complaint

Miss A complains that advice from Whitehead Group Limited ('Whitehead') to transfer her final salary occupational pension ("OPS") benefits to a personal pension plan ('PPP') in 1994 was not reviewed as part of the industry-wide pensions review directed by the then industry regulator in 2000.

Miss A complains that she may have been financially disadvantaged by unsuitable advice.

background

In 1994, Miss A was advised by Whitehead to transfer the accrued benefits from her OPS to a PPP.

Miss A gave Whitehead a deferred benefits statement, from her OPS, which showed her OPS benefits at April 1994. It showed a revalued pension of £9,740.88 per year payable from 1 July 2014 for a minimum of five years.

The OPS benefits also had a death after retirement spouse's pension of £6,493.92 a year plus a lump sum of any outstanding balance of the five year guarantee.

A letter from May 1994 from Whitehead confirmed the transfer form was sent to Scottish Life. It says an investment growth rate (critical yield) of 10.5% per year was needed to improve on the OPS scheme benefits.

I have seen an application form signed the same day in May 1994 showing the transfer value of £23,870. And a welcome letter from Scottish Life in July 1994 saying the application had been processed.

I have also seen Whitehead letters from 2000 to Miss A about the industry wide pension review. They show a review was started in 2000 but not completed.

Our adjudicator considered Miss A's complaint. He concluded that as the Pension Review was not completed Miss A's complaint should be upheld.

He said that if a loss was then shown, Whitehead should compensate Miss A as required by the industry regulator, the Financial Conduct Authority.

Both parties to this complaint were sent the adjudicator's view.

But as there has been no communication from Whitehead either before or after the adjudicator issued his view, to Miss A or to this service, the matter has been referred to me.

my findings

I have considered all the available evidence and arguments to decide if this complaint falls within the jurisdiction of this service.

I have concluded it does for reasons set out below.

I have also decided it is appropriate, in the specific circumstances of this complaint, to depart from our usual practice to not address in a final decision jurisdiction *and* merits issues.

There is persuasive evidence, by way of Royal Mail receipts signed by a former director of Whitehead, that it has received Miss A's complaint.

However, it has not responded to her complaint. It has also not responded to any communication from the Financial Ombudsman Service.

In these circumstances, our rules say that I have discretion to reach my final decision on the merits of a complaint from the evidence and information that is available, notwithstanding that it has been provided only by the complainant.

In this case, I am exercising that discretion. But first, I consider it appropriate to comment on the jurisdiction of this service to consider the merits of this complaint and so the context in which I am exercising my discretion to decide its merits.

our jurisdiction to consider Miss A's complaint

Whitehead has not given Miss A its final response to her complaint (as required in our rules) so the six month time limit does not apply.

As the transfer falls within the pension review population, as defined under the terms of the industry wide pension review, it also cannot be time barred on the six and three year rule as set out in DISP 2.8.2.

This is because in the circumstances of Miss A's complaint, where a review was not completed, DISP 2.8.5R says:

'The six-year and the three-year time limits do not apply where:

***(2)** the complaint concerns a contract or policy which is the subject of a review directly or indirectly under:*

> ***(a)** the terms of the Statement of Policy on 'Pension transfers and Opt-outs' issued by the FSA on 25 October 1994; or*
>
> ***(b)** the terms of the policy statement for the review of specific categories of FSAVC business issued by the FSA on 28 February 2000.'*

My view is that only the outcome of a completed review would inform Miss A if she had cause for concern or not. But the review was not completed.

So I agree with our adjudicator that this complaint is within our jurisdiction, notwithstanding the passage of time since the advice was given.

I am aware that Whitehead Group Limited, since the advice was given, has undergone several name changes. I am also aware that its Financial Conduct Authority ('FCA') authorisation ceased in 2014.

But generally speaking, a firm remains responsible for complaints about events and activities which occurred when it was authorised, even if the firm is no longer authorised to carry out investment business and/or it has stopped trading.

This reflects the general principle that people and firms providing professional services cannot just walk away from their responsibilities and duty of care to their clients.

Accordingly, I am satisfied this service has jurisdiction to consider the merits of this complaint.

A firm's failure to co-operate with us, on the grounds that it is no longer trading or authorised, does not prevent us from investigating the merits of a complaint against it.

Nor does it prevent us from issuing a final decision with or without the input of the firm in question.

Our final decision will be legally binding on the firm, if accepted by the complainant. The firm will then be liable to pay the complainant any award we may make against it.

the merits of Miss A's complaint

I have carefully considered all the available evidence and arguments to decide a fair and reasonable outcome to the merits of this complaint.

The pensions review period was between 29th April 1988 and 30th June 1994. The advice and application to transfer was made and completed in May 1994.

So this advice and transfer falls within the review period. The evidence we have on file indicates a review was started. But there is no evidence the review was completed.

So if the advice and transfer had been found unsuitable, Miss A's plan should have been uplifted by any compensation as required by the guidance.

But as the review was not completed Miss A does not know if the advice she received in 1994 was suitable for her circumstances.

On that basis alone, I have decided to uphold Miss A's complaint.

In this case, notwithstanding the name changes and cessation of FCA authorisation, the entity that was originally Whitehead Group Partners Limited, which advised Miss A in 1994, appears still to be in existence and with assets in its balance sheet.

I say this because Whitehead Group Partners Limited had a Companies House registration number of 2009447. That same number has applied to its various incarnations both before and after its FCA authorisation ceased in 2014.

It now applies to an entity called WGL Altrincham Limited.

Companies House records show that at the last balance sheet date of 30 June 2016, WGL Altrincham Limited had net assets of £168,989.

Miss A has approached the Financial Services Compensation Scheme ("FSCS") to ask it to consider her complaint. It has declined to do so.

It can only accept complaints against firms it has declared in default. But as WGL Altrincham Limited appears to have net assets, FSCS cannot declare it in default.

I appreciate this leaves Miss A in a difficult position, not least in enforcing the terms of an uphold decision this service may issue. We have no power to enforce our decisions. That is a matter for the courts and the industry regulator, the Financial Conduct Authority.

If firms refuse to calculate or pay redress as directed by this service, then complainants must revert to the courts to enforce our decision. I understand that this may prove an onerous and time consuming process for Miss A.

But I trust my final decision here will be helpful to Miss A in bringing her complaint to a satisfactory resolution.

For the reasons set out above, I have decided that the advice to transfer Miss A's OPS benefits in 1994 must now be reviewed in accordance with the regulator's latest guidance for such reviews.

what must Whitehead Group Limited (now WGL Altrincham Limited) do?

In determining redress, my view is that a fair outcome would be for Whitehead to put Miss A, as far as possible, into the position she would now be in but for the unsuitable advice.

Whitehead Group Limited must undertake a redress calculation in line with the pension review methodology, as amended by the Financial Conduct Authority in October 2017.

This calculation should be carried out using the most recent financial assumptions published by the FCA at the date of the actual calculation. Whitehead Group Limited may wish to contact the Department for Work and Pensions ('DWP') to obtain Miss A's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P).

These details should then be used to include a 'SERPS adjustment' in the calculation, to take into account the impact of leaving the occupational scheme on Miss A's SERPS/S2P entitlement.

If this shows a loss, the compensation amount should if possible be paid into Miss A's pension plan. The payment should allow for the effect of charges and any available tax relief.

The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If the payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Miss A as a lump sum after making a deduction to reflect the rate of income tax Miss A pays or is likely to pay in retirement.

This is because the payment would otherwise have been used to provide pension benefits, which would have been taxed according to her likely tax paying status in retirement. My understanding is that the rate applicable to Miss A would be 20%.

25% of the loss would be tax-free and 75% would have been taxed. So making a notional deduction of 15% overall from the loss adequately reflects this.

Our award limit for complaints brought to us before 1 April 2019 is £150,000. Where total fair compensation requires payment of an amount that might exceed £150,000, we may recommend that the business pays the balance.

The compensation resulting from the loss assessment must where possible be paid to Miss A within 90 days of the date Whitehead Group Limited receives notification of her acceptance of my decision.

Further interest should be added to the compensation amount at the rate of 8% per year simple from the date of this decision the date of settlement for any time, in excess of 90 days, that it takes Whitehead Group Limited to pay Miss A this compensation.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above.

So any period where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

If Miss A accepts my final decision, the money award of up to £150,000 would be binding on Whitehead Group Limited. Our recommendation for the amount over £150,000 would not be binding.

Further, it's unlikely that Miss A can accept a final decision and go to court to ask for the balance of the compensation owing to her after the money award has been paid.

Miss A may want to consider getting independent legal advice before deciding whether to accept my final decision.

my final decision

I uphold this complaint.

Whitehead Group Limited (now WGL Altrincham Limited) must review its advice in 1994 to Miss A, taking account of the latest guidance from the regulator in respect of such reviews.

If a loss is shown, it must redress her as I have set out above.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss A to accept or reject my decision before 13 July 2019. .

Terry Connor
ombudsman