

The complaint

Miss F complains about the fees she was charged in relation to services provided by Ten Financial – an appointed representative (AR) of Openwork Limited - on her investment portfolio. She says the fees taken were excessive and do not reflect the service she received. She is also unhappy about the accuracy of the information recorded about her financial situation.

What happened

Miss F has a longstanding relationship with a financial adviser. The firm which the adviser worked for has been an AR of Openwork over a number of years. During this time, Miss F has received services from the adviser and incurred fees as a result. On reviewing documentation provided to her by Openwork in February 2021, she discovered information recorded about these services that she hadn't seen before. It caused her concern about the services she had paid for and led to her making a complaint in relation to the period 2016 to 2019.

In summary she complained:

- The adviser requested she sign blank understanding and analysis (U&A) forms and fee agreements that were completed later without her knowledge.
- The fees charged and the alleged time taken for which they were calculated were excessive and do not reflect the work undertaken by the adviser.
- The information recorded about her financial situation in the documentation is inaccurate, and she had never seen the fact finds, risk profiles and suitability reports. There is also a misclassification of the risk profile of her assets.

Openwork responded to the complaint. In summary it said:

- The adviser confirmed that he discussed U&A fees with Miss F and provided an estimate of what the fee may look like. He would have sent the completed U&A fee agreement before a cheque was cashed.
- It didn't think it plausible that someone with Miss F's experience would have signed blank documents agreeing to commit significant fees. Similarly, it doesn't accept Miss F did not read the introducer letters she signed.
- The adviser confirmed he discussed the U&A fees and there is no documentation to say Miss F didn't agree to them.
- There is no reason to believe the completed U&A forms weren't provided to Miss F, as it was standard practice for the adviser to provide this information.
- The fee charges were reflective of the work completed – and do not seem excessive or unreasonable for the work that needed to be done.
- The fees weren't for advice, but rather U&A. Although Miss F thinks £500 per hour is too much for such a service, this was presented to her.
- U&A fees are payable regardless of whether an investment is taken out.
- It disputes that the information recorded about Miss F's circumstances is incorrect and the adviser would have written down what was presented to him.
- The adviser would only send suitability letters on any occasion advice was provided, had Miss F not received this, it would have expected her to query the matter.

- In respect of the alleged misclassification of assets, the adviser confirmed the references to risk relate to Miss F's attitude to risk not that of the product.

Miss F didn't accept the response and asked this service to complete an independent review of her complaint. One of our investigator's reviewed it and issued an assessment. He didn't uphold the complaint. In summary he said:

- He was satisfied Miss F was made aware of the fees applied by Openwork and she agreed to them. He has been provided with the U&A fee agreement forms which are all completed and explain the fee amount and what the fees are being charged for. It is reasonable for her to question them if she didn't agree, but on each occasion, she wrote a cheque to pay the fee. While she has said she was unaware the fees were for U&A, it's not unreasonable for Openwork to charge her for services it provided.
- He noted Miss F said the information recorded about her financial situation was inaccurate. Although he didn't dispute that some of the information recorded on the fact finds may have been inaccurate, as no products were recommended based on this information, it follows there isn't any impact caused by unsuitable recommendations made by Openwork. The products she took out were recommended by a different adviser, and it was this person's responsibility to ensure that all Miss F's financial details were recorded accurately as part of this advice.

Miss F didn't agree with the outcome reached, so requested the complaint was referred to an ombudsman for a final decision. She provided further submissions too. In summary she said:

- She would like every question she's raised answered – as she doesn't feel Openwork, or the investigator have responded to everything.
- She reiterated that she was asked to sign blank U&A forms and provided an email as evidence to support the forms were backdated and filled in without her agreement.
- The evidence she has provided indicates the U&A fee payments she paid to Openwork were linked to the investments she made into loan notes.
- The adviser didn't record her assets correctly, so how could he monitor and give advice on her pension and savings. The loan notes are recorded as balanced secure assets, but there is court evidence that says the opposite. So how could the adviser refer her to another adviser when he has no understanding of her financial position. She doesn't think this shows the adviser was acting honestly, fairly and professionally in accordance with her best interests.
- The fact finds provided by Openwork are materially different to the discussions she had with the adviser. The adviser would ask her for the latest numbers of her financial information in each meeting. He then wrote the details on his note pad and not on these fact finds which she has never seen before.
- She doesn't accept Openwork's explanation that the risk category put against the loan notes of 'balanced' refers to her attitude to risk (ATR) and not of the product in the fact find.

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 recognise Miss F's strength of feeling about this complaint. She has made significant submissions to support her arguments. I also acknowledge she has requested answers to every query she has raised. I want to reassure that I have considered everything she has sent. And I hope she won't think I am being discourteous but I will not be addressing all of the points she has made in detail. While I will not be addressing every single point Miss

F has made, I have fully considered them and am satisfied that my findings below address the substance of the arguments that she has put forward.

I also confirm that I won't be revisiting the question of whether Openwork is responsible for advice provided to Miss F to invest in loan notes. This subject matter has already been considered by another ombudsman at the service who found Openwork isn't responsible for providing advice, despite Miss F's belief that it is.

I've considered the evidence available in relation to the fees Miss F complains about. There are four U&A forms – they are dated from 2016, 2017, 2018 and 2019. Each form is signed by Miss F and they all provide details of a fee that was charged on each occasion. There are notes written on the forms of the work carried out. While the notes aren't identical there are very similar comments on each document - including things such as reviewing investments and tax position. There are also references to discussing income requirements, other investments and also a mention of a referral to another adviser.

These documents also contain information to explain "The Openwork fee agreement for additional services". It notes that the agreement sets out the terms of the services that will be provided and they should be read carefully before signing. In respect of fees for additional services this confirms you will pay the fees that are agreed with you.

Openwork say its AR did explain and discuss the fees and this is supported by the documentation Miss F signed. It also says it is entitled to take at face value a fee described on a fee agreement, signed by a client and it had no reason to think the fees were for anything other than U&A. It concluded that Miss F agreed to pay the U&A fee on several occasions and this led to a referral to another adviser who recommended the other investments she took out.

Miss F says when she signed these documents they were given to her blank. She has also provided an email that indicates she was asked to sign the 2017 form in March despite it being dated in January. She says this all shows that she didn't agree to the fees and disputes that she was aware that she was paying fees for a U&A service only.

There is evidence that Miss F agreed to the fees on each occasion. I think it is reasonable to place weight on the fact there are signed documents which detail a fee agreement. But I also acknowledge Miss F's arguments that the forms weren't fully completed when she signed them, so she didn't have a full understanding or agree to the fees. I cannot be sure what information was contained on the forms when Miss F signed them or whether a completed copy was sent to her. But I think it is reasonable to expect a customer to ensure they understand any documents that they are signing - particularly where it is an authorisation for payments for services provided. I also think it is relevant that Miss F wrote cheques and paid the fees detailed in the U&A forms to Openwork. I think this further supports that she acknowledged and accepted the level of fees paid to Openwork for the service provided.

I appreciate Miss F has previously argued that her understanding of the reason for the fee was to pay for the advice she received from the AR to invest in subsequent loan notes she took out. I also accept that there is evidence that she did take out other investments around the time the U&A forms were dated. But I don't think this in itself doesn't mean the fees she paid weren't for U&A. I've already explained I'm not going to revisit the arguments around whether the AR gave advice on these investments as a decision has already been made that Openwork isn't responsible for any advice in this respect.

Miss F has also raised concerns about the level of the fees for the services provided. Openwork say the fees represented five to six hours of work and it doesn't consider the amounts charged as excessive. It notes the £500 hourly rate is detailed on the 2016 and

2017 fee agreements Miss F was given – and it says that the fee was consented to. It isn't clear to me precisely how the amount was established, but equally I don't have evidence that would persuade me the AR didn't provide a level of U&A service for the amount charged. I also reiterate my comments above that on balance I find that Miss F accepted the fees based on the services she received from the AR.

I've also considered the complaint points Miss F makes about the accuracy of the information recorded in the fact find documents that Openwork has provided. Miss F has identified information recorded about her circumstances that she says is inaccurate – this includes information about the assets she held at various times, her expenditure and liabilities. She says this means the adviser wasn't able to correctly assess her needs and it has impacted his decisions on her existing investment and protection policies. She also says this led to the referral made to another adviser to sell products that weren't suitable for her. Openwork maintains that the information recorded was based on details gathered by the AR from Miss F and doesn't see reason why the adviser would not record the information presented to him.

I accept it is possible there is information in the fact finds that could have been recorded incorrectly or even out of date. But at the same time, it is reasonable to say what is recorded is based on information gathered from Miss F and the adviser had an understanding of her circumstances. I say this considering he had been her adviser for a number of years. It is only more recently Miss F has sight of these records and after she had suffered losses, which she links to her involvement with this adviser. So, I understand why she has questioned his credentials in supporting decisions on her existing products and also the referral made to another adviser.

The purpose of collecting and recording personal details in a fact find is so that an adviser can provide advice where a need and objective is established. But a product can only be recommended taking into account the availability of suitable products available to the adviser – this includes their status and any restrictions on the products they can advise on. The evidence I've seen indicates that no product recommendation was made to Miss F during the relevant period by the adviser. So even if the information recorded is incorrectly, I cannot say this resulted in an identifiable loss to Miss F as a result of an unsuitable recommendation being given.

Miss F maintains that she received advice to invest in investments that were outside of her risk profile off the back of the meetings she held with the adviser who was an AR of Openwork. I'm not looking at the question of advice again, so I don't think it is appropriate to comment in any detail on the suitability or risk category of these investments. As explained above, I also haven't seen that a mis-categorisation led to the adviser recommending other products to Miss F.

I note Miss F's comments about the adviser referring her on to another adviser based on inaccurate information. Even in this event, the responsibility for providing suitable advice for any product taken out wouldn't lie with Openwork, just because its adviser introduced Miss F to another adviser. It is covered in Miss F's previous complaint that the introduction to the other adviser made it clear it is separate from Openwork and it had no involvement in any alternative products that resulted from this.

Miss F has questioned whether inaccurate recording of her assets over a five-year period has impacted decisions made on the other savings, pension and protection products. I note she hasn't raised specific points about advice given or the suitability of these products. So in this situation, I haven't found reason to say there are failings attributable to Openwork that caused her a loss.

In conclusion, I acknowledge why Miss F is unhappy about the service she received from the adviser at the AR firm. She clearly believes the services she received are linked to the losses she has suffered on the loan note investments she took out following the referral to another adviser. Despite this, I haven't found reason to say that Openwork is responsible for these losses as result of the U&A service provided. I understand this will be very disappointing for Miss F, but I haven't found reason to uphold her complaint about Openwork.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 15 March 2024.

Daniel Little
Ombudsman