

The complaint

Ms C complains the advice and service Oury Clark gave her on an investment portfolio that started in 2018 wasn't provided with appropriate skill, care and diligence.

What happened

Ms C has explained the background to her complaint. She is assisted by a representative. For simplicity I refer in this decision to Ms C when referring to things said by her or on her behalf by her representative. In brief summary:

In 2018 she approached Oury Clark to invest over £600,000 of cash and investments so these could provide an income and be of limited risk.

She was on sick leave at the time due to illness resulting from her neurodiversity. She says she made clear to Oury Clark her health and job security were in flux due to this – and also how her neurodiversity made it more effortful for her to comprehend written material and contributed to her low confidence in financial matters which was very stressful for her.

She says Oury Clark advised a portfolio for growth which appeared appropriate because she had money to live off for a couple of years. She also agreed to ongoing advice at extra cost covered by a percentage fee each month.

She says not a lot happened in the first few years, but in 2022 she became concerned with the portfolio performance. She says in June 2023 she became concerned Oury Clark was changing her portfolio without reconfirming her risk attitude annually. It had written saying her risk appetite hadn't changed, but it hadn't discussed this with her. She complained to Oury Clark. Her concerns were, in broad summary:

- Her core objective was for the portfolio to provide annual income of around £30,000. Given its performance, she didn't understand when this might be achieved. The initial advice hadn't considered when she might need to start the income, how long it might last and what to do if it couldn't be produced. Oury Clark hadn't considered when the portfolio should be changed to become "income producing". She wasn't comfortable that all was well and that she had the correct "tools in place".
- Oury Clark held inaccurate information about her employment status, profession and job role. It recorded her as a non-taxpayer, but the portfolio produced taxable dividends. It assumed she was in good health, without discussing this with her, and assumed she had no need for accessible format documents. There were also other inconsistencies in its records, and it kept no meaningful records of their meetings in 2022 or July 2023.
- Oury Clark had promised its service *"incorporates annual review meetings and ensures your investments... remain relevant to your current goals and attitude to investment"*. But it hadn't arranged these meetings – it had waited for her to request these. It didn't assess her risk attitude every year - or consider this or her life expectations. It admitted at a recent meeting that it didn't know her current financial position, despite being paid to know. This was irritating and stressful.

- Oury Clark told her the ongoing advice fee was for “*ongoing tweaks*” to her portfolio. She hadn’t given her authority for it to make such changes so she wanted confirmation that such changes in 2023 hadn’t caused loss, or that Oury Clark would cover such losses.
- The portfolio performance hadn’t been acceptable. But Oury Clark wasn’t able to reply to basic questions about this or detail what it or the fund managers were doing about this. It should surely have carried out a review to identify any changes necessary or to support its reasoning to “stick with the existing portfolio”.
- Fees had been charged without any explanation of what they were for or being agreed with her first – like a £1200 fee charged for advice but unhelpfully labelled as “ad hoc” and a fee of £9,000 deducted at the start by the platform in 2018 when she thought the fees were a percentage of the portfolio.
- Oury Clark should check that all its business with her and fees it had charged her had been done in line with the rules and regulations and with its contract with her. It should also investigate its failure to have appropriate systems and controls in place to provide accurate information and the lack of oversight by senior management of its financial advice activity.
- After she told Oury Clark in July 2023 she no longer wanted on going advice services, it took further fees for this of around £500. It agreed to refund these but only after she raised this. It isn’t clear that she would’ve got these fees refunded otherwise.
- A June 2023 report said she had invested £603,000 but it should have said £623,000. She queried this but at the July 2023 meeting Oury Clark said the lower figure was right. It only admitted later it wasn’t and that the lower figure was due to a back-office error. This points to failings in Oury Clark’s processes and controls. Also she needed to know the error hadn’t affected the portfolio management or caused loss.
- Errors particularly impact her as her neurodiversity, and comprehension and decision making difficulties arising from it, means she needs to be able to trust in the accuracy of information she is given. Oury Clark claimed it wasn’t aware of her neurodiversity challenges. But she discussed them with Oury Clark many times, including at the start and at the July 2023 meeting when Oury Clark specifically asked about her health. The challenges were why she lost her job and why, alongside having received inheritances, she had made significant life changes and needed financial advice for the first time.

Our investigator considered Ms C’s complaint and agreed there were failings in the service Oury Clark had offered Ms C – and that it could have done more to adapt to or address needs arising from her neurodiversity. So he thought Oury Clark should pay Ms C redress of £500 for the inconvenience and distress arising from this. He found the advice at the start was suitable for Ms C’s “cautious balanced” risk attitude and objectives. He noted that the advice had reduced the risk Ms C’s investments had been subject to, by reducing her exposure to shares. He also noted she hadn’t needed income from the investment initially.

Our investigator found Oury Clark had offered and held reviews with Ms C each year but hadn’t held a discussion with her for the June 2020 review, so he thought she was due a refund of twelve months’ ongoing advice fees. Normally this would be the twelve before June but in view of the irregular pattern of contact here, he proposed a refund for the six months either side of September. He said Oury Clark should also pay interest on this refund and, separately, on fees for 2023 that it had already refunded of its own accord.

The reviews before and after June 2020 stated Ms C's risk attitude and objectives as the same, so our investigator found the June 2020 failing didn't lead to the portfolio becoming unsuited to Ms C's risk attitude or aims. He found the portfolio was suitable throughout (until the time of the complaint when Ms C told Oury Clark her risk attitude had changed). He didn't find Oury Clark at fault for how it had dealt with Ms C's concerns about the portfolio performance in 2022 either and didn't find grounds for awarding any other redress.

Oury Clark agreed to accept our investigator's findings. Ms C replied saying a refund of one year's advice fees and £500 wasn't enough redress for the considerable distress caused to her by Oury Clark's approach to vulnerable customers and its lack of focus on building a portfolio suited to her objective. She said she had never needed specialist financial advice before and engaged Oury Clark to provide for a professional service but paid heavily as a result. She said Oury Clark didn't provide an appropriate service as it didn't focus on her fundamental objective of generating an income. She said further investigation should focus on these matters.

In support of all this Ms C also said, in brief summary:

- Her core objective was to invest a significant sum to generate an annual income due to her lack of employment. There should have been a detailed explanation on file showing how the recommended portfolio could meet the objective in the long term. Subsequent review meetings should then have revalidated the core objective and the suitability of the portfolio, so remedial action could be taken if needed. But nothing was done, like a cash flow analysis modelling returns at different rates, to show the recommended portfolio would or could generate the income necessary. No consideration was given to savings reducing faster than expected or to when the income would be needed.
- The lack of key information like review meeting notes and risk assessments in its records suggests lack of oversight of, and competence of, the Oury Clark adviser. The £20,000 error identified by Ms C is reason for concern about Oury Clark's "systems and controls" for ensuring accurate records. Given she spotted this error, it was insulting for Oury Clark to question her competence when she pointed out again her neurodiversity and health challenges. So Oury Clark's understanding of the requirements for ensuring vulnerable customers aren't disadvantaged appear to have been significantly lacking.
- It is concerning that Oury Clark claims it wasn't aware of Ms C's health challenges, given it asked her about these at its July 2023 meeting. But Oury Clark's records suggest Ms C had significant health issues. If Oury Clark wasn't aware of these it was negligent to record her in 2018 as not working and on "*long term sick*" without finding out more. This would have a key influence on the timeframe for Ms C's use of her savings, so it should have been an input into the construction and subsequent review of the portfolio. Also, Oury Clark knew Ms C had a settlement from her employer due to her neurodiversity.
- When Ms C withdrew Oury Clark's authority, it didn't tell the platform and continued to receive information it wasn't entitled to, so failing to manage sensitive personal data in line with the various data protection requirements.
- Ms C had to query a number of account charges she hadn't been told about or agreed.

As this matter couldn't be resolved informally, it has been passed to me to decide.

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.

Having done so, I've arrived at broadly the same conclusions as our investigator, for broadly the same reasons. I'll explain my reasoning.

It is agreed Ms C's initial objective was capital growth, with income to be taken later. In my view it wasn't inappropriate for Oury Clark to advise Ms C to invest her funds to try to grow them until income was needed. This investment needed to be at a suitable risk level, and I'm satisfied it was. I say this bearing in mind the portfolio's significant exposure to fixed interest funds and assets carrying less risk than shares. Also I note the exposure to shares was less than had been the case with Ms C's existing investment funds.

I don't overlook that Ms C also put in extra cash, but nothing she has said makes me think she wasn't willing to invest her funds in the hope of growing them to help sustain the income she could draw from them. The portfolio's asset allocation was relatively conservative in my view and not unsuitable for this objective in the circumstances.

Oury Clark says its process was to reconfirm Ms C's risk attitude as part of an annual review process but to look to review her attitude more formally if her circumstances changed. I don't see anything wrong with that process in principle. But Ms C's circumstances did change and these changes didn't result in a more formal review of her risk attitude – such as one where she would fill in a risk questionnaire or take part in some other more formal process.

For example, Ms C lost her job in 2019. Her health challenges also increased over the years. Related to this, her evaluation of her job prospects altered over time. So by the time of the 2023 meeting to discuss her concerns about her portfolio with Oury Clark, her outlook was in many respects different from 2018. A reassessment of her situation was plainly needed then – and, to reinforce this, Ms C told Oury Clark at that time that her risk attitude had changed.

But on balance I'm not persuaded that a more formal reassessment of Ms C's risk attitude at an earlier stage than that would have made a difference or led to Ms C's portfolio's being revised in a way that would have benefited her. I say this bearing in mind that although her employment situation changed in 2019, Ms C's objective remained to try to grow her funds so that they could support her future income. The portfolio had been growing since 2018 and continued to do so. I note Ms C has said *"for the first few years, not a lot happened"*.

Ms C received a settlement in 2019 and used this as her income source at first – leaving the portfolio invested. This seems to me to have been a reasonable approach. She was also consistently reminded of the risk attitude for which the portfolio was catering, so if this didn't seem right to her or she felt she wanted to change her approach, she could do so. I've not seen anything that suggests she would've wanted to do that prior to the events in 2022 – at which point the gains made by the portfolio had been lost and the value had fallen.

I don't find Oury Clark negligent for not advising Ms C to alter her portfolio when discussing her performance concerns in 2022. With hindsight this benefited her – as if she'd reacted by significantly reducing risk, she would've risked missing the recovery that occurred. Ms C had to decide at that time whether she was comfortable with the existing approach or wanted to change it. She decided to carry on with it. I don't think Oury Clark was wrong for not acting to bring about a different outcome.

I note Oury Clark didn't at that time ask Ms C to fill in a new risk questionnaire or take part in a formal risk profiling process. But on balance I'm not persuaded this means Oury Clark's actions at the time were unfair or inappropriate – or caused loss. I note in September 2022 Ms C agreed to an ISA transaction at the same existing investment risk profile as before.

Overall, I'm satisfied the portfolio continued to suit Ms C's risk attitude up to the point when she raised her complaint – and Oury Clark was willing to revisit this with her after that.

Ms C has expressed misgivings as to whether it was feasible for the portfolio to produce or sustain the income she was seeking. Oury Clark didn't carry out projections at the start of what income the portfolio might sustain. So this is something that could have been looked into more at the start. Of course, as Ms C has noted, projected returns aren't guaranteed. But figures Oury Clark set out in 2023 for a value of around £650,000 suggested the portfolio might sustain annual income of £25,000 if there were reasonable growth. A later cashflow projection showed the portfolio might provide £30,000 a year until Ms C was 100 if growth of 3.5% a year after charges (5% net of 1.5% in charges) were achieved.

Of course, the more income that is needed, the harder it is for a portfolio to produce and sustain – and the more risk that the capital will be depleted. The question of how Ms C should use the portfolio to meet her future income needs would be affected by what those needs were when the time came and what the investment was worth. Such matters would necessarily need to be looked at in more detail when the time came to take income, rather than at the start. But what I've seen doesn't make me think it was unreasonable to advise Ms C at the start to invest her funds to try to grow them with a view to taking income from them in future. Had Oury Clark carried out projections at the start, I don't see this would've made a difference to the investment advice Oury Clark gave or ought to have given Ms C.

Ms C points out there was no discussion or apparent consideration of when the portfolio should change to "income producing". Ms C was still paying into the portfolio in 2022. She hadn't started to withdraw income before she met Oury Clark in 2023. But from what she's said, the time when she might start drawing income was approaching. Oury Clark needed to be mindful of whether the portfolio composition would allow Ms C to draw income in a tax efficient way when the time came.

The capital gains tax allowance of £12,300 was reduced to £6000 in April 2023 and halved to £3000 in April 2024. The November 2022 budget statement announced these changes. In July 2022 the total gain for the portfolio had been only £16000. So if withdrawals of £30000 started - less than 5% of the portfolio value – it's unlikely this would realise a gain exceeding £6000. But the chance of fund sales incurring capital gains tax at some point were increased in future by the tax changes. High or prolonged portfolio growth could also alter the picture. Ms C's lack of work income also left income tax allowances available for use if the portfolio produced more income – although any impact on benefits would need to be considered.

With all this in mind, it seems to me Ms C is unlikely to have suffered a loss from not being advised to change her portfolio before the 2023 meeting. But there were reasons Oury Clark ought to have been looking to review Ms C's situation more thoroughly in 2023, to see if the portfolio configuration needed to be altered to be fit for the future. So I agree with Ms C that sending a June 2023 portfolio update and not seeking a meeting with her – leaving it to her to decide if one was needed instead, was negligent. Instead, as Ms C says, reviewing the portfolio's approach should have been on the agenda and actively arranged by Oury Clark.

Oury Clark refunded advice fees for 2023 from the point Ms C said she no longer wanted its ongoing service – which I believe was from July. In light of what I've said above, I consider Oury Clark should also refund the rest of the ongoing advice fees for 2023 – as the service provided in that year up to June 2023 didn't meet the standards Ms C was entitled to expect.

Turning to unexplained or unauthorised fees, the £1200 'ad hoc' fee has been explained by Oury Clark as being for advice. As for the £9000 figure, a letter to Ms C from the platform in November 2018 said this was an initial charge payable to the adviser on £589147 Ms C was investing. This broadly matches Oury Clark's advice charges of 3% on the first £100,000, 2%

on the next £100,000 and 1% on the rest - which results in £8891. The investment amount here was made up of cash of £280,000 but also existing investments whose value would be different by the time the transfer happened. So perhaps a fixed figure was used so the cost would be known. Whatever the reason, Oury Clark's advice report of November 2018 set out the cost of advice as a fixed cost of £9500 – for the general account and ISA combined.

With all this in mind, I think it likely the £9000 fee was discussed at the start with Ms C. So, in light of all I've said above, I don't find Oury Clark charged Ms C fees without telling her or asking her permission first.

Similarly, Oury Clark's advice reports, including the June 2023 report it issued shortly before the advice relationship ended, asked Ms C to sign to authorise the changes proposed. I've seen nothing to suggest portfolio changes were made without Ms C's permission. I conclude Oury Clark didn't make changes to Ms C's portfolio without her knowledge or authority.

Oury Clark understated by £20000 the initial investment figure in its June 2023 report – due to a recent payment to her ISA being assumed to be an internal transfer and not new money. I'm satisfied this error didn't cause financial loss. The report suggested rebalancing the funds in the portfolio so that the funds would match their target holdings as a percentage of the total current value. This wouldn't be affected by the report having misstated the total sum that had been invested. So this error didn't affect the report's proposals. In any case, Ms C didn't sign to make the changes proposed in the report, so those changes weren't made.

Oury Clark apologised for the error and it was right to do so. Errors do sometimes happen, and an error doesn't automatically make it fair and reasonable for me to award redress. But it is plain this error and the failure to identify it quickly – firstly at the July 2023 meeting - shook Ms C's confidence and caused her concern. I note her need to be able to trust what her advisers tell her. So I have taken this into account when considering the distress and inconvenience suffered by Ms C overall as a result of the failings my decision has identified.

Oury Clark accepts it didn't have a record of Ms C's neurodiversity challenges. So it didn't seek to adjust its service, such as its communications with Ms C, to account for these. Ms C says she made no secret of these, and they were also apparent from her circumstances – such as her work absence and later settlement.

It is clear Oury Clark was aware Ms C was off work at the outset and knew later she lost her job - and all this was plainly related to her neurodiversity challenges. So it isn't surprising Ms C was upset by Oury Clark's suggestion that its adviser wasn't aware of the severity of these challenges. So Oury Clark's failings in this area did contribute to Ms C's distress. In this regard I also note what Ms C says about Oury Clark being slow to update the investment platform after she withdrew her authority.

I take all this into account in my award for distress inconvenience – alongside the other failings I've identified. In my view £500 is fair redress for the inconvenience and distress Oury Clark's failings have caused Ms C overall. I'd mention that awards exceeding £300 usually require a failing that caused considerable distress, upset or worry – and I find this to be so here. It is not a trivial award.

Ms C has made criticisms of Oury Clark's processes generally. My role isn't to review a firm's processes in general, but to decide Ms C's particular complaint and award redress for the impact any failings had on her. I've focussed above on the points relevant to that.

For the reasons I've given and to the extent I've explained, I uphold Ms C's complaint.

Putting things right

Oury Clark should put things right by paying Ms C the following sums:

- A refund of 12 months' ongoing advice fees for a period in which the September 2020 is one of the middle months – with simple interest at the gross rate of 8% on each fee payment from the date Ms C paid it until the date of the refund.
- Simple interest at the gross rate of 8% on the refund of ongoing advice fees Oury Clark has already paid Ms C for 2023 (if such interest has not already been paid).
- A refund of all other ongoing advice fees for 2023 that Oury Clark hasn't already refunded, with simple interest at the gross rate of 8% on each fee payment from the date Ms C paid it until the date of the refund.
- A payment of £500 for distress and inconvenience caused to Ms C by failings I've identified and discussed above.

My final decision

For the reasons I've given and in light of all I've said above, I uphold Ms C's complaint.

Oury Clark must put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 15 March 2025.

Richard Sheridan
Ombudsman