DRN-4985626

## The complaint

Mrs G complains about charges Octopus Investments Limited has levied on her Octopus Inheritance Tax Service (OTIS) investment. She doesn't agree with how the charges have been applied and requests they are refunded.

## What happened

Mrs G applied for her OTIS investment with Octopus in 2015. She received advice from a financial adviser to take out the investment. In the years that followed, she was sent annual statements detailing the costs associated with it. The performance of the portfolio was reviewed during meetings with her financial advisor.

On 9 August 2023, through her advisor, Mrs G complained that Octopus was unfairly charging her for its management of her investment. It was argued that Octopus' terms only permitted it to charge once the portfolio was delivering returns over a certain percentage, and that this threshold hadn't been met for Mrs G's investment.

Octopus considered the complaint but didn't uphold it. In summary it said it had calculated the charges as per its terms and conditions, and Mrs G was liable for charges as the threshold for charging had been met. As Mrs G was unhappy with Octopus' response, she referred the matter to our service.

One of our ombudsmen issued a decision on whether the complaint was one we could look at – specifically in relation to the time limits set out in our rules. In summary, the decision stated our service does not have the power to investigate Mrs G's complaint about Octopus' charges prior to 9 August 2017, but we can investigate her concerns about all charges from 9 August 2017 onwards.

The complaint was passed back to one of our investigators to review the merits specifically in relation to the charges incurred after August 2017. He didn't uphold the complaint. In summary he said he found Octopus clearly set out the charges, and that they would be based on growth of the net investment amount. And the charges have been set in statements over the last six years as a regular reminder of the basis which they were taken.

No agreement could be reached, so Mrs G's representatives asked for the complaint to be referred to an ombudsman for 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.

Firstly, I want to be clear, that the complaint I'm considering relates to how charges have been applied by Octopus on Mrs G's investment since August 2017. I haven't considered how the product was explained to her originally. I understand Mrs G received advice to take the product out, so in any case this means it wasn't Octopus' responsibility for how the investment was sold.

I understand that since August 2017, Mrs G has incurred charges on her investment. The specific charge she is disputing is the Annual Management Charge (AMC) applied by Octopus. This is a 1% deferred charge that will only be taken if the returns on the investment have achieved a 3% target for the year. Where this target hasn't been achieved, no AMC will be taken.

Having reviewed the submission of the parties, I'm satisfied the key point in dispute is whether the annual growth on Mrs G's investment should be based on an investment amount net of initial charges or on a gross basis, as this has an impact on whether the 3% threshold has been met during the relevant years I am considering where charges have been applied.

I've reviewed the relevant product brochure Octopus has referred me to, to establish how the product was designed to work. It says this is the document that sets out how the AMC would be applied to Mrs G's investment.

Firstly, I note there is a section that confirms *"Our target is a return of 3% a year (after our annual management charge has been taken into account) on the amount invested after initial charges and dealing fees."* So this supports Octopus' argument that when it describes the growth target of 3%, it is in respect of net of charges growth.

There is a case study within the brochure to help customers understand how the policy works. This covers the main aims for inheritance tax planning but also touches on how the charging structure works. There is an illustration of an example investment that contains a note that relates to how the AMC would be applied - this states:

*"Octopus targets a 3% a year return (after an annual management charge of 1%+VAT has been taken into account) on the amount invested after initial charges and dealing fees. This diagram assumes that the target return is met eg two years' compound growth on £194,060, or £194,060 x 1.03 x 1.03. The target return is not guaranteed, your capital is at risk, and you may get back less than the amount invested. Our diagram also assumes that Mr [J's] share portfolio would have generated an equivalent return. In reality a share portfolio may return more or less than what's assumed here."*

In the investment strategy section, there is further reference to the 3% growth aim – this states:

*"WE TARGET A 3% RETURN*

*The target return for Octopus ITS is 3% a year (after accounting for our annual management charge). This targeted return is based on the amount you invest, after deducting initial charges and dealing fees."*

Lastly, towards the end of the brochure there is a section specific to charges. Amongst setting out full details of each charge, it also has the following reminder:

*"A FEW POINTS TO KEEP IN MIND*

• *Our target annual return is based on the amount you invest, after deducting the initial charges and dealing fee."*

All this information supports that the AMC was based on growth after initial charges. I haven't seen anything that would suggest that the AMC related growth target was based on the original investment contribution before initial charges as Mrs G understands.

Having carefully considered the submissions of both parties, my finding is that the approach taken by Octopus to base AMCs incurred (since August 2017) on a net growth basis hasn't led to Mrs G being treated unfairly. The evidence I've seen indicates this was always intended to be how charges were applied, so I haven't found it has done anything wrong in the situation where it has based the AMC using this approach. I appreciate this isn't what Mrs G expected to happen, but I haven't found that Octopus is responsible for misleading her in this respect. It follows I don't find it needs to refund any AMCs that it applied due to growth being above the target of 3%, based on a net of charges investment amount.

## My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 7 March 2025.

Daniel Little
**Ombudsman**