DRN-4676679

Financial Ombudsman Service

The complaint

Mr and Mrs D complain that abrdn Financial Planning and Advice Limited ("abrdn"):

- Didn't act in accordance with its own terms when it chose to end its relationship with them.
- Failed to provide suitable advice at the November 2021 annual review – they invested more money with abrdn following the advice they received, when abrdn would have known that it was going to terminate its services very soon afterwards.
- Continued to charge advisory fees after it wasn't providing a service, and then made mistakes in refunding those fees.
- Failed to handle their complaint individually and in a timely manner.

To put things right, they want abrdn to compensate them for:

- The unsuitable advice they received, and the mistakes made with the refund of fees.
- The financial losses they incurred in having to transfer their accounts to a new provider.
- The significant distress and inconvenience they've been caused.

What happened

Mr and Mrs D had a managed portfolio service with abrdn. They each had a stocks and shares ISA and a SIPP account. The ISAs were invested in a managed fund; the SIPPs held the same managed fund alongside cash. Mr and Mrs D met annually with their abrdn financial advisor.

Following the annual review meeting in November 2021, abrdn recommended Mr and Mrs D both invest a further £20,000 each in their ISA, to be invested in the managed fund, to utilise their annual ISA allowance. And abrdn recommended Mr and Mrs D invested the cash held in their SIPP accounts. Mr and Mrs D agreed, although Mrs D only wanted to invest some of the cash held in her SIPP.

In January 2022, the abrdn advisor asked for a further meeting with Mr and Mrs D. He told them that abrdn had been reviewing its policy for offering services to US connected persons and that, as a result, it would no longer be able to offer services to Mr and Mrs D.

Mr and Mrs D say that abrdn made this commercial decision in its own interests and didn't consider their interests. And they think abrdn must reasonably have known when they had their annual review meeting in November 2021 that it was going to take the decision to close their accounts. So they say the advice they were given in November 2021 was unsuitable because abrdn knew Mr and Mrs D could potentially lose the UK tax benefits of the SIPP and ISA wrappers when their accounts were closed. They also say abrdn continued to charge its advisory fees. Whilst it agreed to refund them, it wrongly paid the ISA fees to their bank account.

abrdn said it reserves the right to change its policy at any time and the timing of the policy change after Mr and Mrs D's review was coincidental. It said its advisor was unaware of the forthcoming announcement and gave his advice in good faith. It said the advice given was suitable and Mr and Mrs D have been able to keep their investments and transfer them to a new provider. It said the closure of their accounts hadn't caused any financial detriment because the investments were transferred, and the tax efficient status was maintained.

abrdn acknowledged that it wasn't able to provide Mr and Mrs D with advice from January 2022, but it refunded its fees from the date of their last review, November 2021.

Our investigator thought abrdn should pay Mr and Mrs D interest at 8% simple per annum on the fees it had refunded. But he didn't think it needed to take any other action or pay Mr and Mrs D any compensation. He didn't think it had treated Mr and Mrs D unfairly or unreasonably in making the commercial decision to close their accounts and he didn't think there was evidence to show abrdn had made a decision before it gave its November 2021 recommendations. He couldn't see that Mr and Mrs D had made a financial loss in moving their investments to a new provider and he was satisfied the ongoing advice fees had been refunded, although there was a delay in crediting the ISA accounts because the fee refund had initially been paid to Mr and Mrs D's bank account.

abrdn agreed to pay interest on the fee refund.

Mr and Mrs D didn't agree with our investigator's conclusion. They said, in summary, that:

- The process of deciding to stop servicing the accounts of US connected persons must have been made well before November 2021 and their advisor said that he'd attended a presentation in mid-November. Their annual review should have been postponed until a decision was made, and they shouldn't have been advised to invest new money when abrdn was going to disengage with them just a few weeks later.
- abrdn had a duty to alert them to a material change in its terms and conditions. They should have been notified before the change was made.
- Mr D has been treated unfairly as he is a "non-US person" and shouldn't have been affected by the change in policy.
- More recently, they received a statement from abrdn showing money was still held in Mrs D's ISA account, with no explanation was to why the transfer hadn't been completed in a reasonable timeframe.

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.

Firstly, I'm aware that I've summarised this complaint in far less detail than the parties and in my own words. There is a considerable amount of information here but I'm not going to respond to every single point made. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Whilst Mrs D has lived outside of the US for many years, she remains a US citizen. Historically abrdn was able to offer her investment advice and manage investments on her behalf. But there are obligations on non-US financial businesses to report details of their

US-linked clients to the US Internal Revenue Service and there are heavy penalties for failing to meet the reporting requirements. Businesses are entitled to use their commercial judgement to decide whether they can continue to offer their services to US connected persons. I don't have the power to tell a bank how it should treat all customers or how it develops its internal policies. That's a matter for the regulator, the Financial Conduct Authority (FCA). My role is instead to consider individual disputes and to award redress where appropriate.

I don't think it's unreasonable for abrdn to design its business model to only deal with UK tax authorities, and not US ones, as a UK based business. The focus of my decision is on whether abrdn treated Mr and Mrs D fairly and reasonably in implementing its decision.

I'm satisfied that the decision to stop offering its services to US connected clients wasn't made until after Mr and Mrs D's annual review meeting in November 2021. I don't find the abrdn advisor was aware that a decision might be made in the near future, and I don't find there was any obligation on abrdn to tell Mr and Mrs D about any internal discussions before a policy decision was made.

Mr and Mrs D suggest that their annual review should have been postponed until a decision was made. I don't agree. They were paying for abrdn to provide on-going investment advice and part of this was the provision of an annual review. I'm satisfied that the advice given at that meeting was suitable for their agreed investment objectives and risk profile and that Mr and Mrs D were invested for the medium to long term. I don't find that investing the cash they did in November 2021 caused them any financial detriment when they transferred their accounts to a new provider – they transferred the investments (rather than having to sell them and repurchase), and they didn't lose the tax benefits of their ISA and SIPP wrappers.

Mr and Mrs D say that the ISA and SIPP providers' terms and conditions include the line, "*you are not subject to tax reporting requirements in a country other than the UK*". But I'm satisfied this wording was only included when abrdn changed its policy. Mr and Mrs D say that they did not receive notice of this change. But this complaint is not about the provider of their investments, it's about abrdn.

I find abrdn treated Mr and Mrs D fairly when it communicated the change to them. Their advisor arranged a meeting to explain the change. And, from what it's told us, it offered them support in moving their accounts – by giving them names of possible new providers and allowing them the time they needed to decide on a new provider. Mr and Mrs D say they should have received written notice earlier than they did. But I'm satisfied that they received enough notice of the change in that they weren't required to immediately close their accounts. They were given the time, and help, they needed to decide on a new provider.

It also looks like there was a discussion about Mr D's accounts. He is not a US citizen and he could, most likely, have kept his accounts with abrdn. But the abrdn advisor knew that Mr and Mrs D had previously liked the arrangement whereby they discussed their financial circumstances with one advisor. And it seems they agreed that they would like this to continue in the future. Mr and Mrs D say Mr D was treated unfairly and should have been allowed to keep his abrdn accounts. But I find he was treated fairly – it seems more likely than not that he would have been able to keep his accounts if he'd chosen to, but that Mr and Mrs D felt it was better for their investments to be considered together by one advisor.

Following its change in policy in January 2022, abrdn couldn't provide investment advice to Mr and Mrs D, but it continued to charge its on-going advice fee until February 2022. I'm satisfied abrdn refunded the fees charged, and from the earlier date of November 2021. For the SIPPs, it reversed the charges as though they were never paid. For the ISAs it refunded

the fees. It initially paid the refund to Mr and Mrs D's bank account, but this was later corrected so that the refund was credited to their ISA accounts. I agree with our investigator that abrdn should pay interest on the refund at 8% simple per annum from the dates the fees were charged to the date they were credited back to the ISA accounts. I'm satisfied the interest applied makes up for the lack of use Mr and Mrs D have had of this money within their portfolios, and I consider it a simple, straightforward way of putting things right.

More recently, Mrs D told us she'd received a statement from abrdn showing a small cash balance still held in her account. We asked abrdn why money was still held in the account, but it didn't reply within the timescale we gave it. The transfers were instructed and took place after Mr and Mrs D raised this complaint so, unfortunately, it will need to contact abrdn if it has concerns about the transfer process.

I appreciate Mr and Mrs D were caused inconvenience by abrdn's change of policy. But I've explained why I don't think abrdn treated them unfairly or unreasonably and I've not found that they were caused a financial loss. In the circumstances, I make no award over and above that recommended by the investigator.

My final decision

My decision is that abrdn Financial Planning and Advice Limited should pay interest at 8% simple per annum on the refund of its ongoing advice fees for Mr and Mrs D's ISA accounts. The interest should be applied from the date the fee debited the accounts to the date the fee refund was credited back to the ISA accounts. *

* HM Revenue & Customs requires abrdn Financial Planning and Advice Limited to take off tax from this interest. abrdn Financial Planning and Advice Limited must give Mr and Mrs D a certificate showing how much tax it's taken off if they ask for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 9 April 2024.

Elizabeth Dawes
Ombudsman