

The complaint

Mr M complains that Omni Financial Ltd (Omni) retained the advice fee paid on the transfer of a personal pension. He believes the fee should be returned to him because he exercised his cooling off rights due to having lost faith with his adviser.

It is noted that Mr M received advice from Omni jointly with his wife, Mrs M and as a result, the majority of the communication on file is from Mrs M on behalf of them both. For ease, references to Mr M will include communications from Mrs M where appropriate.

What happened

In August 2020, Mr and Mrs M were referred to Omni by their accountant in order to obtain financial advice. Following a number of meetings, calls and emails, a recommendation was made in October 2020 covering pensions, life cover and wills, and information was provided in relation to mortgages.

During October and November 2020, Mr M (mainly via his wife) and Omni communicated regularly. The pension transfer forms were scanned and emailed to the adviser on 29 November 2020 dated 28 November 2020, and forwarded to AJ Bell, the receiving pension provider. An email confirms that on 3rd December 2020 the cash value of the pension fund had been received by AJ Bell.

However following the increase in premiums of the life cover, an administration error leading to another client being erroneously copied into an email, and some unexpected emails being received from AJ Bell (the new pension provider), Mr M decided he no longer wished to go ahead with the products recommended.

He returned the cancellation form to AJ Bell on 15 December 2020 who liaised with Aviva to facilitate the return of the pension funds, however due to the funds already having been invested, the servicing adviser needed to disinvest the funds. AJ Bell have stated that they forwarded an email to Omni on 31st December 2020 from Mrs M who did not have the required authority over Mr M's account. They have not outlined the content of that email, however they have confirmed that the cancellation form was received from Mr M on 15 December as stated above, and have also confirmed it was within the cooling off period. The pension included 22 funds, however only 21 were disinvested resulting in the pension not being returned to Aviva. When this error came to light, AJ Bell agreed to disinvest the remaining fund (and waive the charge for this), and the fund was returned to Aviva. AJ Bell have acknowledged that they could have done more to ensure that the return of funds was processed quickly, and have offered a payment of £100 to Mr M to reflect this. The fund value returned to Aviva was the current value, less the advice charge which had been paid to Omni in December 2020 when the fund was initially transferred.

On 11 June 2021 Mrs M emailed the adviser on behalf of herself and Mr M to request a return of the advice charges that had been taken from their pension funds, and on receiving no reply from Omni, sent emails chasing this on 19 June, 11 July and 9 August 2021.

As no response was received, Mr M referred his to complaint to us. Our investigator did not think that Omni had acted unreasonably and did not uphold the complaint. Mr M did not accept this and as a result the complaint has been referred to me for a final decision.

Provisional findings

I issued my provisional decision on 25 October 2022. It said:

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.

I am providing this provisional decision as, based on everything I have seen thus far, I intend to depart from the investigator's recommendations.

Mr M states that he decided to exercise his cooling off rights due to the conduct of his adviser, Omni. Cooling off/cancellation rights exist to ensure that customers are able to change their mind. Mr M states that he changed his mind having lost faith with his adviser and his (in Mr M's view) lack of professionalism. It is noted that he does not claim that he was unhappy with the advice provided or felt it was unsuitable for his needs and circumstances.

Having reviewed the correspondence between Mr M, his wife on his behalf, and Omni, I do not believe that Omni acted unreasonably during the initial stages of the process prior to the pension transfer application. Mr M states that he felt the process was rushed and felt disjointed, messy and confusing, however the communications on file do not support this. The initial meetings took place in August 2020, with the illustrations being provided in September and the suitability report being issued 23 October. There is nothing on file to suggest that the adviser was pushing or rushing Mr M in any way, and he submitted the pension transfer forms on 29 November 2020. I therefore do not believe that Omni had acted unreasonably in their actions until that point.

Mr M states that he lost faith in Omni when the premiums for the life cover were increased following medical underwriting, the business inadvertently copied in another client to Mr M's email, and Mr M received emails from AJ Bell during the night. Mr M's wife then emailed Omni on behalf of them both to say they wanted to put the applications on hold. I have reviewed the emails and correspondence relating to these issues. When Omni was informed that the life cover premiums were to be increased, the adviser made contact with Mr & Mrs M in order to discuss this. Mr & Mrs M acknowledge that they were aware that the premiums could be increased, but were not expecting the level of increase to be as much as it was. As an adviser, the business would be expected to inform their clients of this possibility, however could not reasonably be expected to know the level of rating that would be applied following medical underwriting for all medical conditions. I therefore don't think Omni did anything wrong here.

Mr M was very concerned that another client was copied in to an email addressed to him. This was a worrying lapse on the part of Omni and I can see why Mr M was concerned by this. However, I've reviewed the email and whilst it includes information relating to Mr & Mrs M's health, and the impact of their health conditions on their life assurance premiums, I haven't seen anything which makes me think this information could have been used in a way that caused Mr M financial harm. There is no indication from Mr M that this has been the case. Whilst I've considered the impact on Mr M, it doesn't seem to me that further compensation is warranted here.

The final concern for Mr M was when he received emails during the night from AJ Bell. He states that he did not know who AJ Bell were and thought it was a scam. Mr M had been provided illustrations and a suitability report referencing the transfer to AJ Bell, and had completed a transfer form to them. It would therefore be reasonable to consider that Mr M would have an awareness of AJ Bell being his new pension provider, and recognised correspondence from them as being linked to his recent pension transfer. In any event, this complaint is against Omni which isn't responsible for AJ Bell's actions.

Although Omni fell short of their duty of care in protecting Mr M's data, there is nothing to suggest that their other actions in dealing with Mr M were unreasonable in the period leading to him cancelling his pension transfer. However, Mr M was within his rights to do this. I cover this aspect of his complaint next.

I have reviewed the documentation provided to Mr M relating to the advice fee, which was 3% of the fund being transferred. At outset, Mrs & Mrs M were provided with an initial disclosure document setting out the services offered by Omni, as well as a fee agreement stating the specific charge applying to them. This fee was reflected in the pension switching report provided, and the suitability report issued. It was stated that the charge was for advice and implementation of that advice and it would be facilitated from the pension fund. The report confirms that the charge would not be payable if Mr M did not proceed with the transfer. Although Mr M exercised his cooling off rights, he did so following the advice to transfer, and as stated above, has not indicated at any time that he was dissatisfied with the advice itself. However, the purpose of the cooling off period is to return the client to the position that they had been in if they'd not proceeded with the recommendation. The information provided did not inform Mr M that he would need to pay an advice fee in these circumstances. For the above reasons it is reasonable to consider that Mr M would have understood that exercising his cooling off rights would not lead to him incurring the advice fee.

Omni have confirmed in an email dated 24 February 2022 that Mrs M's advice fee was not refunded because she did not cancel within the cooling off period. It is my view that by extension, this logic would apply to Mr M. This suggests that they would refund a fee if the cancellation was within the cooling off period (as was the case here and has been confirmed by AJ Bell). Omni have been given an opportunity to clarify why they do not believe Mr M should have the advice fee refunded. Whilst they have reconfirmed their views relating to the chain of events, good service and suitable advice received by Mr & Mrs M, they have not directly addressed what they said on 24 February. Within the response, Omni have raised the point that the analysis, review and report provided were time consuming and for this, they expected to be paid in accordance with the agreement with Mr & Mrs M.

I have reviewed the documentation provided to identify what is fair and whether Mr M could reasonably expect to have to pay the advice charge if he exercised his cooling off rights. Omni have confirmed they issued Mr M with a copy of the suitability report, which has been provided. This refers to the initial fee and states "Please note that this fee is not subject to VAT and will not be payable if you do not proceed with my advice". This indicates that they would not expect to be paid for the analysis, research and report in the event that the transfer did not go ahead. By exercising the cooling off rights, Mr M has effectively put himself in the position of the transfer not going ahead. It is therefore fair to consider that Mr M would not have expected to have to pay the advice charge in this case.

Mr & Mrs M were provided with a client agreement setting out the fees that would be charged, both for the initial advice and for the ongoing service. It is noted that Omni have confirmed that this was not signed, but that Mr M gave his verbal agreement to the adviser. Omni state that it was the process that in order to cancel the transfer, Mr M should have completed the bottom of the agreement (identified as a Cancellation Form), signed and

returned it to them. Having reviewed the client agreement referenced, I cannot agree that it is reasonable to consider that Mr M would have understood that in order to exercise his cooling off rights in relation to his pension transfer he would have to sign and return the cancellation form. The form itself refers to the cancellation of the agreement for the supply of Financial Advice Services rather than relating to cancelling the transfer itself. The documentation provided to Mr M by AJ Bell did reference the cooling off rights and provided the contact details which Mr M used in order to do this.

Whilst it is accurate to state that Mr M did not inform Omni of his intention to cancel his pension with AJ Bell within the cooling off period, he did inform AJ Bell of his intention within the required timescales, thereby exercising his rights in an appropriate period of time. It is therefore reasonable to consider that in line with Omni's own statement outlined above, that they would be expected to refund Mr M's advice fee due to his timely cancellation of the transfer to AJ Bell. I therefore uphold this part of Mr M's complaint. I explain what Omni should do below.

The correspondence shows that despite having had regular communication with Mr M's wife on behalf of them both until December 2020, following him cancelling his transfer to AJ Bell, Omni did not maintain this. Mrs M sent an initial email on 11 June 2021 requesting a refund which was unanswered, which she followed up on 19 June 2021. On 21 June, Omni stated that they would review the file and come back to her. This did not happen, and Mrs M sent further emails chasing the adviser on 11 July and 9 August which were also unanswered. This lack of response has caused Mr & Mrs M stress and worry, and prompted Mr M to forward his complaint to this service. I have considered whether Omni acted unreasonably during the period from 11 June to 9 August 2021. Considering the circumstances and events that had preceded this, I think it is reasonable to consider that professional standards suggest that Omni should have responded to Mrs M's requests for a reply. It is reasonable to consider that Mr M would have felt frustrated by the lack of response from Omni in relation to the refund of a fee he felt was due to him, and concerned by the potential impact on his pension. I therefore think an award for distress and inconvenience is warranted. I consider an award of £100 is fair and reasonable compensation for the concern encountered by the uncertainty caused.

Putting things right

To compensate Mr M fairly, Omni should refund the amount of £1,591.05, reflecting the fee paid with interest at 8% added from the date Mr M exercised his cancellation rights to the date compensation is paid. In addition to this, Omni should pay Mr M £200 in respect of the distress and inconvenience caused by their lack of responses following him exercising his cancellation rights.

Response to my provisional decision

Both parties have accepted my provisional 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.

As no new information has been provided I see no reason to change my decision. So I remain of the view I set out in my provisional decision.

My final decision

For the reasons given above, I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 9 December 2022.

Joanne Molloy
Ombudsman