

complaint

Ms C's complaint is, in the main, that Orwell Securities (Ipswich) Limited ('Orwell'):

- Provided limited and poor investment advice in relation to her portfolio. [issue 1]
- Mishandled the transfer of her Beaufort holdings unto the Transact platform. [issue 2]
- Provided incomplete information to her accountant. [issue 3]
- Negligently exceeded her Capital Gains Tax ('CGT') limit for the 2017/2018 tax year. [issue 4]

background

Ms C says she appointed an Independent Financial Adviser ('IFA') from Orwell in November 2017 and that she sought financial planning/advice in the context of *Brexit*. She says she formally terminated the IFA's appointment in October 2018. Her complaint to Orwell was not upheld. She rejected its goodwill offer of £500 and considered it grossly inadequate. Ms C says the complaint issues are, in summary, about the following:

- Issue 1 is about the IFA's failure to diversify her portfolio (especially a particular fund in her General Investment Account ('GIA')) and his delay in investing cash in her pension portfolio. It is also about the six month portfolio review being ill prepared.
- Issue 2 is about the IFA's delay, until 28 December 2017, in initiating the transfer process, about his failure to maintain progress in the process despite awareness of Beaufort being at risk at the time and about the overall delay in the transfer process (which was completed after around nine months). It is also about the IFA's advice to retain £30,000 in cash with Beaufort from December 2017, had she not withdrawn the cash, on her own initiative, in January 2018 it would have been trapped in the administration process that Beaufort underwent. The IFA did not inform her about a registration date related to the administration process, but she found out through other means and met the deadline.
- Issue 3 is about the IFA failing to provide her accountant with the complete set of paperwork related to her investments on the Transact platform and related to the 2017/2018 tax year, despite the full paperwork having been given to him by Transact.
- Issue 4 is about the IFA's mismanagement of her portfolio causing sales which generated gains around £2,300 beyond her nil rate CGT allowance for 2017/2018.

In the main, Orwell says:

- Brexit had nothing to do with its appointment. Ms C sought to consolidate her investments under one investment wrapper, to use an investment platform for this purpose and to gain the benefit of completing her annual tax reporting through one mechanism rather than through different companies. This was the objective it was appointed to address. Moving Ms C's portfolio to the Transact platform was done to also provide her with a regular income in the future – taken from capital withdrawals which would be subject to CGT that was at a lower rate than income tax.
- With regards to issue 1, the relevant GIA fund was already reasonably diversified, it matched the balanced part of Ms C's risk profile, it had good historic performance and it had a significant gain that had accumulated since the initial investment. The IFA had no significant concerns about the fund as it was and took the view that, mindful of the gains, the fund could be reduced more tax efficiently and over time through ISA contributions and income withdrawals for Ms C. With regards to the pension portfolio a similar view applied, to reduce it over time using Ms C's 20% tax

band and the tax free cash she had to take before losing the ability to do so on her 75th birthday (Ms C was 69 years old). The IFA did not see an advantage in maintaining the portfolio long term. The idea of making cash withdrawals from the portfolio was the rationale behind retaining cash, as opposed to reinvesting it.

- With regards to issue 2, it first became aware of the closure of Beaufort by the regulator in March 2018, through press articles; prior to this, press commentary in 2017 was limited to concerns about illiquid and non-mainstream investments in Beaufort portfolios, this was irrelevant to Ms C as her (relatively liquid) investments were in listed UK companies and Investment Trusts; there is evidence of the administrators writing to all known creditors and clients of Beaufort's in April 2018 about the administration process; it prioritised the transfer of other assets ahead of the Beaufort portfolio but that was reasonable because the former were larger than the latter; it approached the transfers in this order; Transact was engaged in chasing progress in the transfer process and in updating Orwell in this respect so it did not need to be chased; eventually Ms C's Beaufort assets were transferred at full value; the delay was caused by Beaufort and not Orwell.
- It did nothing wrong in issue 3 and engaged meaningfully with Ms C's accountant – with whom it had a longstanding relationship for over 30 years. It sent the Transact tax report for 2017/2018 to the accountant in October 2018, upon her request.
- With regards to issue 4, generation of income subject to CGT that was lower than income tax was the rationale for recommending the withdrawal of capital gains. It stands by this rationale and considers it was reasonable.
- Its offer of £500, without admission of liability, was a gesture of goodwill in recognition of Ms C's experience in the Beaufort transfer matter.

One of our investigators looked into the complaint and broadly agreed with Orwell's positions on the complaint issues. He referred to Orwell's suitability letter as record of Ms C's objectives and its recommendations. He did not consider Orwell's strategy for the GIA fund to be unreasonable and whilst he understood that the pension portfolio's cash could have been invested over the short term he could understand why retention of cash was a suitable alternative that avoided the risks of its value being eroded by charges and falls in investment value.

The investigator considered that all the transfers had to be completed before Orwell could provide any further review/reinvestment advice and that its advisory service – based on the client agreement – did not require it to monitor Ms C's assets on an ongoing basis but only to provide initial advice and then advice during periodic reviews. He also did not consider that six month review document was ill prepared or that Orwell failed to engage with Ms C's accountant.

The investigator said available evidence shows that Beaufort was mainly responsible for the transfer delay. He considered that Orwell's goodwill offer catered for a minor administrative error on its part. He noted Ms C's point about the £30,000 holding in the portfolio but took the view that no loss resulted in this respect. He took the same view in relation to the registration date issue, whilst noting the complaint about Orwell not informing Ms C about this date he considered that she learnt about it in any case and met the relevant deadline. The investigator also considered that Orwell's CGT related strategy for Ms C was not unreasonable and that its suitability letter to her gave notice of the possibility of exceeding her nil rate CGT allowance.

Ms C disagreed with this outcome and the matter was referred to an ombudsman. She repeated her key points and mainly stressed the following:

- She was pressured by Orwell to transfer her investments unto the Transact platform. She did not initiate the idea of such a transfer and she maintains that the context for the advice she sought was Brexit.
- Orwell did not properly oversee the Beaufort transfer, it caused an initial delay in the process of around six weeks (in total) during which it was inactive and the £30,000 in cash was not needed for any transaction so it should have been addressed by Orwell at the time. Orwell also did not have proper oversight of her investments on the Transact platform, as she expected it to have, and there is a lack of evidence that it monitored the investments on the platform. Lack of monitoring resulted in underperformance (and losses) in her assets which went unaddressed at the time.
- Orwell did not fully utilise her ISA allowance in March 2018.

The investigator was not persuaded to change his mind. He retained the view that Orwell's goodwill offer was a reasonable conclusion to the complaint. He repeated his previous views in response to the points made by Ms C and, with regards to ISA allowance issue, he noted evidence that her 2016/2017 and 2017/2018 ISA allowances had been fully used prior to Orwell's appointment and that it advised on the use of her 2018/2019 allowance but this never progressed because Ms C terminated its appointment before the end of that tax year.

my findings

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 have reached the same conclusion as the investigator for broadly the same reasons. In addition to issues 1 to 4, as summarised above, I consider the ISA allowance issue to be "issue 5". I also confirm that I have considered the documents recently submitted (or re-submitted) by Ms C and her covering email.

Issue 1

I understand the points Ms C has made in relation to oversight and, it appears, monitoring of the investments transferred unto the platform. However, I consider that the investigator addressed this point meaningfully. The crux of the matter appears to be a mismatch between the expectation Ms C had from the IFA and the type of service agreed between her and Orwell. As the adjudicator said, the advisory service that was agreed between both parties did not extend to the sort of ongoing monitoring and oversight, of the platform and the assets within it, that Ms C appears to have expected. The advisory service featured the initial advice which, as evidenced by the suitability letter, Ms C received in late 2017 and subsequent periodic reviews. There is evidence of the six month review that took place in 2018 – which, based on available evidence, I do not consider to have been lacking – and it appears that Ms C's termination of Orwell's appointment in October that year rendered subsequent reviews redundant.

The suitability letter of November 2017 captures the initial advice and the circumstances surrounding it. I consider that Ms C's reference to a Brexit context is sincere and this could have been a matter that was on her mind at the time, but the suitability letter which was sent to her, and which she does not appear to have disputed at the time, does not feature it. In the absence of evidence that Ms C disputed this letter at the time, I consider its contents reliable. If those contents were inaccurate it is more likely (than not) that she would have disputed the letter and there would be evidence of such dispute.

The focal point of the initial advice, as expressed within the suitability letter, was the transfer of Ms C's investments – with, it appears, the exception of her pension – to the Transact platform. The IFA explained that, following completion of the transfer(s), Orwell would then look further into the actual investments themselves. In this context and as of 2017 – and until the investments were all transferred – Orwell was not yet responsible for the detailed review, revision and/or reinvestment based advice (with regards to specific funds and their underlying investments) that Ms C might have expected.

The letter also includes the matter of Ms C taking income from her portfolio through capital withdrawals, with the plan being to benefit from the nil rate CGT tax allowance and then, beyond that, to benefit from significantly lower CGT treatment as opposed to higher income tax treatment. It also includes the recommendation to use the tax free cash from her pension and to take further income from the pension in the future. The wider CGT strategy that Orwell has explained to this service is also reflected in the letter.

Overall, I do not consider that Orwell's initial advice mismatched Ms C's objective or her balanced to adventurous risk profile. It was not intended to commence and complete the financial planning task in one measure. It was the beginning of a mid to long term process that started with the transfer(s), that was to follow with arrangements to draw income from the investments in a tax efficient way and then, after completion of the transfer(s), was to follow with a further review(s) to look into the investments that had been transferred.

Like the investigator, I do not consider that Orwell's interim strategies for the specific GIA fund and the pension portfolio were unreasonable. It did not consider the GIA fund to be unsuitable at the time – or to be sufficiently of concern to review and reinvest it at the time. Having considered the fund, I do not disagree. If Ms C disagrees, the point remains that the recommendation she agreed with was to prioritise the transfer(s) and then, after completion, review the investments, so she was not led to expect an immediate and/or comprehensive review. I am not persuaded that the interim measure – to reduce the fund's gains in a tax efficient manner over time (or, as it appears, until the post-transfer review of the investments) – was unreasonable.

I draw a similar conclusion in relation to the pension portfolio. As the investigator said, short term investment of the cash within it could have been an alternative but it was not unreasonable for Orwell to prefer the retention of cash – for short term cash withdrawal purposes – as opposed to taking the risks of eroding the value of that cash by investing it.

Issue 2

Orwell was appointed in November 2017. There is evidence that, as it says, it prioritised initiating the transfer of Ms C's larger assets before it initiated the Beaufort portfolio transfer in late December that year.

There is evidence from Transact – and from correspondence between Transact and Orwell – which shows that Transact engaged in the progression of the transfer from early January 2018 onwards and kept Orwell informed. The same evidence suggests that the overall responsibility for the delay in completing the transfer belonged to Beaufort. I have used the word "*suggests*" only to reflect that this service does not appear to have received submissions directly from Beaufort on the matter. However, there is evidence of a chronology of the transfer process from Transact which provides a persuasive basis to conclude that Beaufort caused the delay.

It was not unreasonable for Orwell to prioritise transfer of larger assets ahead of the smaller Beaufort portfolio. The delay was not significant. Its contribution to the overall delay in the matter was minimal and, I consider, is catered for within Orwell's goodwill offer. I consider the same with regards to the minor administrative error that the investigator noted. Available evidence does not suggest that Orwell needed to chase Transact in the matter, Transact appears to have been engaged in chasing Beaufort and it also kept Orwell updated. I do not consider that there is evidence to show there was a role for Orwell to play in addressing the delay in 2018 or, if there was such a role, how it would have made a difference to the matter.

With regards to the £30,000 cash holding in the portfolio and the administration related registration date issue, I agree with the investigator's conclusion that neither matter resulted in a loss to Ms C, so I consider neither – individually or jointly – to be a sufficient basis for compensation. For any trouble and upset Ms C considers to have been caused in these matters, perhaps in principle, Orwell's goodwill offer caters for that too. I note Ms C's point about prior knowledge Orwell had or should have had about the problems in Beaufort. However, there is insufficient evidence to establish her case in this respect. Orwell says it learnt about the problem in March 2018 and that previously the concern about Beaufort portfolios in the press was arguably irrelevant to Ms C's portfolio. I have not seen enough to defeat this submission. In addition, Beaufort's problems caused a delay to the transfer of Ms C's assets but they do not appear to have caused a loss in those assets.

Issue 3

I have not seen enough evidence to establish a wrongdoing by Orwell in this matter. Evidence suggests that it had a longstanding and good working relationship with Ms C's accountant and the implication appears to be that it had a history of engaging with that particular accountant for the purpose of sharing information relevant to their mutual clients' investments. So Orwell appears to have been experienced in doing this and in doing this well. I have not seen evidence that its engagement with the accountant for Ms C's benefit was problematic. It also appears to have shared the Transact tax report with the accountant upon her request.

Issue 4

The crux of this issue is the CGT strategy Orwell recommended for Ms C's portfolio. As I said above, it was a reasonable strategy in the circumstances of the initial advice and at least until the detailed investments review that was to take place after completion of the transfer(s) of the investments. As the investigator noted, the suitability letter issued to Ms C gave her prior notice that some CGT could be incurred from gains that exceeded the nil rate CGT allowance. The rationale of reducing the gains in a tax efficient manner over time, doing so to generate income for Ms C and doing so at the expense of CGT as opposed to income tax (which would have been higher) was not unreasonable.

Issue 5

This service has evidence of the sale and re-purchase (a re-purchase within Ms C's Stocks and Shares ISA) of the same assets in Ms C's portfolio between 10 and 18 April 2017 which was in the value of £20,000. The repurchase, in this value, within her ISA appears to have utilised her full ISA allowance for the 2017/2018 year as Orwell has submitted. It appears that there was no spare ISA allowance to use in March 2018.

my final decision

For the reasons given above I endorse the offer, from Orwell Securities (Ipswich) Limited to Ms C, of £500. It reflects the trouble and upset caused to her by the delay in initiating the Beaufort portfolio transfer and the other related issues noted above. I do not uphold Ms C's complaint about the overall delay in that transfer or about the other complaint issues she has presented.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 9 February 2020.

Roy Kuku
ombudsman