

The complaint

Mr and Mrs M complain in their capacity of trustees of the S Trust and the L Trust about the service they have received from abrnn Financial Planning And Advice Limited in relation to investments held in the Trusts. They raise concerns about failings in the certification of identity documents when the Trusts were set up.

What happened

Between late 2021 and early 2022, Mr and Mrs M received advice to switch existing holdings into investment bonds to be held within the Trusts. The Trusts were set up with Mr and Mrs M being trustees along with their two sons as additional trustees. For the purpose of the decision, I will mainly refer to Mr and Mrs M (as the trustees who are representing the Trusts in the complaint), and will refer to their sons as the “additional trustees”

Mr and Mrs M were unhappy with the service provided by abrnn, so in February 2023, they gave an instruction for it to be removed as the servicing adviser for the investments. While reviewing details of the investments online, Mr and Mrs M discovered documents relating to their sons (the additional trustees) identities which had been falsely certified as being true copies of original documents by members of abrnn staff during the setting up of the accounts. They said no original identity documents had been provided, so the staff members had no physical sight of the documents that were said to be certified. They were worried that there was potential for catastrophic consequences for the future running of the Trusts due to the situation. This led them to question the validity and legal standing of both Trusts.

Following this Mr and Mrs M raised a complaint on behalf of the Trusts. Mr and Mrs M requested for the Trusts be unwound, original funds returned (with interest) and all fees repaid.

In May 2023, abrnn responded. It partially upheld the complaint and made an offer of compensation. In summary it said:

- The dissatisfaction relating to the removal of abrnn as servicing adviser, was passed to another part of the business to respond to this element of the complaint.
- In respect of the allegations of falsifying the certification of identification documents, it wasn’t able to show it followed due process. It acknowledged Mr and Mrs M were concerned about the additional trustees not being able to execute their duties for the two loan trusts. To put this right, it proposed to provide services (at no cost) to revisit the matter of identity verification for the additional trustees and re-address the requirements. It didn’t agree it needed to unwind the Trusts and refund all fees and charges.
- The timing of the initial investments and the difference in charges between Mr and Mrs M’s other investments and the bonds held in the Trust have played a part in the variation in performance. abrnn was not in a position to influence either of these factors, so isn’t responsible for issues relating to investment underperformance.

- It didn't think there had been a financial disadvantaged due to the timescale for the implementation of the two Loan Trusts, but it did extend beyond what would be expected and its unable to identify a satisfactory explanation for the prolonged timeframe. It proposed to offer £100 in respect of each Loan Trust as compensation (£200 in total) to the trustees.
- It agreed to refund the Ongoing Advice Charges (OACs) that were charged after the agency transferred away from abrdn in February 2023 – which was £85 for each bond.
- Lastly it recognised it had been a stressful time for Mr and Mrs M and they have been inconvenienced by having to bring the above matters to its attention, causing trouble and upset as a consequence. It apologised and offered the trustees £600 in compensation to acknowledge the distress caused.

Mr and Mrs M didn't accept this explanation and asked this service to complete an independent review of the complaint on behalf of the trustees. One of our investigator's looked into the complaint. He found the proposed settlement made by abrdn was fair. In summary he said:

- abrdn offer to rectify the identification issues is fair, as he hadn't seen the legal status of the trusts was compromised. The advice to invest hasn't been challenged by Mr and Mrs M. Despite the problems certifying documents, it wouldn't be appropriate to unwind everything and ask abrdn to refund all the fees and invested funds.
- It's very clear that the uncertainty surrounding the status of the Trusts has caused Mr and Mrs M considerable distress. abrdn offer to make a compensation payment of £600 for this element of the complaint, this is a reasonable amount in light of the impact suffered.
- He didn't find the delay in opening the Loan Trusts had caused a loss despite the funds being sent in March 2022, but not invested until 12 May 2022. This was because the unit price was lower at the time of investment so more units were purchased. abrdn offered a compensation payment of £100 per trust for the inconvenience of not having invested sooner – which is fair and reasonable in the circumstances.
- While Mr and Mrs M are unhappy that access to the Personal Finance Portal has been removed, abrdn explained it did this because it was no longer servicing advisers. As access to the portal is part of the service abrdn provided and this had ended, it's not unfair to have the access removed. abrdn should still provide information required by Mr and Mrs M.

Mr and Mrs M didn't accept the investigator's findings In summary they said:

- abrdn deliberately falsified the certification of documents. These were deliberate and reckless actions perpetrated by two separate members of abrdn staff that may still have serious financial consequences.
- They have a significant mistrust of abrdn as an organisation given what they have experienced, both with its undeniable actions in setting up the loan trusts and the manner in which it has dealt with the complaint. If abrdn actually has any evidence that clearly demonstrates that the loan trusts are legally sound then why has this not been provided before now. This evidence should be provided so they can make an

informed decision, and move on.

- The investigator only focused on the historical unit prices of the investment funds in establishing if they have been financially disadvantaged. This ignored the fact that they have been deprived of interest on the £150,000 loan trust monies that were provided to abrdn on 10 March 2022 and not invested until 12 May 2022.
- In respect of the access to evidence held on abrdn's Personal Finance Portal, they had unfettered access to this system way beyond removing abrdn as their financial advisers and that it is only on refusing the settlements that the access has been revoked thus hindering their ability to provide all available evidence to support the complaint. They request abrdn to provide hard copies of this evidence.

As no agreement could be reached, the complaint has been passed to me to reach 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.

I'd first like to acknowledge the significant amount of correspondence that has been put forward by Mr and Mrs M. I won't be commenting on everything that has been submitted, but I want to reassure them that I have considered everything provided. I also recognise the seriousness of the situation, and their strength of feeling about the complaint.

The crux of the complaint relates to concerns about the way abrdn certified identification documents for the additional trustees (Mr and Mrs M's sons) when setting up the Trusts. Mr and Mrs M say they submitted scanned copies of their sons' passports and driving licences to abrdn. But subsequently, when attempting to remove abrdn as their adviser, they discovered information that led them to have serious concerns about abrdn's actions when setting up the Trusts. Specifically, they found information that indicated identity documents for the additional trustees had been falsely certified as being true copies of original documents by members of abrdn staff, but no original documents had been provided or contact was made with either of the additional trustees at any time. This caused the trustees extreme worry about the validity of the Trusts and the potential consequences of the additional trustees not being able to execute their duties on behalf of the Trusts.

Firstly, it isn't in dispute that there were problems with the certification process. In its response to the complaint, abrdn has conceded that it couldn't satisfy itself that due process was followed. Its solution to put things right was to offer to complete the certification process again for the additional trustees. This is something that Mr and Mrs M completely rejected. Rather they requested that the Trusts were effectively unwound with the invested funds being returned along with all the associated fees.

I've considered the position on what I think abrdn need to do to put things right. In practical terms this means putting the Trusts back in the position they would be but for abrdn's failings. To be clear I've not considered the overall suitability of the investment advice provided. If the trustees have concerns about this, they would need to raise this separately with abrdn.

I'm satisfied it was the intention of the trustees for two Trusts to be established for the bonds to be held, and that Mr and Mrs M plus their sons were intended to be the trustees. This is what happened but the failings described above mean Mr and Mrs M are extremely worried the Trusts can't operate as intended – and question the legal standings of them.

I've reviewed the documents that set out the terms of the Trusts. Within these it is clearly set out who the intended trustees are – Mr and Mrs M, plus their sons. And the four trustees have all signed the documentation. There isn't anything within the documents that refer to requirements for certifying identification documents of the trustees. Rather the documents says by signing the trust deed the trustees accept that appointment and are subject to the powers and provisions that are set out within it.

I note abrdn has provided a legal opinion from its in-house legal counsel on the position of the Trusts as a result of its failings. This acknowledges it has obligations in respect of anti-money laundering (AML), but essentially says it doesn't think the issues prevent the operation of the Trusts. It also points out that the identities of the trustees is not disputed. Despite Mr and Mrs M's reservations, I don't think this evidence can be dismissed out of hand. I have considered it and I think the points made about AML obligations not having a direct bearing on the Trusts and its intended purpose do carry weight in my consideration of what is fair and reasonable. But I note Mr and Mrs M's concerns about the contents of this opinion and whether it is conclusive proof that there is no consequences of the failings in the certification of identity documents during the set up.

I acknowledge Mr and Mrs M's comments about requiring undisputed evidence that the loan trusts are legal, or otherwise, and the suggestion a decision on the legal standing of the Trusts is required. Only a court can provide an answer in law. The decision I make is based on what I considered to be fair and reasonable based on the individual circumstances of the complaint.

On balance, I'm not persuaded the evidence that has been provided would lead me to conclude, as result of the failings in the certification, the Trusts are invalid to the extent that they should be unwound. So, it follows that I don't think it would be fair and reasonable to require abrdn to refund all monies invested and associated fees. As noted, an offer has been made by abrdn to retrospectively certificate the identification documents. This action would provide assurances that the failings are rectified. But it is clear Mr and Mrs M don't think this action would resolve their concerns or remedy the situation. I'm not seeking to downplay the serious concerns Mr and Mrs M have raised, and of course they are free to reject this offer, but I don't think it was wrong for abrdn to make the offer to try and rectify its failings.

Despite not accepting Mr and Mrs M's request to unwind the Trusts, I do recognise it is clear that the trustees have suffered distress and inconvenience as a result of abrdn's failings. They were shocked when they discovered the failings, and it has left them with significant worries about the operation of the Trusts. I think it is fair and reasonable that compensation is paid to recognise this. An offer of £600 has been made by abrdn. Having considered this, I find this level of compensation is fair in the circumstances, and in line with what I would award.

Mr and Mrs M have also raised points in relation to delays in funds being invested when the Trusts were first set up. They say a cheque was provided on 10 March 2023, yet the funds weren't invested until 12 May 2022. They argue interest should be paid for the period where abrdn was in receipt of the funds but didn't make them available for investment. But I don't find paying interest is the appropriate way to assess a potential loss. Instead, I've considered what has happened as a result of the funds not being invested as soon as they should have been. By looking at the unit price at the time is a fair way of assessing if the Trusts have suffered a loss as a result of the delays. The information I've seen regarding unit prices indicates that the price was actually lower when the funds were invested, compared to when they should have been but for the delays. There was some discussion on when it was reasonable for the funds to be invested. The investigator suggested a date of three working days from the presentation of the cheque (which would be 15 March) – which I agree is

reasonable. The unit price comparison data I've seen indicates that between 12 March and 18 March, the price was consistently higher than the price achieved on 12 May. This means the money committed to the investments actually purchased more units because of the delays, which is to the Trusts advantage. So I haven't found the Trusts have lost out financially because of abrdn failings here.

But, abrdn has also offered a further £200 of compensation to recognise the impact on the trustees of the delays in making the investment. I've considered this additional compensation in light of the circumstances. I can see the delays did cause upset and frustration. Again, I think the offer made to the trustees is fair. In addition to this, abrdn has agreed to refund ongoing advice fees taken after it was removed as the servicing adviser on the investments as it was not providing a service at the time fees were applied. It is correct for it to refund these.

Lastly, I note Mr and Mrs M are unhappy they have been denied full access to the portal provided by abrdn. I understand this is because access to the portal part of the services abrdn provides to its clients. As Mr and Mrs M ended their relationship with abrdn it has removed access. I haven't found abrdn's actions to be unreasonable in this situation. Mr and Mrs M say they have been denied access to documents relating to the complaint they have made. Like the investigator, I think abrdn should provide Mr and Mrs M with information it still holds about the investments held with the Trusts - including any documents linked to the complaint. So, I direct abrdn to provide Mr and Mrs M with the information they have requested in relation to their complaint that they can no longer access due to portal access being removed.

In conclusion, I find the basis of the offer made by abrdn to be fair and reasonable in the circumstances of the complaint. If it hasn't already, it should pay the trustees the compensation detailed for the distress and inconvenience suffered by the trustees as a result of its failings and repay the service fees. I understand that Mr and Mrs M do not believe the compensation is sufficient, but I don't find that abrdn needs to do anything further. As mentioned, there is also an offer to re-process the identification documents for the additional trustees. While abrdn says it is still prepared to do this, Mr and Mrs M have been clear that they have no faith in abrdn and this isn't something they want to happen. Although based on their comments this seems very unlikely, if the trustees change their mind, I require abrdn to complete this work at no further cost to the trustees.

My final decision

abrdn Financial Planning And Advice Limited has already made an offer to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that abrdn Financial Planning And Advice Limited should honour the offer it made in its final response letter and pay the compensation set out to the trustees.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 30 May 2024.

Daniel Little
Ombudsman