

The complaint

The K Trust complains about the services Origen Financial Services Limited has provided to it in respect of an investment bond held within the trust.

What happened

In 2013, the K Trust was established, with three trustees Mrs M, Ms C and Miss M. The trust received advice in September 2013 from a Building Society to invest approximately £285,000 in a portfolio bond to be held within the trust. For a number of years, the Building Society provided ongoing services to the trust in relation to the investment.

In March 2019, Origen took over responsibility for providing investment services to the trust for the portfolio bond. Over the following years the value of the bond declined.

In March 2023, Origen sent the trustees an advice and recommendation report. The adviser recommended a fund switch from the existing funds into a new cautious managed fund. But as no acceptance of the advice was received, the switch wasn't implemented.

In November 2023, the trustees raised a complaint. They were unhappy about the service received from Origen since it took over responsibility for the ongoing services. In summary they said:

- Documents were sent only to Mrs M, which were complicated, and she doesn't understand them. They feel things should have been fully explained in 'layman terms'. They also think documents should have been sent to all three trustees.
- There have been hardly any reviews since the transfer to Origen – and they haven't received any service for the charges that have been taken.
- They are unhappy the trust has lost money, and seen several of the funds underperforming. The investment was originally invested in a low-risk portfolio, but recently Origen advised to invest in a high-risk portfolio.

Origen considered the complaint but didn't uphold it. In summary it said:

- It's not responsible for the performance of the investment, but Origen's research and investment team engage in an ongoing review of the funds on its approved list and offers suitable alternatives should any fund held no longer be on its approved list.
- It agreed to ensure all trustees received communications going forward, not just the primary trustee.
- It provided the correct level of service under the agreement set out at the point of transfer - including the accessibility of annual reviews.

One of our investigators considered the complaint and provided two assessments. In summary he found Origen wasn't at fault for the performance of the bond. He saw recommendations had been made by Origen to invest differently with the aim to improve returns, but these hadn't been accepted by the trust. He acknowledged the concerns about how information had been communicated and noted it had been agreed that all trustees would now receive correspondence from Origen.

The investigator did uphold part of the complaint in relation to the provision of ongoing services to the trust by Origen as part of the service fee it collected. He noted that during a number of years since Origen were collecting charges, it hadn't actually held an annual review with the trust, so hadn't provided the service paid for. He said the charges should be refunded for the years where no review took place.

Origen didn't accept the investigator's view. In summary it said Origen's Client Service Agreement (CSA), clearly states that the ongoing fee entitles clients to an annual meeting with an adviser, but it also confirms that they will not receive an invitation for the annual review and would need to contact Origen to do so. It doesn't feel any error has been made with the information provided to the trust or that it hasn't provided the level of service agreed.

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 note the value of the investment has fallen since Origen took over from the Building Society as the trust's advisers. But I've not seen evidence to suggest this is as a result of errors by Origen, but rather this appears to be related to the underlying performance of the funds the bond was invested in. The funds weren't recommended by Origen, this was agreed before it became involved. I can see a switch was recommended by Origen in 2023, after the 2022 review. This didn't go ahead, as no acceptance was received for the recommendation. Again, I haven't seen evidence to indicate this was due to a failing by Origen.

I understand the trustees are unhappy with the service they have received from Origen since it took over from the Building Society. Origen confirmed a pack was sent on 7 March 2019 to the trust setting out the services and charges - this said:

'Your service and charges

Following the transfer of the Select Portfolio Bond to us, I am delighted to confirm that your ongoing service charge will stay at 0.50% of the Bond value. This will remain the charge for at least the next 12 months so long as you don't need additional services or advice and we will be contacting you shortly to provide a statement of what the 0.50% means to you in £ and p. The charge will still be collected from the Select Portfolio Bond by Legal & General. This charge is currently VAT exempt, but VAT may apply if you opt for additional services or advice not agreed or set up during the initial product sale.

There are no changes to your ongoing service, which includes:

- Access to an Origen financial adviser should you wish to review your investments or require additional advice.*
- Continued access to the L&G 'My Account' Portal (unless we notify you otherwise), so you can view and monitor your investments.*
- A personalised Annual Customer Report that shows how your investments are performing.*
- The services of our Research and Investment Team, who will continue to monitor the performance of your investment to check that it continues to perform as we expect.'*

It has also provided a copy of the Client Service Agreement (CSA) which gives a more detailed breakdown of the services that are to be provided. This makes a clear statement that the ongoing fee entitles you to an annual meeting with an adviser.

The trustees have raised several points about the communications received since 2019, which they say has impacted their understanding of the investment's performance. I can see Origen has now agreed to amend its approach ensure all trustees are provided with communications going forward. This is a positive step.

The trustees have also raised concerns about the lack of reviews provided by Origen. The trustees have questioned whether the service that has been paid for through the service charge has been provided.

It is accepted that only one review has taken place (in 2022) in the period since the transfer in 2019. Origen says it has offered reviews, but these haven't been taken up, and it is for the trust to request a review. It has referred to the CSA to support its position. It points out the 'Adviser Services' part of the agreement confirms the availability of a review but indicates you will not receive a phone call inviting you to attend an annual review. It argues this means a review would need to be requested by the customer. And as reviews weren't requested by the trust each year, it is not at fault.

From 31 December 2012, the FCA's Conduct of Business Sourcebook (COBS) 6.1A.22R has said:

"A firm must not use an adviser charge which is structured to be payable by the retail client over a period of time unless (1) or (2) applies:

(1) the adviser charge is in respect of an ongoing service for the provision of personal recommendations or related services and:

(a) the firm has disclosed that service along with the adviser charge;
and

(b) the retail client is provided with a right to cancel the ongoing service, which must be reasonable in all the circumstances, without penalty and without requiring the retail client to give any reason; or

(2) the adviser charge relates to a retail investment product for which an instruction from the retail client for regular payments is in place and the firm has disclosed that no ongoing personal recommendations or service will be provided."

The FCA also produced a factsheet on adviser charging which, amongst other things, said:

"Ongoing charges should only be levied where a consumer is paying for ongoing service, such as a performance review of their investments, or where the product is a regular payment one. If you are providing an ongoing service, you should clearly confirm the details of the ongoing service, any associated charges and how the client can cancel it. This can be written or orally disclosed. You must ensure you have robust systems and controls in place to make sure your clients receive the ongoing service you have committed to."

I'm satisfied that COBS and the FCA factsheet are clear that Origen ought to have been providing a service to the trust from when it took over as the adviser in 2019 – which included an annual review meeting. It's not disputed ongoing service charges were received by Origen from the date it took over responsibility from the Building Society.

While Origen says the CSA meant it was the trustees' responsibility to request a review, I'm not persuaded this means it could still receive charges for the periods when it hasn't actually provided a review meeting. The above statements by the FCA indicate the service paid for shouldn't just be offered or been available only if needed, an actual service needed to be provided. As the charges were taken as annual percentages, I'd expect to see Origen had provided personal recommendations or services for that individual client in each year that the fee was taken.

I note that there were other services included, such as fund monitoring and access to an online portal to view the bond's performance. But I note the trust were receiving annual statements from the bond provider anyway, and the online portal was hosted on the bond providers website too, so not a service Origen were directly providing.

As mentioned above, a review took place in 2022. The trustees have confirmed they attended an online meeting with an adviser. I've also seen a copy of the recommendation report Origen says was issued after this review (in March 2023). I also understand a review meeting was arranged for 2024. So as the trustees received the service they'd been told they'd get in return for the charges paid in these years, it wouldn't be fair or reasonable for me to tell Origen to refund these charges. But for the other years where no review took place, I find Origen should refund any charges it has taken without providing the service it charged for.

Putting things right

Origen should repay the K Trust any service charges it took in the years that it didn't carry out a review meeting.

I've considered whether the trust has lost out on growth on those charges as they were deducted from the value of the bond. From the information provided about the performance of the bond since Origen took over as the adviser, it isn't clear the trust has lost out due the value falling in this period. In these circumstances, overall, I find it is fair and reasonable for Origen to refund the charges only.

My final decision

My final decision is Origen Financial Services Limited should pay the compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the K Trust to accept or reject my decision before 19 March 2025.

Daniel Little
Ombudsman