's investments, excluding Mrs S' pension, trail commissions or any ongoing fees from providers would equate to £632.57. And that it was this amount upon which VAT would be payable.

The report also set out a quarterly valuation would be provided, and the portfolio updated and rebalanced as required during the year.

It certainly isn't straightforward as to when VAT should be applied or is exempt, especially due to the passage of time that's passed. But from the information I've seen and taking into consideration WPL stood to benefit nothing from VAT being applied, on balance, which is the test I must use, I'm satisfied WPL acted fairly and reasonably when applying VAT to the fees they did.

Summary

In summary, I'm aware my decision isn't adding greatly to what Mr and Mrs S have previously been told and they feel strongly about their complaint. But on balance I'm satisfied WPL acted fairly and reasonably, and I don't think they need to do anything more than what they've already done or what's already been set out.

Putting things right

WPL should pay Mr and Mrs S interest at 8% simple, from the date the overcharged transfer out fees were paid until the date they refunded the £525.

If WPL considers that they're required by HM Revenue & Customs to take off income tax from any interest due to Mr and Mrs S, they should tell them how much they've taken off.

They should also give Mr and Mrs S a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

Wealth Planning Limited has already made an offer to pay Mr and Mrs S interest as set out above, and I think this offer is fair to resolve this complaint in all the circumstances.

So, my decision is that Wealth Planning Limited should pay interest as I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 21 April 2023.

Sean Pyke-Milne
Ombudsman