

The complaint

Mrs S has complained about the ongoing advice charges she paid to Amber Wealth Creation Limited, trading as Amber Financial Planning ('AFP'), for a service she says she did not receive and had not agreed to. Mrs S is seeking a refund of all charges plus interest she has paid since 15 December 2023.

What happened

Mrs S had been a client of the predecessor business of AFP since November 2017. AFP took over the predecessor business on 15 December 2023. After contact with AFP Mrs S wasn't happy and raised her concerns with AFP on 24 May 2024. She said she hadn't agreed the ongoing advice charges and didn't think they were warranted. She had undertaken her own capital gains tax ('CGT') planning and ensured her ISA allowance was used to make sure no significant loss was incurred through AFP's inaction.

AFP responded on 21 August 2024. It said;

- It had contacted Mrs S in December 2023 and January 2024 about the ongoing service.
- Mrs S declined a meeting offered on 31 January 2024 which would have been part of AFP's ongoing advice service similar to the predecessor business reviews which took place in August and February each year.
- A meeting provided the opportunity for Amber to review Mrs S' CGT planning and ISA allowance utilisation.
- It offered the same service that had been provided by the predecessor business and Mrs S' risk profile hadn't changed.
- It had carried out the required work on Mrs S' account as per her instruction, so wasn't willing to refund the fees and rejected the complaint.

Mrs S didn't agree with the outcome so brought her complaint to the Financial Ombudsman Service. Our investigator who considered the complaint didn't think AFP needed to do anything more. He said;

- There was no change to the Client Agreement Mrs S had signed with the predecessor business on 13 November 2017, nor were there changes to the charges which wasn't unusual when a business was taken over.
- AFP had tried to arrange a meeting to review Mrs S' investment but this was declined. AFP wanted to continue with the February/August twice yearly meetings with Mrs S, hence its offer to do so.
- The predecessor business' meeting notes from February 2023 concluded with details of recent changes to CGT and how Mrs S should best utilise her tax allowance. And the investigator thought it likely that if the meeting proposed at the end of January 2024 had gone ahead the same issues would have been discussed.
- Mrs S did contact AFP on 21 and 27 March 2024 about her CGT and ISA allowance

– the subscription for which did go ahead. But AFP couldn't be any more proactive than it had been in seeking the opportunity to review her finances.

- Mrs S would have known she could switch off the fees if she had engaged with AFP.

Mrs S didn't agree. She said;

- It wasn't right that a bed and ISA transaction could only be undertaken at a meeting – AFP could have made contact. And it wasn't a valid excuse that AFP needed to understand her finances before they were able to act. They had all the records of her account.
- It was clear at the end of the tax year she had disengaged with AFP as it had received letters of authority from another adviser, and she had declined meetings. She wasn't aware she could switch off fees and AFP should have alerted her to this as she was clearly dissatisfied.
- A financial advice firm needed to review the suitability of the investments at least annually and this hadn't occurred since August 2023, and it may have been the case she was still paying fees. AFP should have disengaged with her and stopped taking the fees as no proactive work was being undertaken to rebalance the portfolio and ensure ongoing suitability.
- The late communication of the complaint process was unsatisfactory.

Mrs S asked that her complaint be reviewed by an ombudsman, so it 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.

After doing so, I've reached the same conclusion as the investigator and broadly for the same reasons. I'll explain why.

AFP and Mrs S have provided copies of some correspondence and a timeline of events for Mrs S' account which has allowed me to gain an understanding of the relationship and the communication that took place.

Shortly after AFP took over the predecessor business, I can see it wrote a 'welcome' email to Mrs S on 21 December 2023 further to recent correspondence from the predecessor business. Amongst other points the email explained the service that had been provided by the predecessor business was to continue on the same basis as previously provided and concluded with the statement;

'Current Charges

The charging structure and agreements you have in place will continue as they are from day one without change – any changes will be discussed with you openly and clearly prior to any alterations being made.

Your data and historic financial planning will move over to us seamlessly in the background; however, for compliance purposes, we have attached a copy of our GDPR form outlining how we will continue to hold your data.

I welcome all clients to call if they wish to discuss anything further and encourage people to come to our offices and meet the wider Amber team – I know they will

provide you with a warm welcome. Otherwise, we are hoping to set up an online client meet and greet with a Q & A for any unanswered questions at this time.'

Mrs S has said there was no copy of the GDPR form and no invitation for the online client meet so she assumed it was some sort of marketing spin. She said at no time was she provided with a services and costs disclosure, the charging structure, a complaint process or an opportunity to reject the proposed course of action whether to disengage or turn off any advice fees.

However, I'm satisfied the 'Current Charges' section referred to above made Mrs S sufficiently aware the agreement she had with the predecessor business would continue with AFP, along with the same charging structure and service. And while Mrs S says the GDPR form was missing I note AFP sent a follow up email on 26 January 2024 acknowledging some recipients hadn't received it and attached another copy.

Mrs S responded to the December 2023 welcome email on 18 January 2024 to say;

'...it all came as a bit of a surprise but I shall be interested to see how things work out.'

And she went on to explain her previous adviser had left so wasn't sure who to approach as she wanted a withdrawal of £6,000 to be paid to her. In reply to Mrs S, a new adviser from AFP responded to say he had been assigned to her account, and he could help with the withdrawal. He suggested a call the following day for security questions for the withdrawal.

I understand a call took place on 21 January 2024 and an invitation for a meeting was given to review Mrs S' investment but this was declined. Mrs S has said the invitation was purely for a meeting and during the call there was no mention of any specifics such as ISA planning for 2023/2024.

On 30 January 2024 AFP's timeline shows that Mrs S emailed AFP to say she was seeking counsel from a friend and asked some questions. In response AFP offered a call with Mrs S' friend to discuss but Mrs S said she wasn't 'ready for a meeting.' While I don't have copies of all communication, the timeline provided by AFP confirmed that AFP responded on 1 February 2024 to points raised by Mrs S and that Mrs S requested data on 4 February 2024 which was provided on 9 February 2024 at which point Mrs S said she was thinking about her long term future.

Mrs S then contacted AFP on 21 March 2024. She asked for confirmation as to whether her CGT allowance for the year had been utilised and if not, to accept her email as an instruction to sell assets up to the CGT allowance limit and place the proceeds in her cash fund. She confirmed she hadn't used her CGT allowance elsewhere. After chasing for a response AFP replied on 26 March 2024 to say that CGT positions would normally be picked up during reviews but it would provide a CGT report shortly.

AFP responded the following day to confirm Mrs S' CGT and ISA allowance hadn't been used and that a bed and ISA could be carried out before the end of the tax year and early in the next one. To raise the £40,000 needed to fund the two ISAs it said it would give rise to a capital gain of £683. It also said to use the full CGT allowance an additional £284,799 of assets would need to be sold. It clarified there was a previous tax year's loss of £18,917 to carry forward and 'whether we need to sell down the full cash amount currently.' It asked for confirmation from Mrs S if she wanted to proceed with both bed and ISAs and whether to sell to the value of £284,799 to hold as cash.

Mrs S responded to say the 2023/2024 bed and ISA take place immediately and asked what would have happened if she hadn't asked about the tax allowances;

'It seems to me that my ongoing advice fees should surely have covered you alerting me to the opportunity and ensuring my tax efficiency?'

While Mrs S said she was surprised at the CGT position she asked that £250,000 be liquidated and put in her cash fund.

AFP replied to explain that the need for bed and ISAs would usually be picked up during the year and it was doing so during its introductory meetings and calls with clients from the predecessor business to save overload at the end of the tax year. It explained the predecessor hadn't bed and ISA'd throughout the year. However, it confirmed it was happy to carry out the transaction and arrange a review meeting for May. It said a bed and ISA would fall under ongoing advice service and AFP had tried to arrange an introductory call without success where the bed and ISA issue would have been addressed. It went on to say its team was working through the list of the predecessor business clients and would have picked up on the issue during the following week. It again confirmed the significant losses which would negate the need to sell but would proceed with her instruction.

As it turned out the bed and ISA instruction was too late for the investment platform which had a cut off date of 28 March. But there was sufficient cash on one of her other investments to subscribe for the 2023/2024 ISA.

I'm satisfied that AFP explained how it worked in that ISA and CGT allowances would be addressed at review meetings and that is the sort of issue I would expect to see dealt with upon reviews in an advisory relationship. However, it's clear it did not happen in this case but that was because a review meeting didn't take place as Mrs S had declined the invitation. And I think Mrs S was aware of what she was turning down because of her experience with the predecessor business and AFP had said it was to provide a similar service. And if the offer had been accepted I'm satisfied, it's more likely than not, that the ISA/CGT position would have been dealt with.

In any event, the CGT and ISA allowances were used for the year, albeit rather later than Mrs S would have liked. So, while I accept that the Bed and ISA didn't result from direct intervention by AFP before the end of the financial year end and I agree it wouldn't always be necessary to have a meeting in order for that investment decision to be made. But I don't think at that time it was unreasonable for AFP to have concluded that Mrs S didn't want to take any action bearing in mind her not accepting the January 2023 offer of the six monthly review meeting during which I'm satisfied it would have been ready, willing and able to provide in line with the ongoing service agreement.

In Mrs S' email of 8 April 2024 she said that while she was grateful for the work that been undertaken to ensure her ISA was subscribed to she was;

'very aware that this happened because of my action in reminding you, rather than your advice process.'

She said she was still waiting for a copy of AFP's Complaints Procedure and asked about the responsibility of the advice she had received from the predecessor business. AFP responded the next day, but Mrs S was still confused about the relationship of the predecessor business and AFP, where she fitted in with the new arrangement, use of her personal data and the ongoing advice fee bearing in mind the recent issues.

The recipient of the email was away from the office but Mrs S' AFP adviser responded and offered a call to discuss but Mrs S wanted a response from the original recipient and despite him being back in the office on 24 April 2024 she didn't receive a reply until 9 May 2024. Dissatisfied with the response received Mrs S then raised her complaint on 24 May 2024.

I assume Mrs S' expectation of AFP being proactive before the year end was the service she received from the predecessor business, but Mrs S was aware her account was being managed by a new business and so there was the potential that her account could be managed differently pending a meeting and clarification of how to proceed in the future. But I do agree that as AFP had all the necessary CGT and ISA information then it could have been more pro-active before the year end to ensure Mrs S utilised her CGT/ISA allowances which I understand she usually did. But AFP said it was working through the list of the predecessor business' clients where the use of CGT/ISA allowances hadn't been used, and it would have picked this up and I have no reason to think this wouldn't have happened.

Overall, AFP did provide Mrs S with the CGT calculations and ISA information. And the necessary investment decisions and actions were made and completed by the financial year end, even if that came about because of prompting by Mrs S rather than by AFP. So overall, I'm not persuaded AFP has done anything wrong.

And with regard to the fees being incurred I think the 'welcome' email should have flagged to Mrs S that the ongoing advice charges she had previously agreed to with the predecessor business were still in place but she didn't take any action at the time so there was no reason for AFP to think the relationship wasn't going to continue. And there was sufficient opportunity for Mrs S to confirm she didn't want to continue with AFP. But it looks like Mrs S' real dissatisfaction came about when a Bed and ISA wasn't proactively offered to her but the outcome is that it was carried out.

I am satisfied Mrs S was aware she could turn off the ongoing advice charges or service. While Mrs S says she didn't know of this until informed by the investigator I see the this was noted in the client agreement which said;

'You will have the option to withdraw from any ongoing service agreement by informing us in writing.'

It also says Mrs S could terminate the account;

'...in writing and will take effect from the date of receipt.'

And with specific regard to On-going fees it said they could;

'...be cancelled at any time by simply informing us in writing. Please note we reserve the right to charge you for service provided prior to cancellation.'

I note the ongoing advice charges for Mrs S' ISA were switched off on 24 June 2024. It's not clear to me how this came about but it might have been upon AFP's receipt of her 'letters of authority' from an alternative adviser. However, I'm satisfied the information that this could be done at any time was clear in the client agreement. If Mrs S had wanted to disengage from AFP she could have done so from when she received the 'welcome' email in December 2023. It's not clear to me why she didn't at that time – or any time thereafter during contact with AFP – if she didn't want to continue the relationship with AFP after that.

But that being the case, I am satisfied Mrs S was provided with a service. She responded to AFP's December 2023 'welcome' email by contacting AFP in January 2024 when she was offered a meeting and a withdrawal transaction was carried out to provide the funds she

requested. And AFP again offered Mrs S a meeting to be had with her friend. It then provided her with the information she asked for and ultimately carried out the action needed – and promptly – by placing the transaction for the Bed and ISA. And during this time the portfolios Mrs S was invested into were continually being monitored by AFP. Because of this, I don't think a refund of the ongoing advice charge fees is warranted.

Mrs S has said the late communication about the complaint process was unsatisfactory. The timeline suggests Mrs S requested this on 2 April 2024 and again on 13 April 2024, but this wasn't provided until 8 May 2024. This must have been frustrating for Mrs S but ultimately Mrs S was able to raise her complaint on 24 May 2024, and which was responded to by AFP on 21 August 2024.

Taking all the above into account, I don't think a repayment of the ongoing advice charges is fair as AFP did provide a service under its remit and in line with the ongoing service for which I think it's reasonable it should be remunerated. I accept Mrs S didn't receive the complaint procedure information she requested but she was able to proceed with making her complaint.

Overall, I don't uphold Mrs S' complaint. I appreciate Mrs S will be disappointed in the outcome. It's clear she feels strongly about it. But I hope I have been able to explain how and why I have reached my decision.

My final decision

For the reasons given, I don't uphold Mrs S' complaint about Amber Wealth Management Limited, trading as Amber Financial Planning.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 16 October 2025.

Catherine Langley
Ombudsman