DRN-4830704

The complaint

Ms O complains that Niche Private Clients Ltd now trading as Niche IFA gave her unsuitable advice to invest in a General Investment Account. She says after the initial fee was taken and with the small time period the investment was required, it would've been better to have stayed in cash or be put into premium bonds. She was also unhappy with the customer service provided by Niche.

What happened

Our investigator set out the background to this complaint in his view – which I've included an amended copy below to give the context of this complaint:

'Ms O had been a client of Niche since 2015. Ms O sold a property in August 2021, and wanted to invest the proceeds of £111,755.

Ms O wanted to invest the funds from the property tax efficiently and thought she may be able to benefit from backdating her pension contributions, so she consulted with Niche her financial adviser who Ms O had previously taken pension advice from.

Niche advised Ms O and a suitability report was issued on 6 October 2021 reflecting this. It showed Ms O's circumstances as set out below:

- *Being 58 years old.*
- *Being employed as a sales director earning approximately £50,000 per annum owning a £500,000 house and a buy to let property worth £200,000.*
- *Having an Aviva pension worth £104,784, a small NEST pension and about £26,510 in an ISA.*
- *Being divorced with one adult child who is no longer financially dependent. Ms O was aiming to have £36,000 a year in retirement.*
- *Having a moderate attitude to risk.*
- *Being in good health and aiming to retire at 65.*

Niche recommended Ms O put £10,000 into her ISA and contribute approximately £32,000 into her pension to get immediate tax relief.

This left approximately £70,000 to be invested in a GIA with Aviva with the intention of transferring it to an ISA or pension as soon as this became tax efficient.

The GIA dropped in value due to its performance, although Ms O continued to move funds from it to her pension and ISA when the opportunity to do so arose without incurring more tax.

In March 2023, Ms O had a meeting with her adviser to discuss the GIA which had lost approximately £6,000 on the original investment. Ms O said her financial adviser showed evidence of healthy gains on the GIA, but this incorrectly included tax relief. Ms O asked for this to be corrected.

Ms O complained by phone on 28 September 2023 and by email a day later. Niche responded on 30 November 2023. Niche accepted they provided poor service but said the advice they provided was still suitable. They offered £500 compensation for the poor service.

Ms O has noted Aviva said their GIA account is a longer-term investment that should be made for at least five years.'

Our investigator looked into matters but didn't feel the complaint should be upheld. He felt the award for the distress and inconvenience caused by the poor service was fair. And that the advice hadn't been unsuitable. The investigator said the advice fee had been for the total amount of money invested and for the advice as a whole and not just the GIA. He explained the investment met her attitude to risk and her objective had been to invest for maximum growth. Her attitude to risk questionnaire showed that she did not want to keep the money in the bank and was prepared to take some financial risk.

Ms O in response said that she would accept the £500 as settlement for the customer service issues but she remained of the view the advice had been unsuitable. She sent evidence of the client agreement which said that the fee paid was for the research and implementation of the GIA. She feels the adviser did not pick up the investment timeline would be short and that the product was recommended for investments of over 5 years. And this combined with the initial fee meant that she wouldn't have much time to see growth on this money. Ms O feels it was never going to be the right investment for her given it should be held for more than five years or more according to Aviva.

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.

And having done so I agree with the findings of the investigator and for broadly the same reasons. I won't repeat the findings of the investigator that haven't been disputed but will concentrate on the issue that Ms O remains unhappy with.

Ms O's key point of contention with the advice is that the GIA is described by Aviva as being recommended for a minimum five-year investment. I've looked at the Aviva website and it says

'*A general investment account (GIA) is a way to buy and sell investments like shares and funds. As there's no limit on how much you can invest in GIA, it's could be a good option if you've used up your £20,000 ISA allowance… You can use a GIA to buy and sell a wide range of investments, most commonly these are:*

- *Funds – a selection of shares or other investments that are either put together by a fund manager or track an index like the FTSE 100 index*
- *Shares – these give you part ownership in companies that are listed on stock exchanges*
- *Bonds – loans to either a company or the government which give you a fixed return over a set period...*

The kind of investments you'll be making are recommended for the longer term (at least five years).'

So the key bit here is its not the product that is recommended for five years plus but the investments within it. Ms O was advised to invest within the same Vanguard fund for her

GIA, ISA and pension. So upon moving the funds from the GIA to the pension/ISA, Ms O would remain within the same fund, and there was more than five years from investment to the intended withdrawal date at retirement. So I don't have any concerns about the recommended term in relation to the investment. Ms O's investment will have time to ride out any short term fluctuations before the money is required.

I've also considered whether the product itself was suitable for Ms O given her argument that she has paid an initial advice fee that may not be recovered as the GIA will only be held for a short time. According to the suitability report, four years, but with reducing capital each year as it is moved across.

Firstly looking at the illustration provided by Aviva of the GIA this shows that with the charges applicable and the initial advice fee applied, after a year with mid-range performance, 3.5% returns, the fund will have clawed back the initial charges. Anything above that rate of return will have increased the fund available to transfer across to the ISA and pension with the subsequent tax efficiency benefits increased. After two years at the medium growth rate the investment would show a good increase which obviously continues for each year held. However, this is based on a sum of 90,000 (which it appears was the original value earmarked before the calculations were able to be done on what allowances Ms O had open to her). So on a £70,000 sum, the initial fee will have more of an impact as it was fixed rather than a percentage of the sum invested. So, if you consider the initial fee as relating purely to the GIA, it would've required growth somewhere in excess of the mid-range marker of 3.5% (which was essentially the reduction amount relating to the fee) in the first year to level the charges out. If that was achieved, going forward any growth in excess of 0.5% would've provided a beneficial result to Ms O. The product itself was low cost but Ms O is viewing it as unsuitable due to the initial fee being applied to that product and meaning her starting position required growth in excess of the mid range in year one to claw that back.

However, I don't think that is a fair or the right way to view the initial fee. Ms O sought out Niche's advice as she was wanting to invest the proceeds of her property in the most tax-efficient way maximising the potential for growth. Her existing arrangement with Niche where she was paying an ongoing fee of 0.5% following a pension transfer, didn't cover new advice from a new money source. To give Ms O advice on this regardless of the product selected would've required a fee to be paid. If a customer wants to make use of a professional adviser, they will have to pay for it. Ms O could've decided to make her own decision about that money, but she chose not to as presumably she valued the input of a professional.

The recommendation wasn't just for Ms O to take out a GIA but also included investment within her existing pension and ISA and the plan to move money each year in line with her allowances. To work out what could be invested in what, Niche had to undertake work to find out what allowances Ms O had in relation to her pension and ISA as well as choose a suitable product for the funds that couldn't yet be invested that way. That the fee was purely applied to her GIA was likely due to the fact that this made more sense given Ms O wanted to maximise the amounts being paid with tax-advantages into her ISA and pension. I appreciate the client agreement details the fee as being for *'implementation and research of General Investment Account'* but it's clear from the suitability report that the advice to implement the GIA was part of a wider investment plan including her existing pension and ISA. So, I don't agree that the initial fee should be seen purely as relating to her GIA. And also viewing that initial fee as being applicable to just four years isn't fair either. As the money once moved to the pension and ISA will remain invested within the same fund (unless changes are made) and with the same charges applicable until age 65. So the initial charge should be viewed within the context of the performance of this money over seven years of investment. And in the context that advice needs to be paid for in any event and ultimately funds can go up or down.

I appreciate it was disappointing that the GIA didn't perform as well as hoped and there was a downturn in performance at the worst time in terms of the product's standalone performance. This meant that the money that could be passed into the pension and ISA to benefit from tax efficiencies wasn't as much as was anticipated – and I understand held back in the second year to recover. But the performance of Ms O's funds and I suppose the outcome of the advice so to speak should be considered when Ms O comes to retire. And not purely through the GIA's performance in the short term.

Furthermore, the performance of the underlying fund has been quite strong recently, so the loss in the GIA is due to the timing of the investment and transfers out rather than poor performance of the underlying fund/product. The subsequent upturn in performance will have benefitted Ms O within the pensions and ISA. And this is part of what Ms O paid for within the initial fee, any advice needs to include a specific investment for the funds invested within. Ms O also invested within the GIA over a time period that has seen relatively poor performance across the market but the alternative of holding it in cash also in real terms would've meant she suffered a loss. And this wouldn't have met her initial objectives and attitude to risk.

I understand it's difficult to view this situation without hindsight, as Ms O has complained following the relatively poor performance of the GIA, but had it seen growth in that time – like the growth the fund has experienced since, I don't think Ms O would've been unhappy. This is the inherent risk with investing and as I've said I don't think the frames of reference Ms O has put onto the GIA funds – with the fee for advice only relating to it and those funds viewed only within the GIA – are the correct way of viewing matters.

In conclusion, I think the advice to invest within the Vanguard fund and the GIA with the ongoing plan to re-invest tax-efficiently met Ms O's attitude to risk and objectives at the time. And was suitable advice. I don't think it is a fair measure to see the initial fee as relating purely to the GIA and over the short term. Niche didn't at times provide good customer service but it offered £500 that Ms O has accepted and I understand this now has been paid. So I don't think Niche needs to do anything more to put things right.

My final decision

For the reasons explained, Niche Private Clients Ltd trading as Niche IFA, doesn't need to do anything more to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O to accept or reject my decision before 20 November 2024.

Simon Hollingshead
Ombudsman