

The complaint

On behalf of her estate, the late Mrs K's executors have complained about what it considers to have been the "advice" she was given by Openwork Limited (Openwork) to purchase an annuity in 2013. Their complaint is that the late Mrs K was vulnerable at the time of the purchase, so she shouldn't have been "pressured" into making a decision and ought to have been given the opportunity to have a family member involved. They have said that the "advice" she received has subsequently caused her civil partner to be financially disadvantaged.

What happened

The late Mrs K held two pensions which, in 2013, she wanted to transfer to another provider using an appointed representative of the Openwork network. The idea of the transfer was to then purchase an annuity through Openwork on a non-advised basis. In December a total of £237,787.92 was transferred to the new provider. Mrs K was approaching 60 years of age at that time. During the transfer process Mrs K underwent surgery for a serious medical condition.

Following the transfer Mrs K was to receive tax free cash (TFC) of £59,088.13 with the residual fund used to purchase a single life annuity with inflation protection and a guarantee period of 10 years paid monthly in arrears. The provider that was chosen offered an enhanced annuity – due to Mrs K's medical conditions – of £7,953.84. Openwork received a commission payment of £5,761.09.

In January 2020 Mrs K entered into a civil partnership and she then updated her will to ensure the proceeds went to her partner.

Sadly in July 2020 Mrs K passed away.

In November 2022 the late Mrs K's stepdaughter complained on behalf of the estate about the advice given to the late Mrs K. The complaint was that the annuity recommendation was unsuitable and had led to a financial loss – as it failed to take into account the late Mrs K's civil partner's circumstances at the time. It was suggested that Mrs K was a vulnerable client who was suffering with serious medical conditions and was "pressured" into making a decision because of the impending time constraints.

Openwork didn't uphold the complaint making the following points in response:

- The reference to its "adviser" was incorrect as the late Mrs K wasn't given any advice.
- It had been made clear to her that the business operated on a non-advised basis. It also noted that the late Mrs K could have used an alternative firm if she wanted advice or wanted to consider alternative products.
- Although it accepted that undergoing surgery can be a stressful experience, it hadn't found any evidence to suggest that Mrs K had been vulnerable at the time of the sale because of her medical situation. It hadn't found any evidence of incapacity either

before or after the surgery and all the post operative communications suggested there were no ongoing concerns.

- Regarding the emails that were sent by the adviser up to the date of the surgery – seemingly “pressuring” Mrs K – these were sent in response to emails from Mrs K requesting information. And it noted the whole process had taken over three weeks and it was Mrs K who contacted it after her operation to progress the annuity purchase.
- It thought that Mrs K had discussed her partner’s situation at the time of the sale and had indicated the annuity was only for her as her partner had his own pension provision. It also thought the evidence suggested she had – or would be - discussing the matter with her partner and had intimated that they would expect to (jointly) receive an email from Openwork containing the various options.
- However, no advice was given to Mrs K, so Openwork wasn’t in a position to make any suggestions of how Mrs K ought to make provision for her partner except to set out the alternatives – which it thought it had done.
- In any case the annuity purchase was made over six years ago and it thought the complaint had been brought more than three years after Mrs K ought to have been aware of a cause to complain. Therefore it believed the complaint had been brought outside of the time limits allowed and couldn’t be considered by the Financial Ombudsman Service.

The estate then brought the complaint to us where one of our investigators looked into the matter. He didn’t think the complaint should be upheld and made the following points to support his findings:

- He didn’t think the complaint was made outside of the time limits allowed. While the annuity purchase had been made more than six years previously, he hadn’t seen any evidence of a “trigger” which meant Mrs K ought reasonably to have been aware of a cause for complaint more than three years before her executors brought the complaint. He didn’t think it was logical that Mrs K ought to have been aware of a cause to complain at the point she purchased the annuity as he didn’t think she would have gone ahead in the first place if she was concerned about the advice.
- In terms of the merits of the complaint, he thought Openwork had made it clear to Mrs K that it provided a non-advice service and therefore wasn’t required to provide a recommendation, or to take into account Mrs K’s goals or retirement income needs.
- Openwork’s role was to source and provide annuity quotes to put Mrs K in an informed position to make up her own mind about how she should proceed. He thought Openwork did provide enough information and explanation. He said it gave Mrs K ample opportunity to raise any queries before she went ahead.
- He thought Openwork, through its initial disclosure document (IDD) and quotation, did make Mrs K aware she would (indirectly) pay Openwork for its service.
- He didn’t agree that Mrs K had been pressured into making her decision. He noted that the provider’s annuity quotations were only valid for a certain length of time, so he thought it was reasonable for Openwork to make Mrs K aware of that fact. He also thought Openwork had made it clear that the annuity was enhanced because of her medical condition which was set out in the quotation and said, “*the annuity includes an enhancement based on the lifestyle and medical conditions provided to us.*”
- He didn’t think the evidence within the phone calls he’d listened to demonstrated that Mrs K seemed vulnerable in her dealing with Openwork. Based on what he’d heard he didn’t think it was reasonable for Openwork to refuse to help Mrs K and he didn’t think she would have taken up the offer of additional family support if discussed. He noted that Mrs K was clear on her partner’s position at the time – namely that he had his own pension provision, and this annuity was just for her benefit.

The representative of the late Mrs K's estate didn't agree, however, making the following points in response:

- Mrs K didn't intend to move her smaller pension but was persuaded to do so by Openwork when it "advised" her about the tax position of that pension. By involving itself in matters relating to the smaller pension Openwork acted beyond its capacity. Openwork's adviser should also have explained that any cash that Mrs K invested from her pension would also be subject to income tax.
- Openwork shouldn't have said it would "*see if we can get you a better income in retirement*" unless it could substantiate that statement. There's no evidence to show what it was comparing against as Openwork was unaware of the offering of the existing providers.
- Mrs K had stated a number of times to the adviser that she had problems with her vision because of her condition. She wasn't asked if she was capable of reading the number of documents and illustrations that she would be sent, and she was given some misleading verbal information – namely that there wasn't a cost attributable to Mrs K for the annuity purchase – which she might not have been able to confirm through reading the accompanying literature.
- It would have been prudent to defer the purchase until after the surgery so that Mrs K had clarity on the state of her health. At the very least Openwork ought to have suggested that Mrs K had a friend or relative with her on the call.
- Although it was accepted that the proposition was non-advised, Openwork ought, at the very least, to have informed Mrs K that there were other options – such as flexi access drawdown.
- Mrs K had only started considering her retirement plans when she first became aware of her health issues. This should have alerted Openwork to the fact that she had "*event driven vulnerability*". But in any case, her initial consideration had only been to purchase an annuity with the proceeds of the larger fund, and she wouldn't have agreed to transfer the smaller pension unless she'd been "swayed" by the first conversation she had with Openwork's adviser on the telephone.
- While it wasn't expected that the adviser should undertake a "medical assessment" of Mrs K at the time, more consideration should have been given to her potential vulnerability following the disclosure of her medical issues and impending surgery.
- It was clear the annuity was just for Mrs K's benefit but that didn't take into account the information she provided in the second phone call about expenses her partner might incur on her death and that there was joint intention to "*do a few things*" with the TFC. More consideration should have been given to her partner's likely position on her death.

The investigator wasn't persuaded to change his opinion so the executors asked for the complaint to be referred to an ombudsman. In doing so they provided more details of Mrs K's health post-surgery and reference to the fact that she took some weeks to get over the anaesthetic. They also reiterated the following points in relation to the complaint:

- Mrs K didn't need to take the 25% tax free lump sum out of the smaller pension as this would not be tax efficient.
- She wanted to keep the smaller pension as income and shouldn't have been influenced otherwise by someone who could only offer one solution.
- Openwork failed to recognise Mrs K was vulnerable and in not doing so didn't protect her or offer support.
- Reference was also made to the regulator's guidance on dealing with vulnerable clients.

The complaint was referred to me for review.

My provisional decision

In my provisional decision I said that this was a complaint we could consider but I didn't think it should be upheld. I'll replay my provisional findings – which form part of the final decision, in full below.

Is this complaint one we can consider?

In its response to the complaint Openwork said it thought the complaint had been made outside of the prescribed time limits. It said the annuity had been purchased more than six years previously and the late Mrs K was aware - from the point she effected the annuity, of some or all the points raised by the complaint, more than three years before the complaint was made.

The relevant rules regarding time limits are set out in DISP 2. DISP 2.8.2 says:

“The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

(1) ...

(2) more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received”.

So as the annuity was purchased in 2013 – more than six years ago – I need to consider when the complainant ought reasonably to have become aware that they had cause to complain.

Openwork's main point here was that the late Mrs K was aware that she wasn't being given advice in 2013 and, as the complaint points being raised now were also about things that were known in 2013, the complaint should have been raised at that time. But I think Openwork's position here is illogical as, should Mrs K have been aware of those issues at the time, she clearly wouldn't have gone ahead with the purchase or would have least delayed going ahead until her concerns had been allayed.

So Mrs K going ahead with the annuity, and seemingly being happy with the plan according to her discussion with the adviser on the telephone, would suggest she had no reason to be aware of a cause to complain at that time.

And looking at the ensuing years until her unfortunate passing, I've seen nothing to show that anything might have triggered an awareness of a cause to complain. Indeed there's no evidence to demonstrate any further communication between Mrs K and Openwork after the original sale – so it's not clear what might have given her a cause to complain during this time.

I'm satisfied the event that triggered the complaint were the issues that arose after Mrs K's death – such as the financial position that her partner was put into because of the way in which the annuity was set up.

The complaint points that have now been raised were based on the executor's analysis of the circumstances around the original sale which led them to conclude that the "advice" to take out the annuity was unsuitable. Those points comprise the merits of this complaint which I'll now go on to consider below. But I don't think the complaint itself has been brought outside of the time limits for the reasons I've given above.

As to the merits themselves, I don't intend to uphold this complaint which I know is an outcome that will disappoint the executors of the late Mrs K's estate. I've made a provisional decision to allow both parties the opportunity to respond, but I'll set out my reasons below.

Was there any advice given which could be considered unsuitable?

I ought to first explain that throughout this decision I've referred to an "adviser" from Openwork. But as part of the reasoning in my decision is that I don't think Openwork gave any advice during this process, I haven't used the term to describe someone that gave advice but simply as a generic term for the individual that conducted the telephone "interview" and obtained the illustrations.

The executors have made a number of references to "advice" that Openwork either should have given or did in fact give. So I think it's important to establish the grounds on which Openwork did interact with Mrs K and what it was obliged to do for her but also wasn't able to do. So to establish that position I've first looked the IDD, which set out Openwork's services and costs and was emailed to Mrs K at the start of the process.

Within section three on the first page it said "you will not receive advice or a recommendation from us. We may ask some questions to narrow down the selection of products that we will provide details on. You will then need to make your own choice about how to proceed."

This document also set out the costs that Mrs K would have to pay by noting that "you will pay for our services on the basis of commission. None of the above includes payment for any ongoing services, e.g. periodic or ongoing reviews, unless otherwise agreed by us."

I've also seen a copy of the annuity illustrations that were sent to Mrs K which outlined the service Openwork would provide in more detail. They said "as discussed because we offer a non-advised service we do not charge fees and instead will be paid a commission from the provider should you decide to go with them. If you would indeed like us to arrange the business for you then please let me know and I will issue the relevant paperwork to you, once completed we will arrange a courier to collect that from you at no cost to yourself in order to keep all the documentation secure.

And in a covering letter dated 2 December 2013 which Openwork sent after the first telephone call it was noted that:

"As I explained to you in our telephone call, we offer a non-advice service, which means I've asked a number of questions about you, your pension plan(s), your health and your income requirements and have used the information you provided to see if we can get you a better income in retirement than you are being offered by your existing provider(s). This is the only area of your financial situation we discussed.

I am not making any recommendations or offering advice regarding any of the options you may be considering but I am able to provide information in response to questions you have about the products and features so that you are better able to make an informed decision yourself. We have access to the whole of the market and therefore approach all the leading annuity providers. My research is limited to conventional annuities which provide a guaranteed income for life. There are other types of annuities available which generally include some form of investment element."

I think this information was quite clear. Mrs K couldn't be given advice under Openwork's terms of engagement, it could only provide the information she required to decide whether to take the proposed annuity terms offered to her.

But I've also listened very carefully to the two telephone conversations the adviser had with Mrs K, and I'm satisfied that I haven't heard any evidence to support the idea that Openwork strayed into giving advice. Mrs K's family have said that they think the adviser gave advice around taxation which "influenced" her decision to take the second pension which she hadn't originally intended to do. But as I'll explain further later, I think any "advice" – which I actually think was just information - was simply to explain that any TFC not taken at the inception of any annuity couldn't then be withdrawn later - which was important information Mrs K needed to be given. I'm satisfied that the adviser simply provided that information and left Mrs K to decide if she wanted to take advantage of that benefit with her second, smaller pension. I note Mrs K had already said she was open to taking the second pension if it was in her interests financially.

So I don't think there's anything to support the idea that Mrs K was "advised" here or provided with anything other than the relevant information she needed. It was Mrs K that initially contacted Openwork for illustrations for alternative annuities which might benefit her financially and I'm satisfied that Openwork fulfilled that requirement and that it made Mrs K aware – before it began the process - of its limitations in how it would go forward in helping her.

Should the late Mrs K have been regarded as vulnerable and should her partner's situation have been taken into account

This is central to the complaint the executors have raised. They have said that Mrs K was clearly vulnerable during this process and that even on the day the adviser rang to gather relevant information from Mrs K she was due to have major surgery the following day, and so the adviser should have delayed the process or at the very least offered her the opportunity to have a member of the family or friend to be part of the call. They also think she remained vulnerable after the process and suffered from post-surgery problems all of which would have affected her capacity to understand and retain information and to make such important decisions.

They maintain that Mrs K had "event driven vulnerability" and the adviser should have recognised this and made the appropriate adjustments and should not have "pressured" Mrs K using the expiry dates of the illustrations as deadlines to conclude the sale quickly. They also provided references to the regulator's (current) guidance on dealing with vulnerable clients as support for their arguments.

I've considered the family's submissions and I've thought carefully about its representations. And although the guidance to which it refers was only first set in 2015 – after the "advice" given here – I have taken into account the regulator's current definition of vulnerable clients, which is "someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care." So I've taken that statement and applied it to the evidence I've been presented with to determine whether Openwork acted fairly towards the late Mrs K in 2013.

The executors are right to say that the only basis on which to decide whether Openwork acted fairly and appropriately was within the telephone conversations that Mrs K had with the adviser. I've listened to those two calls very carefully and I'll set out below what I think are the relevant points from them to support my decision.

The first call

The first call picked up Mrs K's initial enquiry. She explained that she was going into hospital the following day for surgery which was "complicated and she doesn't understand it". She explained how the problem was discovered and said that "reading through all the notes and things I thought I'd better mention it". The adviser asked about the prognosis and suggested that "it would likely enhance the annuity".

The adviser explained his firm's non-advised status. He said he would be gathering information which he would use to see if "we can possibly get you a better offer in retirement than what you're currently being offered". He explained it offered "conventional" annuities but that there were others available which come with some risk. He referenced the key features documents which "should already have been emailed out to you... we don't charge you apart from commission payments we receive if you should decide to go ahead."

So in the first instance I think the adviser did set out the service he offered and the cost to Mrs K – which wasn't a direct cost to her. I also think he obtained sufficient information about Mrs K's situation and circumstances to judge whether she presented as being vulnerable. I didn't hear anything to suggest he ought to have been alerted to a vulnerability which would require adjustments to the process at that time – I don't think it's necessarily the case that the immediate surgery alone meant Mrs K automatically should have been defined as "vulnerable".

Mrs K had the paperwork available from both pension providers and provided the fund values. I'm not persuaded that she said she only wanted to annutise one plan, but that she only wanted to take the TFC from one plan - as she had "a few things to do". This was confirmed by the adviser when he asked, "are you looking to keep that with (the smaller plan's provider) while Mrs K confirmed "not necessarily if I can get a better deal somewhere else."

I'm also not persuaded that the adviser did give (misleading) advice or, rather, information around the taxation of the plans. He simply explained that if TFC isn't taken at inception it wouldn't then be available at a later date – which would of course mean that Mrs K would lose access to some TFC and pay more tax overall. However he confirmed that Mrs K could do whatever she preferred having simply put her in an informed position regarding the availability of TFC.

In my view Mrs K was able to answer most of the questions put to her except where she expressed a lack of knowledge in some complex areas - but which I would expect the majority consumers to be unaware of.

She gave a clear explanation of the two pensions she held, and it was quite clear from her references to the detailed information about her plan and circumstances that she'd already provided in the email she sent to Openwork, that she had looked into this matter and thought carefully about it. She did confirm that it was her medical condition which had caused her to think about taking her benefits more seriously as she now approached her 60th birthday and was looking to reduce her working capacity.

The adviser confirmed that single and joint life pensions were available, but Mrs K said, “it’s only for me” although she confirmed she had a partner who “has his own pension”. I don’t think it was for the adviser to explore which of joint or single life annuities were more appropriate as he wasn’t making a recommendation based on advice – so he would be unaware of the specific circumstances here. But I would expect him to point out that joint annuities were available – along with the other features such as guarantee periods and escalations, which I’m satisfied he did.

Mrs K did say on two occasions that she had “some work to do” before the surgery which would suggest she was still able to carry out everyday tasks and I’m satisfied this included sorting out her retirement provision – which had become important to her based on the changes in her medical circumstances.

Mrs K did refer to a problem with her eye and double vision, but said the current condition wasn’t related to that and had “now gone away”.

The adviser asked about any follow up treatment and Mrs K said they “would just keep an eye on it” and it wasn’t “likely to be anything major”.

I understand the executor’s point that Mrs K wasn’t fully aware of the seriousness of the situation or the extent of the surgery, but I think the adviser would have only been able to act upon the information he was given, and I think it’s reasonable that his approach was dictated by Mrs K’s tone and manner with him at that time. The executors are right to state that Mrs K’s manner only served to demonstrate that she was “sound of mind”, but I haven’t heard anything to suggest that the adviser ought to have been concerned that she was “vulnerable” at that time, such that the adviser should have taken alternative action.

The adviser said he would send out a variety of quotes and illustrations and some information about the process. Mrs K said she “wouldn’t probably have time to read it today” and the adviser said there was no rush and “it’s there when you need it.”

I’ve set out a number of in depth references to this call to show there’s nothing, in my view, to support the idea that Mrs K wasn’t able to discuss this matter with the adviser. She was able to explain the situation – including her understanding of the forthcoming surgery and the likely outcome. I think the adviser was clear in his explanation of matters and I’ve heard nothing to suggest he gave advice outside of his remit which may have influenced her decision.

I think if Mrs K felt at all vulnerable about thinking about her pension provision at that time I would have expected her to inform the adviser that she wasn’t in a position to do so. The evidence I’ve seen would support the idea that she was happy to continue the process at that time and was able to consider the annuity options she would be provided with following the conversation with the adviser – and based on the clear information she provided to him.

The second call

In this call Mrs K said she’d had a look at the figures the adviser had provided and had a couple of questions – which I think were quite reasonable in respect of putting herself in an informed position. I think the adviser gave a good explanation of the “guarantee period” – which then seemed to make Mrs K’s mind up for her. The guarantee option did provide her with some protection for her estate in the event of her death (for a limited time) and Mrs K

stated as much very decisively and confirmed both the option she preferred, and the amounts involved.

The adviser said he would then have to obtain up to dates quotations because of the deadlines imposed within them.

The executors did make reference to Mrs K's difficulty in reading at that time as supported by her statement that she wasn't "really into reading war and peace at the moment". But from what I've heard that reference was in relation to the "open market transfer form" which she was unable to find from the provider and the adviser's subsequent statement that provider's "do tend to send war and peace".

I don't think that was a comment that ought to have alerted the adviser to the fact that she might not be able to read the information he had provided. In fact Mrs K had proved that she had read Openwork's information as she stated she had, and also raised a several questions about the content. I think her remark was aimed at the wealth of information she had received from the existing providers – although she had clearly been able to extract the relevant information from the provider's pack in terms of current fund values etc.

The adviser then confirmed back to Mrs K the full details of the options she'd chosen.

The second call was clearly designed to "wrap things up" and put which of the recommendations Mrs K preferred in place. I think that if Mrs K hadn't been able to make up her mind she would have said so bearing in mind how decisive she seemed at this time. Again I can't reasonably say that I heard any "advice" which may have influenced her decision and, following the advisers answer to her questions, she seemed confident in her decision and the reasons behind it.

I note the investigator expressed an opinion that "Mrs K appears lucid, engaged, curious and decisive in these calls." I think having listened to them carefully that is a description I find myself in agreement with. I don't think Openwork either failed to explain its service and costs or what it proposed to do for Mrs K, and I don't find that it provided advice it shouldn't have done – but simply provided relevant and material information to put Mrs K in an informed position. And I don't think it failed, based on the evidence I've seen and heard, to identify her vulnerability to such an extent that it should have either delayed the process or insisted that Mrs K was represented throughout.

Was the late Mrs K pressured into purchasing the annuity?

I note an additional complaint point was that Mrs K was "pressured" into taking out her annuity. But I have to say I've seen nothing to support that idea. And I note that the transaction was completed in her own time and even when the adviser said that there were documents that needed to be returned, it was Mrs K that wanted to send them off as soon as possible by "recorded delivery"- which obviously was understandable in that situation.

I don't think there's any reasonable suggestion that the adviser used the deadline dates within the illustration to speed up the process or to "force" Mrs K to make a quick decision. From what I've heard I think Mrs K was given the time she clearly needed after her surgery to complete the process. Much has been provided about the post-surgery problems Mrs K suffered, but I don't think she made reference to any of these issues when the adviser called her for the second time. Again I think Mrs K would have alerted the adviser to any medical issues she may have experienced which prevented her from making up her mind about which option to choose.

The financial position of the late Mrs K's partner

The executors say that, as a result of the annuity that was put in place, the late Mrs K's partner has now suffered financially and has been forced to sell their property. And I have sympathy for the position the family now find themselves in. But I don't think it's fair to say that Openwork was responsible for that situation. As I've said previously Openwork carried out a non-advised sale and provided an annuity recommendation based on the information the late Mrs K provided.

I'm satisfied the issue of joint and single annuities was raised but it wasn't for Openwork to put forward a recommendation around which one Mrs K ought to choose. It established that Mrs K had a partner at the time, but she was clear that he had his own provision and this annuity should be for her alone. I wouldn't have expected Openwork to develop that discussion and make any robust challenges as it wasn't providing advice. I'm satisfied the matter was raised and the relevant information recorded before Openwork set up the annuity options that Mrs K had chosen.

Responses to my provisional decision

The executors said they had nothing further to add that might change my decision here although they continued to believe that this outcome was wrong.

Openwork said it accepted my findings around the merits of the complaint but continued to dispute whether the complaint was within our jurisdiction. It said that, as Mrs K was aware that no advice was given to her in 2013, it seemed that a complaint brought nine years later about advice, would seem to be out of time. However, it considered this issue to be "moot" given the decision about the merits of the complaint.

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.

And as neither party provided any further comment or submissions about the merits of this complaint. I see no reason to depart from my provisional findings. I'll set out my reasons below.

As I explained in my provisional decision I thought this was a complaint we could consider. Openwork has also accepted that the complaint is within our jurisdiction so I've only looked at the merits of the complaint made by the estate – that the late Mrs K was in a vulnerable position when Openwork talked to her about setting up an annuity - and shouldn't have "pressured" her into a decision or should at least have insisted that another friend or family member was present during her interactions with Openwork.

Did Openwork provide "advice" which might have been unsuitable?

I've seen copies of number of documents which set out Openwork's position and status in its dealings with Mrs K.

It's IDD noted that, "*you will not receive advice or a recommendation from us. We may ask some questions to narrow down the selection of products that we will provide details on. You will then need to make your own choice about how to proceed.*" It also confirmed the charges that would apply to Mrs K noting that, "*you will pay for our services on the basis of commission. None of the above includes payment for any ongoing services, e.g. periodic or ongoing reviews, unless otherwise agreed by us.*"

I think this was a clear indication of the type of service Openwork would offer Mrs K. There was no suggestion of advice, and it was clearly noted that there would be a cost – which wouldn't come directly from Mrs K, but by means of a commission payment from the provider. This position was further enhanced through the annuity illustration Openwork issued to Mrs K which said, *“as discussed because we offer a non-advised service we do not charge fees and instead will be paid a commission from the provider should you decide to go with them.”*

I've also seen a copy of a letter which Openwork sent to Mrs K on 2 December 2013 – after its first telephone appointment with her. This also confirmed that the adviser hadn't given advice but had simply asked a series of questions designed to help him provide Mrs K with the information she needed to make a decision. So I don't think the late Mrs K would have been under any illusion that Openwork would be providing her with advice. I think that was also supported by the two telephone calls Mrs K had with the Openwork adviser – which I've listened to carefully. I haven't heard anything to support the idea that the adviser gave “advice” or tried to influence the late Mrs K's decision about what to do.

I'm satisfied that Openwork set out the type of service it would provide Mrs K. I think it then fulfilled that service by asking questions about her circumstances before providing illustrations for her to consider, which I think took into account the information Openwork was provided with. I haven't seen anything to support the idea that it gave any “advice”- which it had already confirmed it wasn't able to do.

The late Mrs K's vulnerability

The late Mrs K's executors have said that she was in a vulnerable state throughout much of the annuity process. They said that she was due to have major surgery the day after she first spoke with Openwork and ought to have been offered the opportunity to have some help or support with her during the telephone conversations she had. They also provided evidence to show that Mrs K suffered from post-surgery problems as well. They said all of this affected her ability to retain information and make important decisions.

I've considered all of the medical evidence that's been provided and also referred to the regulators current guidance for businesses when dealing with vulnerable clients – which is defined as *“someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care.”* I've looked at the interactions Openwork had with Mrs K to see if it should have done more to identify and help with her situation. In particular I've listened to the telephone appointments, which I think were the only real basis on which Openwork could have made such judgements.

During the first telephone call I was satisfied that the adviser had explained the service Openwork would offer and gathered enough information about Mrs K to both help her with providing annuity quotations and also to establish any “vulnerability”. I haven't heard anything to support the idea that the adviser should have been alerted to a vulnerability which might have required adjustments at that time. I also think the adviser gave relevant information around the TFC available – not specific advice around taxation as suggested by the executors.

I understand the executor's position here and I have some sympathy considering the late Mrs K medical situation at the time. But I think Openwork could only have acted on the information it gathered and on Mrs K's own comments and explanations about her circumstances. I would have expected Mrs K to have told Openwork if she felt vulnerable and not able to make decisions around her pension provision, but the evidence I've seen would support the idea that she was happy to continue and was “engaged” in the process.

The second telephone call was arranged to discuss the annuity illustrations and answer any outstanding questions before setting up the late Mrs K's preferences as an annuity application. The evidence would suggest that Mrs K did ask some questions which were answered before she agreed to go ahead. I said in my provisional decision that she appeared to be "*lucid, engaged, curious and decisive*". So I don't think there was any evidence on which to base a claim that the adviser ought to have identified a vulnerability which should either have led to an extension of the application process or an insistence that Mrs K was represented throughout.

I also note Mrs K was keen to pursue her application during the second call and I haven't seen any evidence to support the idea that the adviser "pressured" Mrs K into making a decision. There were deadlines attached to the illustrations and I don't think it was unreasonable for the adviser to make Mrs K aware of them. He also said that he would apply for up to date quotations suggesting that Mrs K was given sufficient time to make up her mind.

I know the executors have provided medical evidence to show that Mrs K did have some post-surgery complications, but there's nothing to suggest these impacted on her decision making process as she didn't make any reference to them during the second call – which I would have expected if she considered them to be an issue. But, even if I am wrong in my assumption of the late Mrs K's health at the time, Openwork could only act upon the information it was presented with at the time. And, from what I've seen and heard, there isn't sufficient evidence to support the idea that its adviser ought to have considered Mrs K to be in a vulnerable situation and make adjustments accordingly – such as additional (family) representation, or an extension or even a pause to the process.

The financial position of the late Mrs K's partner

The executors told us that the late Mrs K's partner has recently been forced to sell their property and is in a difficult financial position because of the annuity that the late Mrs K took out. They said that the lack of provision for her partner has caused this financial hardship, and this was a direct result of the lack of "advice" the late Mrs K received and her vulnerability when making her decision about the annuity terms.

As I've said previously I'm satisfied Openwork provided a "non advised" sale here and so it wasn't obliged to make a recommendation which took into account all of the late Mrs K's goals and objectives. So it wasn't obliged to advise Mrs K whether she needed to make provision for her partner in the event of her death. It simply needed to ask Mrs K what provision she wanted to make, which she answered by saying "*it's only for me*" confirming her partner "*has his own pension*".

I don't think Openwork needed to explore which annuity was more appropriate for Mrs K in those circumstances, but I would expect it to explain the availability of joint life annuities and other features such as guarantee periods and escalations. Based on what I've heard during the telephone conversation I'm satisfied Openwork's adviser did have those discussions.

So, as I don't think Openwork had any responsibility to advise the late Mrs K about what annuity option she should choose, I don't think it can be held responsible for any financial problems which may have arisen after Mrs K's passing because of the particular annuity terms that were in place. I do have some sympathy for the position the late Mrs K's partner now finds himself in, but I don't think it's fair or reasonable to say that Openwork is responsible for that when it didn't provide "advice" around the annuity options that were chosen.

My final decision

For the reasons that I've given I don't uphold the estate of Mrs K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs K to accept or reject my decision before 1 January 2024.

Keith Lawrence
Ombudsman