

## The complaint

Ms M has complained that Openwork Limited didn't provide all of the annual reviews she'd paid for in respect of her investment portfolio. She also says the charges associated with the service were high and she received unsuitable advice, which led to financial losses.

## What happened

Ms M started a relationship with a financial adviser in 2012 after inheriting money following the death of her father. In 2014, the adviser became a representative of Openwork and in 2016, Ms M started her relationship with Openwork.

In May 2016 Ms M was advised to invest £1,000,000 in a general investment account ('GIA') and an Individual Savings Account ('ISA') on Zurich's investment platform. Openwork assessed Ms M's attitude to risk as 'balanced' and recommended that she invest the monies in a model portfolio in line with her attitude to risk. Ms M accepted the advice. As well as agreeing to pay an initial advice fee of 2.5%, Ms M agreed to take Openwork's premium ongoing advice service, for which she'd pay an ongoing advice charge ('OAC') of 1.25%.

Ms M made further investments throughout her relationship with Openwork into her GIA and ISA, including:

- an investment of £650,000 in January 2018;
- an investment of £1,500,000 in November 2018 following the disinvestment of two bonds held with other providers;
- an investment of £1,650,000 in July 2019 following the sale of some land;
- an investment of £200,000 in January 2020;
- an investment of £650,000 in October 2021 following the sale of a property.

In 2021 Ms M's platform provider changed to Embark following a takeover of the previous provider. And in late 2023 this rebranded as a Scottish Widows platform, after Scottish Widows acquired Embark in 2022.

In July 2024 Ms M complained that she had been overcharged for the advice she'd received and also complained that she hadn't received all of the reviews she'd paid for. Ms M said she'd come to realise this after meeting with a new financial adviser in 2023 who'd taken over from her previous adviser. She said this had prompted her to go back over the advice she'd received over the years. Ms M said in 2018 she'd been advised to encash, then reinvest, funds she'd been advised to invest in 2012 by the same adviser at significant cost. She added that the charges levied had been inconsistent and she hadn't always been advised to use her annual ISA allowance. Ms M felt she'd been taken advantage of by the previous adviser and ultimately cancelled her ongoing advice contract.

Openwork didn't uphold Ms M's complaint. It considered the advice provided in 2018 was suitable and was satisfied that annual reviews had been provided in line with the service selected. Openwork said Ms M had agreed to the fee arrangements at each point of advice, which had also been explained in the recommendation letters. Regarding Ms M's ISA allowance, it noted that this had been used each year except in the financial years ending

2018, 2021 and 2022. However, it noted Ms M held investments elsewhere and could've used her ISA allowances through those providers. It also said the adviser couldn't make ISA investments without her consent.

Ms M didn't agree, saying Openwork had provided her with a fee agreement which it said was signed on 3 May 2016 but this couldn't have happened because she was on holiday at the time. She also didn't recall signing it and doubted the veracity of the signature. Ms M also said the different service levels were never discussed and maintained the fees she'd been charged were excessive. Ms M still questioned whether the advice to encash the bonds in 2018 was tax-efficient.

Openwork noted that Ms M had met the adviser at her home in March 2016 so it was likely the fee agreement had been dated after Ms M had signed it. Whilst it agreed this wasn't ideal, it didn't think this meant Ms M hadn't accepted the fee agreement. It said the charges applied were within Openwork's decency limits. Ultimately Openwork wasn't persuaded to uphold the complaint.

Ms M remained unhappy and referred her complaint to the Financial Ombudsman Service. She added that she believed she had received unnecessary advice to transfer investments held on an alternative platform to the Zurich platform in 2019.

The Investigator considered the complaint and ultimately made the following findings:

- While Ms M's adviser started working for Openwork in 2014, she didn't receive any advice or start to pay fees to Openwork until May 2016.
- Ms M had complained about Openwork not using her ISA allowance in the tax year ending April 2018 too late as she hadn't complained within six years of the event she was complaining about or within three years of the date she was aware, or ought reasonably to have been aware, of her cause for complaint.
- He wasn't persuaded that the fees Ms M had been charged for initial or ongoing advice were unreasonable. And he noted that Ms M had signed her agreement to pay the fees on each occasion, with the fees also being outlined in the recommendation letters.
- He was also satisfied that Ms M had received the annual reviews she was entitled to.
- He considered the advice Ms M received to disinvest from the bonds in 2018 was suitable.
- While the Investigator could see there was discussion about moving a GIA and an ISA from another provider to the Zurich platform, he was satisfied that this didn't go ahead.
- He considered that Openwork had advised Ms M to use her ISA allowance for the financial year ending 2022 when providing advice on an investment in October 2021. However, the recommendation letter noted that Ms M had said she had other funds that she planned to use for this year's ISA allowance.
- He thought Openwork had neglected to advise Ms M to use her ISA allowance in the financial year ending April 2021 and recommended redress. He also awarded compensation of £150 for the distress and inconvenience this caused.

Ms M didn't accept this and made the following points:

- She'd only learned of her cause for complaint in November 2023 so the missed ISA allowance in 2018 couldn't be time-barred.
- At no time during the meetings when advice was provided did Openwork explain the fees that were payable in monetary terms, only in percentage terms. She maintained that the charges were excessive.
- She still considered the advice to disinvest the bonds in 2018 was unsuitable. While she recognised that she would pay a lower rate of capital gains tax by moving the investments to the Zurich platform, she could've used "top-slicing" to manage her tax position. She also said she still paid dividend income tax in the GIA.

Openwork accepted the Investigator's findings but disagreed with the method he put forward to compensate Ms M for the loss of her ISA allowance. It said this should be based on the return achieved from her actual investments. It added that it would be reasonable to deduct charges from any assumed return and the return should also be discounted to date.

The Investigator wasn't persuaded to change his opinion so the complaint was passed to me to make a decision.

I contacted both parties to explain I was likely to reach a different outcome to the Investigator on a couple of issues, though I otherwise agreed with the Investigator's findings.

I told Openwork that I didn't think the complaint about Openwork failing to use Ms M's ISA allowance in 2018 had been made too late. This was because the ISA allowance could've been used up until 5 April 2018, so the date of the failure to use it was 6 April 2018. While Ms M had made her complaint more than six years after this, I wasn't persuaded that she ought reasonably to have been aware of her cause for that complaint more than three years before she complained in July 2024. I said I hadn't seen any evidence to persuade me that Ms M was aware before meeting with her adviser in 2023 that her ISA allowance in this year hadn't been used. So, I thought she'd made her complaint in time.

I further explained that I was intending to uphold this aspect of her complaint because Ms M made a substantial investment of £650,000 in January 2018 under the advice of Openwork. I said I could see no reason why the adviser shouldn't have ensured part of this investment was made in the ISA. So, I told Openwork that I was also intending to require it to compensate Ms M for the future loss arising from the missed ISA subscription in 2017/2018.

After considering Openwork's point about how to compensate Ms M for her missed ISA allowance, I suggested an alternative method that I considered to be reasonable in the circumstances, bearing in mind Ms M's attitude to risk.

I also said I wasn't satisfied that Openwork had provided the annual review which would've been due around January/February 2022. I could see that the next annual review was provided in September 2022, which seemed to follow the last piece of advice that was provided in October 2021. On balance, given that Ms M hadn't received an annual review for around 20 months, I thought it would be reasonable for Openwork to refund half the OACs Ms M paid between January 2021 and January 2022 on the funds she had invested before the additional investment was made in October 2021. I said it should also pay a return on the fees to be refunded in line with the performance of the investments until the date Ms M disengaged from Openwork. I said this compensation should then be brought up to date in line with the FTSE UK Private Investors Income Total Return index.

Openwork didn't have anything to add to my provisional findings. Ms M said she was disappointed with certain conclusions, in particular regarding the level of charges, but had no further comments.

As both parties have now responded, I'm providing my final decision.

## **What I've decided – and why**

### Jurisdiction

The rules I must follow in determining whether we can consider this complaint are set out in the Dispute Resolution ('DISP') rules, published as part of the Regulator's Handbook.

DISP 2.8.2R says that, where a business doesn't consent, I can't consider a complaint made more than six years after the event complained of, or if later, more than three years after the complainant was aware, or ought reasonably to have been aware, of their cause for complaint.

Openwork doesn't consent to our Service considering Ms M's complaint about it failing to use her ISA allowance for the financial year ending April 2018. The ISA allowance could've been used until 5 April 2018. So, the date of the event complained of is 6 April 2018, as this was the point at which the ISA allowance was lost. This date is more than six years before Ms M referred her complaint to Openwork in July 2024. So, Ms M's complaint has been brought too late under the six-year part of the rule.

As such, I have to consider whether at any time after this Ms M was aware or that she ought reasonably to have been aware of her cause for complaint.

I recognise that Ms M's ISA allowance was used in some of the following years, but I don't think that means Ms M would've understood that her ISA allowance for the year ending April 2018 hadn't been used. I haven't seen any evidence to persuade me that Ms M was aware before meeting with her adviser in 2023 that her ISA allowance in this year hadn't been used. So, I think she made this complaint in time.

### Merits of the complaint

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

#### *OACs and annual reviews*

I'm satisfied that Ms M received the annual reviews she paid for in each year since the arrangement started, except for in the year 2021-2022.

Ms M received the initial investment advice from Openwork in May 2016. So, reviews would've been due around May each year. However, from 2019, annual reviews took place at the start of the year; reviews were provided in February 2019, February 2020 and January 2021. So, I would've expected the next review to take place around January or February 2022.

I can see that new advice, for which a separate initial advice fee was charged, was given in October 2021. Ms M was advised to invest £650,000 in the Graphene C1 Cautious Model Portfolio. There is no evidence to suggest within this letter that a review of the suitability of Ms M's whole portfolio was considered at this time. There is no mention of the portfolio performance or how it was invested and whether that remained suitable for Ms M. That isn't

necessarily surprising because this advice was given as a result of Ms M selling a property so she had new funds to invest, rather than because an annual review was due. But in any event, I don't consider this to meet the requirements of the annual review that Ms M had paid for that year.

I haven't seen any evidence to demonstrate that Ms M was invited for or had the annual review due around January/February 2022. And the next review took place in September 2022, around a year after the last advice was provided. So, it seems that the October 2021 advice essentially reset the annual review cycles. But I don't think it would be fair to retain the full OAC for the year 2021/2022 when the main service hadn't been provided. Based on what I've seen, no consideration was given as to the suitability of all of the investments held within Ms M's portfolio for around 20 months.

As such, I think it would be fair for Ms M to receive a refund of half of the OACs she paid between January 2021 and January 2022 on the funds she had invested before the additional investment was made in October 2021. I've determined that it should only apply to the funds invested before the additional investment was made in October 2021 because Ms M received an annual review in September 2022, which included these funds, so Ms M did in fact receive the review paid for from these funds.

I am requiring Openwork to only refund half of the OACs in this year because an annual review did take place in 2022, albeit not until September 2022. So, I think a partial refund is fair because it reflects that the annual review was delayed rather than not being provided in this year at all.

A return on the fees to be refunded should also be paid in line with the performance of the investments until the date Ms M disengaged from Openwork and this compensation should then be brought up to date.

Ms M believes that the level of fees she was paying was too high. She said she wasn't told about different service levels; that the fees were only described in percentage terms and not monetary terms. And she didn't know that the fees were higher than those she could've paid elsewhere.

I appreciate Ms M's strength of feeling here, and I accept that she may not have realised she could pay a lower sum if she had approached a different adviser to manage her investments. But overall, I think Openwork provided clear information about the fees Ms M would pay for the advice she received on each occasion. All of the recommendation letters she has received since 2016 set out the fees payable in monetary terms so I think she would've clearly understood how much each piece of advice cost her to implement. For example, the recommendation letter sent to her on 16 May 2016 said that she would pay an initial fee of £25,000 and an ongoing fee of £12,500.

Furthermore, from November 2018, Openwork set the fees out both in percentage and monetary terms. For example, the recommendation letter of 5 November 2018 said Ms M would pay an initial fee of £22,500 for the new amount she was investing which equated to 1.5% and an ongoing service fee of 1.25%, which equated to £18,750 a year. And the recommendation letter of 11 October 2021 said Ms M would pay a total initial fee of £3,250 which equated to 0.5% and an ongoing service fee of 1.25% which equated to £8,804 per year.

Ms M says that she wasn't told about the different service levels, but when she first took advice from Openwork in May 2016 she was given the Client Proposition brochure, which set out the different services her chosen adviser could provide. It could provide a report only service (Standard), for which a fee of 0.75% was payable and a holistic ongoing advice

service (Premium) for which a fee of 1.25% was payable. And as Ms M wanted to benefit from ongoing advice, the Premium service was presented and Ms M agreed to take it. Other advisers may have charged less for their ongoing advice services, but it was incumbent on Ms M to research other advisers if she wasn't happy with the cost of the service her chosen adviser with Openwork could provide.

I appreciate that looking back, Ms M may feel that the fees were high in comparison to other firms. But I don't think Openwork was obliged to say that Ms M may be able to pay lower fees if she used a different advisory firm. In any event, I don't think the level of fees in percentage terms were out of step with the industry in general – while she may have been able to benefit from lower fees elsewhere, it's also possible she could've paid more for the services she was receiving. I say this particularly in relation to initial advice fees, which can be as much as 5% of the sums to be invested. And I can see that Openwork didn't charge Ms M the full initial advice fee of 3% detailed in the Client Proposition brochure, and it reduced the initial advice fee it charged significantly in October 2021 to 0.5%. Ultimately, if Ms M felt the fees were too high, she didn't have to continue to use Openwork's service. And, apart from the instance I've specified above, Ms M received the service she was paying for.

#### *Advice provided to encash investment bonds*

Ms M believes that she received unsuitable advice to encash two investment bonds that she held elsewhere and to reinvest them in her GIA. She said that this was unnecessary and exposed her to an immediate tax liability. Ms M also feels that leaving the bonds as they were was more tax-efficient generally.

The recommendation letter of 5 November 2018 noted that Ms M wanted to consolidate her investments and take advantage of lower charges. Based on the evidence I've seen, I don't think the advice to disinvest the bonds and reinvest them in the GIA was unsuitable for Ms M. The recommendation undoubtedly allowed Ms M to consolidate more of her investments into one platform for ease of administration and I'm satisfied that she also benefited from lower product running costs – Openwork's Client Report of 18 September 2018 noted that Ms M would save up 1.27% on one bond, and 2.15% on the other bond as a result.

The recommendation letter also brought to Ms M's attention the potential for a tax liability as a result of encashing her funds. Openwork noted that while it understood Ms M was currently a basic-rate taxpayer, she would speak to her accountant about this further. I also note that following Ms M's discussion with her accountant, Openwork wrote to Ms M on 15 April 2019, clarifying that the capital gains tax she'd have to pay was potentially as much as £42,405 depending on her end of year tax return. Ms M confirmed her agreement and understanding of this at the time. So, I think Ms M proceeded in an informed position.

I appreciate that encashing the bonds meant that Ms M was subject to an immediate tax charge which she wouldn't have had to pay had she remained invested in them. But while the bonds and the GIA were subject to different taxation, both would be subject to capital gains tax. So, while Ms M is unhappy that she had to pay this tax, this is something she'd have always had to pay at some point when they were encashed. I note that Ms M has said that she could've managed her tax position by staggering her withdrawals or by using 'top slicing'. But Ms M wasn't interested in taking an income from these investments at the time, so I don't think this was a relevant consideration for Openwork when the advice was given. Ultimately, I think the advice was suitable because of the benefit of lower charges and because it allowed for consolidation, even if this resulted in an immediate tax liability.

## ISA allowances

Openwork has told us that Ms M's ISA allowances were used in every year except in 2017/2018, 2020/2021 and 2021/2022. As such, I've considered whether Openwork is responsible for Ms M not using her full ISA allowance in these years.

### 2017/2018

Ms M made a substantial investment of £650,000 in January 2018 under the advice of Openwork. In the recommendation letter of 23 January 2018, the adviser stated:

*"You have not used your full ISA allowance for this tax year and £20,000 can still be used. Any unused ISA allowance cannot be carried forward to the next tax year".*

But Ms M was paying for advice on how her funds should be invested. The adviser was aware Ms M hadn't yet used her ISA allowance for this year, and she was running out of time to do so. As such, I see no reason why the advice to invest £650,000 should not have ensured that her full ISA allowance was also used for tax efficiency, particularly as this had been part of her strategy to date.

As a result of failing to use the ISA allowance in this year, Ms M has paid more tax than was necessary on a portion of her investment. Openwork should therefore calculate the future loss as a result of the missed ISA subscription in 2017/2018 as set out below.

### 2020/2021

The Investigator found that Openwork was responsible for Ms M not using her ISA allowance in this year – Openwork accepted this so I'm also requiring Openwork to compensate Ms M for failing to use her ISA allowance in this year as above.

### 2021/2022

In October 2021 Ms M made an investment of £650,000 in her GIA following the sale of a property. The recommendation letter dated 11 October 2021 said

*"An Individual Savings Account is one of the most tax efficient investments available for you to invest in. You have not used your full ISA allowance for this year and £20k can still be used. Any unused ISA Allowance cannot be carried forward to the next tax year if it's not fully utilised. You have other funds that you plan to use to utilise this year's ISA allowance in due course."*

I think this demonstrates that the use of Ms M's ISA allowance was discussed with her at the time and Ms M told the adviser that she had other funds that she was intending to invest in her ISA. I think it was reasonable for the adviser to leave this in Ms M's hands, particularly as she still had around six months to make her investment. As such, I don't think Openwork is responsible for Ms M not using her ISA allowance in the 2021/22 tax year.

## How to compensate Ms M for the missed ISA allowances

Openwork said that the calculation suggested by the Investigator wasn't fair as it didn't accurately reflect how Ms M's monies were actually invested. It said it would be reasonable to instead base the returns on her actual investments. Openwork also said that it should be able to discount the loss back and make an allowance for charges.

Whilst it is possible to calculate the actual return Ms M received on the ISA between 2017 and 2024, it's evident that Openwork was removed as the financial adviser so it doesn't know how the funds have been invested since then or how they will be invested in future. So, ultimately I think what I have set out below (and which I have already explained to Openwork) is fair and adds certainty.

I also don't think it is reasonable to discount the loss back or take account of charges, I say this because I am only requiring Openwork to calculate the loss over a period of 10 years and in reality, Ms M may keep this investment for longer. Whilst I recognise the redress method is imperfect, I ultimately think it is a fair resolution here.

## **Putting things right**

### *Missed ISA allowances*

Openwork should compensate Ms M for the additional tax she has paid on her investments as a result of it failing to use her full ISA allowance in the tax years 2017/2018 and 2020/2021. Openwork should carry out the calculation for each year.

In calculating Ms M's future loss, Openwork should pay an amount which reflects that likely tax burden calculated as:

- Taking £20,000, calculate what that would be worth if the capital grew at a compounded rate of 5% per year, and it provided dividend distributions of 2.5% of the initial investment amount, for 10 years.
- Calculate the income tax and capital gains tax that would be payable at the rate applicable for a higher rate tax-payer.
- Pay that amount to Ms M as compensation.

### *OACs*

Openwork should refund half of the OACs Ms M paid between January 2021 and January 2022 on the funds she had invested before the additional investment was made in October 2021.

A return on the fees to be refunded should also be paid in line with the performance of the investments until the date Ms M disengaged from Openwork. This compensation should then be brought up to date in line with the FTSE UK Private Investors Income Total Return index to reflect that this additional sum would've been available to invest by the new adviser since then.

### *Compensation for distress and inconvenience*

I think that Openwork's failure to use Ms M's ISA allowance in the years I've specified above, and it's failure to provide the annual review in January 2022 has caused her distress and inconvenience. Openwork should pay Ms M £150 to compensate her for this.

### *Interest*

The compensation resulting from calculations set out above must be paid to Ms M within 28 days of the date Openwork receives notification of Ms M's 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 Openwork being notified of Ms M's acceptance of my final decision.

**My final decision**

I'm upholding Ms M's complaint about Openwork Limited in part.

Openwork Limited should pay Ms M the compensation as set out above.

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

Hannah Wise  
**Ombudsman**