

The complaint

Mr L complains about the service he received from Openwork Limited (“Openwork”) when transferring the proceeds of his Occupational Pension Scheme (“OPS”) pension to a Personal Pension Plan (PPP). He’d like compensation for what happened.

What happened

In early July 2019, having decided to transfer out of his OPS, Mr L approached his long-standing financial adviser (“Mr W”) for advice. Mr W is an appointed representative of Openwork. As Mr W didn’t have the necessary permissions to give transfer advice, he referred Mr L to Openwork’s Defined Benefit Scheme Advice Service (“transfer service”), which would eventually put him in touch with one of its transfer specialists, who’d make a formal recommendation.

On 12 July 2019, Openwork’s transfer team invited Mr L to watch several educational videos. Once these were watched, it emailed Mr W on 15 July 2019, outlining the documentation required to take Mr L’s case forward for the transfer service’s initial assessment.

Mr W requested a statement of Mr L’s entitlement under his OPS from the scheme administrator on 22 July 2019, and this was provided on 15 November 2019. Amongst other things, the statement confirmed that to secure the Cash Equivalent Transfer Value (“CETV”) quoted Mr L needed to be more than 12 months away from his Scheme’s Normal Pension Age (“NPA”), age 65; have applied to transfer within 3 months of the guarantee date; and have provided evidence of having received appropriate advice within 3 months of his statement of entitlement.

On 15 December 2019, Mr W wrote to Mr L, asking for a copy of his state pension forecast. Mr L provided this the following day.

Following the COVID-19 outbreak, Mr L contacted Mr W on 10 June 2020, asking to discuss his pension arrangements. He said he thought he’d have been able to take benefits via income drawdown by this point and wanted to know where he stood. Mr L asked that if Mr W couldn’t provide advice due to personal circumstances, he’d appreciate one of his colleagues temporarily doing so. Mr W replied two days later with an update on the circumstances surrounding his family’s health and the pressures associated with it. He explained that after 4 months away, he’d be returning to his desk and would review Mr L’s case the following week.

On 24 June 2020, Mr W confirmed that his report for Mr L’s transfer was up to date and ready to be reviewed by someone in the transfer team to see if further information was required before the case was taken forward. Mr W emailed the transfer team on the same day, confirming that he’d uploaded documents for Mr L’s case onto its system.

On 26 June 2020, the transfer team contacted Mr W. It noted that two expenditure questionnaires were missing from Mr L’s case and asked for these to be returned. Mr W contacted Mr L on the same day, asking for the questionnaires to be completed. The

questionnaires were returned by Mr L on 28 June 2020 and forwarded to the transfer team the following day. The transfer team responded, saying that once its analysis was finalised, it would contact Mr L directly.

Between 22 and 28 July 2020, Mr W discussed Mr L's case with the transfer team. He also had further discussions with Mr L who repeated that he wished to transfer out of his OPS by his 65th birthday.

On 3 August 2020, the transfer team concluded that Mr L's case was ready for referral to a pension transfer specialist. It later identified that some information was missing from Mr L's case, however once this was resolved, the case was allocated to a specialist on 11 August 2020.

The transfer specialist requested a transfer value analysis ("TVAS") and new CETV for Mr L on 13 August 2020. However, on 28 October 2020, the OPS administrator informed the transfer specialist that it wouldn't be issuing a new CETV. It explained that as Mr L was within 12 months of the scheme's NPA, he'd lost his right to transfer.

Having been informed of the situation, Mr L complained about the service he'd received from Openwork. He said it hadn't acted quickly enough to enable the transfer to go ahead when it could've.

Mr L later contacted his OPS administrator and after several discussions he was, as an exception, allowed to transfer.

Openwork provided its final response to Mr L's complaint and in summary said:

- Mr W wasn't a transfer specialist with an intimate knowledge of the technical matters applying to OPS transfers. So, he wasn't expected to assess the details of Mr L's pension statement. Indeed, he was discouraged from doing so to avoid the risk of straying into giving advice. Mr W's role was to collate sufficient documentation to enable the transfer specialist to give advice.
- Even if, having reviewed Mr L's pension statement, Mr W had recognised that Mr L might not have been able to transfer beyond 15 January 2020, there wasn't enough time to analyse the transfer and, if the advice was to transfer, to get the application to the scheme administrators.
- There was no guarantee Openwork would've advised Mr L to transfer. In fact, its transfer specialist said it was unlikely that he'd have supported such action.
- In terms of how long things took, it pointed out that Mr W's wife had almost died in January 2020 and since then shielding her had been Mr W's focus.
- OPS transfers were often a protracted process and while it appreciated Mr L's frustration at not being able to transfer, it didn't think it was at fault for this.

Mr L disagreed. He said Mr W had known before July 2019 that he intended to transfer and having received his pension statement in November 2019, he should've acted on the information contained therein about the transfer deadline. Had Mr W done so, Mr L said the transfer would've been completed before the 15 January 2020 deadline. Mr L said Mr W had presented himself as a financial adviser and he'd trusted him. If he wasn't qualified to assess information received from his OPS, Mr W should've passed his case onto someone who could've identified the issue, taken immediate action, and set the transfer in motion.

As he remained unhappy, Mr L referred his complaint to our service. One of our investigators considered the matter and, in summary, concluded that:

- The way Openwork was organised meant that Mr L's pension statement wasn't reviewed until it was passed to a transfer specialist. It wasn't fair that this led to a delay in information about the transfer deadline being shared with Mr L.
- Allowing time for Openwork to review Mr L's pension statement upon receiving it, it was reasonable to have expected it to let Mr L know about the transfer deadline by December 2019 the latest. However, this would've left just six weeks until the deadline expired, so it was unlikely that Mr L would've had sufficient time to find another adviser and complete the transfer process before the deadline.
- As Mr L had ultimately been able to transfer, he hadn't been prevented from doing as he wished or suffered a financial loss. However, he would've experienced inconvenience and stress due to Openwork's delays, so it should pay him £300 in recognition of this.

Openwork accepted the investigator's recommendation, but Mr L disagreed. He explained that it was through his own perseverance that he'd managed to persuade the trustees of his OPS that, due to Openwork's poor handling of the situation, the transfer should be allowed to go through. He asked for a higher level of compensation so Openwork would appreciate the seriousness of the situation. Finally, Mr L noted that the adviser he'd ultimately used to transfer only took 35 working days to complete the process, so he disagreed with the investigator's finding that the transfer couldn't have been completed before the deadline if Openwork had acted in a timely fashion.

As no agreement could be reached, the matter was passed to me for a 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.

Having done so, I'm going to partially uphold Mr L's complaint. I'll explain why. But before I do, I should emphasise that while I've taken note of all the arguments made by both parties, I've limited my response to the issues I consider to be central to this complaint. That's to say:

- Whether Openwork made Mr L aware of the transfer deadline when it should've.
- Whether Openwork's acts or omissions caused Mr L to miss the transfer deadline.
- What, if any, compensation is due to Mr L from Openwork for what happened.

Overall, I have sympathy for Mr L. It's clear to me that in deciding to transfer and seeking Mr W's advice, he was looking to take specific and deliberate action to try to ensure his needs in retirement were met and that his children were provided for when he passed away. As his long-standing adviser, Mr L understandably relied on Mr W to act in his best interests. And while Mr W didn't have the necessary permissions to provide the transfer advice he was seeking, I think Mr L would've reasonably expected that alongside Openwork's transfer service, the advice and transfer process would be smooth and managed with the appropriate level of care.

Mr L feels strongly that Mr W should've alerted him to the transfer deadline provided in his November 2019 CETV statement sooner than it did. Essentially, the statement said that a transfer would only be processed and paid if Mr L was more than 12 months away from the scheme's NPA. So, if he wanted to transfer, the latest he could do so was before 15 January 2020.

Openwork's position is that Mr W's role was limited to collating documents needed for the transfer specialist to provide Mr L with advice. It says he wasn't expected to notice the

deadline in the CETV statement and says that Mr L was told about the deadline as soon as this was possible.

Like our investigator, I agree that the way Openwork provides its transfer service is a legitimate exercise of its commercial decision. But I'm also mindful of its obligation to be organised in such a way that it conducts its business effectively, with diligence and regard for the information needs of its customers. Given that the transfer deadline determined whether Mr L would retain the right to move his pension elsewhere, I consider it to be a key piece of information which Openwork had a duty to share with Mr L at the earliest possible stage.

It's logical that Openwork discourages advisers in its network without the appropriate transfer advice permission from analysing the details of CETV statements. However, I don't think that Mr W sharing the transfer deadline with Mr L soon after the statement was received would've amounted to an analysis or come close to straying into advice. If this was a genuine concern, Openwork could've arranged for the CETV statement – arguably one of the most significant documents in the advice and transfer process – to be passed to a transfer specialist which, based on what I've seen, Mr W had direct contact with. The transfer specialist could've quickly identified the significance of the deadline – including whether the deadline was likely to be met and the implications of missing it – and shared this with Mr L directly. Alternatively, he could've explained the situation to Mr W so he could pass the information onto Mr L. Had this happened, I think Mr L could've been told about the transfer deadline shortly after the CETV statement was received on 15 November 2019. Given the circumstances, I believe this could've reasonably been sometime between the end of November 2019 and early December 2019.

I don't agree that waiting almost eleven months – from when the CETV statement was received – to share the transfer deadline with Mr L demonstrates that Openwork was acting in Mr L's best interests in this respect and with the level of care the situation warranted. As a result, Openwork missed an opportunity to manage Mr L's expectations about the transfer he was seeking.

It's worth noting that the CETV statement was only sent to Mr W, so Mr L had no sight of it or any way of knowing about the deadline it contained. He was wholly reliant on Openwork sharing relevant information with him and advising him accordingly. On this occasion, I think Openwork failed to do so. So, I can appreciate Mr L's disappointment and frustration with what happened.

Mr L feels that, but for Openwork and Mr W's actions, he would've been able to transfer before the deadline, avoiding the time and effort he says he later had to put in to persuade the trustee of his OPS to allow him to transfer, despite the deadline having passed. He's also mentioned that the adviser he ultimately used to transfer took only 35 working days to complete the process.

Further to what I've said about when I believe Openwork should've told Mr L about the transfer deadline, I've considered when Mr L thinks the transfer could've been completed. Having done so, I'm not persuaded it could've been finalised by 15 January 2020. If Mr L had been made aware of the transfer deadline, at the earliest, by the last working day in November 2019 - 29 November 2019 – this would've only left 31 working days for the transfer to be completed. Given the number of steps that needed to be completed to get to this point – including, an assessment of all the documentation collated, the production of a transfer value analysis (TVAS) report, the finalisation of a formal recommendation and, assuming the advice was to transfer, the completion and return of transfer forms for the OPS and receiving scheme – I think it's unlikely the transfer could've been completed before the deadline.

I'm aware of how Mr L strongly feels that transferring was his best option based on his objectives. And I note what he's said about having made Mr W aware of his intention to transfer long before approaching him for advice. However, this doesn't mean that it was inevitable Openwork would advise him to transfer or that the transfer would go ahead.

I'm mindful of Openwork's role during the transfer process. It had an overarching duty to act in Mr L's best interests. And given the valuable benefits and guarantees Mr L would be giving up by transferring, Openwork's role wasn't to simply justify and make the transfer happen before the deadline. Its significant and overriding responsibility was to assess Mr L's objectives against his overall circumstances. It needed to determine what course of action would help him meet his objectives and, above all, place him in the best possible position in retirement. The recommendation also needed to be robust and clearly demonstrate through evidence that it was suitable.

I can't comment on how long another firm was able to advise on and facilitate the transfer of Mr L's pension. However, I would say that pension transfers are generally rather drawn-out processes and it's common for them to take up to 6 months, sometimes longer. The document Mr W gave to Mr L, providing information about Openwork's transfer service confirmed this.

Notwithstanding what I've said about where I think Openwork ought to have acted differently and sooner, I acknowledge that other factors, some beyond Openwork's control, also contributed to how long things took overall. For example, from what I've seen, Mr L's OPS took almost 3 months to provide the CETV statement after it was requested. This wasn't an insignificant period of time bearing in mind the limited time available before the transfer deadline.

There was also a period of almost six months (between December 2019 and June 2020) where very little appeared to happen on Mr L's transfer case while it was with Mr W. But as this was happening around the same time as the COVID-19 outbreak and Mr W's wife was extremely vulnerable at the time, it's somewhat understandable.

But I don't think these circumstances altered Openwork's duty to keep Mr L informed and manage his expectations. If anything, I think it had a greater responsibility to be proactive about its communications with Mr L during this time.

Once Openwork told Mr L that as the deadline had passed almost eleven months prior, he'd lost the right to transfer, Mr L was understandably shocked, disappointed, and concerned. After all, it appeared that the long-standing plans he'd had for his retirement and provision for his children, much of which depended on him accessing the proceeds of his OPS pension flexibly, were now impossible. I can appreciate this must've been a stressful time for Mr L, especially while he was trying to find alternative ways to achieve his objectives.

Mr L was eventually able to transfer. But he says he only managed to achieve this by persuading the trustee of his OPS to make an exception because of Openwork's poor handling of the matter. Other than Mr L's testimony, I haven't seen anything which confirms that Openwork's actions were the reason the trustee changed its position on the transfer deadline. However, it's clear to me that in having to liaise with his OPS trustee directly to transfer, Mr L will have had to put time and effort in to get the resolution he was seeking. But I'm not persuaded that, but for Openwork's actions, Mr L would've wholly avoided this. As I've said, even without Openwork's failings, I don't think it would've been possible to complete the transfer before the deadline. It seems to me that Mr L was always going to have to liaise with his OPS to try to secure the transfer, albeit I believe his conversations

with the OPS trustee could've occurred sooner if Openwork had told him about the transfer deadline when it should've.

As Mr L was ultimately able to transfer, he says he understands that he hasn't suffered a financial loss. Instead, he's said he's seeking compensation that reflects Openwork's inept handling of his case, and which makes it realise that it shouldn't mess around with peoples' livelihoods. I don't underestimate Mr L's strength of feeling regarding this matter, however this service isn't intended to punish a business for its conduct. Instead, if we decide a business has done something wrong, our role is to say how the business should put things right, bearing in mind the impact of its mistake. In Mr L's case, I think the impact has been the distress and inconvenience Openwork's actions caused.

It's entirely reasonable for Mr L to have expected Openwork to act with more care in the circumstances. And it's unfortunate that this didn't happen at every stage. In my view, Openwork wasn't as proactive as it should've been while handling Mr L's case. Specifically, I find that it should've communicated more effectively with Mr L, especially in terms of sharing the transfer deadline earlier than it did. By not doing so, Mr L's expectations about the transfer of his pension weren't managed as well as they ought to have been. As a result, Openwork caused Mr L avoidable stress and disappointment, for which I think he should be compensated. Like our investigator, I think Openwork should pay Mr L £300 in recognition of trouble and upset caused. I consider this to be fair and reasonable bearing in mind what Openwork could've done better.

My final decision

My final decision is that I partially uphold Mr L's complaint and direct Openwork Limited to pay Mr L £300 compensation for trouble and upset caused by its service.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 16 March 2023.

Chillel Bailey
Ombudsman