

## **The complaint**

Mr O complains that MWS Financial Advisers Limited (MWS) shouldn't have advised him to transfer his personal pension benefits into a new plan with the same provider in 2016. He thinks he would have been better off if he had remained where he was and would like to be put back as close to the position he would now be in without MWS' advice.

## **What happened**

In October 2015 MWS met with Mr O to discuss his existing personal pension plans. He said that he was looking to invest more into his plans as mortgage rates were low and his costs had fallen.

MWS said that one of Mr O's plans contained guaranteed annuity rates and should be kept in place, but it said the other plan only allowed investment into the with-profits (WP) fund – which was then paying a 2% annual bonus rate. It recommended transferring to a new flexible retirement plan with the same provider, but which offered a wider range of funds. It said the transfer would also allow Mr O to pay regular contributions into the plan and suggested increasing his contributions from £30 to £150 per month. MWS recommended investing into the "Prufund growth" fund within the plan and said it wouldn't charge Mr O for its advice – although it confirmed the introduction of an ongoing adviser charge of 0.75% per annum.

On 17 October 2015 Mr O's pension provider confirmed the transfer value of his plan as £63,019.43. It provided the requested transfer discharge forms and said it would recalculate the fund value when it had received all the outstanding requirements.

The application to transfer was signed by Mr O on 10 December 2015 and submitted to the provider, who confirmed in a letter dated 13 January 2016 that it had paid the transfer value to the new plan.

When Mr O received his first annual pension statement in September 2016 he noticed that MWS had received a charge of around £300. He asked the provider to stop the charge which was done the following month.

In 2020 Mr O says he started to be concerned about the difference in performance between his two plans and queried the matter with an adviser from the provider. But he wasn't satisfied with the ongoing financial loss he thought he was suffering so, in August 2020, he complained about the advice he'd been given in 2016.

He said he was told that there would be no cost for the advice he was given, so he would like any fees that had been deducted to be refunded. But he also said that he thought he'd suffered a financial loss because of the advice he'd been given. He said he wanted to be put back into the position he would now be in without the advice to switch into another pension plan with the same provider.

MWS didn't uphold the complaint. It made the following points in response:

- It had conducted a fact find and issued a suitability report to confirm its advice in 2016.
- It had agreed, as a gesture of goodwill, not to charge a fee for the transfer. But it had set out its *ongoing advice fee* which Mr O had agreed to by signing the application form. But in any case, Mr O cancelled this ongoing fee within the first year.
- It said Mr O's plan provider had given it the declared bonus rates at the time of the advice – which demonstrated that Mr O would obtain better rates on his new plan than the original plan.
- Although the total ongoing charges for the new plan were higher than the original one, when the appropriate bonuses were applied, the returns on the new plan outweighed the existing one.
- In summary it believed that Mr O had agreed to its ongoing advice charge and it thought he was in a better financial position following the switch.

Mr O remained dissatisfied, so he asked the provider for some more information about the values of the plan. In a letter dated 22 December 2020, the provider said that the original plan would have been worth £86,309.90 if it hadn't been transferred, and £95,556.96 if the original monthly contributions had been increased to £150 and not transferred. The transfer value of the new plan on 23 September 2020 was £86,106.45.

Mr O decided that, as it seemed he had suffered a financial loss, he would bring his complaint to this service, where one of our investigators looked into the matter.

He said the complaint shouldn't be upheld, making the following points in support of his conclusion:

- He thought that the ongoing charges had been disclosed in both the suitability report and application form. He believed these documents made it clear that no initial fee was to be charged but that an ongoing fee would be deducted to provide future reviews and advice.
- He thought that the evidence suggested Mr O wasn't satisfied with the performance of his existing plan and was looking for an alternative through his discussions with MWS. He thought the transfer seemed reasonable as Mr O didn't have a choice of alternative funds in his existing pension plan.
- Performance alone wasn't something we would usually consider as part of our investigation as investments can go up and down, and he thought the transfer was suitable and that Mr O was invested into a new fund with a similar risk profile.

Mr O didn't agree and asked for his complaint to be referred to an ombudsman – so it was passed to me to review. He made the following points to accompany his referral:

- He still hadn't been given a copy of MWS' suitability report. He was unsure why MWS wouldn't provide the document when requested.
- In 2016 he had simply wanted to increase his pension premiums – but ended up switching into a new fund. He was told the transaction wouldn't cost him anything and when he discovered it had, he cancelled the fees straight away.
- He thought this showed that the reality of what was discussed was different to what was set out in the suitability report– which in any case he hadn't ever received.
- He didn't think he was in a position to dispute MWS' advice that the new fund would perform better at the time.
- He didn't think he should have been encouraged to switch – especially being so close to retirement. He said it didn't seem fair to recommend a switch into a fund where the performance wasn't guaranteed and there was an increase in costs,

particularly when his normal retirement date had only been around six years after the date of the switch.

- We hadn't investigated whether the provider would have "encouraged" such a switch in the same circumstances.

### *My provisional decision*

In my provisional decision I took a different view to the investigator and said Mr O's complaint should be upheld. I made the following points in support of my findings:

- We wouldn't normally uphold a complaint on the basis of investment performance alone, so I'd considered the question of whether MWS' recommendation to switch plans and funds with the same provider was suitable.
- I was satisfied MWS had set out its reasons for recommending the switch, but I had expected to see a fuller comparison between the existing and new pension plans to justify the reasons for the recommendation.
- There was no evidence to show that such a comparison had been made and presented to Mr O. Instead MWS had set out the bonus rates that applied at the time to each fund and simply subtracted the two sets of charges from them.
- I set out the reasons why I didn't think that was the fairest way for MWS to give Mr O the opportunity to make an informed decision about whether the switch was in his best interest.
- I listed the factors which demonstrated that the advice might not have been suitable. I thought Mr O needed to be presented with illustrations which made it clear which plan was more likely to provide greater returns – which I thought would be Mr O's biggest driver in determining the suitability of the advice.
- I said MWS should carry out a calculation, at the date of any final decision, which compared the notional value of the original plan with the actual value of the current plan.

### *Responses to the provisional decision*

MWS said it was happy for us to publish a final decision and had already requested the necessary information from the provider to carry out the redress calculation.

Mr O said he accepted the outcome from the provisional decision. He believed he had suffered a considerable loss as a result of the switch and found the situation distressing – especially as his retirement was imminent. He said he wanted to reserve the right to carry out his own redress calculation if unsatisfied with MWS'. He also advised that he hadn't received the regulatory illustrations I had referred to on pages four and five of my provisional 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.

As neither party has made any additional submissions or points to consider, I see no reason to depart from my provisional findings. I don't think MWS' advice was suitable, and I think it needs to carry out a redress calculation – as set out below, to see if Mr O has suffered a financial loss in this case. I'll give my reasons for the outcome I've reached.

We wouldn't normally uphold a complaint purely on the basis of investment performance – as the very nature of investments means that performance cannot be guaranteed. But we

can consider a complaint about whether or not the advice that may have led to an issue with performance was suitable. So that's what I've looked at here – whether the recommendation for Mr O to switch plans and funds with the same provider was suitable.

MWS did provide a reason for its recommendation in its suitability report. It stated that, “*I think this offers you a better growth option going forward on this pension.*” That was based on the idea that Mr O would be able to switch and invest into a wider range of funds, one of which was similar to the WP fund and was providing gross returns of 7.3%. It set out the returns – and charges, that Mr O was receiving on his existing plan, and concluded that he would be better off by transferring to the new plan/fund.

But I think Mr O needed to have been presented with documentation that set out why he would be better off, and which demonstrated that MWS' advice was sound and in his best interest. Instead MWS simply noted the bonus rates that applied to both plans at that time and subtracted the charges that applied. So, although it concluded that Mr O would be better off going forward, I don't think it demonstrated that the switch was in his best interest.

I would have expected MWS to have provided Mr O with an illustration – based on the growth rates set out by the regulator, which would have included the charges that applied to both plans and the existing and proposed contributions. I know this would have assumed the same returns for both plans, and MWS has said that the bonus rate on the fund it recommended was higher than what Mr O was receiving at the time. But a comparative illustration would have enabled Mr O to have compared the charges and effect of contributions of both plans, and he could then have looked at the relative historical bonus rates of them to make his final decision on whether to switch.

I've set out the effect of not incorporating these factors into a comparative illustration below.

#### *The bonus rates*

MWS confirmed the bonus rate that Mr O's WP fund had attracted up to that time and explained that a terminal bonus would be applied which wasn't guaranteed. It implied that consolidation of that terminal bonus would mean it would then be “locked in” following the switch. It also confirmed the bonus rate that was being applied to the new fund at that time. But that didn't take into account that “*performance/bonus rates are not guaranteed on any funds and can vary in the future*”, as was confirmed in WMS' own suitability report.

There's no suggestion here that MWS misled Mr O or didn't provide him with accurate information, but I think it led Mr O to decide the transfer would be in his best interest because it was logical to conclude that the differential between the bonus rates would lead to greater performance with the new plan. But I think Mr O should have been provided with an illustration of future growth for the proposed plan, and also obtained an illustration for the existing plan at around the same date, assuming it continued in force. Both illustrations should have been projected to the same retirement age.

#### *The charges*

Under the regulator's rules at the time, an illustration was required to take into account the future charging structure of the respective plans, which included charges deducted to pay for commission or fees to the adviser for making the switch. So looking at charges in isolation, whichever plan had the higher projected value would have appeared the more suitable option.

But it was important to then consider this in the context of any other benefits that would be gained and lost in the switch. I think Mr O needed to be given this information so that he could then decide if the potentially higher bonus rates of the new plan were sufficient to assume the transfer would be in his best interest.

Sometimes these comparisons are clouded by including future contributions, as the impact of charges on these may be different than the existing fund. In this case it would seem that MWS weren't aware that Mr O was making contributions of £30 per month to his existing plan, so there's no illustration to compare the addition of increased contributions into the existing plan against what were essentially "new" regular contributions to the new plan.

Ideally MWS should have obtained illustrations showing the values generated by the existing fund and future contributions separately.

So I think simply telling Mr O that the new plan had higher charges than the existing one didn't sufficiently highlight the effect these charges might have had on future returns.

#### *The term of the plan*

In this case Mr O's selected retirement age was around seven years away. Where there's a relatively short investment horizon available it's possible the projected growth might not offset the impact of any new or ongoing costs. I also can't discount that the differential in the bonus rates might not be so pronounced over so few years when the charges were taken into account. So it's difficult to conclude what the outcome of the illustrations would have been when these variable factors were considered. But I think it would have helped to put Mr O in a more informed position, so that he could decide if the transfer was in his best interest, instead of simply being presented with a calculation of the explicit charges being subtracted from the historic bonus rates.

#### *The fund recommendation*

One of the main reasons for the recommendation was that Mr O was only able to invest into the WP fund within his existing plan. WMS said that if he switched to the newer plan he would have the option of investing across a much wider range of funds. But I note that WMS only recommended that he invested into one fund, which, while it appeared that its current and historical bonus rate had been higher, was essentially a similar fund that worked in the same way. It's unclear to me why MWS wouldn't have included access to a larger number of funds as part of its recommendation to give Mr O more diversity in his investment.

#### *summary*

So I think that these factors help to demonstrate why MWS' advice might not have been suitable. It shows that such factors needed to be included in the information presented to Mr O which would then have given him a better idea of whether the switch was in his best interest.

I think MWS ought to have provided comparative illustrations which would have made it clear to Mr O which plan was likely to provide him with greater returns – which I think would have been his main driver in deciding if the transfer was appropriate. MWS thought Mr O should have a bigger range of funds to invest into, but with only just over six years to his selected retirement age it was unlikely this would have been a more important factor to Mr O than the ability to increase his retirement provision. But in any case, the evidence I've seen would suggest that MWS only went on to recommend one fund within the new plan.

## **Putting things right**

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

I'm satisfied that what I've set out below is fair and reasonable given Mr O's circumstances and objectives when he invested.

## **What must MWS do?**

To compensate Mr O fairly, MWS must:

As at the date of this final decision, compare the value of Mr O's current pension plan with the notional value of the original plan. Both values should take into account the actual contributions made since the switch. 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.

MWS should also add any interest set out below to the compensation payable.

MWS should pay into Mr O'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 MWS is unable to pay the total amount into Mr O's pension plan, it should pay that amount direct to him. 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 Mr O won't be able to reclaim any of the reduction after compensation is paid.

The *notional* allowance should be calculated using Mr O's actual or expected marginal rate of tax at his selected retirement age.

It's reasonable to assume that Mr O is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr O 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%.

Pay to Mr O £250 for the disruption to his retirement planning.

Income tax may be payable on any interest paid. If MWS deducts income tax from the interest it should tell Mr O how much has been taken off. MWS should give Mr O a tax deduction certificate in respect of interest if Mr O asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

## **My final decision**

I uphold the complaint. My decision is that MWS Financial Advisers Limited should pay the amount calculated as set out above.

MWS Financial Advisers Limited should provide details of its calculation to Mr O in a clear, simple format.



Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 23 January 2023.

Keith Lawrence  
**Ombudsman**