

The complaint

Mr B complains that Openwork Limited trading as The Openwork Partnership ('Openwork') gave him unsuitable advice when it recommended he switch his existing pensions and individual savings account (ISA) to a new provider. Mr B also complained about fees charged when he increased his pension contribution in 2018.

Mr B's wife has also complained about advice she received. This decision only considers the advice given to Mr B.

What happened

Mr B had a meeting with his Openwork adviser in July 2015. Mr B's wife was also at the meeting. A Fact Find document was completed during the meeting. This recorded the following about Mr B:

- Mr B was 49 years old and married with two financially dependent children.
- Mr B was employed on a full time basis, earning a gross income of £70,000 per annum (p.a.).
- Mr B and his wife had a joint net monthly income of £4,000 and total monthly expenses of £2,300.
- Mr B had an existing ISA. He made a lump sum contribution of £7,500 in 2010, was making monthly contributions of £200 and the value of the ISA in July 2015 was £23,872.44.
- Mr B had a PPP valued at £55,201.26 but which had a transfer value of £54,262.84, as an exit penalty of £938.42 was payable on transfer. He also had a stakeholder pension with a transfer value of £20,184.07.
- Mr B was part of his employer's defined contribution pension scheme. He was making regular contributions of £150 per month, his employer was making a contribution of £187.50 per month, and the scheme retirement age was 65.
- Mr B felt he had enough time to assess his needs in retirement, and had no income needs.
- Based on an Attitude to Risk and Investor Experience questionnaire, Mr B was assessed as an inexperienced investor who relied on advice and recommendations. He was assessed as having a 'balanced' attitude to risk.

A suitability report was issued to Mr B after the meeting. This stated that Mr B had indicated he wanted to retire at age 67. And it noted Mr B's objectives as:

- achieving long term capital growth by investing in a tax efficient way
- to save on charges
- to have access to a vast range of funds, in particular funds that were not managed by a single fund manager
- to put all assets in one place on a platform where his money could be managed in a tax efficient way, taking advice and using the new pension reform rules to his benefit
- to pay additional charges for the funds in anticipation of their growth

- to have investments auto-rebalanced which meant readjusting the asset allocation every six months to stay aligned to his attitude to risk.

The report recommended Mr B transfer his PPP, stakeholder pension and ISA to the Firm Z platform to invest in a Stocks and Shares ISA account and a Retirement Account. The reasons for the recommendation were:

- The existing fund range for the PPP, stakeholder pension and ISA did not meet Mr B's objectives. The existing ISA offered 483 funds for switching purposes, the PPP offered 362 funds and the stakeholder pension offered 29 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 less expensive by 0.38%.
- The PPP was subject to an exit penalty, which would expire on 6 September 2016, of £938.42.
- Transferring the ISA would be less expensive by 0.82%.
- Transferring the stakeholder pension would be more expensive by 0.31%.
- Switching charges were free and unlimited, although the ISA provider reserved the right to charge if switching was excessive.
- Moving Mr B's investment portfolio to a platform would simplify the way his investments were administered and would have defined his 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 Mr 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 Mr B's assets was agreed. Cost comparisons between the existing and the proposed PPP, stakeholder pension and ISA excluded this ongoing service charge.
- There were no tax liabilities for transferring the PPP, stakeholder pension or ISA.
- Mr B should make a monthly contribution of £200 to the platform ISA 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 Mr B's occupational pension.

Mr B accepted Openwork's recommendation and his existing PPP, stakeholder plan and ISA account were moved to Firm Z.

Mr B increased his monthly top up contributions to his pension plan in 2018 to £250. Openwork charged a fee of 50% of the value of the first 12 months contributions to his plan. This equated to around £1,500.

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

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

following the adviser's recommendation to transfer the personal pensions and ISA to the platform with Firm Z, a referral was made to Openwork's internal team for charges comparisons. It said these included the costs to transfer any funds and the adviser fees. Openwork said that while Mr B's existing PPP was slightly cheaper, overall the charges were lower.

Mr B remained unhappy and so brought his complaint to this Service. Mr B reiterated what he said in the complaint to Openwork and asked for full repayment of all advisor charges paid to Openwork. He said that if he had been aware that he could have moved his pensions to his workplace pension, at much reduced charges, he would have opted for this. Mr B said he believed he'd been adversely affected by the high adviser fees paid for the initial advice, for top ups and the ongoing fund based charge.

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

Openwork did not agree with what our Investigator said. It said there are two issues at play here – the suitability of the transfer advice and Mr B electing to receive ongoing advice. 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.

Having done so, I agree with the outcome our Investigator reached and for mostly the same reasons. So I'm upholding Mr B's complaint. I'll explain why.

When considering what's fair and reasonable in the circumstances, I need to take account of relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS').

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Openwork's actions here.

PRIN 2: A firm must conduct its business with due skill, care and diligence.

PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.

PRIN 7: A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

PRIN 9: A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability.

In 2009 the Financial Services Authority (now FCA) published a report and checklist for pension switching that is still applicable today. That checklist identified four main areas where consumers had lost out, one of those being that consumers had been switched to a pension that is more expensive than their existing arrangement (because of exit penalties and/or initial costs and ongoing costs) without good reason. So in deciding whether the advice given was suitable, I have to be satisfied that there were clear reasons why the new platform arrangement with Firm Z was more beneficial to Mr B than his previous pensions and ISA arrangement.

As the 2009 report highlighted, an important part of assessing the viability of financial advice is to look at whether the transfer put Mr B in a better financial position than he would have been in if he had not followed the adviser's recommendation. I take the view that there has to be a notable benefit to Mr B in order for there to be a good reason to transfer the pensions and ISA.

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

The Client Report drawn up by Openwork included both Mr and Mrs B's pensions and ISA accounts. This seems to suggest 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 Mr B would end up paying slightly less in charges as a result of the transfer. However, it's not clear if this took into account the initial 4% fee for the advice. And 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 Mr B's pensions and ISA. And I think this needs to be considered when looking at the overall cost to Mr B.

From what I can see, Mr B would most likely not have opted to pay for this particular service had he not moved his funds onto one platform, as recommended by Openwork. I see the ongoing service fee as part and parcel of the transfer, and so I think it's fair to consider it as a cost attached to that move.

I've also considered the illustration that was provided by Firm Z at the time of advice. This provided a projection for what Mr B's Retirement Account could be worth at age 67 and was based on the plan achieving a mid-rate of growth. However, the illustration suggests that at retirement, Mr B's fund could be worth less than initially invested, when all the charges are taken into account.

Given that Mr B's main objective was listed as building up capital growth and saving on charges, on the face of it, it would seem that the advice given to Mr B to move his funds was unsuitable.

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

Another of Mr B's objectives was for him 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 Mr B did not want his investment to be held in single manager funds, as he wanted to invest in a diverse portfolio of funds to match his attitude to risk.

Openwork noted that Mr B's existing funds did not have the facility to automatically rebalance his funds, to ensure they remained aligned to his agreed risk profile. So it didn't think the existing fund range met his objectives. But I can see that his PPP offered him 362 funds to invest in, with free and unlimited fund switches. The Stakeholder plan had 29 funds available and again fund switches were free and unlimited. And Mr B's ISA had 483 fund available. The fund switching charges were free and unlimited although the provider reserved the right to charge if switching was excessive.

Mr B's combined pensions and ISA benefits were fairly modest. He had limited investment experience and a balanced attitude to risk. It doesn't appear Openwork did a thorough assessment of the funds available to Mr B through his existing arrangements and, as our investigator pointed out, it's difficult to accept that the hundreds of funds Mr B already had access to could not have provided him with a sufficiently diverse balanced risk portfolio that would have been appropriate given his attitude to risk.

Mr B's funds were moved to a single platform, which Openwork said allowed him to consolidate his investments and provided him 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 Mr B that the recommendations to transfer his pensions and ISA were suitable, and I don't think they did.

While I agree that the ability to rebalance funds is likely to be beneficial, this came at an ongoing annual cost of 1% of Mr B's fund value. And as I've explained above, the illustration, which does not take account of the additional cost of on-going servicing, shows that Mr B was unlikely to be better off as a result of transferring. So while I agree that Openwork's recommendation put Mr B in a position where his funds potentially had greater oversight and would be rebalanced on a six-monthly basis, and I think this was likely beneficial for him. I don't agree that benefit outweighed the additional cost involved to Mr B.

I also think that while there might be some future benefit to moving his funds to a platform that allowed him greater flexibility at retirement, the fact is Mr B's retirement needs were not discussed during the meeting. Given that Mr B was 49 years old at the time of the advice and his retirement was some years away, I think that it was premature to say that moving his funds in the way suggested by Openwork suited his needs in retirement.

While I can see that the recommended transfer offered some benefits to Mr 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 Mr B to justify the transfer, given that the transfer wasn't financially viable as set out above.

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

Mr B also complained about top up charges levied since the funds were switched in 2015. I can see that in 2018 Mr B increased his monthly contributions to his Retirement account by £250. He was charged a fee by Openwork of 50% of the value of the first 12 months' worth of contributions to his plan, which equated to around £1,500. So I've considered whether Mr B should, as he's requested, have this amount refunded.

Although I appreciate Mr B signed a '*Supplementary Fee Agreement*' with Openwork at the time that he increased his contributions, and so he agreed to this fee, I don't think advice given at this time was suitable.

It's my understanding that Mr B contacted his Openwork adviser because he wanted to increase contributions to his pension. He was then advised to invest these premiums in his Firm Z Retirement Account.

I can see from the Suitability Report issued at the time that it was discounted that Mr B invest these top-up premiums in his existing workplace pension. This was despite it being noted that this would have been less expensive than making payments into Firm Z's retirement account. The reason given for this was that it met Mr B's objectives, which I note were the same as when the initial advice was provided.

However, Openwork needed to do more than just note Mr B's objectives and agree to facilitate a way forward of achieving them, especially when there might be viable alternatives to meeting those goals, as there appears to have been here with his workplace pension. As I've explained above, I don't think the advice to move his pensions onto Firm Z's platform was suitable in the first place. So it follows that I also think the advice to invest the top-up contributions in the Firm Z Retirement Account was unsuitable for the same reasons. It would appear from the Supplementary Fee Agreement that no charge would have been payable if Mr B had topped-up his workplace plan. And even if that wasn't the case, it appears to have been Mr B's decision to make this increase, rather than it coming about as a result of advice from Openwork. So had Mr B retained his initial plans rather than transferring them over to Firm Z's platform, I think it's unlikely that he would have needed to pay to increase his pension contributions.

Overall, I'm satisfied that the advice given to Mr 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 Mr B compensation of £350. Mr B felt he had to take steps to have another adviser look again at the recommendations made for him and he found this experience stressful. I think it's fair to ask Openwork to make a payment for the distress and inconvenience experienced.

Putting things right

Fair compensation

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

I take the view that Mr B would mostly likely have remained with his previous providers, however I cannot be certain that a value will be obtainable for what the previous pension plans 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 Mr B's circumstances and objectives when he invested.

What must Openwork do?

In relation to the Retirement Account, to compensate Mr B fairly, Openwork must:

- Compare the performance of Mr B's Retirement Account with the notional value if his pensions had remained with the previous providers. 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 Mr B's Retirement Account 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 Retirement Account if it would conflict with any existing protection or allowance.
- If Openwork is unable to pay the total amount into Mr B's Retirement Account, 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 B won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr B's actual or expected marginal rate of tax at her selected retirement age.
- It's reasonable to assume that Mr B is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr 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 Mr B fairly, Openwork must:

- Compare the performance of Mr 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 Mr B a lump sum for any loss identified.
- Openwork should also add any interest set out below to the compensation payable.

Openwork should pay to Mr B £350 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 Mr B how much has been taken off. Openwork should give Mr B a tax deduction certificate in respect of interest if Mr B asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Retirement	Still exists	Notional	Date of	Date of my	8% simple per

Account and ISA	and liquid	value from previous providers	investment	final decision	year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)
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Actual value

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

Notional Value

This is the value of Mr B's investments had they remained with the previous providers until the end date. Openwork should request that the previous providers calculate this value.

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

Any withdrawals from the Retirement Account or 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 Mr B's investments 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:

- Mr B main objective was Capital growth with a small risk to his 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 his 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 Mr B's risk profile was in between, in the sense that he was prepared

to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr B into that position. It does not mean that Mr B would have invested 50% of his 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 Mr B could have obtained from investments suited to his 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 Mr B in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 25 March 2024.

Lorna Goulding

Ombudsman