DRN-5859667

The complaint

Mr L and Mrs L complain that Succession Wealth Management Limited ("SWM") unfairly charged them a monthly retainer fee. Mr and Mrs L paid this fee through their limited company, L. But for ease I'll refer to Mr and Mrs L throughout.

What happened

Mr and Mrs L had been clients of a financial adviser, who I'll call Mr X, for some years. Mr X had two companies – A1 and A2. A1 was a regulated financial advice company, and A2 was unregulated, and through which Mr X gave general financial planning advice.

In 2017, SWM bought A1 and A2, and Mr X became one of their advisers. Mr and Mrs L signed SWM's terms of business and became their client, with Mr X remaining their adviser.

As part of SWM's terms, Mr and Mrs L agreed to pay them an annual fee for ongoing advisory services. They also transferred a standing order mandate for a fixed monthly retainer fee, which they'd previously paid to Mr X, in favour of SWM.

In July 2023, Mr and Mrs L complained to SWM. They said they didn't think they should have been paying the monthly fixed fee in addition to SWM's annual, percentage ongoing advice charge (OAC). They didn't think SWM had set out what the monthly retainer was for, or provided any additional services in return for it.

SWM said the retainer was a continuation of a separate agreement between Mr and Mrs L and Mr X, for unregulated services which weren't covered by SWM's terms of business or service offering. They offered to refund the fees which had been taken since Mr X had left SWM in 2022, but didn't think they needed to refund anything from before that.

Mr and Mrs L brought his complaint to our service. SWM said they didn't think our service could consider the matter as the retainer related to unregulated services and so the complaint didn't relate to a regulated activity. They also thought the complaint had been brought too late. One of our investigators looked into things. In summary, he said:

- Mr and Mrs L didn't know they had cause for complaint until they left SWM in 2023.
- While the retainer was paid to A2 – an unregulated firm – before SWM acquired it, after 2017 the fee was simply paid to SWM, a regulated firm.
- There was no evidence of an agreement from the time Mr and Mrs L became SWM's clients explaining what the retainer was for, other than a letter inviting Mr and Mrs L to update their standing order which said it was *"to retain [Mr X] as your adviser"*.
- SWM's terms said that the annual percentage OAC was, in part, for access to an adviser. And that services not covered by the OAC would be billed separately when those services were provided.
- There was no evidence SWM provided any such additional services to Mr and Mrs L.
- Overall the investigator thought Mr and Mrs L hadn't agreed for SWM to provide them any services other than those paid for by the OAC. And so he didn't think it was fair for SWM to have charged them a monthly retainer, too.

The investigator recommended that SWM refund all the monthly retainer fees since Mr and Mrs L had become their clients, along with interest, as well as £150 for the distress and inconvenience Mr and Mrs L had been caused.

SWM didn't agree and asked for an ombudsman to decide the matter. They said they remained of the view the fee, and the complaint, related to unregulated business and so our service shouldn't consider it. And that the complaint had been brought out of time. But in any event they thought the fee had been fairly charged. They said:

- Mr X had explained that the retainer was for additional services over and above those for which an OAC would be charged – he'd charged an OAC to Mr and Mrs L when they were with A1 and also the retainer for work carried out by A2.
- These additional services weren't related to regulated activities.
- The nature of those services and the retainer fee didn't change after SWM acquired A1 and A2 – and so the fees continued to be for unregulated services and outside our service's remit. This was endorsed by an ombudsman on another case.
- SWM has been criticised by our service in the past for failing to provide continuation of services after acquiring other firms, where those services didn't fall within SWM's own offering/fee schedule. SWM tried to do the right thing by continuing to charge the retainer and allow Mr X to continue providing those unregulated bespoke services to his clients, including Mr and Mrs L.
- Just because SWM is regulated, doesn't mean all of the services it provides, or charges for, are regulated.
- The OAC doesn't cover all aspects of financial planning, and those planning services Mr X provided in return for the retainer weren't covered by the OAC.
- The agreement for the retainer was to ensure Mr X remained Mr M's adviser. SWM could have allocated Mr and Mrs L to a different adviser, but they respected that Mr and Mrs L were willing to make a fixed monthly payment to ensure the services they got from Mr X continued as they had with A1 and A2.

I issued a provisional decision, in which I said:

> SWM have argued that this case is outside our jurisdiction, and also that I shouldn't uphold it. This is a case where the jurisdiction and the merits of the case are closely intertwined. What I've had to decide is whether the fee complained of was, in fact, for solely unregulated services. And if not, whether it was reasonable for SWM to have charged it.
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> Under the DISP rules which our service is bound by, we can consider complaints about regulated activities, and any ancillary activities, carried on in connection to a regulated activity. There are also time limit rules, which I'll address first.
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> DISP 2.8.2R says we can't consider a complaint if it has been brought more than six years after the event complained of. If it gives more time, we can consider complaints brought within three years of when someone became aware (or ought reasonably to have become aware) they had cause for complaint.
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> Here, Mr and Mrs L complain about the monthly retainer fees they paid. I find each of those fees to be a distinct event – their complaint is that each month they paid a fee they received no service in return (that they weren't already paying for elsewhere).
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> So, trivially, I find I can consider all the fees taken in the six years prior to the complaint. Mr and Mrs L complained to SWM on 18 July 2023. So I find all fees taken after 18 July 2017 are within scope. Mr and Mrs L signed their agreement with SWM on 3 July 2017. If a fee was taken between 3 July and 18 July 2017, then this fee

would fall outside the six years.

But Mr and Mrs L have said that they understood the retainer fees to be going directly to Mr X. They only discovered that the fee was going to SWM after Mr X left Succession in 2022. I'm satisfied Mr and Mr L couldn't have known they had cause to complain to SWM until they knew the payment of the fee was going to SWM not being routed to Mr X. So I don't think they knew they had cause for complaint until 2022, which was within three years of their complaint. So I find, even if a fee was taken in that small window at the start of Mr and Mrs L's relationship with SWM, I can consider it too.

SWM's position is, briefly, that Mr X agreed to provide unregulated services to Mr and Mrs L in return for the retainer fee, and that these services didn't form part of SWM's annual advice offering. and were offered to provide continuity. SWM said that these unregulated services would *"generally be something our business would agree a cost with the client beforehand, to be invoiced"*, but here were provided in the same way as had been the case before they acquired Mr X's firms *"to provide a continuity of service"*.

SWM relies on internal emails from Mr X, where he says that the retainer was to provide *"a financial representation of that value for each client, separate from the commoditised percentage charge of running their money"*. Where the "value" was given to include the personal relationship with the adviser, and non-transactional work such as pension analysis, tax planning, liaising with their accountant and helping their kids.

Mr X also sent emails after Mr and Mrs L's complaint was raised, and there his version of events is somewhat different. There Mr X says *"there was no contractual basis for the payment once the old [A1 and A2] client agreement […] fell away"*.

He also says of the unregulated A2 that it *"was in a separate non-regulated company (which became Succession Independent Schools once acquired). This non-reg company had a clear client agreement with regards to the retainer, that the client agreed to and signed"*.

I'm also mindful of the fact that – according to Mr X – Mr and Mrs L had a separate client agreement with A2 for the unregulated services, with a retainer. And that A2 became Succession Independent Schools. I've not seen anything to suggest Mr and Mrs L had any relationship or agreement with Succession Independent Schools.

What Mr and Mrs L did have after SWM's acquisition of A1 and A2 was a relationship with SWM. The ysigned a terms of business, as well as a standing order mandate for the retainer. The standing order change was in response to a letter from SWM (via Mr X) saying that by making the payment Mr and Mrs L were *"guaranteed to retain me as your adviser"*.

Mr and Mrs L signed up for SWM's Premier Wealth Management Service. SWM's fee schedule said that this would cost 1% a year of the value of their portfolio, and would be for things including an annual planning meeting, an assessment of the tax efficiency of their financial arrangements, providing strategic updates to their accountant or other professional advisers, amongst other things.

I've also considered a copy of Mr and Mrs L's client declaration for Mr X's old firms. This agreement, signed in 2013, signs them up for Mr X's *"wealthbuilder"* programme – which is subject to a fixed monthly fee. It's notable that the agreement doesn't list any

percentage charge, and it appears to be for A1, the regulated arm of Mr X's business, and not A2, which Mr X said had its own agreement and retainer.

I've also asked Mr and Mrs L for their recollections of the services they received from Mr X after moving to SWM. They said:

"When [A1] became Succession, [Mr X] continued to advise me on our investment portfolio (reviewing where necessary),maximising ISA allowances, ensuring that we had sufficient income for our needs and their tax implications. We met regularly, probably about four times a year and we spoke regularly over the telephone. We thought his monthly fee was very reasonable for what was a very personal experience. All this stopped when he left Succession, yet we continued to pay Succession a fee."

I've thought carefully about the above. Where evidence from the time is incomplete and conflicting, as it is here, I have to base my decision on what, on balance, I think is more likely than not to have happened. Having done so, I currently find:

- A2 had its own agreement and retainer, and became Succession Independent Schools. Mr and Mrs L have no relationship with Succession Independent Schools.
- Clients paid a fixed monthly fee to A1, which provided regulated financial advice.
- SWM said in its fee schedule that their OAC included activities which I consider to be ancillary to the regulated advice it was giving – such as considering the tax efficiency of arrangements. I think things like looking at tax implications of investments and liaising with an accountant would be likely to relate to the result of investment advice or predicate further regulated advice – and so I consider them in these particular circumstances to be ancillary to that advice.
- SWM also said it would detail any additional services it provided and charge for them individually. There's no evidence of it doing so for Mr and Mrs L.
- While SWM said it didn't do that due to the legacy arrangements here, I can't see that that was explained to Mr and Mrs L in writing at the time of the acquisition. The only reference to the retainer at the time was the letter saying it was to "retain" Mr X as an adviser.
- The services Mr and Mrs L say Mr X provided through SWM – maximising ISA allowances, managing income levels and tax implications – align with the regulated and ancillary services SWM set out to provide in return for the OAC.
- I think it's likely that the retainer paid to ***A1*** was, similarly to the OAC SWM charged, for ongoing regulated advice and ancillary activities to that advice.
- I therefore find that this complaint relates to activities we can consider.

So overall I currently find that the monthly retainer SWM charged Mr and Mrs L was for basically the same thing as the OAC it also charged. I've not been persuaded that it was for specific unregulated services as SWM says. Even if the fee was simply to ensure Mr and Mrs L had Mr X as their adviser, rather than any other employee of SWM, I find that to be within our scope as it would relate to the adviser who'd be giving Mr and Mrs L regulated advice.

If the retainer was in effect duplicating the OAC, then I don't think it would be fair for SWM to have charged it twice. And so I think they should refund the retainer. And if it was to ensure Mr X remained Mr and Mrs L's adviser, I also think it should be refunded. SWM, as they've said, could choose which adviser to allocate to a client. And they needed to ensure they acted in a client's best interests. I'm not persuaded it was in Mr and Mrs L's interests to have to pay a fee each month just for SWM to give them the same adviser. Especially as this involved no cost to SWM. And I note that the idea of paying for a particular adviser isn't mentioned anywhere in SWM's literature or fee schedule.

In conclusion I currently find this case within our jurisdiction to consider, and I find that the monthly retainer fee Mr and Mrs L paid to SWM wasn't fairly or reasonably charged.

So I think SWM should refund any retainer payments it hasn't already paid, along with 8% simple interest from the time it took the payments until the date it settles this complaint. Like our investigator, I think this caused Mr and Mrs L some distress and inconvenience, and agree that SWM should pay a further £150 to Mr and Mrs L in light of that.

Mr and Mrs L accepted my provisional decision. SWM said it didn't agree, but had nothing further to add and no additional evidence to submit.

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 submitted anything new in response to my provisional decision, I see no reason to depart from my provisional findings and conclusions, and so I make them final here.

Putting things right

SWM should refund any retainer payments it hasn't already paid, along with 8% simple interest from the time it took the payments until the date it settles this complaint. I think this caused Mr and Mrs L some distress and inconvenience, and SWM should pay a further £150 to Mr and Mrs L in light of that.

My final decision

I uphold this complaint, and direct SUCCESSION WEALTH MANAGEMENT LIMITED trading as Succession Wealth to pay L and Mr and Mrs L compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask L and Mr L and Mrs L to accept or reject my decision before 31 October 2025.

Luke Gordon
Ombudsman