

The complaint

Mrs C complains that due to the poor service she received from Prosperity Independent Financial Advisors and Stockbrokers Limited (Prosperity), she has lost out financially.

In particular, Mrs C says that if Prosperity had carried out a review of her portfolio when it was due, she would have been able to encash a structured product she held before its value fell further.

In order to put matters right Mrs C wants Prosperity to pay her the difference between the value she received for the structured product when she encashed it, and the amount she would have received if she had encashed it around three weeks earlier.

Mrs C is represented in this matter by Mr W.

What happened

In my provisional decision I set out that I understood Mrs C paid Prosperity a fee for on-going advice on her portfolio of investments. One of the investments in Mrs C's portfolio was a structured product she took out in 2015. Mrs C invested £15,000 in this product.

On 23 June 2021, Mr W telephoned Prosperity. Mr W says he contacted it as he wanted to discuss withdrawing money to meet an upcoming expense for Mrs C. Mr W says that during this call, he was told that a review of Mrs C's investments was 'overdue'.

I understand that Mr W then spoke to Mrs C's financial adviser on 28 June 2021. Mr W says he initially discussed withdrawing money from another investment Mrs C held. Mr W says he then asked the adviser for the current value of a structured product Mrs C held. Mr W says the adviser told him that this product was '*coming to an end during July*'. Mr W says the adviser told him that he had kept '*... a regular check on them and three weeks prior they stood at about 82% of their original value.*' I understand that over the term of the investment Mrs C had received payments from this structured product.

Mr W says he then asked the adviser to let him have a current valuation for the structured product. He says the adviser told him it had '*dropped to about 65%*' of the £15,000 Mrs C had originally invested in the product. I understand that Mr W discussed the possible value of this structured product at its end date with the adviser and whether the '*...value would drop sufficiently to reduce the payback further considering the terms and conditions.*'

Mr W says he discussed the matter with Mrs C, and she decided '*...that a known value now as opposed to an unknown future value, in either direction, was the best option...*' and she instructed the adviser to encash her structured product. Mrs C received £9,336 when the product was encashed.

Mr W complained on Mrs C's behalf, to Prosperity about its failure to carry out regular reviews of Mrs C's investments. He said that if a review had been carried out on time, Mrs C would have been able to reduce the losses she suffered when she encashed the structured product.

In order to put matters right Mr W said he felt Prosperity should pay Mrs C £2,634. Mr W calculated this as the difference between the amount Mrs C would have received if she had encashed the product when it was valued at around 82% of the amount invested, and the amount she actually received when she encashed the product.

Prosperity did not uphold Mrs C's complaint. It said, in summary, that its adviser had discussed the options open to Mrs C to withdraw money when it spoke to Mr W on 28 June 2021. The following day Mr W had contacted the adviser again and requested a surrender form for the structured product Mrs C held. Mrs C signed and returned the form that day, 29 June 2021. Mrs C's holding in the structured product was then encashed on 30 June 2021.

It said its adviser had explained to Mr W that the surrender value was not guaranteed, and the amount Mrs C received would depend on the market value at the time of surrender.

It noted that Mrs C had invested £15,000 in the product in 2015 and had received 15 quarterly payments from the plan of £375, a total of £5,625. It said this amount, plus the surrender value of £9,516 meant that Mrs C had received a total of £15,141. (It appears that this calculation did not allow for the early redemption fee of £180 (£150 plus 20% VAT) that Mrs C incurred when she encashed the product early.

Prosperity said its adviser had explained to Mr W at the time, that the valuation of 82% of the initial amount invested was not guaranteed. It also said its adviser had not told Mr W that Mrs C would receive 82% of the amount she had invested if she chose to encash the product. When Mrs C instructed it to encash the product it said it had acted very promptly and there had not been a *'substantial market drop between your original enquiry and [the adviser] acting on it'*.

Mrs C was not satisfied with Prosperity's response and Mr W referred her complaint to this service.

Mr W explained that the last portfolio report **he** had received from Prosperity was dated 11 June 2020, and Mr W said he had to chase the adviser several times before he received this report. (It was unclear when the most recent portfolio report was provided to Mrs C as, despite several requests, Prosperity failed to provide this service with a copy of any reviews it had carried out for Mrs C.)

As it was over twelve months since he had received a review when he contacted Prosperity on 23 June 2021, Mr W said he felt it should compensate Mrs C for the fall in the value of her structured product. He said that if an annual review had been carried out when it fell due – and Mr W indicated that he thought it should have been carried out at the same time as his annual review was due - Mrs C would have been able to encash the structured product sooner and the loss she suffered would have been over £2,600 less.

Our investigator said he thought Mrs C's complaint should be upheld in part. He said Prosperity hadn't carried out a review of Mrs C's investments in June 2021, when it appeared a review was due. He said that if the review had been carried out on time, and a report issued to Mrs C, she would have had an up-to-date view of her investments.

But he said he couldn't say with certainty that Mrs C would definitely have encashed the structured product sooner than she did, even if a review of her investments had been carried out in early June 2021. As this was the case, he said he felt Prosperity should pay Mrs C £200 for the loss of expectation she suffered when she was told the investment had fallen in value from around 82% of the amount invested, to around 63% of the amount invested.

Mrs C did not accept our investigator's view. Mr W responded on Mrs C's behalf. He said the

crux of Mrs C's complaint was '*...had Prosperity carried out a proper review in a correct and timely manner, our losses would have been mitigated by that action and we would have had much reduced losses...*'

I issued my provisional decision on Mrs C's complaint on 3 February 2023. In it I explained that I had reached a different view to that of our investigator. I set out my provisional decision as follows:

I said I appreciated that Mrs C felt that if Prosperity had carried out a review of her investments in early June 2021, the financial loss she suffered when she encashed the structured product would have been lower.

I said I appreciated that, with the benefit of hindsight, Mrs C felt she would definitely have encashed the structured product she held sooner than she did, and that a review of her portfolio in early June 2021, would have prompted her to encash the product immediately.

I noted Mr W said that '*...if Prosperity had imparted the knowledge that they had to us at an earlier time our losses would have been lower...*'

I said I was sympathetic to Mr W's position, but I couldn't safely find that Mrs C would have encashed the structured product sooner than she did if a review of her investments had been carried out in early June 2021. I said I had reached this view as I hadn't seen anything to show or suggest that the adviser, or Mrs C, could have predicted that the value of Mrs C's structured product would have continued to fall. As this was the case, I said I couldn't safely find that Mrs C would definitely have encashed her structured product holding sooner than she did.

However, I said I thought that the £200 compensation our investigator had recommended was too low in the circumstances of this complaint. In particular, I said I didn't think it adequately took account of Prosperity's failure to monitor and review Mrs C's portfolio.

Despite several requests by this service, Prosperity failed to provide a copy of the 'Client & Fee Agreement' it had in place with Mrs C.

I noted that in the Fee Agreement for Prosperity it says:

We will send you a 'Fee Agreement Letter' confirming the service we will provide to you and the specific fees we will charge...We will ask you to sign the letter to confirm your agreement to the fees before any work begins.

In view of this I said I thought it was very unsatisfactory that Prosperity had been unable to provide this service with a copy of the Fee Agreement it had in place with Mrs C. I said it was unclear to me on what basis it had been charging Mrs C fees.

In the absence of a copy of the fee agreement Mrs C had in place with Prosperity, I reached my provisional decision based on the submissions made by Mr W that Mrs C had opted for, and was paying for, 'Ongoing Service'.

I noted that this was described in Prosperity's Client and Fee agreement as follows:

Ongoing services are optional and the ongoing service fee will cover:

At least annual reviews – on an annual basis (or more often for more complex needs or portfolios) we will reaffirm with you our understanding of your objectives and risk strategy,

confirm to you the current portfolio value and performances and undertake a fee review. We will also provide:

- Ongoing assessment and monitoring of investments and their ongoing suitability*
- A review of your needs & objectives to ensure they remain on track*
- An assessment of your tax position and tax liabilities to ensure we are minimising tax wherever possible...*
- We will provide you with an annual report to summarise our findings*
- An interim meeting where the complexity to your affairs or requirements require a more frequent review*
- Review of statements received*
- Online access to portfolios...*
- Access to adviser and administration staff during office hours*

I noted that the agreement went on to say '...Our ongoing service ensures that our relationship doesn't stop once a transaction or investment is made, you can be confident in knowing that your affairs are well looked after...Our business is your business and our ongoing relationship ensures that you are never alone and can be confident of our support now and in the future.'

The agreement set out that a client would be charged an ongoing fee of 1% of the 'total market value of the investment funds that we manage on your behalf, subject to a minimum of £750 per annum.'

I noted Prosperity said it had carried out the annual reviews 'in good time', but I said I had not been provided with anything to show that Mrs C received a review of her investments. As it appeared that Mrs C had opted for and was paying for an 'ongoing service' and I had not been provided with anything to show that she received this ongoing service from Prosperity, I said I thought it should refund the ongoing fees it had received from Mrs C, from 12 months after the date of the most recent annual review it had provided to Mrs C, to the date of settlement of this complaint.

I said I was mindful that, to date, Prosperity had not provided this service with any records showing that Mrs C had received any annual reviews or investment reports. I noted Prosperity had provided copies of reviews it had prepared for Mr W, but I noted I had not received any records of reviews that had been carried out for Mrs C.

Having carefully considered this matter, my provisional decision was that I thought it was unfair for Prosperity to charge Mrs C for a service it did not provide, and I said I thought Prosperity should refund any ongoing service fees it had received from Mrs C.

In addition, I said Prosperity should also pay Mrs C the £200 recommended by our investigator for the loss of expectation Mrs C suffered when she was given out of date information about the cash-in value of her structured product, when Mr W contacted it in late June 2021. As Prosperity had apparently committed to provide 'ongoing monitoring' of her investments I said I thought it was unsatisfactory that it initially provided an indicative valuation that was three weeks out of date.

However, I said that if Prosperity could provide evidence to show that it did provide Mrs C with:

- *'at least annual reviews'*

- *an 'ongoing assessment and monitoring of investments and their ongoing suitability'; and*

- *'an annual report to summarise our findings'*, that accurately reflected the current value of her holdings at that time, I would, of course, re-consider my provisional decision.

Prosperity responded to say it accepted my provisional decision. However, it said that having checked its records it could confirm that it had not charged Mrs C for providing an ongoing service.

Mr W also responded on Mrs C's behalf to say he accepted my provisional 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.

As both parties have accepted the findings in my provisional decision I find no basis to depart from my earlier conclusions.

Putting things right

Prosperity has now confirmed to this service that Mrs C has not been charged for ongoing servicing – and I understand that Mr W has accepted this is correct.

As this is the case, Prosperity should pay Mrs C £200 for the loss of expectation she suffered when she was given out of date information about the cash-in value of the structured product, when Mr W contacted it on her behalf, in late June 2021.

My final decision

My decision is that Mrs C's complaint should be upheld. I have set out above the redress Prosperity Independent Financial Advisors and Stockbrokers Limited should pay Mrs C in order to resolve this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 31 March 2023.

Suzannah Stuart
Ombudsman