

The complaint

Mr D's complaint is about the advice Approachable Finance Limited (trading as Approachable Finance (IFA)) gave him to transfer benefits from an occupational pension scheme (OPS) to a personal pension. He says the defined benefit element of the OPS should have been investigated further before proceeding with the advice to transfer. Mr D believes he lost out financially by having to take the defined benefit part of the pension as a single life annuity with no guarantee period.

Mr D also complains that the service agreement he had with the firm was terminated at short notice.

What happened

Mr D's complaint was considered by one of our investigators. He sent his assessment of the complaint to both parties on 2 December 2022. The background and circumstances to the complaint were set out in his assessment. But to recap, Mr D was a member of an occupational pension scheme (OPS) and he'd sought advice from Approachable Finance about taking benefits from it. He'd been made aware from colleagues of the potential opportunity for an uplifted tax-free cash amount.

Approachable Finance contacted the administrators - a well-known pension provider – and the Trustees in the process of obtaining information about the scheme. On 21 January 2020 the administrators sent Approachable Finance information about the "Group Plan". The letter provided detailed information including that the plan was paid up, didn't facilitate drawdown, and so would need to be transferred to a new plan if drawdown was required. It also said *"...there are no Safeguarded Benefits attached to this member's plan"*.

The administrators called Approachable Finance on 19 February 2020 about the level of protected tax-free cash (PTFC) available and the delays in getting information from the Trustees. The administrator's call note said the Trustees were considering limiting tax-free cash to 25%, but Mr D was already aware of other scheme members who'd benefited from an uplift in the tax-free cash and so he was concerned he may be restricted to the 25%.

The administrators wrote to Approachable Finance again on 18 March 2020 saying the Trustees had confirmed that the tax-free cash payable from the plan would be based on Mr D's protected amount as at 5 April 2006, rather than being restricted to 25%. It said the Trustees had also confirmed there was an option to take the PTFC cash and use the remainder for a drawdown arrangement.

The letter went on to say that the OPS had *'...non standard rules, which include a defined benefit guarantee in respect of contributions prior to 1 March 1996. The scheme actuaries have identified that there is a shortfall in [Mr D's] pre 1 March 1996 fund, which means that in addition to the benefits available from our scheme, the employer will have to make up the shortfall to the pre 1 March 1996 fund'*.

Approachable Finance sent a copy of the letter to Mr D prior to a meeting with him on 23 March 2020. And the defined benefit guarantee was discussed during it. Mr D has said

Approachable Finance told him the guarantee wasn't connected to the plan with the pension provider and was nothing to worry about.

A suitability report was issued to Mr D on 31 March 2020. The report was silent on the defined benefit guarantee. Approachable Finance advised Mr D to take the PTFC, and transfer the remaining funds to a drawdown pension with another pension provider.

On 17 April 2020 the administrators wrote to Approachable Finance confirming the Trustees had authorised payment of the PTFC and transfer of the balance to another pension provider. The PTFC was paid to Mr D and the remaining fund transferred to a drawdown plan.

The Trustees e-mailed Approachable Finance in July 2020 asking if it was authorised to provide advice in respect of safeguarded benefits. The Trustee also asked whether Approachable Finance would accept a top up to the drawdown lump sum initially paid out by the scheme. Approachable Finance said that it had '*legal, GDPR and regulatory concerns*' about the e-mail.

Mr D contacted the OPS' sponsoring employer to ask about the defined benefit guarantee the Trustees had referred to. And in November 2020 the sponsoring employer provided details about the guarantee, as calculated by the actuaries. It also said it would cover the cost of a financial adviser to advise on the transfer of the defined benefit guarantee/safeguarded benefits. The employer said it had confirmation from the scheme administrators that a transfer of safeguarded benefits had already taken place in April/May 2020, and Mr D should check if the new pension provider would accept a further transfer.

Approachable Finance provided Mr D with details of a Pension Transfer Specialist (PTS) in November 2020. However, having had a basic discussion with the PTS and provided some background to the situation, the PTS told Mr D of the starting point that safeguarded benefit transfers were generally not a good idea. The PTS told Mr D he'd pay a fee and the likely advice would be to remain in the scheme and not transfer. Mr D subsequently contacted the employer to say he didn't think it was in his interests to transfer and he'd chosen not to pursue that option.

Mr D said the Trustees eventually told him he could go to the market and buy an annuity if he wished, but again he would need to provide evidence of financial advice from a suitably qualified adviser. Mr D searched for annuity options and discussed the matter with some annuity providers. However, these companies declined to assist further when Mr D alerted them that the purchase would be from a defined benefit guarantee/ safeguarded benefits arrangement.

Mr D returned to the Trustees saying he couldn't get anyone to advise him on the remaining guaranteed/ safeguarded benefits, so could they help. The Trustees offered Mr D an annuity on a single life basis, with no escalation or guarantee period. Mr D says he accepted this as he felt he had no other options open to him.

Mr D had a review meeting with Approachable Finance in January 2022 during which Mr D raised further questions about the guaranteed/safeguarded benefits. Approachable Finance subsequently wrote to Mr D saying it was cancelling its client agreement with him.

Approachable Finance said it felt there was a conflict of interest with the OPS situation still ongoing, and it's concerns regarding the Trustees' approach to the matter. It said as Mr D had approached the OPS' administrators to check on Approachable Finance's involvement in the initial transfer, it felt there'd been a breakdown in trust.

Mr D then raised two complaints. Initially he complained that it was unfair that Approachable Finance had taken fees for the pension transfer advice, but since terminated his ongoing advice agreement at short notice. He asked Approachable Finance to refund the original adviser fee. Approachable Finance initially agreed to the refund, but Mr D decided to take the matter further. He raised additional concerns that insufficient due diligence had been carried out in respect of the defined benefit guarantee prior to the transfer from the OPS. He felt he'd lost out financially due to having been 'forced' into a single life annuity.

Approachable Finance didn't uphold Mr D's complaints and withdrew the offer to refund the original advice fee. Approachable Finance said the defined benefit guarantee was a separate scheme with safeguarded benefits that it didn't have the authorisation to advise on.

Mr D referred his complaints to us, and they were considered by the investigator.

Approachable Finance had said it hadn't provided any advice on a defined benefit transfer, so it felt Mr D shouldn't be able to complain about work it hadn't undertaken to provide.

The investigator explained the relevant Dispute Resolution (DISP) rules covering our jurisdiction to consider complaints and powers to dismiss them. The investigator said we had jurisdiction to consider the complaint as Mr D was an eligible complainant and his complaint was about a regulated activity. And he didn't think there were any valid reasons why the complaint should be dismissed.

The investigator went onto consider whether Approachable Finance should have undertaken further due diligence in light of the information it received that there was a defined benefit guarantee. The investigator acknowledged that the administrator's original report of 21 January 2020 said there were no safeguarded benefits attached to the plan. And at that time the administrator hadn't had instruction from the Trustees that the pre-March 1996 fund might be considered to be safeguarded benefits, so its scheme notes didn't reflect this.

But the investigator thought the 18 March 2020 letter from the administrator confirmed the OPS had "*non standard rules, which include a defined benefit guarantee in respect of contributions prior to 1 March 1996.*"

The investigator thought the fact that the OPS included a defined benefit guarantee should have prompted Approachable Finance to investigate the scheme further given it wasn't authorised to advise on safeguarded benefits. He said Approachable Finance had instead said it was nothing to do with the plan it was transferring. He noted it wasn't mentioned in the suitability report.

The investigator said he had asked the OPS' administrators to clarify the situation and it had said the scheme was:

'... an Own Trust Money Purchase scheme, but when it was set up, the Trustees wanted to incorporate a Defined Benefit Guarantee, and [the administrators] agreed to set up the scheme with the non-standard Defined Benefit Guarantee element. On 1 March 96 the Defined Benefit Guarantee was removed for contributions from that date onwards. So it is only the fund generated in respect of premiums prior to 1 March 96 that has the Defined Benefit Guarantee, and therefore it is only the pre March 96 fund that the trustees are classing as Safeguarded Benefits'

And

'As far as the [administrators]... is concerned, it is only the pre March 96 fund that is potentially classed as Safeguarded Benefit, i.e. the post March 96 fund is excluded. Our

correspondence with the Trustees suggests that they only consider the pre 96 fund to be Safeguarded benefits in cases where the cost of providing the DB Guarantee exceeds the value of the pre 96 fund, as was the case with this customer’.

The investigator said the pre-March 1996 fund value transferred was around £85,000. And the administrators had already confirmed there was a shortfall under the defined benefit guarantee. This meant the pre-1996 benefits were classed as safeguarded, something Approachable Finance wasn't authorised to advise on.

The investigator thought Approachable Finance should have undertaken further due diligence to clarify the situation with the defined benefit guarantee, and had it done so, it would have been clear that the OPS included an element of safeguarded benefits. The investigator went on to consider what impact this had on Mr D.

The investigator said Mr D had confirmed that Approachable Finance had informed him from the start that it was unable to advise on safeguarded benefits. The investigator said had Approachable Finance investigated the defined benefit guarantee it would have realised it wasn't authorised to advise on the safeguarded benefit and, in all likelihood, a referral would have been made to a PTS with the required permissions. Or Mr D would have located his own suitably authorised PTS.

The investigator said by proceeding with the advice, Approachable Finance had initially denied Mr D the option of having the occupational scheme reviewed as one, including the defined benefit guarantee and the shortfall. As a review by a PTS didn't take place, the investigator said it wasn't possible to confirm what the recommendation would have been. But Mr D had confirmed his plan, other than taking the protected tax-free cash, had been to take a drawdown from the pension at some point, something the original plan couldn't accommodate.

The investigator said after the defined benefit guarantee had been calculated, some six months later, the sponsoring employer set out clearly the requirement for Mr D to seek further independent financial advice in relation to the remaining safeguarded element. It said it would cover that cost.

The investigator said Mr D was given the option of having a PTS advise him on the situation, at no cost to himself. And it appeared the Trustees were happy to allow Mr D to continue and transfer the defined benefit guaranteed element out once he'd received advice from a suitably qualified adviser/PTS. The investigator said Mr D had an opportunity to mitigate his position by taking advice. And although Mr D did speak with a PTS, he confirmed he decided not to take forward the formal advice process in the belief that the likely outcome would be that he should not transfer, but the employer would still have to pay the advice fee.

The investigator said he thought as Mr D hadn't taken advantage of the option of taking advice from a PTS, he wasn't able to conclude that he was forced to take the single life annuity. The investigator said there was no specific evidence that Mr D suffered financially as a result. And he thought that Mr D should have accepted the offer to take additional financial advice from a PTS, for which the sponsoring employer would have paid.

The investigator did, however, think Mr D had suffered significant disruption, distress and inconvenience because of Approachable Finance not having done what it should in the first place; investigate the defined benefit guarantee and inform Mr D to seek independent financial advice from a PTS. Mr D had spent a considerable amount of time and effort looking into the matter. It wasn't until the Trustees explained to Mr D some months later what should have happened, and what Mr D needed to do to correct the situation. The investigator thought to recognise the considerable distress and inconvenience caused to

Mr D that Approachable Finance should pay him the sum of £500.

The investigator said Mr D originally complained that Approachable Finance had terminated the client agreement at short notice, leaving him with no adviser. The investigator said the terms of the client agreement said:

'The authority to act on your behalf may be terminated at any time without penalty by either party giving seven days notice in writing to that effect to the other, but without prejudice to the completion of transactions already initiated'.

The investigator said he wasn't aware of any transactions that were still to be completed. And whilst it could be argued seven days' notice may not have been given, he was satisfied that it hadn't affected Mr D financially.

In conclusion, the investigator said he thought that Approachable Finance should have undertaken further due diligence with regards to the defined benefit guarantee. And that it should pay Mr D £500 for the distress and inconvenience caused.

Approachable Finance didn't agree with the investigator's findings and asked for the complaint to be referred to an ombudsman for 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 appreciate that there were other parties involved in this transfer such as the OPS' administrators and its Trustees. Each had its own roles and responsibilities in the processing of the transaction. And it may be the other parties didn't meet their own responsibilities and obligations. However, the complaint before me is against Approachable Finance. And so I've considered whether Approachable Finance met the relevant standards required of it in its own dealings with Mr D. If Mr D or Approachable Finance consider there were failings by any of the other parties involved then it is a matter for them to decide if they want to take action against any of those other parties.

As I said above, the investigator explained how the administrators had described the plan in his assessment. *'... an Own Trust Money Purchase scheme, but when it was set up, the Trustees wanted to incorporate a Defined Benefit Guarantee, and [the administrators] agreed to set up the scheme with the non-standard Defined Benefit Guarantee element.'*

This is consistent with the Trustees' position that part of the scheme provided a defined benefit guarantee, and I'm satisfied that is the correct position.

It's not in dispute that the letter from the administrators dated 21 January 2020 clearly stated that there were no *"...Safeguarded Benefits attached to this member's plan"*. This information had been sent to Approachable Finance following its request for detailed information about the scheme from the administrators. So the starting point was Approachable Finance was clearly told there were no safeguarded benefits. It also says this was confirmed in a telephone conversation with the administrators on 19 February 2020, albeit the administrator's notes don't record this. But I accept it was clearly reasonable for Approachable Finance to proceed on the basis that there were no safeguarded benefits at this point.

I also accept that in the exchanges between Approachable Finance, the administrators and the Trustees in arranging the transfer, other than the 18 March 2020 letter, there was no

indication that there were defined/safeguarded benefits. And I have considered the 18 March 2020 letter in that context.

The 18 March 2020 letter included confirmation that the Trustees had confirmed what tax-free cash was payable and information about the value of the plan. But the letter then went on to say:

'The [name of the OPS] has non standard rules, which include a defined benefit guarantee in respect of contributions prior to 1 March 1996. The scheme actuaries have identified that there is a shortfall in [Mr D's] pre 1 March 1996 fund, which means that in addition to the benefits available from our scheme, the employer will have to make up the shortfall to the pre 1 March 1996 fund.'

'I am not in a position to comment on the amount required to cover the shortfall or how it will be paid, as this will be dealt with by the trustees, the scheme actuaries and the employer.'

In my view this information was a *clear* red flag – it was saying the OPS had a defined benefit to it. But it also said the administrators weren't in a position to effectively provide its value, which was also important information. And it said that the scheme had non-standard rules. This should all have prompted further investigation.

Approachable Finance has focused on the wording *'in addition to the benefits available from our scheme'*, saying the terminology in the letter was extremely clear and the defined benefit was separate to the scheme it was advising on. It said it had no connection whatsoever to the scope of the advice it provided, and the existence of the scheme didn't make any difference to its advice.

I don't agree with Approachable Finance's view on this. The wording has to be considered in the round, including all the information given in it. The letter referred to the scheme that Approachable Finance was advising on. As I've said above, it was told the scheme had a defined benefit, its value wasn't given but it was known there was a shortfall, and the scheme had non-standard rules. So even if the benefit was 'in addition' Approachable Finance didn't know the full picture; what type of defined benefit applied; what rules applied to it; its value and how it interacted with the other parts of the scheme that Approachable Finance were considering including giving advice about it.

Approachable Finance didn't know whether there were consequences of transferring out only part of the scheme, or of any potential disadvantages to Mr D in doing so. It didn't look into what the non-standard rules were. In my opinion the letter didn't make the nature of the scheme clear, and Approachable Finance wasn't in a position to know if the defined benefits would make a difference to the advice it had been asked to give.

Approachable Finance was required to obtain all the relevant information about Mr D's pension and act in his best interests. In my view it failed to do so. There could have been unknown consequences to transferring out part of the scheme's benefits. And as a minimum, the fact that Mr D would likely need further advice about the remaining benefits was clearly foreseeable.

As I've said above, I accept that this was only one piece of information in the context of all the other information and contact Approachable Finance had with the administrators and the Trustees. But it was key information. Approachable Finance was aware of it. In my opinion it wasn't reasonable for Approachable Finance to press on with the transfer without making further enquiries about the nature of the pension it was advising on.

Approachable Finance has questioned why it is been complained about in reference to

advice it didn't offer on the separate defined benefit pension. For the reasons I've explained, it wasn't a separate scheme – it was a benefit/feature of the same scheme. Even if it was agreed it was a benefit separate to the scheme, it was something that Approachable Finance should have taken into account when advising Mr D. Like the investigator, I'm satisfied the complaint is about a regulated activity and we have jurisdiction to consider it.

Approachable Finance has also questioned Mr D's motivation for making the complaints. It said they were made shortly after Mr D had asked it to do further work and after it had told Mr D it wasn't willing to be involved in the transfer of the defined benefits (as it wasn't something it was legally allowed to do). And it was after the cancellation of its client agreement. It said this was a full twenty-one months after the transfer had taken place. And it had initially offered Mr D a refund of its initial advice fee which was what apparently Mr D had wanted in his complaint letter. It said this was an offer made without prejudice to avoid the protracted debate that was now taking place and in line with Ombudsman and regulator's guidelines of trying to resolve and acknowledge complaints efficiently.

In my view it was reasonable for Approachable Finance to end the agreement in the circumstances, particularly as the relationship had broken down. And I also think it acted fairly and in good faith to try and attempt to resolve the complaint at an early stage. However I also think Mr D was entitled to make his complaint – whatever the timing and what eventually prompted it. And it was a matter for Mr D to decide whether he wanted to accept the offer – which was subsequently withdrawn before coming to our service.

I appreciate that my decision has consequences for the parties involved. And as I've said, I've considered all the available evidence and arguments in making my decision. But in my view the content of the 18 March 2020 letter *clearly* raised questions that needed further investigation. Although proceeding without making the necessary enquiries may not have caused Mr D a loss, like the investigator, I'm satisfied it caused unnecessary distress and inconvenience.

Accordingly, for the reasons I've outlined above and by the investigator, I consider Mr D's complaint should succeed.

my final decision

My final decision is that I uphold Mr D's complaint. I order Approachable Finance Limited to pay Mr D £500.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 21 April 2023.

David Ashley
Ombudsman