

The complaint

Mrs C complains that Advanced Asset Consultants Ltd (“AAC”) failed to treat her fairly when she requested some advice on the potential transfer of pension benefits from an occupational pension scheme (“OPS”).

What happened

I have issued two provisional decisions on this complaint. Both parties have received copies of the provisional decisions but, for completeness and so those findings form part of this decision, I include some extracts from them below. In my first provisional decision I said;

Mrs C held pension benefits within an OPS. Those pension savings were in the form of defined benefits. But the pension benefits were somewhat fixed in nature – they included a dependent’s pension, payable on Mrs C’s death, and would also be reduced when Mrs C reached state retirement age and so became eligible for her state pension. Mrs C was single so thought it unlikely that a dependent’s pension would be of any benefit.

Mrs C agreed with her employer that she would retire in February 2020 at the age of 57. The OPS at that time also offered a cash equivalent transfer value (CETV) in lieu of Mrs C’s pension benefits. That would allow her to transfer her pension savings to another provider, and potentially increase her pension income by only taking features relevant to her circumstances rather than the generic benefits provided by the OPS.

Mrs C thought that option might be attractive in her circumstances. So, in September 2019, she engaged AAC to provide her with advice, or a recommendation, about whether she should transfer her pension benefits away from the OPS. She agreed to pay AAC £1,750 for its services. Mrs C was aware that she was required by the relevant legislation to be provided with advice before undertaking this transfer, and that the process could be quite lengthy. So she says she got in touch with AAC in plenty of time before her intended retirement.

Mrs C says that she didn’t initially hear anything back from AAC about the progress of its investigations. Towards the end of 2019 she started chasing the business for an update, but was reassured that the analysis was being performed and would be completed to allow a decision to be made in good time for her intended retirement. But on 29 January 2020 Mrs C was informed that AAC had actually overlooked her instructions and no work had yet commenced. It told her that it would need to gather further information before it could start the analysis.

Given that Mrs C was now only four weeks away from retirement she concluded that there was insufficient time for any transfer analysis to be completed. So she reluctantly took the decision to accept the pension from the OPS. After some delays due to banking issues, AAC refunded the £1,750 fee that Mrs C had paid. Unhappy that no advice had been provided, Mrs C brought her complaint to this Service.

There seems to be little doubt that, between September 2019 and January 2020, AAC failed to undertake the necessary analysis to support the advice it had agreed to give to Mrs C. And I have noted that Mrs C had already paid a fee to AAC for that advice. Mrs C has said AAC told her that its advisor had failed to undertake the work based on an assumption that it wouldn't be in her best interests to transfer. That statement in itself, gives me grave concerns – it seems AAC was charging Mrs C a substantial fee to provide advice when it had already pre-determined the likely outcome.

I think it is right at this time to consider the relevant guidance from the regulator about transfers of this nature. The regulator has said that a firm should start by assuming that a transfer will not be suitable. A firm should only then consider a transfer to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer is in the client's best interests. So I think it is right that AAC should have reflected caution in the advice that Mrs C was asking it to provide. But it is also clear from the regulator's guidance that there will be occasions when a transfer is in the best interest of a consumer, and should be recommended.

The situation that Mrs C found herself in, and hence the advice she was seeking from AAC, was rather different to many consumers asking for advice on a transfer of defined benefits from an OPS. Mrs C had already decided to retire, and to take her pension benefits in the form of an annuity. So the analysis she was asking AAC to perform was simply whether the CETV being offered by the OPS would allow her to purchase a higher annuity on the open market, than the pension she was entitled to take from the OPS.

I accept that Mrs C ultimately chose, in late January 2020, to end her relationship with AAC. But I am persuaded by the reasons she gave for that decision. I think by then any trust that existed between the parties would have been destroyed by AAC's failure to perform any meaningful work for a period of almost five months. Mrs C was less than four weeks away from retirement and needed to ensure that she had financial security for her future. As the advice she was seeking was whether it would be beneficial to give up the guaranteed benefits from the OPS, I don't think it unreasonable, at that late stage, that she took a safety-first approach and left her pension benefits with the OPS. There simply wasn't enough time, before her agreed retirement date, for AAC to perform the analysis it needed to undertake and for Mrs C to carefully consider the resulting advice.

I cannot be sure at this stage what annuity could have been purchased by Mrs C had she decided to transfer her pension benefits. And I think the value of that annuity would have driven any decision that Mrs C would have made. But I don't think it unreasonable to conclude that had any annuity quotation been higher than the pension being offered by the OPS, that Mrs C would have transferred her benefits. I think that AAC's actions, in failing to carry out the necessary analysis, deprived Mrs C of making that choice.

So I am intending to direct AAC to perform some analysis of the annuity that might have been available to Mrs C in February 2020 had she accepted the CETV. I think it fair that any annuity should be on a similar basis to that offered by the OPS, save for any obvious benefits that would not be applicable to Mrs C's circumstances such as a dependent's pension. So I would expect AAC to use similar guarantee periods and annual escalations when completing that analysis. And, to help manage Mrs C's expectations, from the limited analysis I have carried out, it is far from clear that she could have purchased a better annuity based on the terms I have set out above.

AAC has told us it doesn't hold information about the CETV that the OPS would have provided to Mrs C. But that seems to be at odds with the information it gave Mrs C in 2019 when it said it had gathered all the necessary information and passed it over to its analysis team. And Mrs C has provided us with her record of the CETV that she says AAC passed onto her. So I'd encourage AAC to look carefully at its records to establish if it holds information about the CETV. I'm sure that I don't need to remind AAC of its regulatory responsibility to cooperate fully with the Ombudsman in the handling of complaints against it. Mrs C has told us that the CETV she recorded at the time was £230,980.48 so if AAC is unable to find any further information I think that is the CETV value that it is reasonable to use in these calculations.

I accept that AAC's advice might have gone further than the relatively simplistic calculation I am proposing above. It might for example have recommended that Mrs C defer using her pension savings and instead draw on any capital savings that she held. Or it might have recommended that she take her pension savings in a different form such as drawdown. But Mrs C has been clear to us that she was simply asking for a comparison between the benefits she would receive from the OPS and those available on the open market. So I am content that the redress I am proposing is reasonable here. By failing to undertake the agreed analysis I think AAC lost any reasonable opportunity to argue that other approaches might have been more beneficial for Mrs C.

AAC treated Mrs C very poorly in failing to even start the analysis it had agreed to undertake, whilst at the same time reassuring her that matters were in hand. That not only lost her the opportunity to compare the annuity she could purchase on the open market, but also to engage an alternative firm had AAC not wanted to undertake the work. I accept that AAC has refunded the fee it took from Mrs C – but I give little credit for that action. AAC had failed to undertake the work, so I can see no reason why it should expect to be paid for it. But, regardless of the results of the annuity analysis I have directed AAC to perform, this situation has undoubtedly caused great trouble and upset to Mrs C. So I intend to direct that AAC pay an additional sum of £300 in compensation to her.

Following that decision I considered the responses that I received from both parties. Given that those responses are equally relevant to the findings of my second provisional decision, and a further email I sent to AAC later, I will provide details of them later in this final decision. But those responses caused me to conduct further enquiries with the administrator of the OPS, and in particular in relation to the guaranteed transfer value information it provided at the time. So in my second provisional decision I said;

Having thought carefully about what AAC has said, I don't find myself deviating from many of the conclusions that I reached in my provisional decision. I still think that AAC treated Mrs C very poorly in failing to even start the analysis it had agreed to undertake, whilst at the same time reassuring her that matters were in hand. And I don't think that my conclusion that Mrs C might have simply expected a comparison between the OPS pension available to her, and an annuity that could be purchased on the open market, is out of line with the regulator's expectations in the specific circumstances that Mrs C found herself in.

But, some of the information that AAC has now provided has led me to conduct further enquiries with the administrator of the OPS, and in particular in relation to the guaranteed transfer value information it provided at the time.

It seems that Mrs C has mis-remembered some of the details from that time. I don't make any suggestion that she has been deliberately dishonest in her testimony – at

that time she would have had a significant number of activities underway in preparation for her retirement so it wouldn't be at all surprising that some of the timings might have become confused in her memory. But the additional information from the OPS administrator does lead me to reach a different conclusion about what AAC needs to do to put things right.

The OPS administrator has confirmed that its records indicate Mrs C herself requested a guaranteed transfer value from the scheme on 30 July 2019. The quotation was sent to her on 19 August 2019 and was guaranteed for three months (until 15 November 2019). So it is clear from the administrator's records that it was Mrs C, and not AAC, that requested the guaranteed transfer value – and that the request was made some time before Mrs C first engaged AAC to provide her with advice.

Mrs C completed a fact find with AAC on 18 September 2019. The document suggests that meeting was for Mrs C to begin to explore whether she wanted to take regulated advice about her pension benefits. But the information recorded at that meeting doesn't make any reference to a guaranteed transfer value having already been provided by the OPS administrator. I don't think that is entirely surprising – it wouldn't be unusual for a consumer to be unaware of the importance of the time limits imposed by the scheme on the guaranteed value.

AAC has said that it wouldn't request a guaranteed transfer value until the very end of its process. It says that is because it is well aware of the time limits those quotations introduce and the need to act quickly once they have been provided. So it does seem that AAC would have been aware of the importance of a quotation already having been issued – and on balance I think that important information of that nature would be likely to have been recorded had it been provided.

AAC says it received from Mrs C a copy of a non-guaranteed quotation on 15 October shortly before its first meeting with her. I understand that these sorts of quotations could be requested, without limits, by members from the OPS website. So it seems it was around that time that Mrs C decided to formally engage the firm to provide her with the regulated advice. But unbeknown to AAC, by that time there was only one month remaining on the guaranteed transfer value that Mrs C had previously received.

I don't think it would be reasonable for me to expect AAC to have been able to conclude its analysis and provide Mrs C with its recommendation before the guaranteed transfer quotation expired. My experience suggests that this process is likely to take far longer. And it seems that Mrs C would agree with those conclusions given her testimony that in January 2020 she thought that four weeks would be insufficient time to engage another firm to provide the regulated advice she had sought from AAC.

I have discussed with the OPS administrator what options would have been open to Mrs C when the guarantee expired – as I think would have been likely even if AAC had been aware of its existence. The administrator has confirmed that, except in truly exceptional circumstances, only one guaranteed transfer value can be issued in any twelve-month period. And without there being an active guaranteed transfer value in place the OPS administrator would not consent to the transfer of pension benefits from the scheme.

So what this means is that, unless Mrs C had agreed to the transfer of her pension benefits before 15 November 2019, no transfer would have been permitted until

August 2020 at the earliest. So, since I think it would be unreasonable to have expected AAC to have provided its advice by that time, its failure to undertake the work it had agreed for Mrs C didn't mean that she was prevented from taking a pension annuity on the open market.

I still think AAC let Mrs C down by the way it handled her request. And so I remain of this opinion that it would be appropriate for AAC to pay her £300 for the trouble and upset she was caused. But now I don't think that AAC needs to do anything more in terms of assessing what annuity Mrs C might have received on the open market – or paying her any further compensation for its failure to provide the advice.

I again invited both parties to provide us with any further comments or evidence in response to my provisional decision.

Mrs C provided us with copies of an extensive email exchange between her and the OPS administrator that took place before, and at the very start of, her engagement with AAC. I will discuss that email exchange in more detail later in this decision, but it led me to conclude that Mrs C was still entitled to receive a guaranteed transfer quotation during the time she was dealing with AAC. So that led me to conclude that I should disregard the altered findings I set out in my second provisional decision. I explained that reasoning in an email to AAC and asked it for any additional comments. So here, I will now summarise the comments from AAC in relation to both my first, and second, provisional decision. Those comments are lengthy, and at times repetitive, so I am only providing a brief overview here of what AAC has said. But I want to reassure AAC that I have read, and carefully considered, its entire responses to both my first, and second, provisional decisions.

AAC doesn't agree with my provisional findings. In its initial response it noted that it had not requested, or received, a guaranteed transfer value for Mrs C's benefits from the OPS administrator. It said that asking for that information would be at the very end of its process. But it confirmed that it received a copy of a transfer out statement (showing a non-guaranteed transfer value) directly from Mrs C on 15 October in advance of the initial client meeting.

AAC noted that whilst Mrs C had agreed with her employer that she would retire in February 2020 that didn't place any requirement on her to access her pension benefits immediately. It said its fact find had shown that she had other financial resources she could use to support her expenditure in the short term. And it said that any consideration about whether Mrs C might have received a higher annuity was hypothetical given that she had disengaged from the advice process before any recommendation was made, and that she had accepted the annuity from the OPS without taking regulated advice from elsewhere.

But AAC then considered, hypothetically, what steps it might have needed to take had it provided Mrs C with the advice she was seeking. It considered, at some length, the requirements placed on the firm by its regulator when providing advice of this nature. And it thought it would be unreasonable for me to conclude that its advice would have been for Mrs C to take her pension benefits immediately. It thought a simple comparison of the scheme pension to the annuity that could be purchased on the open market would fall well short of the regulator's expectations for this type of advice. So it doesn't think it could have provided Mrs C with the necessary statutory advice on that basis, and so she would have been prevented from making any transfer.

Ultimately AAC says that at no stage during its process was Mrs C in possession of a guaranteed transfer value. It says she would have needed to obtain that valuation in order for it to provide her with any assessment on the best way to manage her retirement savings.

So ultimately it says it was the absence of that guaranteed transfer value, rather than AAC's failure to act, that prevented Mrs C from proceeding.

As it has mentioned above, AAC then reiterated that its fact find had shown that Mrs C had sufficient other assets in order to support her retirement for at least a year. So it says that, even after she became aware of AAC's failure to act on her request, Mrs C still had time available to seek new advice from another firm. It says she wasn't required to immediately take her occupational pension benefits simply because she had decided to retire from her employment.

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.

As in my provisional decisions I've taken into account the law, any relevant regulatory rules and good industry practice at the time when considering this complaint. I have also again carefully considered all of the submissions that have been made by Mrs C and by AAC. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

I again think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I will first deal here with the new information Mrs C has provided about her interactions with the OPS scheme administrator.

Mrs C has provided us with a copy of an email exchange she had with the OPS administrator between July and October 2019. From that it is clear that Mrs C requested the OPS administrator to provide her with indicative (non-guaranteed) quotations of her pension benefits across both tranches of her benefits. And it is equally clear that the OPS administrator failed to handle her request correctly. She was sent a guaranteed quotation for part of her benefits, and nothing for the other tranche. It was only after making a formal complaint that the administrator provided the indicative quotations that Mrs C had requested. And in that email the administrator confirmed that the previous issues would not affect Mrs C's one guaranteed quote per year.

I have been unable to get independent validation of those emails from the OPS administrator. But I have absolutely no reason to doubt the veracity of what Mrs C has provided to us. On balance I must reasonably conclude that there was no impediment to Mrs C (or AAC on her behalf) requesting a guaranteed quotation of Mrs C's retirement benefits as part of the analysis she had asked the firm to conduct. And I am satisfied that the information I referenced in my first provisional decision – the CETV Mrs C recorded at the time of £230,980.48 is most likely the final quotation the OPS provided in October 2019, and a good indication of the likely transfer value Mrs C would have received.

So that now takes me back to the conclusions I reached in my first provisional decision. And although the representations AAC has made against those findings haven't caused me to

change my mind, I would like to provide some further explanations in relation to the additional points that AAC has raised.

As I said in my second provisional decision I don't think that my conclusion that Mrs C might have simply expected a comparison between the OPS pension available to her, and an annuity that could be purchased on the open market, is out of line with the regulator's expectations in the specific circumstances that Mrs C found herself in.

When considering the transfer of defined and guaranteed benefits, the regulator has quite rightly placed a great deal of importance on advising firms fully and carefully analysing all aspects of a consumer's finances, and how the transferred pension benefits might be invested and used in the future. And it is that depth of analysis that AAC says I should take into account when reaching my decision on this complaint.

But Mrs C's circumstances were very different to those that apply to the majority of transfers of guaranteed benefits from an OPS. Mrs C wasn't looking to invest her pension savings to provide for an income in many years' time. In fact Mrs C wasn't expecting to invest her pension savings at all – she was simply looking to swap one form of guaranteed income (a pension from the OPS) for another (an annuity purchased on the open market). So I think many of the perfectly valid concerns the regulator might have on a transfer from an OPS would have been negated by that approach.

I accept that, had AAC undertaken much of the analysis it says would have been necessary, it might have presented Mrs C with other options to consider on how she might use her retirement savings. It might, for example, have suggested that she only used part of those savings to purchase an annuity, leaving the remainder available to be accessed flexibly during her retirement. Or it might have suggested not taking any retirement benefits until she reached the normal retirement age of the OPS, and instead used her other savings to support her living costs. And I agree with AAC that any analysis of that nature would have been far more involved than the simplistic suggestion I have made here.

But I think AAC's failure to act at all on Mrs C instructions, for such a lengthy period of time and whilst reassuring Mrs C that matters were in hand, removes any reasonable reliance on a defence of that nature. Mrs C has told us that her only expectation was that she would use her entire retirement savings to purchase an annuity. And without AAC having considered, and presented to Mrs C, any alternative options I have no reason to doubt that is the approach she would have taken.

In its response to my second provisional decision AAC appears to have placed great reliance on the fact that Mrs C didn't hold a guaranteed CETV for her pension savings. And it says that means it couldn't proceed with its analysis. But I find that line of defence to be entirely without merit.

Earlier AAC has told us that it wouldn't request a guaranteed transfer value until the very end of its process. So it seems to me that AAC accepts that it was responsible, as part of the analysis it agreed to undertake for Mrs C, for gathering that information. And from what I have said above, it now seems clear that it would have been possible for AAC to obtain that guaranteed CETV from the OPS administrator. Its failure to hold that information is not the responsibility of Mrs C – it is a further indication of the failings of AAC's processes.

From the information I have seen I cannot disagree that Mrs C had alternative means that she could have chosen to use to support her retirement whilst seeking alternative advice on her pension benefits. But I have seen nothing that makes me think Mrs C should have been compelled to take that approach. Her alternative means appear to have been intended as a buffer against unexpected expense – not as a means of supporting her normal living costs. If

she had used them for a period of time I see little likelihood that they could have been easily replaced. Mrs C approached AAC in good time before her retirement – she allowed a period of almost six months for AAC to complete its analysis and provide her with advice.

So overall I remain of the same opinion that I reached in my first provisional decision.

AAC treated Mrs C very poorly in failing to even start the analysis it had agreed to undertake, whilst at the same time reassuring her that matters were in hand. That not only lost her the opportunity to compare the annuity she could purchase on the open market, but also to engage an alternative firm had AAC not wanted to undertake the work. I accept that AAC has refunded the fee it took from Mrs C – but I give little credit for that action. AAC had failed to undertake the work, so I can see no reason why it should expect to be paid for it. And, regardless of the results of the annuity analysis I am directing AAC to perform, this situation has undoubtedly caused great trouble and upset to Mrs C. So I also direct that AAC pay an additional sum of £300 in compensation to her.

Putting things right

AAC needs to do the following;

- AAC should pay to Mrs C the sum of £300 in respect of the trouble and upset she's been caused.
- AAC should perform some analysis, and share the results with Mrs C, to identify what annuity could have been bought on the open market in February 2020 based on the estimated CETV that Mrs C provided in October 2019 (£230,980.48).

I think it fair that any annuity should be on a similar basis to that offered by the OPS, save for any obvious benefits that would not be applicable to Mrs C's circumstances such as a dependent's pension. So I would expect AAC to use similar guarantee periods and annual escalations when completing that analysis. I accept that the different tranches of Mrs C's OPS benefits had different features. AAC should attempt to replicate (by the use of multiple annuities if needed) the structure of those benefits.

If that analysis shows that Mrs C could have purchased a higher annuity on the open market, that is what I think she would have done but for AAC's failings. So AAC should put Mrs C back into the position she would have been by either purchasing on her behalf an additional annuity, or paying her compensation to allow her to purchase the annuity for herself. AAC should also pay Mrs C compensation to reflect the annuity payments that she would have received up to the date of settlement. But I accept those payments would have been subject to income tax, so they can be reduced by 20%. AAC should add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement.

My final decision

My final decision is that I uphold Mrs C's complaint and direct Advanced Asset Consultants Ltd to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 27 July 2022.

Paul Reilly

Ombudsman