

## The complaint

Ms Q has complained about the investment advice she was given by Foster Denovo Limited ('FD').

## What happened

From July 2015 Ms Q was given investment advice by FD but from 2023 became unhappy with some of the investments – the Standard Life Offshore Bond and the switch to the Clearview ISA.

Ms Q raised her concerns with FD who didn't uphold her complaint. It said it had provided the correct level of service for the Select agreement – reviews, rebalancing of the portfolios etc – and was unable to find any issue with the advice, documentation or ongoing service. However, since Ms Q had started to raise her concerns in July 2023 the service from December 2023 hadn't been of the standard it expected from its advisers and offered £500 as a gesture of goodwill. It also found that it hadn't charged fees for the Standard Life wrapper since January 2021 and was prepared to write off the amount of £4,005 as part of the settlement.

Unhappy with the outcome Ms Q brought her complaint to the Financial Ombudsman Service. Our investigator who considered the complaint couldn't agree the advice to invest in the Standard Life Offshore Bond was unsuitable for Ms Q nor was the switch from the Sequel ISA to the Clearview ISA. However, for the funds invested into the Sequel OEIC and ISA she thought FD needed to do more as too much was invested in cautious funds. And there was also no reason for the number of transactions that took place in early 2019 for which FD hadn't given a reasonable explanation.

To put the matter right FD was to compare the performance of Ms Q's Sequel ISA and OEIC/Unit Trust with a benchmark split equally between Sequel's growth and balanced portfolios and pay Ms Q any loss plus 8% interest. FD had already offered to pay Ms Q £500 for the delay in responding to her request for information which she thought was fair. After some clarification about the tax position of the bond and that there was no promise of predictable returns, Ms Q agreed with the investigator. But FD didn't. It said it had responded to the investigator's request for information about the 2019 Sequel OEIC/Unit Trust investments. In that response it confirmed the high trading was carried out by the discretionary fund managers of the two Sequel investments. FD had no input but only recommended the funds. It also referred to previous correspondence that Ms Q had been happy with her investments, the changes and withdrawals that had taken place since inception.

With regard to the lack of response the investigator clarified this was information FD said it would ask from the discretionary manager, but nothing was received. And the high number of trades referred to weren't the management of the investments but as a result of investing new monies which FD dealt with.

As the complaint remains unresolved, it has been passed to me to decide in my role as ombudsman.

## 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.

After doing so, I've reached the same conclusion as the investigator and broadly for the same reasons. I will explain why.

### Ms Q's circumstances, attitude to risk and investment objectives

I appreciate the background to the complaint is familiar to the parties, but I include some of what I consider to be salient to my assessment of the complaint points.

In July 2015 Ms Q was aged 73 years and retired. Her annual income was £1,930 from shares as well as pension income of £1,500 and pension credit of £3,500, the latter of which was to stop shortly. Her monthly outgoings were £750 per month. Ms Q's assets were £28,000 of inherited shares, property worth £435,000, a cash ISA of £10,000 and cash of £1,900.

As a result of a risk questionnaire Ms Q's risk profile was six out of ten ('Moderate') and she had a basic understanding of investments.

Ms Q was advised to invest a lump sum of £200,000 from the sale of her property for income and growth – from which she could take an income – with an ethical approach. The suitability letter provided said she was comfortable with investing, understood the risks, wanted access to a range of tax wrappers and a simple investment strategy with limited administration.

The £200,000 was to be split £15,420 into a Standard Life Stocks and Shares ISA, £84,760 into a taxable ISA-Feeder Open Ended Investment Company ('OEIC') and £100,000 into a Standard Life Offshore Bond. All investments were to be collective investments and were to be held on Standard Life's Wrap platform for easy administration. The remainder of the cash from the property sale was to be used for a new property for Ms Q, moving costs and £10,000 for the first year's income.

Further investment recommendations were made over the years;

- Ms Q stayed in rented accommodation and invested her capital in a rental property which she sold in 2018 for £297,000. She wanted to invest those funds for a monthly income of £700. The Investment Recommendation letter of 27 September 2018 advised that £16,800 should be kept aside equivalent to two years' income, the Standard Life Stocks and Shares ISA, OEIC/UnitTrust and the Offshore Bond should be switched into funds to match her attitude to risk as the investments held had increased in risk slightly. Of the funds available for investment £20,000 was to be invested into a Sequel ISA for growth and £260,200 into Sequel direct funds (OEIC/Unit Trusts) for growth. Sequel was owned by FD.
- The next month the investment advice was amended as Ms Q wanted to retain £50,000 for NS&I premium bonds so money available for investment was reduced to £230,000. Of this £20,000 was to be invested into the Sequel Stocks and Shares ISA for growth, £95,100 into Sequel OEIC/Unit Trusts and £115,100 into another Sequel OEIC for growth. The investment term for the OEIC/Unit Trusts was to be split between five and ten years.
- On 18 July 2019 Ms Q spoke with FD as she was buying a property for around £200,000 and needed to raise this from her portfolio. She was advised to withdraw

this from the OEIC/Unit Trusts, which would leave her with around £238,000 invested.

- On 21 October 2020 FD wrote to Ms Q with a Financial Planning Recommendation report as its FD Sustainable Dynamic Portfolios were being released that year and Ms Q was keen to invest ethically. Ms Q was advised to transfer her Sequel and Standard Life Stocks and Share ISAs and her Sequel OEIC/Unit Trust (now valued at around £5,100) to the Clearview platform. The underlying investments were to be sold and reinvested into the FD Sustainable Dynamic Portfolio which had a risk rating of six.
- The 27 July 2021 Portfolio Report shows this had been completed and £90,399 was held in a Clearview Stocks and Shares ISA and £137,861 in the Standard Life Offshore Bond.

Correspondence and reporting continued but in 2023 and onwards Ms Q – and her representative – raised questions with FD about the advice which resulted in her complaint.

### The offshore bond

Ms Q has questioned the suitability of investing within an offshore bond wrapper, but I am satisfied it met with Ms Q's investment objectives and requirements. Offshore bonds allow nil-rate taxpayers such as Ms Q to benefit from gross roll up. The investments within the bond grow free from immediate UK income or capital gains tax so growth is compounded over time. And Ms Q was able to take a 5% tax deferred annual withdrawal that met her income requirement and she would remain a non-tax payer.

Upon full or partial encashment of an offshore bond gains are taxed as income so Ms Q could offset gains against her personal allowance, personal/starting rate savings allowance or nil rate band to cover the tax. And the gross roll up (no internal tax on gains) feature meant there was no need to report income or gains within the bond in tax returns which simplified the administration which is something Ms Q was looking for.

And Ms Q could also have looked at top slicing, information about which was provided in the suitability letter but with the caveat it was information only and that detailed tax advice was outside of the scope of the Report. But Ms Q could have considered this further if she wanted to.

As there is currently no crystallised tax liability it's difficult to know whether one will occur, but Ms Q was advised of the potential of this in the July 2015 Investment Planning Report which said;

**'Please be aware that my advice may be different if you were looking to encash the bond in a few years time. On final encashment of an offshore bond, the whole of the gain would be subject to tax at your marginal rate of income tax (20%, 40% or 45%).'** [original emphasis]

So overall, I'm satisfied Ms Q was provided with sufficient information for her to have made a fully informed investment decision and I don't find the advice to have been unsuitable for her circumstances and investment objectives.

### 2018/2019 advice

As referred to above, on 22 October 2018 FD sent Ms Q a revised suitability letter for the sum of £230,200. The funds were to be split over a five and ten year term. It was recommended £20,000 be invested into a Sequel Stocks and Shares ISA, £95,100 into

Sequel direct funds via an OEIC (1) and another £115,100 into a second Sequel OEIC (2). This time all the funds were to be invested for growth.

However, the funds recommended didn't align with the growth requirement;

- For OEIC (1) and the ISA the investment money was to be split 50/50 between the HC Sequel Cautious Target Return Strategy and the Growth Target Return Strategy.
- For OEIC (2) 89% was to be invested into the Cautious Target Return Strategy, 2% in the Balanced Target Return Strategy and 9% in the Growth Return Strategy.

No reason was given for the disparity with what was said in the suitability letter for investment with a growth mandate and what was recommended. However, the next Portfolio Report of 2 February 2019 shows that the investments went ahead and were split as recommended.

But I don't find the advice given to be suitable for Ms Q's investment objectives at the time. It's evident she was looking for growth from the new monies so clearly the investment recommendations were overweight in cautious investments compared to the agreed growth strategy. This was different from Ms Q's previous investment mandate for income and capital growth which was to provide her with a monthly income. But for this investment the earlier suitability letter confirmed that the income Ms Q required of £700 per month could be met from her existing Standard Life investments and so wasn't a consideration at the time and the new money should only be invested for growth.

So, the advice Ms Q was given was unsuitable for her. She was over exposed to cautious investments, and she missed out on the opportunity for growth and this needs to be put right for the time the funds remained invested. I detail below how this should be done.

#### Number of trades carried out

As mentioned, the advice for the two OEIC/Unit Trusts – reference numbers ending 4916 for the investment of £115,100 and 4928 for the investment of £95,100 – went ahead. But for both there was an unnecessary and unexplained number of transactions at inception. As examples, for OEIC/Unit Trust ending 4916 between 24 January and 5 February 2019 there was seven trades in the Balanced fund, all for the same number of units but for slightly different prices. And for OEIC/Unit Trust 4928 between 24 January 2019 there were eight trades each in the Cautious and Growth funds.

I haven't been given any reason for this excessive trading or anything to show that FD wasn't responsible. It said the discretionary manager was responsible but hasn't provided any evidence that this was the case with this new money.

And in FD's suitability letter it said 'If you agree with my recommendations, please confirm your go-ahead on email to [FD's private client email address] who will be dealing with the transactions.' So, without any evidence to the contrary, I think it more likely FD carried out the initial investments in early 2019 and it was the discretionary manager who was to then manage the underlying funds – trading, rebalancing etc which I can see did take place – once the initial investments were made.

The above being said, I have already found that the funds invested into weren't right for Ms Q and have outlined below how the matter should be put right so would incorporate any price differences Ms Q's portfolio suffered during the January/February 2019 period.

#### Transfer to Clearview

On 21 October 2020 Ms Q was advised by FD in its Financial Recommendation Report to transfer her Sequel and Standard Life ISAs to a new stocks and shares ISA on the Clearview platform. And the last of Ms Q's Sequel OEIC/Unit Trust was to be sold (the rest had been sold to fund the property purchase) and reinvested into the Clearview ISA. The Report explained that FD's Sustainable Dynamic Portfolios were being released which more aligned with Ms Q's ethical preferences. 99% of funds would be invested into the FD Sustainable Dynamic Portfolio active risk grade 6. The Report said the fund matched Ms Q's attitude to risk and met her ethical preferences. Ms Q's attitude to risk remained as six out of ten.

Ms Q has complained FD's claims about the transfer to the Clearview platform were misleading in that it said the Sustainable Dynamic Portfolios would 'help to produce more predictable outcomes' and the difference in fees between the Standard Life platform and the Clearview platform.

The Report said Clearview was competitively priced compared to Ms Q's current Sequel investment portfolio and that the overall weighted cost of the investment (after the retention of 1% in cash for the ISA fees) would be 1.42% but would include an additional platform and ongoing adviser charge so totalled 2.33%. This was marginally lower than the then current Sequel charges of 2.53%.

But the charges would be higher when compared to the then Standard Life charges of 1.68%. The Report referred to this difference as meaning an 'Additional Growth Requirement' of 0.65% would be needed. I take this to mean that the underlying investment would need to grow by an additional 0.65% per annum to break even than for previous platform charges and I think this could have been more clearly explained. But the difference in both percentage terms and monetary value between Clearview and the ceding platforms was clearly recorded in the Report so overall I think this was made clear so I can't see Ms Q was misinformed.

And the Report explained there were additional charges for the Sustainable range of funds for the additional research needed. However, the transfer to Clearview would allow Ms Q to invest solely in ethical funds – under FD's advice as the Sustainable Dynamic Portfolios were only available through the Clearview platform – which was her investment objective. So, overall, I don't find the advice to transfer to Clearview to be unsuitable and that the costs were sufficiently explained to Ms Q.

And I don't agree the reference to the Sustainable Dynamic Portfolios being designed to help more predictable outcomes was a guarantee. I'm satisfied this referred to the management style of the funds and that they looked to reduce volatility as an example. But I don't think this was a guarantee or promise that that would be outcome.

Taking all the above into account, I partially uphold Ms Q's complaint. I am satisfied the advice to invest in the Standard Life Offshore Bond was suitable as was the switch to the Clearview platform. However, I do think Ms Q was overexposed to cautious rather than growth-oriented investments from early 2019 so I think the matter should be put right for the time she remained in the cautious fund.

FD has already offered £500 for the poor service she received from July 2023 onwards and I think that is fair and reasonable under the circumstances.

### **Putting things right**

When this Service upholds a complaint, its aim is to put the investor as close to the position they would have been in but for the unsuitable advice given by the business. This can't be

known for sure as there were many ways Ms Q could have invested but I think a benchmark would be a fair and reasonable proxy bearing in mind the funds that were available to FD if it had provided more suitable advice.

In this case, I don't think the advice to invest into the HC Sequel Cautious Target Return Strategy fund was right for Ms Q so to put the matter right, FD needs to do the following;

- Compare the performance of the Sequel ISA and two Sequel OEIC/Unit Trusts invested into in January 2019 to the performance of investments that more matched Ms Q's growth investment objective at the time and her attitude to risk of six out of ten. And looking at what Ms Q could have invested in using the Sequel funds I think a benchmark of an equal split between the HC Sequel Growth Target Return Strategy and HC Sequel Balanced Target Return Strategy funds would be more suitable.
- The start date for the comparison to the benchmark should be 5 January 2019 which was the date the sum to be invested was added to the account. And the end date for comparison purposes should be the date the HC Sequel Cautious Target Return Strategy fund invested into ceased to be held – via transfer to the Clearview platform or sales as examples.
- Ms Q should be paid any loss and added to any losses should be interest at a rate of 8% simple per year from the end date to the date of settlement for being deprived of the money.
- Any additional sum paid into the investments should be added to the notional value from when it was paid in.
- Any withdrawal should be deducted from the notional value calculation from the date it was paid so it ceases to accrue any return from that point on. If there were a large number of regular payments, I'll accept if FD totals all the payments and deducts that from the end notional value rather than deducting periodically.
- A separate calculation should be carried out for each investment.
- FD should pay Ms Q the £500 it has already offered for the poor service she received from 2023.

FD must pay the compensation within 28 calendar days of the date on which we tell it Ms Q accepts my final decision.

If FD fails to pay the compensation by this date, it should pay 8% simple interest per year on the loss, for the period following the deadline to the date of settlement.

### **My final decision**

For the reasons given, my final decision is that I partially uphold Ms Q's complaint about Foster Denovo Limited and it should put the matter right as details above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms Q to accept or reject my decision before 10 April 2026.

Catherine Langley  
**Ombudsman**