DRN-5385551

The complaint

Mr S complains that he was given unsuitable advice to invest in a portfolio by a representative of Openwork Limited trading as The Openwork Partnership.

What happened

In 2021 a representative of Openwork advised Mr S to invest £60,000 in the Openwork Graphene C1 Balanced Model Portfolio. Mr S made a complaint in 2024 because the investment had lost around £9,000. He remembered being told it would grow by 6-8% per year and that he had said he only wanted to take a low amount of risk. He also mentioned that he had not been receiving documents from the adviser over the years, as he couldn't open them electronically and had asked for them by post instead, but they'd never been sent.

Openwork didn't uphold his complaint, saying that the investment met his attitude to risk and that the adviser had advised against crystalising the losses in 2023. Regarding the documents, they said that the issue could be resolved by opening the documents on a computer rather than an iPad. Mr S disagreed and brought the complaint to our service.

An investigator at our service considered the complaint and upheld it. She found the adviser hadn't done enough to properly assess Mr S' attitude to risk and that she wasn't convinced he was willing or able to take as much risk as that involved in the portfolio. She noted the adviser hadn't recorded much information about the type of investment experience Mr S had, or his understanding of the different assets and risks involved in the recommended investment. She said Openwork should compare the performance of Mr S' investments with a benchmark to assess whether there had been any financial loss, and that they should pay him £100 for not following his request for documents to be sent by post.

Openwork disagreed, explaining that the adviser would have had conversations with Mr S about risk and experience, as evidenced by the attitude and capacity for risk questionnaires. They mentioned the adviser said Mr S had told him he had invested £30,000 in an energy company with his daughter, where they lost all the money invested. Openwork said his capacity for loss would only increase, as the state pension would go up over the years, as would the rental income he was receiving.

The investigator wasn't persuaded to change her mind, so the complaint has been passed to me for a final 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.

Having done so, I agree with the outcome reached by the investigator, for largely the same reasons. I've considered whether Openwork treated Mr S fairly and reasonably in the advice they gave him, considering his circumstances, objectives, knowledge and experience.

I can see that in 2021, Mr S had £20,000 in a stocks and shares ISA and £95,000 held in deposit accounts, of which he had plans for £20,000. He had income of around £1,050 per month and outgoings of £800. His objective was noted as wanting to achieve a better rate of growth than he received in his bank accounts, in a tax efficient manner, over the medium to long term.

Openwork assessed that he had a high capacity for risk and his attitude to risk was 'balanced', which was forth out of six options, with the sixth being the highest level of risk. They advised him to invest in a global portfolio of predominantly equities, including 10% in emerging market equities, 30% in UK equities, 30% in US and developed market equities. 20% of the portfolio was in UK GILTs and investment-grade corporate bonds. The remaining 10% was split between global bonds and alternative investments.

I understand the process for Openwork assessing Mr S' attitude to risk began by asking him to complete a questionnaire and this resulted in a 'balanced' risk level. Following this, they've said the adviser would have had a conversation with Mr S to assess whether that properly reflected his attitude to risk. I note Mr S has said that he had told the adviser his attitude to risk was low.

I've considered what the documentation shows about the discussions that took place about risk. Generally, I consider evidence found in documents completed at the time of the advice to be more persuasive than a recollection of events, as the documents were contemporaneous to the events in question. While I note Openwork's comments that certain things would have happened, because that was their process, I also find this is outweighed by what the evidence shows did actually happen.

So, my focus is on the paperwork - and I have a general expectation that a suitability letter accurately summarises the advice given verbally, and the fact find and meetings notes should reflect the conversations that took place, albeit not word-for-word.

I've considered what the paperwork shows about Mr S' attitude to risk and can see Mr S completed a questionnaire made up of 13 questions. In my view, having read his answers, I consider that 7 are indicative that Mr S wasn't prepared to take a high level of risk with a large amount of his money, as follows:

- Question 2 – Mr S said he would rarely go for the best possible return even if there were risk involved.
- Question 3 – Mr S said his typical attitude when making important financial decisions was average (where other options were cautious or adventurous).
- Question 7 – Mr S was willing to place less than half of his money in an investment with possible high returns but a similar chance of losing some of his money.
- Question 8 – he said a friend who knows him well would describe his attitude to taking financial risks as "*careful*", which was the fourth of five options, where the fifth was the lowest amount of risk.
- Question 9 – if he picked an investment with potential for large gains but also the risk of large losses, Mr S said he would feel "a little concerned". Two of the five options involved no concern at all and he didn't pick those.
- Question 10 – when asked whether he would choose to invest in a product with low average annual return but almost no risk of loss to the initial investment, or a product with higher average annual return but some risk of losing part of the initial investment, he said he would choose a mix of both.
- Question 11 – Mr S tended to agree that he would prefer small certain gains to large uncertain ones.

Of the other questions, Mr S gave ambiguous answers to 4 of them, as he said he was "*in between*" agreeing and disagreeing with these statements:

- *"I would enjoy exploring investment opportunities for my money"*
- *"To reach my financial goal I prefer an investment which is safe and grows slowly but steadily, even if it means lower growth overall"*
- *"I am looking for high investment growth, I am willing to accept the possibility of greater losses to achieve this."*
- *"I want my investment money to be safe even if it means lower returns"*

In my view, his answers to those questions either mean he neither agreed nor disagreed, or that he sometimes agreed and sometimes disagreed with the statements. Either way I'm satisfied those answers indicate he was not willing to take a higher amount of risk with his money most of the time.

There's no single answer that shows Mr S was happy to take higher risks if it meant he would get a higher return. The conversation Openwork says would have happened after the questionnaire isn't documented, other than in relation to capacity for risk. There's no evidence of the adviser recognising that some of the answers showed an unwillingness to take a higher amount of risk.

This is not to say that the 'balanced' attitude to risk isn't the right description of Mr S' attitude to risk – I note its definition is quite broad. However simply because his attitude to risk was assessed as 'balanced' doesn't mean any portfolio also called 'balanced' would have been suitable for him.

Rather, my focus is on what the answers given show about Mr S' willingness to take the amount of risk involved in the assets he was advised to invest in. Having carefully considered that, I'm not persuaded he was happy to take the amount of risk involved in these assets.

As set out above, around 25% was invested in bonds, which are generally considered to be lower risk. The rest was predominantly in equities, which are not generally considered to be lower risk – though some can involve less volatility than others, including UK equities traditionally. However, the 30% in UK equities here was in two funds – 25% in an all-companies fund and 5% in a smaller company fund. The other developed market equities appear to be a similarly broad spread. So, this wasn't necessarily going to only be the type of equities that are generally considered relatively lower risk, like shares in FTSE 100 companies.

The capacity for risk questionnaire shows that Mr S had knowledge of the "*basic type of investments*" but didn't define what those investments were. Generally I'd expect that to mean he broadly understands what bonds, equities and property are in terms of investments. But it doesn't show any understanding of the more niche types of each of those assets and the risks they present - like emerging markets, which made up 10% of this portfolio. In my view, based on the evidence from 2021, Mr S wasn't prepared to take the amount of risk presented by the assets making up the majority of this portfolio.

I've considered whether the adviser would have reasonably thought Mr S' knowledge and experience meant he'd have understood the risks involved in the sorts of investments here, regardless of the answers to the questionnaire. I've looked at what the paperwork shows about Mr S' investment experience, including experience of losses.

While there's a note that Mr S had opened a stocks and shares ISA earlier in 2021, the adviser didn't record the types of investments he held in that ISA. This is important not only so the adviser could understand Mr S' experience, but also so the adviser could know the amount of Mr S' assets exposed to different types of risk as a result of the advice. Without understanding the overall position Mr S was left in and how the advice fitted in with his existing assets, I'm doubtful the adviser could have ensured the advice was suitable.

Regarding losses, question 2 asked about Mr S's previous experience of investing, including gains and losses. There were 3 possible answers – the first was having significant experience, including of losing money where the losses didn't tend to cause worry. The third was having little or no experience in investing, with no experience of losses. The one Mr S chose said:

"I have some experience of investing. I may have experienced losses in the past which may have made me feel uncomfortable, but I understand the longer-term nature of investing".

By picking this answer and not the other two, all this tells me with certainty is that Mr S had some experience investing. The statements in the answer included the word "may", so equally may or may not have applied to Mr S, as he was having to pick from just 3 available answers. I don't think that this answer gives much insight – in isolation – of Mr S's experience.

However there's no other evidence from 2021 detailing his experience. This is important because even if a consumer has invested before, if they've only ever seen successful investments, they may not truly understand how they'd cope with losses. Losses can help inform an investor's understanding of the size and speed of potential losses that can stem from different types of assets.

I note Openwork have referred to a conversation that took place between Mr S and the adviser at some point after 2021, where Mr S mentioned investing with his daughter in an energy company and losing £30,000. However, that's all the information I've been provided with about that conversation – they haven't said when the investment referred to took place and the adviser wasn't aware of it in 2021, so it didn't inform the recommendation.

Regardless, that doesn't show that Mr S understood the risks unique to the types of investments involved in this portfolio or that he was willing to take that risk here. For example, there's no evidence that Mr S had experience or knowledge of investing in emerging markets that would have allowed him to understand the unique risks in that type of investment.

Also, having looked at the current fund factsheets for the funds involved in the portfolio, I can see that they allow the fund manager discretion to invest in derivatives. Those are widely considered high risk investments and there's no evidence that the risks unique to them were explained explicitly to Mr S or that he'd ever had any experience with them.

Even if Mr S had told the adviser about losing £30,000 in 2021, having answered the attitude to risk questionnaire in the way that he did, I don't think Mr S would have expected to be invested in investments that could expose him to higher levels of losses as part of this advice. This is particularly given another of the answers to the capacity for loss questionnaire, which shows Mr S felt any loss would have a detrimental impact on his financial well-being or standard of living – which was the worst of the three options available.

Overall, I'm not persuaded Mr S had wanted to take this much risk with such a large portion of his assets. I find the advice to be unsuitable, particularly when the £20,000 in the ISA was also at an unknown level of risk, leaving him only £15,000 in a very low risk environment in deposit accounts. As a result, I find that Openwork haven't treated Mr S fairly and reasonably in the advice they gave him and I've set out below how they should put this right.

Regarding Mr S's concerns over the lack of information provided to him over the years since the investment began. The investigator found that £100 would be fair compensation to make up for the fact Openwork didn't send him the documents by post instead. Openwork has provided no comments on those findings, or evidence to refute what the investigator or Mr S has said, other than the adviser's suggestion that he should use a different device.

I note Mr S has said he made several requests over the years for information to be sent by post. So even if the suggestion to use a different computer to open the emails was reasonable to start, it ought to have been clear that something different reasonably needed to be done by Openwork to assist Mr S as time went on. Overall, I find the £100 suggested by the investigator to be fair compensation for this.

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr S as close to the position he would probably now be in if he had not been given unsuitable advice.

I take the view that Mr S would have invested differently. It is not possible to say *precisely* what he would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr S' circumstances and objectives when he invested.

What must Openwork do?

To compensate Mr S fairly, Openwork must:

- Compare the performance of Mr S' investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.

- Openwork should also add any interest set out below to the compensation payable.

- Pay to Mr S £100 for the inconvenience caused by not changing the way Openwork sent Mr S information about his investments.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
£60,000 invested in the Balanced model portfolio	No longer in force	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement

Actual value

This means the actual amount paid from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Openwork should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr S wanted Capital growth with a small risk to his capital.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.

- The FTSE UK Private Investors Income ***Total Return*** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr S' risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr S into that position. It does not mean that Mr S would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr S could have obtained from investments suited to his objective and risk attitude.

My final decision

I uphold the complaint. My decision is that Openwork Limited trading as The Openwork Partnership should pay the amount calculated as set out above.

Openwork Limited trading as The Openwork Partnership should provide details of its calculation to Mr S in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 18 July 2025.

Katie Haywood
Ombudsman