DRN-4524243

The complaint

Mrs S complains about Openwork Limited ('Openwork'). She says that the advice she was given wasn't suitable for her. This is because the investments she has started have performed poorly and they have produced a 'net zero' gain.

What happened

Mrs S visited a building society in 2007, she says this was to start a savings plan. As a result of this visit, she was referred by the building society to Openwork for investment advice. I note that she, and her partner at the time (now her husband), also opened other products and accounts after being given advice by the building society. These other sales have been considered separately.

Mrs S and Openwork met shortly after she had visited the building society and Openwork completed a fact find document to gather information about her circumstances. This, and the other point-of-sale documentation, recorded that:

- Mrs S was 59 years old. She lived with her partner.
- She was retired and they owned their own home.
- They had no dependents and no financial liabilities.
- Her income was £7,800 a year from her pension and some benefits.
- She and her partner were living within their means and had a surplus income each month of over £3,000 as her partner was still employed.

Mrs S had some savings and investments. There were:

- Cash deposits of £176,501, in various accounts and products.
- Investments of £126,000 which included an Investment Bond and some other equity-based investments.

Her attitude investment risk was recorded as being 'balanced'.

Mrs S was advised to invest £20,000 in a Stirling Investment Bond using the Multimanager Protected Profits Fund (the Protected fund). She received an allocation rate of 106.25% making the total amount invested to be £21,250.

The suitability letter said that this fund was recommended to Mrs S as she wanted a longer-term investment with a high allocation rate. It was documented that the adviser ordinarily would have recommended a different fund, but after discussing this with Mrs S she indicated that she wanted some protection against significant falls in capital value. It was noted that this investment balanced her overall portfolio taking the other investments into account.

Mrs S was also advised to invest £4,000 in an Individual Savings Account ('ISA') using the Threadneedle Equity and Bond Fund.

These policies were started in April 2007. I understand Mrs S' ISA was encashed in 2010 but the investment bond is still in force.

Mrs M made her complained to the building society and I understand this was forwarded to Openwork to consider the parts of the complaint that related to the advice it gave. She said that she was dealing with her father's estate at the time of advice and so this was a difficult time for her. But she was in receipt of an inheritance, and as she had no experience of investments, she needed advice on what to do with this. She said that the investment bond had high fees and had not performed well. She thought it used a fund that was too cautious for her as she was a balanced risk investor, and this was a cautious fund. Therefore it hasn't performed as well as she had hoped.

Openwork considered Mrs S' complaint but did not uphold it. It said that:

- Its adviser could only advise on certain products, and he wouldn't have given advice on the funds Mrs S used and this would have been explained at the time of sale.
- The investments were suitable for Mrs S, they were equity based but she had suggested that she wanted to protect her capital, despite her balanced attitude to risk. This is why her investment was placed in the Protected fund.
- Whilst this Protected fund has not performed well this is not a reason to uphold the complaint, as investment performance is not guaranteed.
- It thought that Mrs S should have complained at an earlier time, particularly as she had transferred her ISA away, and so the complaint was made outside of the relevant time limits.

Mrs S didn't agree with Openwork's view of the complaint, and she brought it to the Financial Ombudsman Service. She said that:

- She didn't think the complaint was made out of time and it was wrong of Openwork to impose time limits.
- She didn't receive an initial disclosure document and she does not recall the Openwork adviser informing her that he could only advise on a limited range of funds or products.
- If Openwork could not advise on funds or give investment advice, then it should not have given any advice at all as she wanted advice on investments.
- A higher risk investment fund was not discussed and there was no comparison made between the two 'standard recommendations'.
- She was a balanced risk investor and wanted the highest allocation rate, she thought the fund that was recommended for the investment bond wasn't suitable for this.
- As she was not risk averse the products were not right for her, she thought the adviser may have confused her and her husband's attitude to risk as he was risk averse.
- The fees and charges were high, and she has paid a significant amount over the life of the bond and ISA.

The time limits to the complaint have been considered by the Financial Ombudsman and an Ombudsman has issued a decision saying that the complaint wasn't brought too late, and it is within the Financial Ombudsman's jurisdiction. I won't reiterate what the Ombudsman said but I agree that this complaint is within the jurisdiction of the Financial Ombudsman Service.

One of our Investigators considered the merits of the complaint and didn't uphold it. He said that after the advice Mrs S still had sufficient cash reserves. The new investments didn't have more risk than she wanted to take as she had some 'capacity for loss'. Whilst she may be disappointed with the performance of the investments, this doesn't mean that they were unsuitable for her.

Mrs S didn't agree with what our Investigator said. I've read her detailed responses to the Investigator's opinion, but I don't think Mrs S raised any further issues than I've detailed above in in response to Openwork's complaint investigation.

As no agreement has been reached the complaint has been passed to me to issue my final 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.

Mrs S' complaint has concentrated on the investment bond that she has. She has also complained about the ISA and I've considered both of the products she was advised to start by Openwork. But I think it's reasonable to say that most of the issues she has raised concern the investment bond only, and I've concentrated on this product.

Mrs S' complaint is primarily about the investment performance of the products she was advised to invest in. Whilst I can see that she is unhappy about this, it's not usually reasonable to uphold a complaint due to investment performance alone. This is because it can be affected by, and is subject to, events that are outside of the control of the business. And in this case the Protected fund is managed by a third-party fund manager and Openwork will have no input or control on the performance of it. So, I can't uphold the complaint on the basis that the fund has not performed as well as Mrs S wanted it too.

I understand the Openwork representative could only advise on limited products. This was, and still can be, relatively common. Not all advisers can give advice on every product or investment. Some only advise on the products of one business or from a panel of products. But advising from a limited product range doesn't mean that any advice given is unsuitable.

There are a very large range of investment products in the market and many of them are very similar. And so not being able to advise on every product is often, practically speaking, of very little consequence. And in any event the advice given needs to be suitable for a consumer and if an adviser doesn't have a suitable product, they shouldn't give advice.

The status of the adviser (what advice they can give and or using which products they can advise on) would usually be disclosed to a consumer in standard documentation from the time of sale, or orally. Given the length of time that has passed it's reasonable to say that Mrs S may not recall any information she was provided about this. And Openwork doesn't have a copy of the terms of business that it says it would have provided at the time of sale. But this doesn't' mean this information wasn't given. I don't think I can say with any degree of certainty that it wasn't provided.

Openwork still has a responsibility to provide suitable advice and I've looked to see if this is the case. The main issue Mrs S has complained about is the fund choice in the investment bond. Openwork says that the adviser would not have advised on the choice of the funds used. But I don't think this is reasonable. The suitability letter is clear in that the funds were discussed, and Openwork gave advice on which funds Mrs S should use. So, I think Openwork did advise Mrs S about which fund she could use.

The Protected fund invests in a range of areas, but it does offer some protection against loss. It is guaranteed to return at least 80% of the highest unit price. I think it's reasonable to say it is a more conservative fund due to the guarantee, but it still does have a significant equity content. So, it still has a risk of some volatility and it may not perform as expected.

I’ve thought about whether this fund was suitable for Mrs S. Mrs S said that she had a ‘balanced’ attitude to risk. But she thinks that the Protected fund had a lower risk than this so it would be more suitable for a cautious investor and wasn’t right for her.

As I’ve outlined above it is clear in the suitability letter that a range of funds was discussed and that a fund with a potentially higher risk could have been recommended to Mrs S. But as she wanted some capital protection the Protected fund was ultimately chosen.

This isn’t unreasonable, whilst Mrs S did have a balanced attitude to risk it seems clear that she wanted to take a lower risk with this investment, possibly because she already had risk bearing investments. I don’t think it’s wrong to do this, it isn’t usual for all of the investments in a portfolio to match a specific risk level. It’s best advice that a range of products and funds are used that consider the overall situation and portfolio needs.

And this seems to have happened here. It was recognised that Mrs S had a balanced attitude to risk but that she did want a degree of capital protection for the investment she made in the investment bond. And this fund wasn’t unsuitable for this need. It is equity based so it would be intended that it would provide returns on this basis, but it also had guarantees that the value wouldn’t fall below a certain amount. So, it would seem to have met Mrs S’ needs.

And this was documented at the time of sale. It was explained in clear terms in the suitability letter why this fund had been chosen. It seems reasonable to say this was likely discussed at the time of sale and the recommendation was made on this basis. And that Mrs S agreed with it at the time of sale.

And having looked at her overall portfolio, I don’t think she was left in a position that was unsuitable for her. And I’ve borne in mind that the amounts she invested were relatively modest given the amount of money she had.

Mrs S has not raised the same issues about the investment she made in the ISA. This did invest in a fund that was more ‘equity based’ and she did surrender it a short time afterwards. I also don’t think this investment was unsuitable for her.

And Mrs S was provided with reasonable information about both products in the providers own literature and the suitability letter from Openwork, I don’t think it is reasonable to say she was not provided with enough information to have allowed her to make an informed decision about the investments.

I’ve not seen any persuasive evidence from the time of sale that Openwork confused her attitude to risk with her partners. The reasons why a lower risk fund was chosen for the investment bond was clearly set out.

I’ve also been provided with the statements for the products, and these do show the charges Mrs S paid. As far as I can see the charges on them are not unreasonable. And I don’t think they are the main reason for the investment performance not being what Mrs S expected.

Given all the above I don’t think the advice Openwork gave was unsuitable for Mrs S and I’m not upholding her complaint. I can see she is disappointed in the performance of the Protected fund, but this doesn’t make the investment unsuitable for her.

My final decision

For the reasons set out above, I don't uphold Mrs S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 25 June 2024.

Andy Burlinson
Ombudsman