

The complaint

Mr C complains about the lack of service from Succession Wealth Management Ltd after November 2022 in relation to his stocks and shares ISA, general investment account and personal pension.

What happened

In July 2018, Mr C became a client of Succession and signed up to their Comprehensive Wealth Planning service, which involved the provision of an ongoing advice service, at a fee of 1% per year. Mr C's ISA, general investment account and pension were held with a separate company. At the beginning of November 2022, he had a planning meeting with his adviser, who I'll call Mr H. They discussed that they would meet over the following months regarding pension contributions, and Mr C says that it was normal for them to meet multiple times in previous years at key points.

On 12 December 2022 Succession sent Mr C an email to let him know that Mr H was leaving and that a new adviser, Mr B, was replacing him. On 14 December 2022 Mr B and Mr C had a brief call and they agreed to speak in the new year to arrange a meeting. On 13 February 2023 Mr B emailed Mr C to arrange a meeting. Due to personal events taking precedence, Mr C didn't reply at the time and Mr B didn't contact him again. As he was unhappy with the lack of contact compared with previous years, Mr C instructed his ISA and pension provider to cease the ongoing service fee payments to Succession in October 2023.

Mr C complained to Succession, because he felt he'd paid for a service he didn't receive and had added cash into his pension in June 2023, which hadn't been invested due to the lack of advice. He said that due to the lack of advice he'd potentially lost money as they hadn't been advised where to invest it over the year – especially at key points like April for ISA contributions and June for pension contributions.

Succession didn't uphold the complaint, explaining that the minimum service level was for one annual review meeting – which wasn't due until November 2023. They also noted that the adviser had been in touch with Mr C throughout the year. Mr C remained unhappy and brought the complaint to our service. An investigator at our service considered the complaint and he upheld it. He said that as no advice was given after November 2022, the fees taken from that point on should be refunded, plus interest at a rate of 8% simple. However he didn't uphold Mr C's complaint points about the loss possibly caused due to the lack of advice – he said Mr C could have asked the adviser for advice at any point.

Succession didn't agree – they said that the fees are collected in arrears after the review and that clients don't pay upfront before the review. They asked for the complaint to be passed to an ombudsman for a decision, so it's been passed to me.

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 Mr C in July 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 Mr C 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 Mr C's circumstances and objectives, and took place in 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 Mr C in 2018, a Commitment Fee became due, which covered stages two, three and four. Mr C agreed to a fee of £1,500 – and as he proceeded to the next stage, this was then offset against the Implementation Fee.
5. Implementation. Once Mr C agreed to the recommendations in 2018, Succession would have put in place the arrangements agreed. This was covered by the Implementation Fee, based on a percentage of the total investment amount covered by the service.
6. Ongoing review. This was paid for by an Ongoing Service Fee, calculated as a percentage of the value of Mr C's portfolio. Mr C 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. Our ongoing planning service will normally be charged as a percentage of portfolio value...”

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 the service 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 at least one annual review meeting. Though there are various annual assessments mentioned above, in practice these usually all take place in a singular annual planning meeting, the purpose of which is for the adviser to assess Mr C's circumstances and objectives, to ensure the investments continue to be suitable. I do appreciate that in Mr C's case, his previous adviser Mr H met him more than once a year.

The "*distinctive approach to investment management*" 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. I'm not convinced the former would apply to Mr C's investments, as Succession was not the investment manager, nor were any other members of the Succession group of companies, as the investments were held elsewhere. There's no evidence that the monitoring and adjusting was carried out at any point after the annual review in November 2022. As I've set out above, I'm persuaded that the advice meeting was the main feature of the ongoing 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 November 2023, had Mr C 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.

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 in 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 a minimum of one annual review. If that review doesn't take place, and no other advice is given throughout the year, then I'm persuaded that Succession isn't entitled to retain the fees taken in that year.

I've gone onto 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 Mr C 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, my understanding is that the following twelve Ongoing Service Fees paid for any further advice given in those twelve months, including the review on the first anniversary. I don't have evidence of the date the fees were first taken, but as the anniversary is November, this leads me to conclude that the twelve fees taken from November 2018 to October 2019 (inclusive) would have paid for the 2019 review. Then the twelve fees taken from November 2019 to October 2020 paid for the meeting in November 2020, and so on.

Having established the principle that the fees pay in advance for the annual reviews – and that the active provision of advice is the primary service being provided under the fee - I've gone on to consider whether the service was provided as promised. It's accepted by all parties that the meeting in November 2022 was the last advice that was given, and as set out above, I'm satisfied this was paid for by the fees from November 2021 to October 2022.

So overall as I'm satisfied that as Mr C was given no advice after November 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 November 2022 advice was paid in October 2022 – so all fees after that point ought to be refunded, up to October 2023, by which point I understand Succession was no longer receiving the fee.

The investigator recommended simple interest at a rate of 8% should be added to the refund, from the date each fee was deducted from Mr C's investments to the date of settlement. I consider this is not an unfair rate of interest to use to compensate Mr C 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.

I've also considered Mr C's complaint points about the lack of advice leading to money not being invested once added to his products, possibly causing loss of growth. I can see that his products aren't held with one of the companies that are part of Succession's group, so I'm not convinced they'd have been aware of any contributions made, unless Mr C told them. It's clear he had the contact details for Mr B, so could have requested advice – though I'd note that if he had done so, and advice had been given, then I likely wouldn't be awarding a refund of the advice service fees. In the circumstances, I consider a refund of the Ongoing Service Fee, plus interest at 8%, is a fair resolution to the complaint, and so I won't be awarding any amount for the potential losses that may have occurred due to the lack of advice.

My final decision

I uphold this complaint. Succession Wealth Management Ltd should refund the Ongoing Service Fees taken from November 2022 to October 2023, and add interest calculated as set out above. Succession Wealth Management Ltd should provide Mr C 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 Mr C how much it's taken off. It should also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 3 January 2025.

Katie Haywood
Ombudsman