

## **The complaint**

Mrs A complained about Openwork Limited trading as The Openwork Partnership (Openwork). Her daughter, Mrs R said Openwork gave them poor financial advice about Mrs A's existing investments, and then went on to recommend an investment that was unsuitable. She would like Openwork to waive its fee because of this.

Mrs A's daughter, Mrs R has made the complaint on her behalf. Mrs R now has power of attorney regarding her finances. I have referred to Mrs A and Mrs R throughout my decision.

## **What happened**

Mrs A had a range of cash, shares, premium bonds, and national savings. Mrs R and Mrs A initially met with an adviser from Openwork on 22 March 2023 in order to gain some financial advice about Mrs A's finances. Following this meeting, Mrs A sold all of her investments with a view to having one pot of cash to invest.

The parties met again on 6 and 12 April 2023. In the latter meeting, the adviser recommended Mrs A invest in an investment bond with Prudential. Within this bond, the adviser recommended Mrs A invest £230,000 in a Prufund growth fund, which he said was suitable for someone with a balanced attitude to risk.

Mrs A initially agreed to this recommendation and handed over a cheque to the adviser. Mrs A and Mrs R then said after giving it some further thought they had strong reservations and ultimately decided not to proceed. Mrs R on Mrs A's behalf contacted Openwork on 17 April 2023 and said Mrs A didn't want to proceed. She did so within the cooling off period and so the proposed investment was cancelled.

That said, Openwork charged its initial advice fee that came to £4600. Mrs R said she feels Openwork initially gave her mother poor advice by advising her to cash in her existing financial investments. She said she didn't realise Mrs A would lose tax benefits and also potentially incur capital gains tax. She said Openwork then provided advice that was not suitable for Mrs A. She said she remembers saying she didn't want to take on any risk, and what was recommended was for a balanced approach to risk. She said finally, Mrs A was rushed into agreeing into the investment, and so they cancelled it. She doesn't think because of all of this, that Openwork should charge its initial advice fee, and it should instead waive it.

Openwork said in response that its adviser met with Mrs R and Mrs A and completed a fact find to find out personal and financial circumstances. It said the adviser deemed Mrs A as vulnerable due to her age and conducted the interview with Mrs A alongside her daughter Mrs R.

Openwork said within the fact find, its adviser noted down from the conversation with Mrs A and Mrs R that they wanted a balanced approach to risk, so that they could get some potential growth from the funds. It said it recommended the prufund growth fund and this matched their circumstances at that time. It recommended adding Mrs R to the investment bond as the life assured to allow the investment to continue in the event of Mrs A's death.

Openwork said Mrs A and Mrs R agreed to proceed and Mrs A signed the application, fee agreement and other documents. Mrs R then provided a cheque to the adviser. It said after reviewing the documentation, it thought the recommendations were wholly appropriate based on what was summarised in the suitability report.

Openwork said a fee agreement was signed and Mrs R and Mrs A indicated they were happy with the fees as stipulated in this document. It said its adviser disputes what Mrs R has said about Mrs A's initial investments. It said the adviser said he could not arrange the sale of shares on Mrs A's behalf and that they should seek guidance on this, prior to selling the investments.

Openwork said in summary, the recommendation from the adviser was suitable for Mrs A. It said the initial fee charged was disclosed to Mrs R and was transparent and clear. It said the adviser said Mrs R should have carried out her own research about potential tax implications of selling the existing investments. It didn't uphold Mrs A's complaint.

Mrs R on behalf of Mrs A was not happy with Openwork's response and referred Mrs A's complaint to our service.

An investigator looked into Mrs A's complaint. He initially didn't uphold her complaint. In his first view he said he was satisfied Openwork considered Mrs A's circumstances before making a recommendation. He said based on the documents provided Mrs A's objectives were set out, as described in the suitability report.

The investigator said one of Mrs A's objectives was to achieve capital growth and this is what the adviser's recommendations sought to do. He said he'd not seen any evidence that Openwork recommended Mrs A cash in her existing investments. But one of Mrs A's objectives was to simplify her finances and doing this, would have achieved that aim.

The investigator concluded he had not seen any evidence that would suggest the recommendation was unsuitable for Mrs A. He concluded Openwork made it clear to Mrs A that the initial adviser fee would still be due. He said he was satisfied the recommendation made was suitable and the fee had been charged correctly.

Mrs R disagreed with the investigator and said she would like Mrs A's complaint referred to an ombudsman. She said the adviser was aware of her mother's dementia, he was also aware of her very limited financial knowledge. She said she did not have a power of attorney then, but she does now.

Mrs R said the suitability report including fees were discussed by the adviser in the meeting, but it was not highlighted that the fee would be required if Mrs A changed her mind. Mrs R said, at no point was she or her mother advised to take their time to read through all the paperwork. Instead, she said, the adviser did not give her mother any special care as a vulnerable person. She said he was happy instead to encourage her to sign the forms and proceed there and then. She said it as totally immoral for Openwork to charge a fee in the circumstances.

The investigator sent a second view, this time upholding Mrs A's complaint. He said after considering what Mrs R had said he was looking to uphold Mrs A's complaint. He said based on what he'd seen he didn't think Openwork had acted fairly.

The investigator said based on Mrs A's personal and investment objectives, he was not satisfied that Openwork did enough to ensure the recommended investment was suitable for her. He said Mrs A was 82 and suffering from dementia. He could see that Openwork

reported she was a vulnerable consumer on the fact find. Although Mrs R was present at the meetings, it was for Mrs A to decide whether she wanted to proceed with the recommendations given. This was because Mrs R didn't hold a power of attorney at this point.

The investigator said Openwork reported that Mrs A wanted to invest for growth potential but at that stage of her life and what it knew about her health, it ought to have asked more questions about Mrs A's future plans in terms of care costs or how she planned to utilise her funds in the future. He said there was no evidence Openwork asked about any of this.

The investigator said Openwork reported Mrs A wanted to achieve capital growth but at her age and health, it was likely she would have needed access to the funds sooner than the 5-10 years window of investment, and she would have been negatively impacted by this.

The investigator said Openwork didn't ask enough questions to fully understand Mrs A's needs before making its recommendation. He said it then went on to make a recommendation, based on inadequate information, that was unsuitable for Mrs A. So, because of this he upheld Mrs A's complaint. He said Mrs A shouldn't have to pay the £4600 fee the adviser charged.

Openwork didn't agree with the investigator's view. It said it obtained a statement from the adviser about what happened when he met Mrs A and Mrs R. It said, he told it that he was unaware or hadn't been told that Mrs A had dementia. He said there was no obvious signs this was the case. He said he recorded her down as vulnerable due to her age.

Openwork said Mrs A and Mrs R were happy to proceed and Mrs R even went to the bank to turn off a sweeping feature on Mrs A's account, so that the money was there to be taken by Prudential. It said Mrs R called the next day to advise that the money was there and to confirm all was ok with proceeding. It said its recommendation was suitable based on the fact find the adviser had carried out and it didn't think its adviser had done anything wrong.

I issued a provisional decision on this complaint on 6 November 2024. Both parties have received a copy of that provisional decision, but for completeness I include an extract from the decision below. I said;

*"I have carefully read what has been said by the parties. It has not been easy for me to get to the crux of Mrs A's complaint, because the parties disagree on a great deal of what happened including what was said in the meetings and what was agreed.*

*Where the evidence or testimony surrounding a complaint is lacking, incomplete or as is the case here contradictory, I have to make my decision on the balance of probabilities – which, in other words, means I base my decision on what I think is most likely to have happened given the evidence I do have and the wider circumstances. So, I have proceeded to do this in the circumstances of Mrs A's complaint.*

*I have looked to address what I think are the key issues of this complaint. These, I think, being Mrs A's vulnerability, the initial contact between the parties, whether Openwork was right to charge a fee and finally whether its advice was suitable or not. I looked into these issues in that order.*

### ***Mrs A's vulnerability***

*Mrs R said the adviser did not treat her mother as a vulnerable person. She said the adviser from Openwork was fully aware of her mother's dementia, but he failed to carry out any*

*form of risk assessment to determine whether it was suitable for him to make a recommendation about investments.*

*Mrs R said, since making the original complaint, Mrs A's condition has deteriorated to an advanced stage, where she no longer knows friends or cannot recall where she is.*

*Mrs R said the adviser from Openwork, although aware of her dementia, also seemed unaware of her level of cognition or rationale. Mrs R said he went ahead, completed a report, and made his recommendation anyway, then charged his fee.*

*Mrs R said she also had to remind Openwork of Mrs A's frailty, as it subsequently contacted her mother on two occasions requesting payment, when she requested it not to do so.*

*The adviser from Openwork in contrast said he felt Mrs A at the time of the meetings, was a very astute lady, very sharp and talked to him about a range of topics. He said Mrs A told him; Mrs R was going to sort out her financial affairs to cut down on the communication she received.*

*The adviser said he disagrees he was made aware that Mrs A had dementia and there were no obvious signs of this illness in his opinion, with conversation flowing between him, Mrs A and Mrs R.*

*The adviser said he did mark Mrs A down as a vulnerable customer, but this was due to her age as she was in her 80's. He said because of this reason, and she was elderly, her daughter wished to be involved.*

*First of all, I'm sorry to hear that Mrs A's health has deteriorated as Mrs R has described and that she has had to obtain a power of attorney to deal with her finances and take care of things.*

*With that being said, I need to consider what happened during the meetings when the parties met, in 2023. It is then that the issues complained about happened, and so I need to consider how things were, what was said and what was agreed between the parties. In doing so, I can then see if Openwork did all it was supposed to and whether it made any mistakes when its adviser recommended an investment to Mrs A and then charged a fee for this.*

*I have first of all considered whether Openwork was aware, as Mrs R has suggested, that Mrs A had dementia at this stage.*

*Both parties have described a very different scenario about what happened when they met on 22 March 2023 and again on 6 and 12 April 2023. And with this being the case, I have needed to rely on what was recorded down on the fact find or client details form that both parties would have seen and agreed upon. I think this document is as close to what I can ascertain was most likely discussed between them.*

*I have been able to see in this document that Mrs A was recorded down as vulnerable because of her age, and not for any other reason. I think when I see this, I am currently minded to conclude that was what was discussed between the parties, and was the reason for Mrs R's involvement, as she said: to try and fix her mother's finances whilst she still had capacity.*

*The adviser said he could see no signs of ill health with Mrs A at that time, and it doesn't look like anything was said between the parties, that was recorded down in the fact find either. So, It follows, that I think it was agreed between the parties that Mrs A was*

*vulnerable because she was elderly and Mrs R was supporting her to make decisions with her finances, at that stage, when they met with Openwork on the three occasions. Openwork proceeded on this basis, and I currently don't think it did anything wrong when it did so.*

### ***Mrs A and Mrs R's initial contact with Openwork***

*Mrs R said she contacted Openwork on 20 March 2023 on the phone and then met the adviser in the first meeting between the parties on 22 March 2023.*

*Mrs R said she explained to the adviser at that first meeting that she wanted to simplify her mother's affairs. She said during this meeting the adviser told her to sell her mother's shares as well as cash in the bonds and national savings. She said he told her that this would create a 'wealth pot' for Mrs A to be able to invest with.*

*Mrs R said after this meeting, her and Mrs A took this advice and sold everything. Mrs R said she informed the adviser of this, and he then said he would proceed and prepare a report for their next meeting to discuss what to do with the realised funds. They agreed to meet on 12 April 2023.*

*Mrs R said she then found out that by following the adviser's advice, Mrs A had given up tax benefits in relation to the national savings Mrs A held and may be required to pay capital gains tax on the sale of the shares. Mrs R said the adviser gave poor advice and if made aware of these issues, she and Mrs A would not have proceeded to sell everything.*

*Openwork said its adviser carried out a fact find at the first meeting, this being a record of client information and circumstances.*

*Openwork said it is a bone of contention by the adviser as to what happened here. It said he said he didn't give advice about Mrs A's investments, but instead suggested they could investigate selling these assets as Mrs R said they were looking to simplify Mrs A's finances. The adviser said he explained he could not transact the sale of the investments himself and that they should seek guidance on this, on capital gains tax and in general seek specialist advice prior to selling the investments. The adviser said he never told Mrs A and Mrs R to encash the national savings as it was a good investment.*

*I have thought carefully about what has been said by both parties here. Again, their recollections differ greatly.*

*I do acknowledge what Mrs R is saying here, she asked a financial adviser for some advice about what to do with her mother's existing investments and then acted on what she felt was said to her.*

*That said, it looks like the adviser from Openwork was at that stage on 22 March 2023, carrying out a fact find about Mrs A's circumstances, and part of this was to record down her financial position. It looks like during this, he made suggestions and then said he caveated them, suggesting to Mrs R that she gain advice on it either by looking at the HMRC website or getting tax advice.*

*I can see how this conversation would not on the surface, be clear for Mrs R and Mrs A, considering they contacted Openwork to ask for financial advice about Mrs A's finances in general. But it seems from the paperwork I have seen; the adviser was there simply to recommend an investment to them and to receive a fee for that recommendation.*

*But in any case, I don't think I have seen enough from the paperwork used at that time, emails between the parties or submissions from them, that advice was given by the adviser from Openwork about this. It looks to me, that he did instead, suggest what Mrs R and Mrs A could do with the shares and bonds that Mrs A held, but ultimately it was down to them to decide whether to sell them or cash them in or not.*

*I can see from reading what has been said that it looks like Mrs A has not incurred any capital gains tax, as was initially, Mrs R's concern. I can see that the main reason Mrs R contacted Openwork to begin with, was to simplify her mother's investments, and the actions she took here, would seem to fit in with what she was looking to achieve.*

### **Were Openwork right to charge a fee?**

*Mrs R said Openwork did not give her and Mrs A all the facts about the charges that would apply, in particular for if they changed their mind.*

*Mrs R said the adviser from Openwork failed to allow sufficient time for them to fully comprehend what his recommendation meant, and they were pressured into signing forms and giving him a cheque as he was going on holiday, shortly after they met on 12 April 2023.*

*Mrs R said the adviser told them they could always change their minds to invest, but he didn't mention to them that if they did decide not to go ahead that they would still incur fees. Mrs R said the terms about fees are hidden and not clear, especially where the fee is payable even if you don't proceed.*

*Openwork said its adviser prepared a recommendation and suitability report and presented it to Mrs R and Mrs A on 12 April 2023. It said it was at this meeting that Mrs A signed an Openwork fee agreement, where she agreed to an initial adviser fee and ongoing advice fee.*

*Openwork said the ongoing fee did not apply due to Mrs A and Mrs R cancelling the investment, however the initial fee was still charged as per the terms that they signed up for in the fee agreement.*

*Openwork said in the key features document, it explains clearly that the initial fee would be charged even if the investment is cancelled. It said this is stated on page 11 "What if the plan is not right for me?". It said it stated in this section that the fee will not be refunded in the event of the cancellation notice being exercised.*

*Openwork said there would have been a conversation between the parties about the initial fee because, it was agreed between the parties that there would be a lower percentage rate, this being 2%, than is stated within the paperwork. It said, consequently, based on what is stated in the paperwork it was appropriate for the adviser to charge the fee and that it was clearly disclosed.*

*Openwork said Its adviser left the documents with Mrs R and Mrs A on 12 April 2023. A day later Mrs R phoned the adviser and said she had removed the sweep function on Mrs A's account and confirmed all was good to proceed.*

*I have looked into what has happened here, and in particular the timeline of events. Mrs R said they were pressured into signing forms and was not told that the initial fee would still be owed if they cancelled.*

*I do empathise with Mrs R here, in that, she was looking to try and do the right thing by her mother and try and simplify her finances. Instead, when they decided to cancel the proposed investment after changing their minds, they still incurred a fee. But even though this was the case, it doesn't mean Mrs A shouldn't have been charged it, or that she shouldn't now pay it.*

*I say this because, I can see that Openwork has been clear in its terms, that it provided to Mrs A and Mrs R that the initial fee that they agreed, would be payable if they cancelled the investment. And Mrs A signed the fee agreement document to say she agreed with this.*

*I also can see, according to Openwork, Mrs R called the following day, after the meeting on 12 April 2023, to say to the adviser that the sweep function on the account had been lifted and all was ok to proceed as agreed. If this was the case, then Mrs R and Mrs A would have had a short window of time, to come back to the adviser, if they had any concerns before he went on holiday, and presumably before he sent the application form off with the cheque. But in any case, I think Mrs R and Mrs A would have had some time to read the paperwork and query anything, including fees with Openwork during and a short time after the meeting, before it sent off the paperwork to Prudential. But Mrs R contacted Openwork several days later, on 17 April 2023, when the paperwork had been sent off, and so because of this, the terms that have been outlined within the terms about the initial fee, applied. I don't think I can currently say Openwork did anything wrong in this regard.*

*I am currently minded to conclude Openwork did nothing wrong when it charged its initial advice fee, as this was agreed by Mrs A when she signed the fee agreement form on 12 April 2023. I also don't currently think Mrs A and Mrs R were pressured into agreeing to have the investment for the reasons I have given, as they would have had a small window of time to read the documentation before it was all sent off. So, with all this in mind, I don't think Openwork did anything wrong when it charged its fee, and so I don't currently uphold this part of Mrs A's complaint.*

*That said, if the advice provided by the adviser from Openwork was not suitable for her, then it stands to reason that Mrs A shouldn't have to pay a fee for that. So, I have gone on to consider whether the recommendation given by the adviser was suitable for Mrs A or not.*

### ***Was the advice given by Openwork suitable for Mrs A?***

*The adviser from Openwork presented a report to Mrs A and Mrs R on 12 April 2023 and then off the back of this, provided a recommendation to them.*

*Mrs R said the adviser failed to assess Mrs A's attitude to risk and didn't take note of their cautious approach. She said the long-term investment recommended was not suitable and too risky.*

*Mrs R said the adviser failed to comply with the instructions made to him. She said they made it very clear they wanted a no risk investment where there was no chance of losing capital. She said the adviser needs to accept that he failed to comply with her implicit instructions and that he presented a solution that was completely opposite to what was required. She said she cannot recall the adviser discussing risk with them or explaining the long-term nature of the investment he recommended.*

*Mrs R said on reflection they were both taken in by the boastful tales of wealth and achievement by the adviser and at the time were taken in by what he was saying. She said on reflection she has serious misgivings of what he had recommended which is why shortly after she cancelled it.*

*Mrs R said she didn't want to risk her mother's capital and one of the objectives she had at that time was needing to provide fees for a care home for her mother in the future. She said the anticipated cost of doing this is a constant worry for her.*

*Openwork said a fact find was carried out by the adviser in the first meeting on 22 March 2023. It said the adviser said Mrs R completed an attitude to risk questionnaire on Mrs A's behalf and Mrs A was profiled as having a balanced attitude to risk.*

*Openwork said the adviser recorded down Mrs A's objectives as set by her and Mrs R. It said these objectives were to simplify Mrs A's finances, along with investing some deposit-based funds for greater growth potential, rather than leaving them on deposit. It said Mrs A's objectives were also to have the ability for the investment to remain in place in the event of Mrs A's death and to benefit from ongoing financial advice.*

*Openwork said at the final meeting on 12 April 2023, its adviser recommended Mrs A invest £230,000 in a prudential investment bond and add her daughter to the product as an additional life assured, it said this would allow the investment to continue in the event of Mrs A's death. It said Mrs A and Mrs R confirmed they would like to proceed and signed forms agreeing to it. It said the investment was suitable for investors with the same attitude as risk identified for Mrs A in that it was suitable for investors with a balanced attitude. It said the bond allows a variety of investment of assets to reduce volatility. It said the recommendation would appear wholly appropriate.*

*I have looked at the fact find that was carried out by the adviser from Openwork. He has recorded down Mrs A received a pension, and had surplus income each month, she was a homeowner without a mortgage, and then had a significant amount of cash on deposit. I can see that he allocated a percentage of this as an emergency fund, then recommended from this £230,000 to go into the prudential investment bond.*

*He has recorded down Mrs A's investment objectives, this being: to simplify her finances, and make a return that is higher than what can be achieved in deposit-based investments, along with having the ability for the investment to remain in place in the event of Mrs A's death. The adviser has also recorded down that Mrs A had a balanced attitude to risk. He recommended the prefund growth fund, that he said matched with Mrs A's recorded objectives.*

*Mrs R said she was clear with the adviser that she wanted no risk investments, but I can't see that this is recorded down in the paperwork that was discussed and agreed on by both parties. I appreciate, that soon after all was agreed that Mrs R changed her mind and cancelled the investment and at this stage, felt, as she said, that Mrs A was taking on too much risk. She has told our service that she had serious misgivings about its suitability and so didn't proceed. But I think the adviser could have only recommended an investment based on what was discussed by the parties about what Mrs A and Mrs R wanted to achieve, what Mrs A's circumstances were and what her attitude to risk was.*

*I have looked through the fund fact sheet for the prudential growth fund and can see that the fund managers invest in a broad range of assets such as UK equities, property, bonds overseas investments and cash deposits. It seems to me that the fund itself seemed suitable, for Mrs A's identified need and objectives in the fact find, that is growth over time, that had the potential to beat the return she would have received in deposit-based investments. I can also see that one of the objectives put down on paper, was for the investment to continue, in the event that Mrs A passed, and this was achieved by the adviser putting Mrs R's name on the bond as a life assured. When I read through all this along with the fact find and then the suitability report, and consider what was discussed*



*between the parties, I don't on balance think the recommendation made by the adviser was unsuitable for Mrs A.*

*Mrs R said that she was worried about long term care costs for Mrs A and keeping her capital intact potentially with that in mind. I appreciate what Mrs R has said here, but also this was not recorded down or apparently discussed by the parties in the meeting. Or if it was, this wasn't queried by Mrs R or Mrs A when they were provided with the paperwork stating what their objectives were. Instead, it looks like a different objective and scenario was discussed, according to the notes in the fact find, and the objectives agreed by the parties, this being for the investment to have potential to continue in the event of Mrs A passing.*

*In conclusion, I can't say that the recommendation by the adviser was unsuitable for Mrs A based on her objectives, recorded attitude to risk and financial circumstances at that time. And I am currently minded to conclude it was right to charge its initial advice fee.*

*I know that my provisional decision will be very disappointing for Mrs R, and again, I have empathy for her, in particular about what she has told our service about her mother's deteriorating health. But in all the circumstances of Mrs A's complaint, I currently don't think Openwork has done anything wrong."*

I asked both parties to let me have any comments, or additional evidence, in response to my provisional decision.

Openwork didn't respond.

Mrs R responded on 18 November 2024. She did not agree with the findings in my provisional decision and has explained why. She said:

- The adviser from Openwork was made aware of her mother's dementia diagnosis during their initial telephone conversation. She said she told him of this when she appraised him of the situation and her desire to simplify her mother's accounts.
- Even though the adviser has denied this, he should have picked it up in a more robust assessment. She said, in short if he had been more thorough, he would have built a better understanding of Mrs A and seen where the gaps in the level of her cognition were.
- Describing her mother as astute and sharp and then documenting her as vulnerable due to her age doesn't make sense.
- On reflection, the adviser should have flagged 'two vulnerable women' due to how little financial acumen either of them had. She said he should have advised them to obtain unbiased advice from trustworthy friends.
- With regards to the time frame between the meeting on Wednesday 12 April 2023 and when she was able to make contact on Monday 17 April 2023 – its offices were closed on Friday afternoon and the weekend. She said she was unable to discuss her concerns during these times.
- On Thursday afternoon [13 April 2023], she said she rang the office in a state of panic in what she perceived were discrepancies with her mother's bank accounts. She said she was advised to talk to the bank and ask for a sweep. She said she recalls feeling uneasy about taking matters further.

- Neither her mother nor herself wished to take any chances with money but were assured a 'balanced approach' was correct. She said without understanding as to what this meant, she naively trusted him.
- She was led to believe the investment would have needed to have remained in place for a significant number of years to make favourable gains. She said given the age of both; she didn't think this was the best option. She said the adviser didn't give any other options.
- If the adviser had made a thorough assessment and taken a slower approach, he would have been able to emphasise all the implications including his extortionate fees.

### **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.

I have read Mrs R's comments carefully and after doing so, I am not persuaded to change the findings I made in my provisional decision. I think on balance, Openwork is not responsible for any failings here and so I don't require it to do anything further.

I will expand on my findings, in addition to what I have already said in my provisional decision. But to be clear the findings I have made in both, provide the reasons why I have made the decision to not uphold Mrs A's complaint.

### **Adviser being made aware of Mrs A's dementia**

Mrs R has again reiterated that she made the adviser aware her mother had dementia from the outset. Openwork on the other hand, says the opposite. The adviser said he wasn't aware of this, and that he found Mrs A to be astute and sharp, with the conversation flowing between them.

There is clearly a difference of opinion about what happened between the parties here and what was or wasn't said. As I have already said, in my provisional decision, when there is a difference of opinion or contradicting statements, I need to consider what I do have in front of me, and make my decision, on the balance of probabilities, that is what more than likely happened than not.

To explain further, I don't know for certain what happened here, and don't think I am going to either. I don't know for sure what the adviser knew or didn't know when he went round to meet Mrs A and Mrs R. It may have been the case that Mrs R told the adviser about her mother's dementia. But conversely, I have also read the adviser's statement about what he thought happened too.

I have also seen documents that were completed at the time of the meeting, including the fact find document. And as I said in my provisional decision, there was no mention of a dementia diagnosis in this document. I would have expected this condition to be documented here by the adviser, or if not have it queried by Mrs R when she looked

through this and the other documents associated with this. So based on this and what I found in my provisional decision, I am persuaded that dementia wasn't mentioned or discussed at the time of the meetings and that the adviser instead, recorded Mrs A down as vulnerable because of her age.

Mrs R has made some points about how thorough she feels the adviser should have carried out his assessment. But I can see that Openwork did carry out a fact find document and did record down Mrs A's circumstances along with an investment report, both of which he would have supplied to Mrs R and Mrs A. I think there was enough detail in these reports for Mrs R and Mrs A to read through what was recorded and query anything that they weren't happy about or raise for discussion. Openwork used its fact find to make a recommendation to Mrs R and Mrs A. I don't think it did anything wrong here by doing this.

### **What happened after the meeting on 12 April 2023**

Mrs R has explained from her point of view what happened after the meeting took place on 12 April 2023. I understand what she is saying and why she felt she needed to call Openwork the following day, due to her concerns about having enough finances in her mother's account.

The findings I made in my provisional decision about this, really was about the window of opportunity she and Mrs A had to get in contact with Openwork to discuss their concerns and cancel the proposed investment, if they wanted to. I do understand Mrs R's explanation of what happened, but it doesn't change my findings about this. I am satisfied Mrs R and Mrs A had some time after the adviser left, to read the paperwork and get back to Openwork the following day to discuss. Openwork would have been of the understanding, after speaking with Mrs R on 13 April 2023, the day after, that all was well and that arrangements were being made for the monies to be available in Mrs A's account, for the proposed investment. So, I can't say that Mrs A or Mrs R didn't have enough time to read through the paperwork here and query anything that they had any concerns about.

### **Suitability of the recommended investment**

Mrs R said she and her mother wanted to take no risks with Mrs A's finances and that they naively went ahead with what the adviser said.

Again, as I said in my provisional decision, I acknowledge what Mrs R has said here, but this wasn't recorded down in the suitability report or fact find. So, on balance, if Mrs R or Mrs A had told the adviser that they wanted to take no risks at all, and then didn't see this reflected in the documents, then that would have been a point of discussion at that time.

Instead, it is recorded down by the adviser, that Mrs R and Mrs A wanted to take some risk, in order to obtain a better return than that received on cash deposit. This was what the adviser had recorded down as a reflection of what was apparently discussed between the parties.

Having gone through all of the documents again, I can't say that the recommendation by the adviser was unsuitable for Mrs A based on her objectives, recorded attitude to risk

and financial circumstances at that time. And I don't think I can say the recommendation was unsuitable just because of her age at that time, I don't think it would be fair of me to do so. Older people can seek to invest and take on some risk if they want to, as long as the investment is suitable in all other aspects of their circumstances.

As I said in my provisional decision, a different objective and scenario was discussed, according to the notes in the fact find, and the objectives agreed by the parties, this being for the investment to have potential to continue in the event of Mrs A passing. And it was on this basis, that the adviser made his recommendation. Again, I do not find fault with this, based on what was recorded down and apparently discussed between the parties at the time.

### **The fee**

Mrs R reiterated that if the adviser had gone slower and made a more thorough assessment then he would have explained his extortionate fees in more detail, and all the implications of these. But I think Openwork made its fees clear within the paperwork, and it is entitled to charge this, in the circumstances of what has happened here.

I have already concluded that I didn't see any mistakes in the way Openwork had completed its assessment and carried out its paperwork, but in addition also, again, I think Mrs R and Mrs A would have had enough time to read the paperwork after the meeting and query anything they were unsure of. They could have contacted Openwork for example, the following day, as Mrs R did when she had a query about her mother's bank account.

I would like to thank Mrs R for her comments to my provisional decision. I do understand why she would be upset about the decision I have made. But I do hope that at the least, I have clearly explained the reasons why I have decided not to uphold her mother's complaint. In conclusion, I can't say that the recommendation by the adviser was unsuitable for Mrs A based on everything that was discussed at that time. And I conclude Openwork was right to charge its initial advice fee.

### **My final decision**

My final decision is that I do not uphold Mrs A's complaint About Openwork Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 26 December 2024.

Mark Richardson  
**Ombudsman**