

## The complaint

Mr and Mrs M complain Campbell Smith LLP (Campbell Smith) weren't transparent about their fees and charged excessively for financial services and advice. They also complain about a number of service issues.

## What happened

Mr and Mrs M instructed Campbell Smith in 2010. They received advice individually and jointly on a variety of things. However, they became unhappy and complained to Campbell Smith. Mr and Mrs M complained:

- Withdrawals were taken from Mrs M's portfolio to cover fees for regulated investment work without permission. This included fees charged for work carried out for Mr M.
- Invoices weren't provided in a timely manner, and they were limited in detail. They weren't provided with total costs on an annual basis.
- Their concerns about the level of risk exposure from the Scottish Mortgage Investment Trust (SMIT) and capital gains tax (CGT) weren't handled appropriately.
- There were comments about bringing Mr M's Individual Savings Account (ISA) into Mrs M's portfolio.
- They failed to make use of Mrs M's annual ISA allowance.
- There were service issues with their advisor. For example, she took too long to respond to correspondence.

As a result of these issues, Mr and Mrs M feel they've incurred a significant financial loss, as well as the costs of moving to a new firm. Campbell Smith responded to the complaint in June 2021. They didn't uphold the complaint.

Mr and Mrs M remained unhappy and asked us to investigate. Our Investigator issued a view. He felt it was unreasonable for Campbell Smith to deduct charges associated with services received by Mr M from Mrs M's portfolio and said Campbell Smith should put things right.

Mr and Mrs M didn't accept the view. In summary, they said:

- They didn't receive the invoices issued between 2015 and 2020. They believe invoices were raised internally and not sent. The fees were significant and there was a lack of transparency which meant they weren't treated fairly.
- They don't feel there was clear justification for the overall fees. There were two occasions in 2015 and 2016 when reports weren't sent, and the service fell short from late 2018. It's unclear what work the drawdowns were taken for on 28 March 2019 and 27 November 2020.
- The mandates were signed but undated so it's not clear when they came into force.
- The redress suggested by our Investigator doesn't recognize Campbell Smith's

failings.

Therefore, the 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.

Both parties have provided detailed submissions to our service, and I wanted to provide assurance that I have considered everything. Where a point has not been specifically mentioned, it doesn't mean I haven't thought about it, but simply I don't think I need to refer to it to reach the right decision here.

#### *Withdrawals from Mrs M's portfolio*

I've not seen evidence which satisfies me that Mrs M agreed for charges associated with Mr M's account to be deducted from her own portfolio. Mrs M took out a discretionary managed portfolio in 2014. I understand in 2015 Mrs M also sought advice and services on some of his investments including his stocks and shares ISA. This was separate to Mrs M and the mandates I have seen were in sole names and signed separately.

The correspondence and meeting notes also confirm Mr and Mrs M received separate financial advice. For example, Mrs M approached Campbell Smith as an individual in July 2014. So, I don't think Mrs M agreed for time spent advising Mr M (or fair contributions to joint advice) to be charged against her portfolio.

As it would have been financially detrimental for Mrs M and related to services she didn't personally receive – I'd expect there to be a clear agreement. In the absence of one, Campbell Smith should not have deducted fees charged in relation to Mr M's instructions or his contribution towards joint advice.

However, these fees would have always needed to have been paid and its more likely than not that Mr M would have agreed for them to be paid from his investments. This is similar to Mrs M and he also signed the mandate to confirm as such. Therefore, Mrs M's portfolio has seen a reduction in capital and growth on this capital, where Mr M's investment has gained, and this should be put right. I'll come back to this below.

#### *Transparency and level of fees*

I appreciate Mr and Mrs M have said they weren't provided with invoices until they requested them. Our Investigator explained why he felt the invoices had been sent – they were generated and correctly addressed. In Campbell Smith's response to the complaint, they have said some invoices would have been provided during meetings, and some were sent.

Having reviewed the information, I'm satisfied Campbell Smith were clear about their charging structure and hourly rate. For example, I've reviewed the initial documentation and can see they explained their hourly rates. I'm satisfied these terms were agreed by both Mr and Mrs M in February 2010 and they signed to confirm their agreement. I've seen these terms were reiterated throughout the years. This included in the review meetings. For example, the notes from July 2014 and September 2018 show Mr and Mrs M agreed to continue.

There was also discussion of additional costs. For example, the fact find from November 2015 confirms there had been some discussion of the £5,200 fee and this seems to have been agreed at the time.

Moreover, Mr and Mrs M signed the mandates to settle the invoices from their investments and so I don't think there has been any detriment here. I have noted the mandates weren't dated, but I don't think this shows Mr and Mrs M didn't provide their agreement. Again, there seems to have been discussion about the mandates. For example, in the meeting note from a meeting in 2018 the advisor recorded confirming the fees and that she held mandates on file.

Additionally, payments made from the investments were recorded in the updated investment information regularly provided by the broker over the years. I appreciate Mr and Mrs M are concerned they didn't always see this. But there is evidence it was provided and available on request. For example, they asked to see it before the meeting in September 2018 and so an up-to-date report was requested.

Mr and Mrs M have also raised concerns about the level of fees charged. I note Campbell Smith charged an hourly rate and used commission to offset the fees where possible. Campbell Smith have already set out an explanation of the queried invoices in their response of 4 June 2021. They've also provided an overview of fee invoices which I've reviewed. I won't repeat the work done in detail here. However, I've considered this against the correspondence and evidence provided, as well as more generally the time spent by Campbell Smith.

Having done so, I'm satisfied there is reasonable justification for the fees charged and they seem to have been charged in line with the terms of engagement. The more significant time spent included preparing and researching information to advise, spending time advising in meetings and liaising with third parties. Additionally, the advisor corresponded with Mr and Mrs M on an ad hoc basis.

In response to the view Mr and Mrs M raised concerns about invoices in March 2019 and November 2020. In respect of the 2019 invoice, I've seen this was discussed during the telephone call in February 2019 and seems to have been agreed. It reflects correspondence and work done for Mr and Mrs M particularly in December 2018, January 2019 and February 2019. I've no concerns about the fee rendered here.

In respect of the November 2020 invoice, I understand part of this invoice related to work in 2018 which was not charged because Mr and Mrs M had confirmed they wanted matters on hold. They said they'd be in touch with the advisor when ready. Campbell Smith explained this covered advice for many areas during that period. And I've seen evidence from the file to demonstrate this. For example, there's a meeting note on file from 8 November 2018 where a range of topics were discussed including Mrs M's income and mortgage repayment.

I note Mr and Mrs M were concerned review letters were not sent in 2015 and 2016. Campbell Smith have provided a few reasons why they may not have been sent and I appreciate Mr and Mrs M would have found these letters helpful. However, this doesn't mean work wasn't carried out and the meetings were still conducted with next steps agreed. I also note a summary was sent following the meeting in 2015. If anything was unclear for Mr and Mrs M then it was open to them to get in touch with their advisor.

Overall, I'm not persuaded there was a lack of transparency around the fees. Campbell Smith clearly set out their charging structure, there is evidence the fees were discussed and agreed to throughout the years and further information was available and provided promptly. Whilst I can appreciate Mr and Mrs M will be disappointed with my conclusion here, I'd also

note that I don't think the charges were excessive and seem to have been raised in line with their terms of engagement. So, even where Campbell Smith might have been clearer about their fees – I wouldn't be asking them to do anything here as the fees were reasonably incurred for time spent carrying out work for Mr and Mrs M.

### *CGT and ISA Allowance*

The evidence shows the advisor was aware of the CGT exposure from the SMIT. There is correspondence with the broker of the wrapper provider from 2015 which confirmed he intended to address this issue after initial deals were dealt with. The correspondence confirmed the SMIT constituted 42% of Mrs M's portfolio and was loaded with CGT. I understand the investment had initially been modest but had performed well before being transferred to Campbell Smith in 2015.

Further to this, the evidence shows the broker reviewed the position annually and confirmed as such with Campbell Smith. They used what they could of the CGT allowance to encash the SMIT where possible. These funds were then transferred and reinvested under the annual ISA allowance. I'm satisfied from this that Campbell Smith took reasonable steps here to address the issues around the SMIT, as well as looking to utilise the ISA allowance.

I appreciate there may be alternative options for mitigating CGT. But this doesn't mean the steps taken by Campbell Smith were unreasonable. I also understand that the SMIT's performance over the years meant exposure to further CGT. I've seen an email from the advisor in January 2021 where she confirmed how they would address the CGT and I'm satisfied it was going to be a point of discussion for the next meeting. Overall, I'm satisfied the steps taken here were reasonable.

### *Mr M's ISA*

I've considered the evidence and can see the bringing of Mr M's stocks and shares ISA within Mrs M's portfolio was suggested by HSBC's advisor. For example, the advisor wrote to Mrs M on 31 October 2014 and suggested Mr M might be happy to transfer his current ISA, although he would lose his ISA status, because of Mrs M's tax position. The advisor went on to say it was just a suggestion and not one that needed to be taken up.

There is also reference to this suggestion in meeting notes. Had Mr M opted to transfer his ISA, it would have been brought under the same management as Mrs M's with the intention of improving performance. The investments might be brought back within an ISA wrapper and gain the tax benefits within around two tax years.

Overall, I don't think this recommendation was unsuitable or inappropriate. The consequences seem to also have been discussed and it wasn't something taken up by Mr and Mrs M so there has been no detriment.

### *Service Issues*

I've already addressed some of the service issues which were raised in relation to Campbell Smith's fees. Having reviewed the file, I can see Campbell Smith mostly provided their service promptly. Whilst they may have not undertaken all of the reviews annually, they clearly monitored the investments and liaised with the broker for the wrapper provider. And for the most part the advisor was reasonably available for advice when it was requested. For example, she responded to emails quickly and looked to action Mr and Mrs M's requests.

However, there were occasions where Campbell Smith's service did fall short of this and Mr and Mrs M didn't receive as prompt a response as they could have expected. Campbell

Smith have said there were issues in 2015 with an IT system change and works being carried out close by which effected their internet connectivity. Whilst I appreciate some of these factors may have been necessary and/or unavoidable, Mr and Mrs M could still expect to hear from their advisor within a reasonable period.

I've also reviewed the correspondence in respect of the concerns Mr M had about the discharge of the standard security from 2018 and 2019. I note he wanted this to be dealt with as a priority and Campbell Smith accepted these instructions were not dealt with as such. The advisor has apologised for this.

However, I do recognise Mr and Mrs M chased the advisor and tried to get in contact in 2020. For example, in their email of November 2020 they explained they hadn't heard anything about the discharge and requested an update. Nevertheless, the title was requested from the lender and kept safe before being transferred to Mr and Mrs M's new solicitors.

I've seen Campbell Smith waived £2,500 in fees to acknowledge the IT problems they had. Whilst this occurred before some of the issues, I'm satisfied it is appropriate in the circumstances and represents work undertaken on the file. So, I won't be asking Campbell Smith to do anything further here.

### **Putting things right**

The positions of Mr and Mrs M's portfolios were affected when Campbell Smith took fees associated with advice for Mr M from Mrs M's portfolios. Therefore, Campbell Smith should look to put Mr and Mrs M in as close to the position they would have been had those fees been correctly taken from Mr M's portfolio.

- A – Calculate the fees charged to Mrs M's portfolio relating to advice and work carried out for Mr M
- B – Calculate the loss of growth on Mrs M's portfolio due to Mr M's fees being deducted. This should be based on how Mrs M's portfolio has actually performed from the date of each deduction until the date of settlement.
- C – Calculate the growth on Mr M's portfolio due to the fees not being deducted – based on the actual growth of the portfolio up to the date of settlement.
- Mr M should undertake to pay £C to Campbell Smith which can use that when paying £D (set out below) to Mrs M as described below

I can't direct Mr M to pay £C to Mrs M as he isn't the firm. And so, if he were to pay £C to Mrs M by his own accord then he should let Campbell Smith know he has done this. In that circumstance Campbell Smith can take that into account when calculating D below

This is so Mr M doesn't receive a double benefit by keeping growth of his investments he wouldn't have had if the fees had been properly deducted from his investments.

- D = either:
  - Where Mr M pays £C to Campbell Smith:
    - A + B
    - Where Mr M decides to pay £C to Mrs M rather than Campbell Smith:
      - (A + B) – C
- Campbell Smith pay £D to Mrs M – which is the amount reduced by fees and the loss

of growth from that money not remaining invested in her portfolio.

I appreciate Campbell Smith's comments about how things should be put right. But ultimately Mrs M has suffered a detriment she otherwise wouldn't have, and this should be rectified if Mr and Mrs M accept my decision. The method outlined above is the most pragmatic way of putting Mrs M in as close to the position she otherwise likely would have been in. Therefore, it is fair and reasonable in all the circumstances of this complaint.

### **My final decision**

I'm upholding this complaint and Campbell Smith LLP should put things right in the way outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 28 April 2023.

Laura Dean  
**Ombudsman**