

The complaint

Ms C complains that Flying Colours Advice Limited trading as Flying Colours declined to approve its initial investment advice.

Ms C had taken out equity in her property to invest in line with Flying Colours' recommendation and she's since incurred interest on this which she feels it should compensate her for.

What happened

Ms C had an initial investment advice meeting with Flying Colours on 30 August 2021. Ms C says she was advised to take the maximum allowable equity release from her property and invest it into an investment held in a trust. She says she was referred by Flying Colours to an equity release specialist but as she was planning to have some building work undertaken on the property, it was agreed that it would be best to wait until these were complete before starting the equity release process.

Ms C then met with Flying Colours on 26 July 2022 in which she says the setting up of a trust was discussed again. Mrs C says she was advised the trust would be set up in time to coincide with her equity release from her property, ensuring she could invest the funds immediately.

Flying Colours provided Ms C with an Estate Planning Report on 10 October 2022 in which it recommended she surrender the full value of her existing ISA and invest £50,000 of these funds along with the £150,000 equity release proceeds into an offshore bond held in trust. There were then delays in Flying Colours' reviewing the advice and so Ms C requested the equity release be delayed. An extension until 5 December 2022 was agreed with Ms C's equity release specialist. Ms C says she then chased Flying Colours for an update, and she received an email on 7 November 2022 confirming everything had been agreed. However, she was then told on 17 November 2022 that Flying Colours wasn't prepared to go ahead with the initial advice and made an updated recommendation. This was for Ms C to purchase a whole of Life insurance product to address Ms C's inheritance tax liability and continue to invest in an ISA. As well as setting up a trust on Ms C's death to leave assets to her estate. Ms C complained to Flying Colours on 6 December 2022 as she felt it had provided her with an unprofessional service. She said she wouldn't have started the equity release process until the trust was agreed if she hadn't been led to believe initial recommendation had been agreed. She said Flying Colours' actions put her in a difficult position as the funds were ready and a solicitor's invoice would need to be paid even if she cancelled the equity release. Ms C decided to work with a new financial advisor but didn't realise how long setting up a new trust would take, and she was left paying interest on the equity release funds until it was completed. Therefore, she requested that Flying Colours compensate her for the interest until she was able to invest the funds in the new trust.

Flying Colours considered Ms C's complaint but didn't uphold it. In summary, it said:

- Ms C's case was with its paraplanning team for just over two months, which allowed it time to obtain the relevant information to provide a recommendation,
- Ms C's case was then with its advice committee from 19 October 2022 until 17 November 2022 – a little under a month.
- Its advice committee had not communicated any decision until 17 November 2022.
- Its recommendation was that the initial recommendation was unsuitable, and it made a new recommendation.
- Ms C didn't want to proceed with the recommendation and so it could only proceed with her on an "insistent client" basis. Flying Colours only accepts "Insistent clients" in exceptional circumstances and it wasn't prepared to make an exception for Ms C, due to the advice committee's view of the unsuitability of the initial recommendation that she wanted to take.
- It also disengaged from Ms C as a client of its as she didn't want to follow its advice.

Ms C remained unhappy and so she referred her complaint to this service for an independent review.

One of our investigators considered Ms C's complaint and felt Flying Colours had acted unfairly. In summary, they said:

- The Estate Planning Report from 10 October 2022 clearly set out the recommendation and at no point is it mentioned that it would need to be approved by Flying Colours' advice committee.
- The revised recommendation was very different to the one Ms C had accepted.
- Once Ms C made it clear she didn't feel the new recommendation suited her needs, Flying Colours told her they could no longer have her as a client. This would have been upsetting for her, and they believe Flying Colours could have done more to engage with Ms C before taking this step.
- They accepted that Flying Colours' process is to make a recommendation to its advice committee before approving advice, but it seems the adviser didn't follow this process – instead they made a recommendation without any caveats that this may later be withdrawn.
- Flying Colours should refund any advisor fees Ms C paid it, add 8% simple interest from the date the fees were charged to the date of settlement and pay her £350 compensation for the distress and inconvenience caused.
- They didn't think Ms C should be compensated for the interest accrued from 5 December 2022 until the funds had been invested. This is because Ms C said she was advised to let the interest accrue until repayment of the equity release – which she accepted. So they felt it was likely the interest wouldn't have been paid upfront even if the investment had gone ahead.

Flying Colours didn't accept the investigator's findings and also confirmed that Ms C didn't pay any fees to it in relation to the investment advice in the trust. Ms C also confirmed this and explained that she incurred costs of over £5,000 for changing her financial advisor and having to start the initial work again.

As no agreement could be reached, the complaint was passed to me to decide.

I issued my provisional findings on the complaint in December 2023. I include a copy of this below:

What I've provisionally 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.

The financial report from 30 August 2021 explained that Ms C was already in the process of taking out an equity release. It's not clear who made the recommendation, but ultimately, the responsibility for the equity release advice lies with Ms C's equity release specialist. As such, I can't consider any complaint regarding this against Flying Colours. Instead, what I have considered is the initial investment advice Ms C received to invest in an offshore bond and the communication Flying Colours has had with her.

Ms C is unhappy with the communication she received from Flying Colours. She feels it led her to believe that the investment recommendation it made would proceed. Looking at the communication she had with Flying Colours, I can't see that it was ever explained to Ms C that any recommendation it made would need to be approved by Flying Colours' advice committee. The Estate Planning Report from 10 October 2022 explained:

"I will contact you shortly to arrange a meeting to review and discuss this report together and if you are happy to proceed, we will complete the necessary paperwork to implement the recommendations."

So I can understand from Ms C's perspective why she felt confident that the recommendation would be followed through with after she agreed to proceed. I also understand why she would have continued to make arrangements for her equity release to be able to invest these funds in line with the recommendation. Furthermore, Flying Colours subsequently emailed Ms C on 7 November 2022 explaining the following:

"Compliance are now happy with the advice but they want to add in some bits into the report so I'm waiting for them to do that at present. I'm hoping they'll have this ready in the next 24-48 hours so that the report can be signed off and over to you."

I appreciate the email said the report needed to be signed off. However, I think the fact that it also said compliance were happy with the advice, led Ms C to believe that the signing off of the report was simply a formality. So I understand Ms C's frustration when she received an email on 17 November 2022 explaining the recommendation hadn't been approved.

Taking into account the above, I'm satisfied that Flying Colours has fallen short of the FCA Principles for Business ("PRIN"), specifically PRIN 2.1.1R (7):

"A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading."

I also don't think Flying Colours acted in accordance with the rules set out in the Conduct of Business Sourcebook ("COBS"). Specifically COBS 4.2.1R (1):

"A firm must ensure that a communication or a financial promotion is fair, clear and not misleading."

So as there has been a failing, I've considered whether Ms C has suffered a financial loss as a result of this and whether an award for distress and inconvenience is appropriate.

With regards to a financial loss, I understand Ms C believes Flying Colours should compensate her for the interest she has accrued on her equity release arrangement from 5 December 2022 up to when she was able to invest the funds with her new financial advisor. However, I don't think it would be fair or reasonable to award this as I think there was an opportunity for Ms C to mitigate her loss. I say this as Ms C was made aware that Flying Colours' recommendation hadn't been approved on 17 November 2022, which is prior to the

completion date of her equity release on 5 December 2022. I understand Ms C had previously pushed this date back and it's possible that she could have done this further. However, even if this wasn't possible, Ms C could have decided to cancel the equity release to avoid having to incur interest on it. Whilst I appreciate, she would have still incurred the solicitor's fees, it was ultimately her decision to proceed with the equity release despite not having investment plans in place. So I won't be recommending Flying Colours compensate her for any interest accrued during this period.

Equally, I don't think it would be fair to ask Flying Colours to compensate Ms C for her solicitor's fees or any fees associated with the equity release, when she has proceeded with the equity release.

I also understand Ms C has put forward costs she incurred when getting new advice. But I don't think it would be fair or reasonable to ask Flying Colours to cover these costs. I say this as Ms C would have always had pay for advice if Flying Colours' recommendation had proceeded. If Ms C had paid costs for the initial recommendation which hadn't proceeded and had no choice but to seek additional advice, I would likely recommend any costs associated with the initial advice to be refunded. But as that's not the case here, I won't be asking Flying Colours to cover Ms C's new advice costs.

However, I do feel that Flying Colours' misleading communications have caused Ms C some distress and inconvenience. It's clear Ms C has been let down by Flying Colours and her expectations were not managed well. Ms C couldn't proceed with the initial recommendation as it was, by Flying Colours' own admission, not suitable for her. And I think that further failing only exacerbated things for Ms C. Looking at Flying Colours records from the meeting with Ms C on 26 July 2022, this appears to be when Flying Colours first talks about investing in an offshore bond. So whilst the formal recommendation wasn't given to her until 10 October 2022, I think her expectations could have been managed better over this three-month period.

As such, I'm currently minded to award £500 for the distress and inconvenience this caused her.

Responses to my provisional findings

Flying Colours didn't accept my provisional findings. In summary, it said my provisional findings failed to take into account that it was Flying Colours' commercial decision by its Advice Committee to not approve the initial recommendation. And that I hadn't factored in that Flying Colours had a regulatory obligation to protect Ms C against following a course of action that was unsuitable for her circumstances. Whilst it agreed that the communication process could have been better, it felt my recommendation of £500 was disproportionate to the distress and inconvenience caused.

Ms C agreed in principle with my finding to not award her the interest she has incurred on the equity release agreement. But she felt she should be compensated for the additional money she paid for her new advisor fee. She said this was £3,480 more than she would have had to pay Flying Colours if she proceeded with its advice. She also confirmed she was unable to delay the equity release beyond 5 December 2022 and that the offer would have been withdrawn on that date if she didn't proceed. She accepts that she could have cancelled the equity release but says she was advised by her equity release specialist not to do so as she wouldn't be able to get as good an interest rate as had been agreed.

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.

I fully understand Flying Colours has a regulatory obligation to protect Ms C against following a course of action that was unsuitable for her circumstances. And whilst I appreciate Flying Colours' Advice Committee took the decision to not approve the initial recommendation given to her, this doesn't detract from the fact that she was given inappropriate advice in the first instance. Ms C clearly expected this initial recommendation to proceed, as Flying Colours failed to clarify it needed to be approved by its Advice Committee. Flying Colours has ample opportunity to clarify this and instead chose to continue to mislead Ms C by emailing her to say compliance were now happy with the advice. So I remain satisfied that my recommendation to pay Ms C £500 for the distress and inconvenience caused remains fair and reasonable in the circumstances.

I've also considered Ms C's further points but I'm afraid it doesn't change my opinion. Whilst I appreciate, she wasn't able to delay the equity release further, by her own admission she could have cancelled it if she wasn't prepared to incur interest without having her investment plans in place. I appreciate Ms C may have proceeded with the equity release as she was told by her equity release specialist that she wouldn't be able to get as good an interest rate if she cancelled. However, I can't consider any advice Ms C received from her equity release specialist and I'm satisfied any decision she made to proceed was independent of the advice given to her by Flying Colours.

I also don't think it would be fair to ask Flying Colours to compensate Ms C for the additional costs she incurred paying for a new advisor. Ultimately, Flying Colours wasn't able to proceed with the initial recommendation so if Ms C wanted didn't want to proceed with its updated recommendation, she would have no choice but to seek alternative investment advice and incur any costs associated with doing so.

Putting things right

Flying Colours should pay Ms C £500 for the distress and inconvenience its misleading communication caused.

My final decision

My final decision is that I uphold Ms C's complaint against Flying Colours Advice Limited trading as Flying Colours and it should pay her £500 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 30 January 2024.

Ben Waites
Ombudsman