

The complaint

Mr and Mrs N complain their advisor at Campbell & Associates Independent Financial Advice Ltd failed to invest the sum of £45,000 into a joint investment they held.

What happened

Many years ago, Mr and Mrs N appointed an advisor at Campbell as their financial advisor. More recently, the FCA contacted Mr and Mrs N and recommended that they review their dealings with the firm. The couple have subsequently gone on to make a series of complaints against Campbell, alleging that money they paid to it wasn't invested in line with their expectations.

For its part, Campbell hasn't responded to these complaints in any meaningful way. Mr and Mrs N have brought their complaints to our service where we've consistently made the findings that:

- We've seen evidence of Mr and Mrs N making payments to Campbell, and noted the firm is not authorised to hold client funds in this way.
- The couple recall making the payments to top up existing investments which were managed by Campbell.
- We've seen evidence of Campbell providing information which suggested to Mr and Mrs N that their money was being deposited in the investments as expected.
- As there's no evidence that Campbell invested the money in line with Mr and Mrs N's expectations, it should refund what they paid it, plus a return.
- Campbell should also compensate Mr and Mrs N for the distress and inconvenience that'd been caused as a result of the events in question.

Campbell has had ample opportunity to explain or otherwise defend its conduct throughout these various proceedings. It has repeatedly declined to do so.

More recently, Mr and Mrs N have reviewed a series of payments they believed they'd made to top up an investment in late 2014 and early 2015.

1. £20,000 on 21 October 2014
2. £12,500 on 28 January 2015
3. £12,500 on 29 January 2015

The couple recall this money was paid to top up an investment they had with a firm I'll be referring to as Platform A. They've followed up with Platform A, and its confirmed it has no record of any such deposits being received. Mr and Mrs N complained to Campbell in March 2024 that its misled them over the whereabouts of their money, and demanded that it be returned to them.

Campbell did not respond to Mr and Mrs N's complaint, so the matter was referred to our service. Our investigator upheld Mr and Mrs N's complaint, for largely the same reasons as their previous cases were upheld. Campbell did not respond, so the matter's been referred to me.

I provisionally decided Mr and Mrs N's complaint should be upheld. This is what I said:

"Prior to giving my decision on the merits of this complaint, I will first assert that I'm satisfied it falls within our service's jurisdiction to consider it. Our time limits, outlined in DISP 2.8.2 R, explain our service cannot decide the merits of a complaint that's referred to us more than six years after the event complained about, or more than three years after the complainant ought reasonably to have been aware of their cause to complain.

Here, Mr and Mrs N are complaining about payments they made to Campbell in late 2014 and early 2015, and its failure to invest that money in line with their expectations. Their complaint therefore is out of time under the first limb of DISP 2.8.2 R. I am however satisfied that they've complained within three years of when they ought reasonably to have been aware of their cause to complain.

I've seen no evidence, prior to the FCA's contact with them in 2023, that Mr and Mrs N would've had any cause to doubt their money was being invested in line with their expectations. It seems it's only through the process of comparing the information they were given by Campbell, with information from their investment providers that they've proactively obtained, that they've developed an awareness that their money isn't where they believed it should be. And I'm satisfied that as per the relevant rule, their complaint to Campbell has been made within three years of this realisation. As a result of this, I do not require Campbell's consent to proceed with my decision here. I will now give my decision on the merits of their complaint.

Having considered the evidence in this case, I intend to uphold it in full. But when doing so, I'll be departing slightly from the reasoning relied upon by our investigator.

Our rules, outlined in DISP 3.5.9 R explain that I may "reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested". And that is what I intend to do in Mr and Mrs N's case.

As a regulated firm, when dealing with its customers, Campbell is required at all times to uphold a series of high-level principles set by the FCA. Amongst other things, the principles outlined in PRIN 2.1.1 R require that:

"A firm must conduct its business with integrity... A firm must conduct its business with due skill, care and diligence... A firm must observe proper standards of market conduct... A firm must pay due regard to the interests of its customers and treat them fairly... A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading..."

Where investments are concerned, these principles are further bolstered by the rule in COBS 2.1.1 R, which requires that:

"A firm must act honestly, fairly and professionally in accordance with the best interests of its client"

Mr and Mrs N have provided bank statements which prove they made the payments totalling £45,000 I referred to earlier. They've also provided the sort code and account number these payments were sent to. Having made enquiries with the bank Mr and Mrs N's money was sent to, we've received confirmation that the account in question belonged to Campbell.

Mr and Mrs N recall making those payments on the understanding their money would top up their existing investment with Platform A. I've been sent emails between the couple and their advisor at Campbell, in which the advisor confirms the money's been received. Having

reviewed the statements Mr and Mrs N have acquired from Platform A which cover the period in question, there's no evidence that Campbell made any attempt to top up the investment in line with Mr and Mrs N's expectations. The money remains unaccounted for, and Campbell has declined to give any commentary on its whereabouts.

From the evidence available to me, I'm satisfied Campbell has failed to invest Mr and Mrs N's money in the manner they recall agreeing to. I have seen no evidence that would give me pause to doubt Mr and Mrs N's submissions on these points.

In my opinion, if Campbell and its advisor had accepted the couple's money in the course of legitimate business, it would be relatively straightforward for it to refute their complaint. As a firm that's authorised to give advice and arrange investments for its customers, I would reasonably expect Campbell to provide evidence of:

- *Arrangements and recommendations for any investments it's sold.*
- *Paperwork substantiating the appropriateness or suitability of those investments.*
- *Diary notes or phone calls recording occasions those investments were discussed.*

The fact Campbell has failed to provide any such evidence is extremely concerning. As is the fact that according to the FCA register, Campbell doesn't appear to have ever been authorised to hold client money. Mindful of this, and in the absence of any counter-narrative defending itself, I'm persuaded that Campbell has failed to invest Mr and Mrs N's money as it should have. And by doing so, it's failed to uphold the principles and requirements I referenced earlier in my decision. I'm satisfied that Campbell has failed to treat Mr and Mrs N fairly.

It remains for me to fairly and reasonably decide what Campbell must do to address the impact its actions have had on the couple.

Putting things right

As I've understood it, Mr and Mrs N had made the three payments I've highlighted on the understanding they'd be used to top up their joint investment with Platform A. So by failing to invest their money as it should have, I'm satisfied Campbell has caused Mr and Mrs N to miss out on the growth that their £45,000 could've made, had it been properly invested with Platform A.

Mindful of all of this, when deciding what would be fair compensation, I consider that my aim should be to put Mr and Mrs N as close to the position they would probably now be in, if their money had been invested in the way they'd expected it to be.

To begin with, I direct that Campbell must pay Mr and Mrs N the sum of £45,000.

Next, I direct that Campbell must calculate the growth Mr and Mrs N's deposits totalling £45,000 would've made, had they been correctly deposited into their joint investment with Platform A. For the purposes of this calculation, I think it's fair and reasonable to expect that Campbell ought to have invested these deposits the same day they were received. Campbell should calculate growth on this investment up until the date it settles this complaint. Completing this calculation will leave Campbell with a monetary figure I'll refer to as "Figure X". Campbell must provide a breakdown of its calculations for Mr and Mrs N in a clear and simple format.

Once it has completed this calculation, I direct that Campbell must pay Figure X to Mr and Mrs N.

Finally, I've considered what Campbell must fairly and reasonably do to compensate Mr and Mrs N for the trouble and upset the events of their complaint have caused them. The firm has shocked and upset the couple with the revelation that, yet again, deposits they'd entrusted to it have seemingly been misappropriated. And in response to these allegations, the firm has simply ignored their concerns and failed to engage with them at all. In the circumstances, I'm persuaded it would be fair and reasonable to award the couple the sum of £500 for the additional distress and inconvenience they've been caused in this complaint".

Mr and Mrs N accepted my decision. Campbell did not reply to it.

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 neither party has sought to contest my findings, I see no reason to depart from them. For the reasons given in my provisional decision, I uphold Mr and Mrs N's complaint in full.

My final decision

My final decision is that I uphold Mr and Mrs N's complaint. With reference to the specific directions given above, I direct that Campbell & Associates Independent Financial Advice Ltd must now:

- Pay Mr and Mrs N the sum of £45,000
- Calculate Figure X as outlined above
- Pay Figure X to Mr and Mrs N
- Provide the calculations for Figure X to Mr and Mrs N in a clear and simple format
- Pay Mr and Mrs N the sum of £500

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N and Mrs N to accept or reject my decision before 15 October 2024.

Marcus Moore
Ombudsman