

The complaint

Mr S complains about the advisory service and information provided by Openwork Limited (Openwork).

What happened

In September 2014, Mr S received advice from Openwork to invest into a stocks and shares ISA. Mr S paid for a gold level of service, which gave access to an adviser and annual reviews, amongst other things. It is common ground that Mr S was invested in the Openwork Graphene Balanced Model Portfolio and invested into the C3 Balanced Managed Portfolio in 2016. Mr S raised a complaint about performance and about lack of information given concerning the bond element of the portfolio. Mr S received a response from Openwork in 2017 but did not refer a complaint to our service at this time. He continued to pay for gold level service and received annual reviews.

Mr S maintains that the adviser failed to contact him or make reasonable attempts to contact him regarding a review in September/October 2021, in particular, Mr S does not accept that attempts were made by the adviser to speak to him by phone.

Mr S complains about performance and maintains that at the time the recommendation was made it was not explained to him that the investment in bonds could limit the effect on his return or that the fund would be rebalanced from time to time.

Mr S maintains that Openwork failed to inform him of elements of the portfolio that were performing badly and hid the truth by providing information about performance as a whole. Had the adviser been transparent he would have switched funds.

Mr S maintains that Openwork should have provided the information he requested in 2021 in a format he wanted and they were responsible for securing this from a third-party. In particular, Mr S sought true information about the transactions in a particular fund. Mr S also raises a series of questions about the performance of the fund.

Openwork say Mr S was provided with the level of service he paid for. The adviser did make attempts to contact Mr S by phone to undertake the September 2021 review. They maintain that reasonable efforts were made to obtain the information Mr S requested from third parties and explanations were given where this wasn't possible.

Openwork say that our service doesn't have jurisdiction to consider a complaint about the suitability of the recommendation, performance and the information provided about rebalancing and bonds. They maintain that it was explained to Mr S by the adviser and in the 2017 complaint response that he was invested in a balanced, managed portfolio where the holdings would be rebalanced by the fund managers to continue to maintain a risk exposure in line with Mr S's overall risk appetite.

Openwork made an offer of £224 as a gesture of goodwill, to refund service fees from September 2021 to the date Mr S requested fees to be switched off. A further sum of £200 was offered to compensate for delays in responding to Mr S's complaint.

Our investigator explained that our service could not consider the matters raised in the earlier complaint as these were brought to our service too late. It was common ground that Mr S did not refer the complaint to our service within six-months of receiving a response in 2017. Further, Openwork were not responsible for performance and the actions of the fund manager nor were they responsible for the way information was presented by a third-party. Our investigator therefore focused on the level of service provided by Openwork and the handling of information requests from Mr S. Our investigator noted that the adviser no longer worked for Openwork so limited information was available. On balance, he was satisfied that annual reports were provided which gave Mr S an overview of the performance of his portfolio, providing information in line with industry standards and annual reviews took place. Our investigator considered that there were shortcomings organising the review in 2021 and found that Openwork had failed to provide a gold level of service at this time. Further, whilst Openwork had sought information from the fund manager in response to a request for more detailed information from Mr S, our investigator thought there had been delays in responding by the adviser and there was nothing to show that the information had been chased on Mr S's behalf. Our investigator considered there was no evidence to show that any issues with performance were due to negligence on the part of Openwork.

Our investigator thought it was fair and reasonable to compensate Mr S for the poor service received from September 2021. It was his view that it was fair and reasonable to refund the service fees of £224 for the period and recommended a total of £400 to compensate for the distress and inconvenience caused by these shortcomings (including the £200 already offered).

Mr S disagrees with the view. He maintains that Openwork's level of service was poor from 2017 and returns were not acceptable. He maintains that he could not make an informed decision on the basis of the information Openwork provided about his investments. Mr S seeks substantially increased compensation than that offered, for the stress of having to chase information to reveal the truth about his investments and compensation for poor performance.

As the parties do not agree, the matter has come to me for a final decision.

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 think it is helpful at the outset to explain our role, we provide an informal dispute resolution service, where decisions are made upon the balance of probabilities. Where things have gone wrong, we look to put things right on a fair and reasonable basis. We have no disciplinary or regulatory function, which means that we can't tell a business how to operate nor can we impose any punitive sanction.

I'd like to reassure Mr S that I have considered the points he has raised and no discourtesy is intended if any points are not specifically addressed. When making my decision I've focused on the core issues to decide what is fair and reasonable.

I've seen that Mr S has raised concern about a number of parties. It is important to highlight the distinction between the respective relationships. Openwork provided advice about the portfolio and provided an annual review service. They were not responsible for management of the funds. A third-party fund manager had discretionary management of the fund, which meant they made decisions about the selection of investments without recourse to Mr S. Finally, the platform provider gave access to view information about the investment online.

As our investigator has explained, we can't consider the suitability of the recommendation to invest in the portfolios or any complaint about the information provided at the outset about rebalancing of the portfolios and bonds as this complaint has been brought to our service out of time. We are bound by the FCA's (the regulator's) Dispute Resolution Rules (DISP), these say that we cannot consider a complaint referred to our service more than six-months after the date a business sends its final response letter to a consumer, unless a business consents to our service looking at the complaint or there are exceptional circumstances that meant a consumer could not refer the complaint in time. Mr S raised a complaint about these matters in 2016 and received a final response from the business in January 2017. Mr S had six months to bring the complaint to our service but failed to do so. Openwork have not given consent for the complaint matter to be considered and I'm not persuaded that there were exceptional circumstances that prevented Mr S bringing this part of the complaint in time. Indeed, Mr S has conceded that he chose not to appeal the response as he decided the investment needed more time. No specific complaint has been made about subsequent reviews save for 2021, addressed below.

Mr S has raised detailed points about the performance of particular funds within his portfolio, which he says caused him to sustain losses. I haven't seen anything to show that Openwork made guarantees about performance at any time and they were not responsible for managing the funds. By way of information only it may assist Mr S to explain that each fund formed part of a portfolio where the overall asset allocation was aligned to his risk profile. The provider was responsible for taking active steps to rebalance the assets, where required, to maintain the overall risk profile, which is why exposure to different funds may have fluctuated over time. Any concerns Mr S has against the fund manager of a particular fund would form the basis of a separate complaint. Further, even if I had been considering suitability (which I'm not), my focus would have been upon suitability of the recommendation to invest in a portfolio as a whole, not a focus on individual funds within a portfolio. Underperformance of a fund in and of itself, is not enough to show that a portfolio recommendation was unsuitable.

The focus of this decision is therefore around information provision and the level of service provided by Openwork.

It isn't disputed that Mr S received annual reports through Openwork, giving information about the overall annual performance of the portfolios and asset breakdown with respective valuations, the total amount of fees and charges, interest and dividends. A comparison of performance was also provided. Information was also accessible online from the platform provider. The content of the information provided by the adviser enabled Mr S to see activity and overall performance of the portfolio and individual investment valuations with the respective gains/losses for the year. From what I have seen, the information provided was in line with the periodic reporting requirements. I note that Mr S says the reports were poor because he couldn't ascertain the level of detail around sub-funds he wanted and he highlights that he now has this functionality with his new provider, which he prefers. But as I explained at the outset, our service doesn't have the power to tell a business how to operate and that includes how it chooses to present information.

I note that Mr S now says that had he been provided with more information by the adviser he would have made different investment decisions earlier. Primarily, I don't agree that there were shortcomings in the information provided. Further, it is Mr S's case that he has been unhappy with performance since 2017, but took no action. So, I can't fairly conclude now that it is likely Mr S would have made different decisions earlier and I'm mindful that it isn't fair and reasonable to consider this matter with the benefit of hindsight.

I've seen that Mr S sought more detailed information from the adviser in September 2021 about specific activity and requested it be presented in a particular format. First, it is relevant that the information requested was held by the fund manager, not by the adviser. So, I've considered if reasonable steps were taken by the adviser to facilitate the request for more detailed information. Having reviewed the documents, I consider that it is more likely than not that requests were made for the information by Openwork on Mr S's behalf. I have seen that the adviser explained to Mr S that the information wasn't available in an excel spreadsheet. However, I agree that the timeline in providing this information was slow with limited chasing by the adviser. I note that the third-party provided Mr S with compensation for delays on their part. I have seen that Mr S did obtain the information in a PDF format initially, so it isn't the case that he had no access to the information, but I can see some mixed messaging as to whether some information could have been put into an excel spreadsheet. It is plain that chasing this information from multiple parties caused Mr S inconvenience and distress, in considering redress below I have focused on a fair assessment for Openwork only.

As to the 2021 review, I have considered Mr S's consistent account that he had to chase the adviser to organise the review. Whilst I have seen that the adviser claimed to have called Mr S and was unable to get through on his land line, I haven't seen any call notes to show that attempts were made. I agree that there's no reasonable explanation as to why different methods of contact could not have been explored if there had been an issue contacting Mr S by landline (which I'm not persuaded there was). Given that Mr S was paying for the highest level of service, I agree that there was a shortcoming here. I'm satisfied it is likely that this situation caused Mr S distress and he was put to the inconvenience of having to chase the adviser.

On the basis of the information provided, I find that it is likely that Openwork did not provide the level of service I'd expect to see for the gold standard from September 2021 until fees were switched off at Mr S's request in March 2022.

Putting things right

As I've found that Openwork did not provide the level of service I'd expect to see for the gold standard from September 2021 until fees were switched off in March 2022, I consider that it is fair and reasonable to refund Mr S the fees for this period, totalling £224. I've also noted that Mr S was put to the inconvenience of chasing information and I accept his account that this caused him distress, it is clear from the tone of emails that Mr S was frustrated by the process. Overall, I consider that £400 is fair and reasonable to compensate for the inconvenience and distress caused by shortcomings by Openwork, which includes £200 already offered by Openwork.

My final decision

In light of my findings above, I am upholding this complaint in part. Unless already paid, I direct Openwork Limited to refund Mr S £224 and to pay £400 in compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 November 2023.

Sarah Tozzi
Ombudsman