

## **The complaint**

Miss S complains about a lack of an advisory service from Succession Wealth Management Ltd since 2020, in relation to her stocks and shares ISA.

## **What happened**

In January 2018 Miss S first met with Succession, and by May 2018 she'd been advised to invest in a stocks and shares ISA with them. She agreed to their Comprehensive Wealth Planning service, which involved the provision of an ongoing advice service, at a fee of 1% per year. From 2019 she met with an adviser who I'll call Ms C. On 30 May 2023, Succession emailed Miss S to let her know that Ms C had left and so a new adviser had been appointed to her, who would be in touch in due course.

By October 2023, Miss S hadn't heard from the new adviser, and she and her partner Mr S wrote to complain about this – they said that they felt the service provided since March 2020 was of a lower standard than expected. The meetings that had taken place were limited to a discussion of fund performance, and didn't involve any level of forward planning, or ongoing strategy discussions. Miss S decided to close her Succession ISA and move it elsewhere, a process that was completed in January 2024. Succession upheld the complaint in part, due to the lack of contact since Ms C left. They offered a refund of the fees paid from July 2023 to the date of their reply, 9 January 2024, plus 8% simple interest.

Miss S didn't accept this, as she maintained the advice provided prior to July 2023 wasn't sufficient, so she brought the complaint to our service. An investigator at our service considered the complaint and upheld it. He said that the meetings that took place up to July 2022 were sufficient to satisfy the agreement in place. However, he found that the fees for the annual advice were paid in advance of each advice meeting, and as the July 2023 meeting didn't take place and Miss S no longer had an adviser attached to her account, the refund should encompass any fees taken after July 2022 up to the date she left Succession.

Miss S agreed with this, but Succession didn't agree with the investigator. In summary they said that although there was no contact with Miss S between July 2022 and July 2023, that doesn't mean the service wasn't available – the adviser would have supported Miss S if she'd been in touch. Their process is to update their records of a customer's objectives and circumstances once a year at the meeting, and then that information is valid for twelve months, so they can give advice at any point during that time.

The reason they've agreed to refund the fees from July 2023 onwards is because no meeting took place, which meant their information was out of date, so they couldn't advise Miss S from then on. If a client were to disengage from their ongoing advice service part way through a year, they wouldn't give a refund of the fees paid since the previous review, as their advisers would have been available during that time.

They further explained that the fees are collected in arrears, starting after the initial meeting and implementation of advice, not paid at the start of the year for the year ahead. They are taken on a monthly basis for the previous month. They gave an example – they said the fees collected in the first year between July 2018 to July 2019 were for the 2018 review meeting.

As the investigator wasn't persuaded to change his mind, the complaint has been passed to me for a 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.

Having done so, I agree with the conclusions reached by the investigator for largely the same reasons. I consider that my decision needs to answer two main questions, firstly what service did Succession agree to provide in return for the fee? Secondly, was that service provided?

To answer the first question, I've started with considering how the service was described in the documents I've been provided with – the Letter of Engagement, originally signed by Miss S in January 2018, the Our Services and Fees document referred to in the Letter of Engagement and the Terms of Business. Collectively these show that Succession provide three levels of service, and Miss S chose the Comprehensive Wealth Management service. This involved six distinct stages, which attract various fees, as follows:

1. An initial discovery meeting. This was at Succession's expense, designed to gather information about Miss S's circumstances and objectives, and took place in January 2018.
2. Research by Succession to find suitable investment options.
3. Providing reports, financial health checks and forecasts.
4. Recommending specific investment products, including confirmation of cost(s). Upon presentation of reports setting out the specific investments, which Succession provided to Miss S in April and May 2018, a Commitment Fee became due, which covered stages two, three and four. Miss S agreed to a fee of £1,500 – and as she proceeded to the next stage, this was then offset against the Implementation Fee.
5. Implementation. Once Miss S agreed to the recommendations in June 2018, Succession arranged the transfer of her ISA from her previous provider. This was covered by the Implementation Fee, based on a percentage of the total investment amount covered by the service. Miss S agreed to an implementation fee of 3%.
6. Ongoing review. This was paid for by an Ongoing Service Fee, calculated as a percentage of the value of Miss S's portfolio. Miss S agreed to an Ongoing Service Fee of 1% per year, subject to a £1,000 minimum amount.

The ongoing review service was described in the Terms of Business as:

*"We provide periodic reviews as an integral part of our ongoing planning service. Planning meetings are held annually to ensure that both the underlying investment strategy and the recommended products continue to meet your requirements. We will contact you to arrange these meetings..."*

*A key component of our ongoing review service is continued analysis to ensure that both the underlying investment strategy and product wrappers continue to be the most appropriate and cost effective in assisting you to meet your objectives. Where appropriate, we may make recommendations to change or identify further products or services, but such recommendations will only be acted upon with your prior approval."*

The Our Services and Fees document explains it further, on page 6:

*"What can you expect?"*

- *One planning meeting a year.*
- *Annual assessment of your goals, aspirations and personal circumstances.*
- *Annual assessment of the tax efficiency of your financial arrangements.*
- *A distinctive approach to investment management.*
- *Annual assessment of your attitude to investment risk and capacity for loss.*
- *Monitoring and adjusting of your Succession Plan.”*

Based on these descriptions when read together, I'm satisfied that the 1% Ongoing Service Fee is for the provision of one annual review meeting. Though there are various annual assessments mentioned above, in practice these all take place in a singular annual planning meeting, the purpose of which is for the adviser to assess Miss S's circumstances and objectives, to ensure the investments continue to be suitable.

The “*distinctive approach*” and “*monitoring and adjusting*” mentioned in the bullet points above are not further described in the paperwork, so I can't be sure of what they involve. On its face, the former sounds like something that Succession would be providing regardless of the Ongoing Service Fee, given the fact that Miss S is invested in a model portfolio managed by Succession. There's no evidence that the monitoring and adjusting was carried out at any point outside of the annual reviews after July 2022. As I've set out above, I'm persuaded that the annual meeting was the main feature of the ongoing service – and if provided separately from the annual review at all, these elements were a very minor portion of the service.

I appreciate Succession have argued that the suitability assessment that took place in 2022 meant that they could have provided advice at any point up to July 2023, had Miss S requested it – so they feel they were entitled to retain the fee for that year. I note that this on demand service wasn't set out in the documents I've quoted above, so I've considered whether it's fair and reasonable for Succession to retain a fee simply for the availability of access to an adviser.

In my view, advisers are technically always available to give advice regardless of an ongoing fee. For instance, if a client who wasn't paying ongoing fee approached Succession for advice, I find it unlikely that they'd be turned away – they'd simply be charged in a different way. So, when that service isn't utilised - regardless of how it would be paid for if it were utilised - I consider it unlikely that Succession would incur any specific costs in relation to a single specific client simply for offering that service, that aren't covered by their general operating costs.

I've also considered the relevant rules and guidance that apply. Succession's regulator, the Financial Conduct Authority (FCA), has set out rules on adviser charging in the Conduct of Business Sourcebook (COBS). COBS 6.1A.22R says that a firm may use an ongoing advice charge if its “*in respect of an ongoing service for the provision of personal recommendations or related services*”.

On the FCA's website, at <https://www.fca.org.uk/firms/adviser-charging-rules>, the FCA says: “*You can only take an ongoing charge if you are providing an ongoing service - for example regularly reviewing the performance of a client's investments*”. In 2014 the FCA issued Factsheet 010, which echoes the website, and adds “*You must ensure you have robust systems and controls in place to make sure your clients receive the ongoing service you have committed to.*” As a regulated firm, I consider it reasonable that Succession ought to have been aware of this guidance in 2018 and throughout the agreement.

With the above mind, I'm convinced that it's not enough that the service was available upon request – a service must actively be provided. I find the wording of the rule and guidance

supports this - the words “*provision/provided*” in particular show an expectation that a recommendation is actually provided, rather than simply being available on request. So, I’m satisfied that the rules and guidance support my conclusion above that the Ongoing Service Fee pays for the active provision of advice, usually at one annual review. If that review doesn’t take place, and no other advice is given throughout the year, then Succession isn’t entitled to retain the fees taken in that year.

I’ve gone on to consider the timing of the charges, and whether they are taken in arrears or in advance of the annual review. The initial advice given in 2018 was paid for via the Commitment and Implementation fees. None of the evidence I’ve seen states that the Ongoing Service Fee was designed to pay for the initial advice given to a new client. While Succession have said that the Ongoing Service Fee is paid arrears for the previous meeting, I don’t consider that to be reasonable given the advice in 2018 was paid for separately. If instead the fees were taken after the fact, then that would mean Miss S was charged twice for the first instance of advice, which I wouldn’t consider fair. I’m also not convinced that was Succession’s intention, given the paperwork clearly distinguishes between the fees for the first and subsequent advice.

As the fee is deducted monthly from the investments, it follows that twelve months of fees paid prior to a review are attributed to payment for that review. So, after the initial advice in 2018, as the products were put in place in June and the first fees were deducted in July, I’m satisfied the twelve fees taken from July 2018 to June 2019 (inclusive) paid for the 2019 review. Then the twelve fees taken from July 2019 to June 2020 paid for the meeting in July 2020, and so on.

Having established the principle that the fees pay in advance for the annual reviews – and that the annual reviews are the primary service being provided under the fee - I’ve gone on to consider whether the service was provided as promised.

There’s no dispute over the meeting in 2019, and Miss S no longer appears to dispute that the service was provided in 2020, 2021 and 2022. For completeness, I’m also satisfied the service was provided as agreed up to 19 July 2022 – the date of the 2022 report. It’s accepted by all parties that this was the last meeting that took place, and as set out above, I’m satisfied this was paid for by the fees from July 2021 to June 2022.

So overall I’m satisfied that as Miss S was given no advice after July 2022, Succession is not entitled to retain the Ongoing Service Fee paid from that point onwards. As set out above, the last fee that paid for the July 2022 advice was paid in June 2022 – so all fees after that point ought to be refunded, up to when Miss S left Succession.

As part of the offer made in their final response letter, Succession offered interest of 8% simple per year, to account for the fact Miss S hasn’t had access to that money. I consider this is not an unfair rate of interest to use to compensate Miss S for the loss of the amounts being deducted, as it compensates for lack of use of the money and is a simple method of calculating the loss. Succession should calculate the interest from the date each fee was deducted from the ISA to the date of settlement of the complaint.

### **My final decision**

I uphold this complaint. Succession Wealth Management Ltd should refund the Ongoing Service Fees taken from July 2022 onwards, and add interest calculated as set out above. Succession Wealth Management Ltd should provide Miss S with details of their calculations in a clear, simple format.

If Succession Wealth Management Ltd considers that it’s required by HM Revenue &

Customs to deduct income tax from that interest, it should tell Miss S how much it's taken off. It should also give Miss S a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 2 January 2025.

Katie Haywood  
**Ombudsman**