

The complaint

Mr V complains that after meeting with his financial adviser from Openwork Limited trading as The Openwork Partnership (Openwork), he decided to take the value of his Self-Invested Personal Pension (SIPP) as a drawdown to put towards a property purchase. He said that before that meeting, he was happy with his living situation. And that he only took the steps he took due to the poor advice.

At the time of the complaint, Mr V's adviser was an Appointed Representative of Openwork. Therefore I'll only refer to Openwork in my decision.

What happened

Openwork provided Mr V with financial advice on his pension and other assets.

Openwork's meeting notes from before 2019 show that Mr V's adviser at the time knew that he intended to sell his current home and then move into a house belonging to a family member as a tenant. Mr V sold his home in September 2019 and moved into the rented property previously discussed.

On 17 November 2019, Openwork emailed Mr V to tell him that it was preparing to transfer him from his existing adviser to a new adviser.

I understand that the new adviser spoke to Mr V at some point in early 2020. She emailed him on 31 March 2020 to say she'd set up a proper review meeting when she could. However, due to the covid19 pandemic, this wasn't possible for some time.

The new adviser carried out a portfolio review in April 2021. The outcome of this review was a recommendation for Mr V and his wife to each invest the maximum annual amount into an ISA.

On 15 June 2021, Mr V met with his adviser for a budget meeting. The adviser emailed him the following day with a budget planner, which she asked him to complete.

While Openwork has evidenced that it did produce a financial planning report and a suitability report dated 14 June 2021 for the April 2021 meeting recommendation, I understand this was never shared with Mr V given what happened at the 15 June 2021 meeting.

During the 15 June 2021 meeting, I understand the adviser asked Mr V some questions about his living arrangements. I also understand that Mr V then approached his landlord to ask for further assurances about his tenure, which his landlord was unable to give. Mr V then emailed his adviser on 22 June 2021 to tell her what'd happened. He explained that his landlord couldn't put anything in writing. This had left him feeling concerned so he'd decided that he should start to look for somewhere he could buy. Mr V said that he thought he might have to take a lump sum from his pension.

The adviser replied to Mr V the same day. She said there'd be tax implications if Mr V took

cash from his pension. She said they could discuss that: *“as and when the time comes.”* She also said that if Mr V instead decided to remain in his rented home, he could gain some property security if he purchased a buy-to-let property. She noted this would involve taking a mortgage, but that would be covered by the rent. And that Mr V’s capital wouldn’t all be tied up in a property, so he’d have other options for the future.

Mr V responded to this suggestion the following day, noting it had given him: *“food for thought”*.

On 1 July 2021, Mr V emailed his adviser to tell her he’d been to a second viewing of a house that day. He noted he’d already talked to her about the property in question. And asked for her to give him a call.

On 7 July 2021, Mr V emailed his adviser to ask her how long it would take to draw down the whole amount of his pension. He said he was just trying to get all the necessary information in case he needed it.

The adviser replied the same day to say it would probably take about a week. She said:

“I’d need to do a full fact find with you in order to do from a compliance point of view given the gravity of what you are contemplating as you have no other provision but once that’s done it’s relatively quick.”

On 9 July 2021, the adviser emailed Mr V to tell him that his pension withdrawal would be taxed at 40% when paid. She said he would need to reclaim any tax overpayment, which she felt would be around £9K, directly from HMRC. She questioned whether this would impact Mr V’s house purchase.

On 12 July 2021, Openwork wrote to Mr V to tell him he’d pay £62,810 income tax and receive a total lump sum after tax of £110,190.

Early the following morning, Mr V asked his adviser to stop the withdrawal process. He also tried to call her just after 9 that morning. When he couldn’t get through, he called the adviser’s office. He said he spoke to a named individual who told him that it was too late to stop the process.

I understand that Mr V’s adviser spoke with him shortly after. And that she emailed him at 12.18 on 13 July 2021 to confirm what had been discussed. This stated that the withdrawal would continue. Mr V emailed his adviser at 14:54 on 13 July 2021 to confirm he wanted: *“to continue with the sell down as discussed”*.

On 14 July 2021, Openwork emailed Mr V to ask him to confirm his decision to make a one-off taxable withdrawal from his SIPP to close his account. He sent a further email to confirm this that morning.

On 15 July 2021, Openwork emailed his adviser’s recommendation letter about his income payment to him. He confirmed receipt. And asked if he needed to do anything else.

The suitability report noted that Mr V’s objective was to access his pension funds so he could purchase a property. To do so, it recommended that he accessed a flexi-access drawdown lump sum from his SIPP of approximately £173,250.91. As there was no tax-free cash available to Mr V, the adviser said the withdrawal would be taxable as earned income at his highest rate, with any overpayment having to be reclaimed from HMRC directly.

The suitability report stated:

“Ordinarily, I would not advise you to fully withdraw all your funds from your SIPP due to the tax implications involved but you have no alternative. You want to purchase a property and [your circumstances mean] you are unable to get a mortgage. We have reluctantly agreed as you urgently need the funds for this purpose. We did discuss alternatives such as buying a rental property and staying in your current home but your priority is to ensure that you have somewhere to live in the future.”

It also noted that phased payments weren't possible. And that the full withdrawal would leave Mr V with no remaining pension provision, reliant on state benefits for future income.

The report also noted that although the adviser would've normally recommended that Mr V accessed other less tax-efficient investments first, he had no other savings or investments that he could access. Nor could he get a mortgage.

On 29 July 2021, Mr V emailed Openwork to confirm his request for a statement following payment.

On 8 August 2024, Mr V complained to Openwork about what the adviser had suggested in respect of his tenure. He said his mental health had only just recovered enough to make his complaint.

Mr V said that his adviser had created a massive disturbance factor relating to his security of tenure on the property he was renting from a family member. Although he had a rolling lease, he said the adviser had said it was vital that the family member put Mr V's rights to continue to live in the house in writing in case the landlord pre-deceased him. He now felt he shouldn't have approached his landlord.

Openwork issued its final response to the complaint on 2 October 2024. It didn't think it'd done anything wrong. It felt Mr V had shown he'd decided to go ahead with his taxed withdrawal to buy a property because he'd emailed his adviser on 14 July 2021 to confirm he wanted to proceed. It also noted the 15 July 2021 suitability report stated that tax would be taken from the whole withdrawal and that emergency tax would be charged initially. And that it'd also stated the risks of such a withdrawal.

Openwork said that its adviser had made an appropriate recommendation given Mr V's circumstances. And that he'd decided to proceed on a fully informed basis.

Mr V didn't agree with Openwork. He asked it to confirm if either it or his adviser had received any payments or commission from his drawdown. And repeated his point that the adviser had made him and his wife – vulnerable pensioners - worried about their security of tenure. He said he'd told the adviser that he was comfortable renting the property he'd been living in. He also noted that it clearly hadn't been too late to stop the withdrawal when he'd requested this on 12 July 2021, noting that he'd only gone ahead with it as Openwork had told him he couldn't cancel it.

Mr V also felt that the adviser should've suggested additional options to him other than drawing down the pension to buy a property. These were:

- Continuing to rent from his family member until circumstances changed.
- Renting a different property.
- Phasing the drawdowns to reduce tax.

Mr V said that his adviser hadn't carried out a fact find for her recommendation. He therefore

felt her advice was non-compliant. He also said that the financial trauma he and his wife had suffered had led to health issues as well as stress, worry, anxiety and depression.

Mr V said he'd ended up having to buy a property that wasn't anywhere near his first choice, due to the massive tax deduction.

Openwork issued a further complaint response on 5 November 2024. It said neither it nor the adviser had received any payment from the financial transaction at the heart of this complaint.

Openwork felt that the evidence showed that Mr V had instructed his adviser to complete a full withdrawal from his pension plan, with full awareness that tax would be charged on the withdrawal. It said it didn't record phone calls, so it couldn't know what had been said during the 13 July 2021 calls. But it said that Mr V's adviser had emailed him on 14 July 2021 to ask him to confirm he still wanted to proceed, when he was fully informed of the tax implications. It said he could've stopped the withdrawal at this point, but he didn't. It also said that phased withdrawals wouldn't have allowed Mr V to meet his objective of purchasing a property, so wouldn't have been appropriate.

Openwork acknowledged that vulnerabilities had been heightened during the pandemic. But noted that there was no evidence that Mr V had made his adviser aware that he was particularly vulnerable, other than his security of tenure. It therefore felt that the adviser had acted in Mr V's best interests when she'd discussed his housing situation.

Unhappy, Mr V brought his complaint to this service. He said he had bought a property with the funds he'd withdrawn and some additional savings. But it wasn't the property he wanted due to the tax he'd had to pay, which he felt Openwork hadn't made him properly aware of.

Our investigator didn't think the complaint should be upheld. While he acknowledged that Mr V felt he hadn't been able to purchase the property he'd intended to, he didn't think that Openwork was responsible. He didn't think that the conversations Mr V had held with his adviser had directly led to the specific actions he'd then decided to take, noting that advice on the purchase of a home was outside the adviser's scope. He said that although Openwork had given Mr V advice on his pension withdrawal, that advice had significant warnings about its implications. He felt the advice had been suitable given Mr V's objectives. And that Openwork had made it clear that Mr V could change his mind throughout the process.

While our investigator acknowledged that the adviser's questions may have made Mr V consider the security of his tenancy, he felt it had been his decision to withdraw all his pension funds to make a property purchase. He didn't think it'd been unreasonable for the adviser to have asked questions about Mr V's financial and living situation.

Our investigator felt that Openwork should've recorded the 13 July 2021 call. But didn't think that it would've been required to retain a copy of that call for more than six months. He therefore said he couldn't reasonably expect the call recording to have still been available at the time of the complaint. He also said that while it would've been preferable for the suitability report to have been issued before Mr V gave his instruction to proceed with the withdrawal, the evidence showed that the withdrawal could've still been stopped. He therefore felt that Mr V had time to review the report and consider whether the withdrawal was still suitable for him.

Mr V didn't agree with our investigator. He made the following points:

- He'd only met with his adviser on 15 June 2021. He said the meeting had been

arranged as an introduction to her and to discuss a budget review, not his living arrangements. Mr V said he was very happy with his living arrangements at that time. Mr V said the adviser had failed to make other suggestions about his living situation such as making a further agreement with his landlord or renting a different property. While he agreed it'd been reasonable for his adviser to ask about his living situation, he felt the adviser's comments had made him and his wife concerned.

- Mr V felt his adviser shouldn't have suggested a "buy-to-let" mortgage given his age.
- Mr V said that a fact find hadn't been conducted at the 15 June 2021 meeting.
- Mr V said that when he'd emailed his adviser to ask for the withdrawal process to be stopped, a named member of staff at his adviser's office had told him that wasn't possible. He therefore felt he'd no option but to proceed. Mr V said that his email was clear evidence that something wasn't right. He was unhappy that Openwork hadn't recorded his call with it from 13 July 2021, and questioned for how long such a call should've been recorded and then retained.

Mr V confirmed that he had received a tax refund from HMRC. But said he was now living in a property he hadn't wanted to buy because of the advice. He told this service that he wasn't saying the advice was bad, but that it was unnecessary. And that it'd led to the situation he was now complaining about.

Our investigator considered everything C had said, but it didn't change his view.

As agreement couldn't be reached, the complaint has come to me for a review. I asked Openwork for further information. I also asked it the following questions:

- 1. Did Mr V ever formally ask you for advice on his house purchase? Did you ever charge him a specific advice fee for advice on his house purchase?*
- 2. When/if did Mr V first ask you about the potential tax implications of a full encashment of his pension?*

Openwork responded as follows:

- 1. No. We never advised him on mortgages because he wouldn't qualify for a residential mortgage on the grounds of his lack of income.*
- 2. Originally he said that he had wanted some of his pension not all of it. This then changed to the whole thing and it was explained to him over the telephone as per the calculation in the email the office did what tax he'd have to pay and what net payment he would get if he encashed the whole thing and that he'd need to make a claim of any tax overpayment. He was made aware that the net payment would be around £110K depending on value of the pension at the point of encashment.*

I also asked Mr V to evidence when he had his offer on the house he wanted to buy accepted. He said he had an offer accepted on 14 July 2021, but that this sale had fallen through in September 2021. He said that at that point, he'd had to buy something else quickly as he'd given notice on his rental property and had to move out at the end of November 2021. He therefore couldn't wait to find a better house.

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'm not going to uphold it. I know this will be disappointing for Mr V. I'll explain the reasons for my decision.

I first considered whether the adviser acted unreasonably during the 15 June 2021 meeting with Mr V.

Did the adviser act unreasonably during the 15 June 2021 meeting?

Mr V felt that the adviser should've only considered the budget review the meeting was about, not his living arrangements. Openwork felt that its adviser had acted in Mr V's best interests when she'd discussed his housing situation.

Mr V said that his adviser had said it was vital that he asked his landlord to put in writing his rights to continue to live in the house if that landlord pre-deceased him. He told this service that he wasn't saying the advice was bad, but that it was unnecessary.

The adviser told this service that all she'd done was suggest that Mr V and his wife got some clarity on their situation if their landlord were to pre-decease them. She said they didn't know what would happen if the landlord died as there was nothing in writing. She refuted the allegation that she'd insisted that it was vital that he got something in writing. She said she'd simply suggested Mr V and his wife understood the situation they were in. The adviser felt that it had been the lack of tenure that had upset Mr V and caused him to decide to use his pension funds to buy a house.

While I can't be certain about what was said during this meeting, I'm more persuaded that the adviser simply asked Mr V about his living arrangements, as I would've expected her to do given the circumstances. I'm not persuaded that the investigator said it was vital that Mr V asked his landlord to put in writing what would happen in the event of his death. Instead, I think it's more likely that her questions made Mr V realise that he didn't know what would happen if his landlord pre-deceased him. I therefore consider that it's more likely than not that it was the lack of tenure itself, rather than the discussion about the rental arrangement, that led Mr V to consider his options.

I acknowledge that Mr V only became worried about the situation he and his wife were in because of the questions the adviser raised. But I can't reasonably hold his adviser responsible for that situation simply because she asked the questions that made him consider his position.

The evidence shows that after the meeting, Mr V decided to talk to his landlord about his tenure. And that when he didn't get the response he'd hoped for, he decided to buy his own home using his pension funds. I say this because the evidence shows that it was Mr V, not his adviser, who said in his 22 June 2021 email that he was so concerned about his situation that he'd decided to start looking for somewhere to buy and that he might want to take a lump sum from his pension.

Mr V also said that he ended up with a property he didn't really want to buy. He said he'd felt forced into buying it as he'd given his notice on his tenancy, and because he had less money to spend as he felt Openwork hadn't explained how his withdrawal would be taxed.

I can't reasonably hold the adviser responsible for Mr V's decision to buy the property he did. There's no evidence that his adviser told him that he had to buy a property immediately. Her 22 June 2021 response to finding out from Mr V the same day that he was considering buying his own home suggested that he could alternatively remain in his rented home but

gain some property security by purchasing a buy-to-let property. I've not found anything to suggest that the adviser forced Mr V into quickly buying a property he didn't like. Openwork has confirmed to this service that it didn't discuss or advise Mr V on the specifics of the property he planned to buy. It simply enabled Mr V's objective to purchase a home using funds from his pension.

I also note that the adviser had provided Mr V with an estimate of the amount of tax he would pay if he fully withdrew his pension to part fund his house purchase before he confirmed he wanted to go ahead with the withdrawal. Her 9 July 2021 email also queried whether the tax Mr V would have to pay would impact his house purchase. Therefore I can't agree that Mr V received less money than he'd expected.

Mr V said his adviser had failed to make other suggestions about his living situation, such as making a further agreement with his landlord or renting a different property. He also felt his adviser shouldn't have suggested a buy-to-let mortgage to him given his age.

The evidence shows that the adviser did suggest that Mr V could decide to remain in his rented home but additionally consider a buy-to-let property, which would mean his capital wouldn't be tied up. While I acknowledge Mr V wasn't happy with this suggestion, I consider that the rationale behind it was sensible and could've benefited Mr V, who seems to have at least thought about it as an option at the time it was suggested.

I can also see that the rental options Mr V has suggested his adviser should've made wouldn't have solved his tenure problem. And the phased withdrawals option Mr V suggested were considered in the suitability report, but ruled out, given Mr V had already had an offer accepted on a house so needed access to all of his funds.

Overall, I'm not persuaded that the adviser acted unreasonably during the 15 June 2021 meeting.

I went on to consider whether Openwork gave Mr V incorrect information about whether his withdrawal request could be cancelled on 13 July 2021. And if so, if there were any consequences stemming from that incorrect information.

Did Openwork give Mr V incorrect information during a call on 13 July 2021?

Before I start, I acknowledge that Mr V is unhappy that Openwork didn't record this call. I confirm that I agree with him that under The Markets in Financial Instruments Directive (MiFID II), Openwork are required to keep a record of every communication with a consumer where it was intended to result in a regulated activity – such as a personal recommendation – being undertaken. And then to store those recordings for five years.

However, the failure to record every such call is unlikely to impact on whether advice was or wasn't suitable. This is because there's usually other evidence, such as the suitability report, to help us determine whether that was the case. Therefore, while Openwork perhaps should've recorded the call in question, I'm not persuaded that the fact that it didn't means that it acted unfairly or gave Mr V inappropriate advice. I'll explain why.

Mr V said that during a call on 13 July 2021, Openwork told him he couldn't stop his withdrawal. He therefore felt he had to proceed with his withdrawal.

Openwork said it didn't tell Mr V his withdrawal couldn't be stopped. The adviser said that after the call in which Mr V said he'd been told it couldn't, she'd called him to discuss the logistics of reclaiming any overpaid tax. She said she would've halted the instruction if Mr V had wanted to stop it.

Again, I have no way of knowing what was said during the call in question. So I have to reach my conclusions based on what I think is more likely than not to have happened based on the available evidence.

Even if the named individual Mr V first spoke to on 13 July 2021 had told him he couldn't stop the process - which I'm not persuaded that she did - I consider that the subsequent call Mr V had with his adviser would've cleared matters up.

I say this because the evidence shows that Mr V could've cancelled his withdrawal request at this point. And there was no reason for Openwork to want him to proceed with his withdrawal request against his will. It wouldn't receive any payment in respect of that withdrawal and it would lose any future payments in respect of Mr V being its continuing client. In short - it was in Openwork's interests for him to cancel his withdrawal.

I also say this because Mr V confirmed on two further occasions to Openwork that he wanted to continue with his withdrawal. I'm more persuaded that if Mr V was only continuing with the withdrawal because he felt it couldn't be stopped, he would've said so in his confirmatory emails. I think at the very least Mr V would've said that he was continuing simply because there was no option not to, and that he would've also questioned why he was being required to confirm something that couldn't in any event be stopped. But Mr V made no such statement in either of these emails, expressing no dissatisfaction whatsoever, but simply agreeing to the withdrawal.

Mr V has also questioned why the confirmation emails he was asked to send Openwork were needed if his withdrawal request couldn't be stopped at that point. I think this is another reason that it was clear that the withdrawal could've been stopped during the email exchange in mid-July 2021, but that Mr V didn't want to stop it.

On balance, I'm satisfied that the evidence shows that it was Mr V's decision to continue with the withdrawal, from a fully informed position.

Mr V said that his adviser hadn't carried out a fact find during the 15 June 2021 meeting. So I went on to consider whether Openwork had carried out a suitable fact find in advance of producing the suitability report.

Did Openwork carry out a fact find on 15 June 2021?

Openwork said that it reviewed and updated Mr V's fact find annually. It said that his financial arrangements were straightforward. And that apart from now wanting to buy his own home, nothing had changed in his financial circumstances.

Based on the evidence I've seen, the adviser did carry out a fact find for the 15 June 2021 meeting. As our investigator noted, the fact find contained important details about Mr V's financial situation. And the values shown appear to be correct.

While I acknowledge that Mr V has said Openwork should've considered his vulnerability. I've not seen any evidence that he explained to his adviser that he was particularly vulnerable, or that he demonstrated any specific vulnerabilities. Therefore I'm satisfied that Openwork couldn't have known that he might be vulnerable.

Overall, I agree with Openwork that it didn't do anything wrong. It reacted quickly to Mr V's changed objectives and then gave him all the information he needed to make a fully informed decision. Therefore I can't reasonably uphold the complaint.

My final decision

For the reasons explained above, I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 22 July 2025.

Jo Occleshaw
Ombudsman