

The complaint

Mrs B complains that Openwork Limited trading as The Openwork Partnership ('Openwork') gave her unsuitable advice when it recommended she switch to a new personal pension plan (PPP) and individual savings account (ISA) provider.

What happened

Mrs B, who was an existing client of Openwork, had a meeting at her home with her Openwork adviser in July 2015. Mrs B's husband was also at the meeting. A Fact Find was completed during the meeting. A Client Report, Retirement Account Illustration and Recommendation Report were also completed.

In summary, Openwork recorded the following information about Mrs B:

- Mrs B was 44 years old and married with two financially dependent children.
- Mrs B was employed on a part time basis, earning a gross income of £2,500 per annum (p.a.).
- Mrs B and her husband had a joint net monthly income of £4,000 and total monthly expenses of £2,300.
- The value of Mrs B's home, jointly owned with her husband, was £260,000. She and her husband had other property valued at £50,000, savings of just under £10,000 and liabilities totalling £100,000.
- Mrs B took out an ISA in 2011, making a lump sum contribution of £5,000. In 2015 this was valued at £6,112.07. Regular contributions were not being made.
- Mrs B had a PPP with a transfer value of £5,317.27. She made monthly contributions of £95.34.
- Mrs B was part of her employer's defined occupational pension scheme. She was making regular contributions of £5.50 per month and the scheme retirement age was 65.
- Mrs B indicated she wanted to retire at age 67.
- Based on an Attitude to Risk and Investor Experience questionnaire, Mrs B was assessed as an inexperienced investor who relied on advice and recommendations. She was assessed as having a 'balanced' attitude to risk.
- Mrs B's objectives were listed as 1) to build up capital through regular monthly premiums, within her budget, 2) to save on charges, 3) to have access to a vast range of funds, 4) to put all assets in one place on a platform where her money could be managed in a tax efficient way, taking advice and using the new pension reform rules to her benefit, 5) to pay additional charges for the funds in anticipation of their growth, 6) to have investments auto-rebalanced.

In recommending the transfer of the PPP and ISA to the Zurich platform, Openwork said the following:

- The existing fund range for the PPP and ISA did not meet Mrs B's objectives. The recommended ISA offered 483 funds for switching purposes and the PPP offered 362 funds.

- The existing PPP was a single manager fund that didn't auto-rebalance. While it had a diversified spread of assets, it didn't have a diversified spread in terms of multiple funds.
- Transferring the PPP would be more expensive by 0.82%.
- Mrs B had waiver of contribution benefit on her current PPP, at a cost of £2.38 per month, and this would be lost following the transfer.
- Transferring the ISA would be less expensive by 0.75%.
- Switching charges were free and unlimited, although the ISA provider reserved the right to charge if switching was excessive.
- Moving Mrs B's investment portfolio to a platform would simplify the way her investments were administered and would have defined her investment strategy to help achieve future aims and objectives.
- The importance of having an ongoing service commitment was considered and this was an important factor for Mrs B in moving to the Platform.
- An ongoing advice fee of 1% pa, to be paid out of funds, for the servicing and managing of Mrs B's assets was agreed. Cost comparisons between the existing and the proposed PPP and ISA excluded this ongoing service charge.
- There were no tax liabilities for transferring the PPP or ISA.
- Mrs B should make a monthly contribution of £95 (net) to her retirement account.
- The advisor's initial fee of 4% would be deducted from the transfer monies.
- It was agreed that no changes would be made to Mrs B's occupational pension.

Mrs B accepted Openwork's recommendation and later switched fund providers.

Mrs B complained to Openwork in April 2021. She said she became concerned when the Openwork adviser said she would be charged a total of £900 for her to increase the monthly amount paid into her ISA by £150. She said this charge was ultimately reduced to zero, but she decided to seek independent advice. Following this advice Mrs B said she then had concerns about the recommendations made to her, and that fees and charges may have been unnecessary and excessive. Mrs B said she was not an experienced investor and when she met with the Openwork Adviser in 2015, she had no specific demands or requests, other than that her then holdings were reviewed. Mrs B thought the advice letter from July 2015 was difficult to follow and said she was not offered the opportunity to leave her funds where they were.

Openwork responded to Mrs B's complaint but didn't uphold it. It said it was satisfied Mrs B received not only suitable advice but continued advice and ongoing service.

Mrs B remained unhappy and so brought her complaint to this Service. Mrs B's husband also raised a complaint and this was dealt with separately. Mrs B reiterated what she said in the complaint to Openwork and asked for full repayment of all advisor charges paid to Openwork.

Our Investigator upheld Mrs B's complaint and thought the recommendations made by Openwork were unsuitable and may have resulted in Mrs B being financially disadvantaged. Our Investigator said Openwork should take steps to calculate whether redress was owed to Mrs B.

Openwork did not agree with what our Investigator said. It thought that it was not right that the cost of the ongoing advice was used as a factor to calculate that the recommended platform pension was more expensive than the transferring scheme. Openwork asked for the complaint to be escalated, so this came to me to review.

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'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 am upholding Mrs B's complaint. I'll explain why.

The Regulator's position

At the time of Openwork's advice, the Regulator, the Financial Conduct Authority (FCA), set out the principles for assessing suitability.

Specifically:

9A.2.1 of the Conduct of Business Sourcebook (COBS) says:

"When providing investment advice or portfolio management a firm must:

- (1) obtain the necessary information regarding the client's:*
 - (a) knowledge and experience in the investment field relevant to the specific type of financial instrument, insurance-based investment product or service;*
 - (b) financial situation including his ability to bear losses; and*
 - (c) investment objectives including his risk tolerance,*

so as to comply with (2);
- (2) only recommend investment services, financial instruments and insurance-based investment products, as applicable, or take decisions to trade, which are suitable for the client and, in particular, in accordance with the client's risk tolerance and ability to bear losses".*

And 9A.2.2 says:

"Firms should undertake a suitability assessment not only when making a personal recommendation to buy a financial instrument or an insurance-based investment product but for all decisions whether to trade, including making any personal recommendations about whether or not to buy, hold or sell an investment".

Mrs B's position at the time of the advice

At the time of the advice, Mrs B was 44 years old. In addition to her being part of her employer's defined benefit pension scheme – which would have provided her with a pension of around £400 p.a. – and her state pension entitlement, Mrs B's retirement provision comprised of one PPP and an ISA. Mrs B's own pension provision was relatively modest and I'm aware that her husband's pension benefits represented the largest proportion of their future retirement income.

Mrs B had two dependants, who she expected to be financially reliant on her and her husband until they reached 21 years of age. She jointly owned her own home, which I have

assumed is mortgaged given her total liabilities of £100,000. She and her husband owned other property and savings totalling around £60,000. By all accounts, and taking into consideration the entire household income, Mrs B appeared to be in a relatively comfortable financial position.

Mrs B was some years away from retiring, given that she expected to retire at the age of 67. So, one of her main objectives was to build up capital in her retirement fund, through making regular contributions, in the most tax efficient way.

In deciding whether the advice given was suitable, I have to be satisfied that there were clear reasons why this move was more beneficial to Mrs B than her pension and ISA remaining where they were.

Financial Viability

An important part of assessing the viability of financial advice is to look at whether the transfer put Mrs B in a better financial position than she would have been in if she had not followed the adviser's recommendation. I take the view that there has to be a notable benefit to Mrs B in order for there to be a good reason to transfer the PPP and ISA.

I've considered that what Mrs B has complained about are the charges that have been levied by Openwork since the pension switch, that Mrs B considers made the switch too costly and the advice unsuitable.

I can see from the Client Report drawn up by Openwork that the Reduction in Yield (RIY) – the effect that charges have in reducing the growth of an investment over the term of the investment – meant that Mrs B would end up paying more in charges as a result of the PPP switch and ISA transfer.

While the RIY has taken fund charges into account, it hasn't taken the 1% p.a ongoing service fee into consideration when calculating the cost of moving Mrs B's pension funds. And I think this needs to be considered when looking at the overall cost to Mrs B. From what I can see, Mrs B would most likely not have opted to pay for this particular service had she not moved her funds onto one platform, as recommended. I see the ongoing service fee as part and parcel of the PPP switch and ISA transfer, and so I think it's fair to consider it as a cost attached to that move.

Two of Mrs B's objectives were listed as building up capital through making monthly contributions and saving on charges. Given that the RIY shows Mrs B would have ended up paying more in charges as a result of following the adviser's recommendations, and that the additional 1% ongoing service fee made the move even more costly, I can't see that the transfer in 2015 was in line with either of these two objectives. So, on the face of it, it would seem that the advice given to Mrs B to move her funds was unsuitable.

Nonetheless, I've considered Mrs B's other objectives and whether there might be other considerations that mean a transfer was suitable, despite providing overall lower benefits.

Range of funds, flexibility and consolidation on one platform

Another of Mrs B's objectives was for her to have access to a 'vast range of funds' with experienced fund managers that have a long-term approach to investing in a broad range of asset classes. Openwork went on to say Mrs B did not want her investment to be held in single manager funds, as she wanted to invest in a diverse portfolio of funds to match her attitude to risk.

Openwork felt Mrs B's existing fund range didn't meet her objectives. But I can see that her PPP offered her almost the same fund range, in terms of the number of funds available for switching. And Openwork acknowledged her existing funds had a diversified spread of assets.

Openwork noted that Mrs B's existing funds were single manager funds and did not have the facility to automatically rebalance her funds, to ensure they remained aligned to her agreed risk profile. And this facility, and I agree this is likely to be beneficial, was available by moving her funds as recommended.

Mrs B's funds were moved to a single platform, which Openwork said allowed her to consolidate her investments and provided her with greater flexibility, specifically in relation to a built-in drawdown facility at retirement.

So I've looked at whether these additional considerations provided enough of a benefit to Mrs B that the recommendations to transfer her PPP and ISA were suitable, and I don't think they did.

I think that Openwork's recommendation put Mrs B in a position where her funds potentially had greater oversight and would be rebalanced on a six-monthly basis, and as I said, I think this was likely beneficial for her.

I also think that while there might be some future benefit to moving her funds to a platform that allowed her greater flexibility at retirement, the fact is Mrs B's retirement needs were not discussed during the meeting. Given that Mrs B was 44 years old at the time of the advice and her retirement was some years away, I think that it was premature to say that moving her funds in the way suggested by Openwork suited her needs in retirement.

While I can see that the recommended transfer offered some benefits to Mrs B and satisfied some of the listed objectives, I don't think this meant the advice given was suitable, as I don't think these offered enough of a benefit to Mrs B to justify the transfer, given that the transfer wasn't financially viable as set out above.

I think it's clear Mrs B's main objective, given her age and that she didn't expect to retire for some time, was to build up the capital in her retirement funds in the most tax efficient way. I think Openwork did not attach enough weight to this as her main objective. I can't see that the recommended transfer offered Mrs B more than she already had, if she had opted not to transfer the PPP and ISA. I'm satisfied that the transfer recommended by Openwork didn't provide Mrs B with enough potential to be better off as a result of transferring her existing pension provision.

So, I'm satisfied that the advice given to Mrs B was unsuitable and I've outlined below the steps Openwork should take to see whether it needs to take further action here. In addition, I think Openwork should pay Mrs B compensation of £200 – Mrs B felt she had to take steps to have another adviser look again at the recommendations made for her and she found this experience stressful. I think it's fair to ask Openwork to make a payment for the distress and inconvenience experienced.

Fair compensation

My aim is that Mrs B should be put as closely as possible into the position she would probably now be in if she had been given suitable advice.

I take the view that Mrs B would mostly likely have remained with her previous providers, however I cannot be certain that a value will be obtainable for what the previous pension

plan and ISA would have been worth. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mrs B's circumstances and objectives when she invested.

What must Openwork do?

In relation to the PPP, to compensate Mrs B fairly, Openwork must:

- Compare the performance of Mrs B's pension with the notional value if it had remained with the previous provider. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.
- Openwork should also add any interest set out below to the compensation payable.
- Openwork should pay into Mrs B's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If Openwork is unable to pay the total amount into Mrs B's pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mrs B won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mrs B's actual or expected marginal rate of tax at her selected retirement age.
- It's reasonable to assume that Mrs B is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mrs B would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

In relation to the ISA, to compensate Mrs B fairly, Openwork must:

- Compare the performance of Mrs B's ISA with the notional value if it had remained with the previous provider. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable. Openwork should pay Mrs B a lump sum for any loss identified.
- Openwork should also add any interest set out below to the compensation payable.
- Pay to Mrs B £200 for the reasons explained in my findings to reflect the distress and inconvenience caused.

Income tax may be payable on any interest paid. If Openwork deducts income tax from the

interest it should tell Mrs B how much has been taken off. Openwork should give Mrs B a tax deduction certificate in respect of interest if Mrs B asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
PPP and ISA	Still exists and liquid	Notional value from previous providers	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

Notional Value

This is the value of Mrs B's investment had it remained with the previous provider until the end date. Openwork should request that the previous providers calculate this value.

Any additional sum paid into the PPP and ISA should be added to the *notional value* calculation from the point in time when it was actually paid in.

Any withdrawal from the PPP and ISA should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Openwork totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If the previous providers are unable to calculate a notional value, Openwork will need to determine a fair value for Mrs B's investment instead, using this benchmark: For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mrs B main objective was Capital growth with a small risk to her capital.
- If the previous providers are unable to calculate a notional value, then I consider the measure below is appropriate.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to her capital.
- The FTSE UK Private Investors Income **Total Return** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mrs B's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs B into that position. It does not mean that Mrs B would have invested 50% of her money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mrs B could have obtained from investments suited to her objective and risk attitude.

My final decision

I uphold the complaint and require Openwork Limited trading as The Openwork Partnership to pay the amount calculated as set out above.

Openwork Limited trading as The Openwork Partnership should provide details of its calculation to Mrs B in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 27 April 2023.

Martina Ryan
Ombudsman