

complaint

Mr S has complained that he received unsuitable advice from Openwork Limited to transfer three of his pensions. He said he wasn't transferred to a Self Invested Personal Pension (SIPP) and also lost a valuable Guaranteed Annuity Rate (GAR).

background

Mr S went to Openwork in July 2014 for advice about his retirement income options. At the time, he was aged 51 and had been interested in "liberating" his funds from three pension plans. Openwork persuaded him against doing this. However, they did advise him to transfer the funds to a single personal pension plan with Provider A.

Mr S complained when he says he realised that the new plan with Provider A wasn't a SIPP as he had been led to believe by Openwork. He was unhappy about this as the plan with Provider A didn't allow him to invest in commercial property as a SIPP would have done. He said that he had been pressured by Openwork to make the transfer and had also given up a GAR from one of his previous plans.

Openwork said that there was no evidence that they had recommended a SIPP to Mr S. They also said that plan with Provider A was suitable for Mr S as it would allow him to take a lump sum from the age of 55. They said that he clearly wanted to do this. The plan with Provider A also had the important feature of a "Secure Income". This provided a guaranteed minimum income from the age of 55.

But, Openwork agreed that the advice to transfer wasn't the best advice because Mr S was already invested in cautious funds for the two of the previous pension plans. So, he didn't need to transfer those plans. As a result, Openwork offered to repay Mr S £1,522 for the advice fee and the costs for the guaranteed income of the plan with Provider A.

Mr S refused this offer and referred his complaint to us. It was investigated by one of our adjudicators who didn't think there was evidence that Openwork had led Mr S to believe that a SIPP had been set up for him. But, he did think the complaint about the transfer should be upheld. In summary, he said:

- At the time of advice Mr S was about to turn 52 and could therefore have accessed funds from his previous plans in three years without transferring.
- The costs of transferring to the plan with Provider A made it more expensive than his previous plans.
- While the plan with Provider A was in line with Mr S's cautious attitude to risk, no consideration was given to what income could be achieved within the existing plans at age 55. And Mr S could have been advised to move the investments with his previous plans into more cautious funds in order to preserve their value.
- Mr S lost a valuable GAR as a result of the transfer. The adjudicator thought that Mr S would have left that plan in place even after he reached the age of 55 to take advantage of the GAR at age 60 had its value been properly explained to him.

Openwork disagreed with the adjudicator. They said that the costs involved in transferring to the new plan could be recovered if the markets or annuity rates fell because of the

guaranteed income feature. They also said that Mr S wanted to access his pension as soon as he could. So, it's unlikely that he would have waited until he was 60 to access the GAR.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

did Openwork tell Mr S that a SIPP had been set up?

It's not clear why Mr S believed he had a SIPP. There's no documentary evidence that Openwork had told him that they thought this was suitable for him or that they had set one up for him. I'm also not sure what was discussed in any meetings held at the time. So, although Mr S is unhappy that he couldn't purchase commercial property with his pension funds, I don't think Openwork have done anything wrong and I don't uphold that part of Mr S's complaint.

was it right for Mr S to have transferred his funds to Provider A?

It's clear that Mr S was giving very serious consideration to taking all his pension benefits as a lump sum at the age of 55. Openwork had advised Mr S not to "liberate" his pension funds via a private company. But they did advise him to switch to the plan with Provider A so that he could release capital at the age of 55 and have the benefit of guaranteed income from the age of 55. The question I have to consider is whether, in these circumstances, the advice to transfer was suitable for Mr S.

There was a cost for this transfer. But Openwork don't appear to have carried out a detailed cost comparison with the previous plans. In the absence of that, I think it's likely that the transfer to the new plan with Provider A was more expensive for Mr S than staying with his previous plans.

Openwork have already accepted that the advice to transfer two of the plans wasn't the best advice. This is because they were invested in cautious funds which they say weren't likely to lose value or affect Mr S's ability to draw income at age 55. I think the same can be said for the third plan. This appears to have been invested in a "balanced lifestyle fund". Even if this itself wasn't a cautious fund (which I think it's likely to be), the suitability letter from Openwork makes it clear that the plan allowed free fund switching. So, I think Openwork could have simply advised Mr S to switch funds for that plan rather than transfer to the cautious fund with Provider A if that was necessary.

I also don't think Mr S was given full advice about the value of his GAR that he would lose on transfer. Openwork have said that Mr S wouldn't have benefited from this as he wanted to take benefits from age 55 and not wait until he was 60. I disagree that this is as clear as Openwork suggest. In fact, as Openwork have said in their response to the complaint, Mr S also wanted "potential for a secure income if required". The advice given to Mr S about the GAR wasn't detailed at all. If he had been suitably advised, Mr S would have realised that the GAR effectively doubled the value of his fund in that particular plan and would be a very good means of securing guaranteed income. I think this would have been a powerful reason why he would have wanted to defer taking benefits from that plan. And he could have still used his two other plans for capital from the age of 55.

So, I don't think Mr S should have been advised to transfer his pension plans to Provider A. In doing so, I think he lost valuable benefits and moved into a more expensive plan. He will also have been concerned and distressed when he realised he'd been transferred to an unsuitable pension plan. I think it's right that Openwork should compensate him for this.

my final decision

I uphold this complaint. My aim is to put Mr S as close to the position he would probably now be in if he had been given suitable advice. So I think it's fair and reasonable that Openwork Limited should pay Mr S compensation of $[C + D]$, where:

In respect of Mr S's two previous plans which didn't have a GAR.

A = the notional transfer value of the two previous plans at the date of calculation, assuming that Mr S would have remained invested in the same funds.

B = the actual transfer value of the proportion of the current plan with Provider A, that has accrued on the amount transferred from these two plans, at the same date of calculation;

C = $A - B$, representing the loss to the date of calculation;

D = Interest on C from the date of calculation to the date of payment at 8% simple. Income tax may be due on this interest.

In respect of the previous plan which had the GAR, I think it's likely that Mr S would have deferred taking benefits until age 60 and benefitted from the GAR. But, I also think it's fair to assume he would have taken 25% as tax free cash. So, this calculation should be as follows:

A = the notional transfer value of the previous plan at the date of calculation assuming that Mr S would have remained invested in the same funds and allowing for the value of the GAR calculated as follows:

$[25\% \text{ of the notional transfer value} + 75\% \text{ of the notional transfer value multiplied by the GAR and divided by the current annuity rate, using the guaranteed rates and current rates based on retirement at age 60}]$

B = the actual transfer value of the proportion of the current plan with Provider A that has accrued on the amount transferred from this plan, at the same date of calculation;

C = $A - B$, representing the loss to the date of calculation;

D = Interest on C from the date of calculation to the date of payment at 8% simple. Income tax may be due on this interest.

If the calculation results in a loss, Openwork should pay the sum to Mr S's pension plan less any tax relief the provider has confirmed will apply. If the plan provider will not accept redress payments, or if paying this sum breaches any fixed protection Mr S has applied for and obtained, the sum should be paid direct to Mr S as a lump sum. 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 (assuming that Mr S will be a basic rate tax payer) that would otherwise have been paid. So:

- in respect of any sum due from the calculation for the plans which didn't have a GAR, the sum paid should include a deduction of 15% to allow for 25% tax free cash i.e. the remaining 75% would be taxed at 20%.
- in respect of any sum due from the calculation for the plan which did have a GAR, a deduction on the whole amount at 20%.

Openwork should provide details of its calculations to Mr S.

In addition, I think that Openwork should pay Mr S compensation of £200 for the trouble and upset caused.

Under our rules, I'm required to ask Mr S to accept or reject my decision before 5 February 2016.

Abdul Hafez
ombudsman