

The complaint

Mrs M has complained that Whitechurch Securities Limited ('WSL') didn't provide her with the ongoing advice service she'd paid for in respect of her investments.

What happened

Mrs M met with an adviser from WSL in April 2018 as she held cash on deposit which she was looking to invest. Mrs M signed an acknowledgement form on 18 April 2018 acknowledging receipt of the WSL client agreement and the 'Key facts about our services and costs' document.

Mrs M signed a fee agreement on 10 May 2018, confirming the fee she would pay WSL for the initial advice. The fee agreement also noted Mrs M had agreed to take the ongoing 'Focus' service, which would cost her an ongoing advice charge ('OAC') of 0.5% of the annual value of her contracts.

WSL issued a Suitability Report on 5 June 2018 in which it recommended that Mrs M should invest £150,000 split between a new Stocks and Shares ISA (mostly funded by a transfer from an existing cash ISA) and a General Investment Account ('GIA'). It recommended Mrs M should invest via WSL's discretionary managed portfolio in line with her 'balanced' attitude to risk. It recommended that Mrs M should use her ISA limit each year by moving funds from her GIA automatically. Mrs M accepted the recommendations.

Mrs M complained in July 2024 that she hadn't received the ongoing service she'd been promised, noting that she'd experienced significant changes in her circumstances and WSL hadn't taken this into consideration. Mrs M also expressed disappointment with the performance of her investments compared to the benchmark and requested a refund of the OACs plus interest.

WSL didn't agree to refund any fees, saying that Mrs M had received the service she'd paid for each year as she had been sent annual review packs. It said the service didn't include face-to-face visits although Mrs M had received a home visit in 2019. WSL said that performance couldn't be guaranteed and Mrs L was aware of this.

Mrs M remained unhappy and referred her complaint to the Financial Ombudsman Service. She told our Investigator that she'd since transferred her investments to a new provider and she was very happy with the service and the returns she'd achieved since then.

The Investigator considered the complaint and ultimately upheld it. He said that the Focus service included a review of Mrs M's objectives and attitude to risk so that it could consider whether the investments remained suitable for her. However, he noted that WSL hadn't sought updated information from Mrs M since the first meeting in April 2018, and it had based its reviews each year on that same information. So, he wasn't persuaded that WSL had delivered the service Mrs M was paying for. The Investigator recommended that WSL should refund the OACs taken by WSL together with the growth the charges would've attained had they remained invested, based on the actual growth the investments achieved.

As Mrs M had since moved her investments away from WSL he recommended WSL bring any loss up to date using a benchmark.

Mrs M accepted the Investigator's view. WSL didn't respond so it was referred to me to make a decision on the matter.

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'm upholding it for largely the same reasons as the Investigator.

According to the fee agreement Mrs M signed in May 2018, Mrs M had opted to take the ongoing "Focus" level of service. This service included a review of Mrs M's objectives and her risk profile, as well as her tax position and asset allocation. So, in my view, in order to say that WSL had delivered the Focus service each year, I'd expect it to have considered Mrs M's current circumstances and attitude to risk and ascertained whether her investment recommendations remained suitable for her.

However, based on what I've seen, the reviews have been conducted without any input from Mrs M and so no consideration has been given as to her current circumstances or attitude to risk. I say this because the first review conducted in June 2019, and in each review thereafter, WSL has assumed that Mrs M's arrangements remain suitable for her, based on her circumstances as recorded by the adviser in April 2018.

Given that the information used by WSL to justify its ongoing recommendations was based on information gathered in April 2018, I don't think it can fairly assume that it was accurate as of June 2019 and each year after that. And I think WSL knew that because in the Focus Review reports it said that to ensure the ongoing suitability of her investment portfolio, it recommended that the information it held about her was updated annually. It said that "*where this has not been possible*", it was happy to refer back to information previously recorded. But this implies that WSL would attempt to gather updated information from Mrs M, and it would only rely upon information previously gathered where that wasn't possible. But I haven't seen any evidence to persuade me that this was the process WSL employed; instead, it appears the default position was to conduct the review based on the information previously gathered, and to ask Mrs M to let it know if that wasn't correct.

In the covering letter for each review, WSL asked Mrs M to contact it within 30 days if the information wasn't right, but I don't consider this to be sufficient. I don't think it is reasonable to expect Mrs M, as a layperson, to know whether her attitude to risk may have changed, or whether a change in her circumstances could be significant enough to affect the investment recommendations. I don't think it is fair or reasonable to place this burden on Mrs M, when she was paying WSL as the expert to conduct the review.

The FCA produced a guidance in the form of a factsheet in 2014, “For Investment advisers – setting out what we require from advisers on how they charge their clients”. The factsheet explained:

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

The FCA’s Code of Conduct Business Sourcebook (‘COBS’) also added additional conditions in 2018, which required the minimum service of at least annual reviews of suitability in relation to ongoing advice.

The Regulator has set expectations that firms like WSL should provide a full service in return for charging ongoing advice fees. While I accept that WSL provided some of the Focus service each year, for example, providing Mrs M with up to date valuations, I’m not satisfied that WSL provided the full Focus service Mrs M was entitled to. And in my view, assessing the ongoing suitability of the investment portfolio based on a current appraisal of her circumstances and attitude to risk, was the main service the OAC paid for. As such, in the absence of this taking place (because WSL relied on out-of-date information) I don’t think the service the OAC paid for has been delivered. As such, Mrs M should be put back into the position she would’ve been in had the OACs not been deducted from the outset.

Putting things right

Mrs M should be put back into the position she would’ve been in had the OACs not been taken from either of her investments. Therefore, my consideration extends beyond the OACs paid to also the loss of investment growth had those charges remained invested.

The OAC’s were 0.5% of the annual fund value which was split across twelve months in advance. They were deducted directly from the investments monthly from the point of inception for the reviews in advance. It follows that the GIA and ISA values would have been higher if the OACs hadn’t been taken.

WSL should:

- Compare the actual values of the ISA and GIA on the date they were transferred away to the new provider to the values they would have achieved if no OACs had been deducted whatsoever.
- If the value of the ISA or GIA would have been higher on the date of transfer, Mrs M has suffered a loss – this represents the compensation amount and it should be paid to Mrs M.
- To ensure accuracy, WSL must also factor in any withdrawals and contributions made during this period.

- As Mrs M transferred her ISA and GIA to a new provider, she would've obtained additional growth on the compensation amount between the date of transfer and the date of my final decision. So as to compensate Mrs M for this additional loss, WSL should also pay a return on the compensation amount between the date of the transfer and the date of my final decision in line with the FTSE UK Private Investors Income Total Return Index.
- This benchmark broadly reflects how Mrs H's funds were invested and I think it is reasonable proxy for the type of return that could have been achieved over the period in question.
- Provide the details of the calculation to Mrs H in a clear, simple format.

Interest

The compensation resulting from this loss assessment must be paid to Mrs M within 28 days of the date WSL receives notification of her acceptance of my final decision. Interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement if the compensation isn't paid within 28 days of WSL being notified of Mrs M's acceptance of my final decision.

My final decision

For the reasons set out above, I'm upholding Mrs M's complaint.

Whitechurch Securities Limited should pay Mrs M the compensation set out above to resolve this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 3 February 2026.

Hannah Wise
Ombudsman