

The complaint

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

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, Mrs M 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 on 3rd December 2020 confirms that 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), Mrs M decided she no longer wished to go ahead with the products recommended.

She returned the cancellation form to AJ Bell on 11 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. The pension included 22 funds, however Omni instructed only 21 to be 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 Mrs 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 to request a return of the advice charge that had been taken from her pension fund, and on receiving no reply from Omni, sent emails chasing this on 19 June, 11 July and 9 August 2021.

As she did not receive a reply, Mrs M referred her to complaint to us. Our investigator did not think that Omni had acted unreasonably and did not uphold the complaint. Mrs M did not accept this and as a result the complaint has been referred to me 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.

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. The issue that needs to be decided is whether it is fair for Omni to refund the advice charge paid from Mrs M's pension fund.

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

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

Having reviewed the correspondence between Mrs M and Omni, I do not believe that Omni acted unreasonably during the initial stages of the process prior to the pension transfer application. Mrs M states that she 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, 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 Mrs M in any way, and she 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.

Mrs M states that she lost faith in Omni when the premiums for the life cover were increased following medical underwriting, the business inadvertently copied in another client to Mrs M's email, and Mrs M received emails from AJ Bell during the night. She then emailed Omni to say she 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.

Mrs M was very concerned that another client was copied in to an email addressed to her. This was a worrying lapse on the part of Omni and I can see why Mrs 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 Mrs M financial harm. There is no indication from Mrs M that this has been the case. Whilst I've considered the impact on Mrs M, it doesn't seem to me that further compensation is warranted here.

The final concern for Mrs M was when she received emails during the night from AJ Bell. She states that she did not know who AJ Bell were and thought it was a scam. Mrs 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 Mrs M

would have an awareness of AJ Bell being her new pension provider, and recognised correspondence from them as being linked to her 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 Mrs M's data, there is nothing to suggest that their other actions in dealing with Mrs M were unreasonable in the period leading to her cancelling her pension transfer. However, Mrs M was within her rights to do this. I cover this aspect of her complaint next.

I have reviewed the documentation provided to Mrs 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 Mrs M did not proceed with the transfer. Although Mrs M exercised her cooling off rights, she did so following the advice to transfer, and as stated above, has not indicated at any time that she 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 if they'd not proceeded with the recommendation. The information provided did not inform Mrs M that she would need to pay an advice fee in these circumstances. For the above reasons it is reasonable to consider that Mrs M would have understood that exercising her cooling off rights would not lead to her 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. This suggests that they would refund a fee if the cancellation was within the cooling off period (as was the case here). Omni have been given an opportunity to clarify why they no longer believe Mrs M should be 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 Mrs M could reasonably expect to have to pay the advice charge if she exercised her cooling off rights. Omni have confirmed they issued Mrs 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, Mrs M has effectively put herself in the position of the transfer not going ahead. It is therefore fair to consider that Mrs 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 their process that in order to cancel the transfer, Mrs 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 Mrs M would have understood that in order to exercise her cooling off rights in relation to her pension transfer she 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 Mrs M by AJ Bell did reference the cooling off rights and provided the contact details which Mrs M used in order to do this.

Whilst it is accurate to state that Mrs M did not inform Omni of her intention to cancel her pension with AJ Bell within the cooling off period, she did inform AJ Bell of her intention within the required timescales, thereby exercising her 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 Mrs M's advice fee due to her timely cancellation of the transfer to AJ Bell. I therefore uphold this part of Mrs M's complaint. I explain what Omni should do below.

The correspondence shows that despite having had regular communication with Mrs M until December 2020, following her cancelling her 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 Mrs M stress and worry, and prompted her to forward her 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 Mrs M would have felt frustrated to have to keep recontacting Omni in relation to the refund of a fee she felt was due to her and concerned by the potential impact on her pension. I therefore think an award for distress and inconvenience is warranted. I consider an award of £200 is fair and reasonable compensation for the concern encountered by Mrs M and her having to chase the adviser for responses.

Putting things right

To compensate Mrs M fairly, Omni should refund the amount of £1,655.79, reflecting the fee paid with interest at 8% added from the date Mrs M exercised her cancellation rights to the date compensation is paid. In addition to this, Omni should pay Mrs M £200 in respect of the distress and inconvenience caused by their lack of responses following her exercising her cancellation rights.

Response to my provisional decision

Both parties have accepted my provisional decision.

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 Mrs M to accept or reject my decision before 9 December 2022.

Joanne Molloy
Ombudsman