

The complaint

Mr W complains about the advice he was given by Wren Sterling Financial Planning Limited when he was considering transferring the benefits in his occupational pension scheme (OPS) into a personal pension arrangement.

What happened

Mr W had a deferred OPS with his previous employer. This had a transfer value (CETV) of approximately £180,000. He also had a Self-Invested Personal Pension (SIPP) held with a business I'll refer to as [X]. This contained funds which were valued at approximately £915,000 and the investments were managed by a discretionary fund manager (DFM) who I'll refer to as [Y].

Mr W had an independent financial adviser (IFA) with whom he discussed the possibility of transferring the benefits of his OPS into his SIPP, but because of the value of the safeguarded benefits in this OPS, Mr W was required to obtain formal transfer advice.

His previous employer had an arrangement with Wren Sterling that it would pay Wren Sterling's fees if it gave pension transfer advice regarding an OPS it held. So Mr W approached Wren Sterling to obtain transfer advice as this would be provided on a no-cost basis to him.

Wren Sterling sent Mr W a pack of documents to read and complete prior to the initial telephone consultation, which occurred on 22 April 2022. During this call Mr W's financial and personal circumstances were discussed, along with his objectives and attitude to risk (ATR). As a result of this meeting Mr W signed a letter of authority (LOA) which was sent to his SIPP provider [X] authorising it to provide Wren Sterling with details of his SIPP and investments. But due to an error by Wren Sterling this LOA was sent to the wrong address and was not received by [X], and the correctly addressed LOA was not received by [X] until 2 June 2022.

The information Wren Sterling required from [X] was received on 11 July 2022 and the final recommendation report was sent to Mr W on 22 July 2022. This recommended that Mr W transfer the benefits of his OPS to Aviva in a flexible drawdown arrangement, and to invest in its Pension Portfolio. Wren Sterling recommended this over a transfer into his existing SIPP arrangement as it said the charges in the existing SIPP would be higher than its recommended options.

Mr W had a telephone meeting with Wren Sterling to discuss the recommendation on 12 August 2022. Mr W didn't agree with the recommendation and said he had made clear from the start that he wanted the transfer to be made into his existing SIPP.

Mr W complained to Wren Sterling on 6 October 2022. In summary, he said:

- There had been unnecessary delays throughout the process;
- The Wren Sterling recommended scheme with Aviva was contrary to Mr W's goal of

transferring into his existing SIPP;

- Given the length of time the process took, his pension value had dropped by over £30,000 due to the fluctuation of the CETV;
- Wren Sterling should sign the appropriate documentation to say it had provided Mr W with financial advice.

In its final response letter, dated 2 November 2022, Wren Sterling didn't uphold Mr W's complaint. It said, in summary, that it was required to not only consider the suitability of the transfer, but to also consider the suitability of the provider and funds. And it had made clear at the start of the process that if Mr W did not accept its advice, it would not engage him as an 'insistent client'. It acknowledged it had caused some unnecessary delays in the process, but its final recommendation was brought about by both the fact that Mr W's existing DFM was not on its panel of approved providers, and also a comparison in costs between his SIPP, with its DFM arrangement, and that provided by Aviva. The Aviva arrangement would be cheaper and therefore overall offered better value for money. However, in recognition of the times it could have been more proactive in keeping him updated and managing his expectations, it offered him £250 compensation.

Mr W did not accept this outcome and referred his complaint to our Service where it was considered by an Investigator. And having done so, our Investigator didn't uphold the complaint. He thought Wren Sterling hadn't treated Mr W unfairly, as it had made its policy on insistent clients clear from the start. He also didn't think Wren Sterling had given Mr W unsuitable advice, even though it wasn't what Mr W had wanted.

There was further correspondence between Mr W and our Investigator who ultimately didn't change his view. So as no agreement could be reached the matter has been escalated to me for a final decision.

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.

This is clearly a matter of importance to Mr W, given his desire to manage his own pension funds how he wants to. And the introduction of Pensions Freedoms in 2015 was intended to allow more people to do just that. However, to protect the valuable safeguarded benefits contained in some OPSs, the legislation required existing providers (the OPS) to ensure, where the plan was worth in excess of £30,000 the consumer has received regulated advice before they gave up those safeguarded benefits by transferring.

Mr W has made several complaint points, including the length of time the process took, that Wren Stirling didn't communicate with him clearly, that it treated him unfairly and that the final recommendation was unreasonable. And he thinks that his CETV has lost value during the time the process took. And whilst I will consider all of these, in deciding this complaint I've focussed on what I consider to be the heart of the matter, rather than commenting on every issue in turn. This isn't intended as a discourtesy to Mr W, rather it reflects the informal nature of our service, its remit and my role in it. The heart of this complaint is whether Wren Stirling acted fairly and reasonably in both the advice process and its final recommendation.

Mr W already had an IFA with whom he'd discussed the possibility of transferring the benefits of his OPS into his existing SIPP. And Mr W has said that had his IFA made a formal recommendation this would have cost Mr W about £7,500. But his former employers, with whom he held the OPS, had an agreement with Wren Sterling that it would provide

transfer advice at no cost to the consumer. So this was clearly an attractive option to Mr W, and it is unsurprising that he took this up.

But irrespective of who was paying Wren Sterling for this advice, it still had certain responsibilities to Mr W during the process. There is extensive regulation around services like those provided by Wren Sterling for Mr W. The Financial Conduct Authority (FCA) Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2 - which requires a firm to conduct its business with due skill, care and diligence.
- Principle 6 - which requires a firm to pay due regard to the interests of its customers.
- Principle 7 - which requires a firm to 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.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms like Wren Sterling. As such, I need to have regard to them in deciding Mr W's complaint.

Further, COBS 2.1.1 R requires a firm to act honestly, fairly and professionally in accordance with the best interests of its clients, in relation to designated investment business carried on for a retail client. The definition of "designated investment business" includes "advising on investments...in respect of pension transfers...".

In 2009 the then regulator, the Financial Services Authority (FSA), published a checklist for pension switching that I think is still helpful today. Although it was primarily aimed at switches, I think it served to highlight the main issues which could arise in transfers as well, and it is reasonable to use the principles when deciding on the suitability of the receiving scheme.

The checklist highlighted four key issues it thought should be focussed on:

- Charges - has the consumer been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension, without good reason?
- Existing benefits - has the consumer lost benefits in the switch without good reason? This could include the loss of ongoing contributions from an employer, a guaranteed annuity rate or the right to take benefits early.
- Risk - has the consumer switched into a pension that doesn't match their recorded attitude to risk (ATR) and personal circumstances?
- Ongoing fund management - has the consumer switched into a pension with a need for ongoing investment reviews but this was not explained, offered or put in place.

And in 2014, following a previous alert in 2013, the FCA issued an alert outlining its specific stance on advice provided about SIPP. This wasn't new guidance, it was the regulator re-stating its position, and is still relevant:

"Where a financial adviser recommends a SIPP knowing that the customer will transfer or switch from a current pension arrangement to release funds to invest through a SIPP, then the suitability of the underlying investment must form part of the advice given to the customer. If the underlying investment is not suitable (...), then the overall advice is not suitable..."

So this made clear that advisers could not restrict the advice they gave to the suitability of the transfer alone. They had to consider where the transferred funds were going and how these funds would be invested as a result. So both the transfer and arrangement had to be suitable for it to receive a positive recommendation. And having considered the suitability of the overall advice provided, I'm satisfied Wren Sterling met the regulatory requirements placed on it. I'll explain why.

Was Mr W an 'insistent client'?

The FCA has defined an insistent client as follows:

- A client who has received a personal recommendation (advice) from the business;
- Who wants to enter into a transaction that is different from that recommended by the business; and
- Who wants the business to facilitate that transaction.

Having listened to the telephone calls between Mr W and Wren Sterling, and having read the evidence in this case, I can see Mr W entered into this process with his desired outcome firmly set in his own mind. He had already discussed this with his own IFA and I think it is likely that he thought it was just a matter of Wren Sterling 'rubber stamping' the transfer. But given the stringent regulatory requirements, some of which I've set out above, Wren Stirling were required to do a significant amount of work in order to enable it to come to an evidence-based and reasonable recommendation which would stand up to scrutiny. And it began this process with this initial telephone call when it completed the fact find. This is where Mr W's personal and financial circumstances were recorded, along with his objectives, ATR and capacity for loss.

The majority of Mr W's pension provision was held within his SIPP. The benefits in his OPS were minor in comparison and Mr W made it clear in the call that he was not relying on his OPS to provide his income in retirement. He was more concerned about providing death benefits to his wife should he pre-decease her, or his daughter, and he felt that transferring into a personal pension arrangement would provide better death benefits. He also wished to take £100,000 in tax-free cash. He was only entitled to take 25% of his pension fund tax-free, so this would have needed to be funded from either his existing SIPP or a combination of the SIPP and the transfer value. And having listened to the call I can see that Mr W was aware of this, and stated his intention to take the £100,000 from his existing SIPP irrespective of whether his OPS was transferred or not. So I'm satisfied that this objective could be safely discounted from the transfer considerations.

Ultimately Mr W wanted to consolidate his personal pensions into one place to simplify the arrangement, and improve on the death benefits available from his OPS. But in order to comply with the regulatory requirements, Wren Stirling, whilst being cognisant of his wishes when making its recommendation, was under no obligation to follow them. If it did not think what Mr W wanted to do was suitable it should not recommend it. And having listened to the initial call I can see Wren Stirling made Mr W aware of this at several points during the initial process when it explained its stance on 'insistent clients'. In my view it made it sufficiently clear that should Mr W not agree with its recommendation, it would disengage from the process and it would not assist him as an insistent client. And it explained that this wasn't just limited to whether the transfer from his OPS was suitable – it included whether he agreed with the recommended fund destination. And as I've said above, the recommendation had to consider both the transfer suitability, and where the funds would go and the associated investments. So although Wren Stirling recommended the transfer of the benefits held in Mr W's OPS it recommended that they be transferred into a fund different to his existing SIPP. So as Mr W disagreed with the recommended destination of the funds he

ultimately didn't agree with the whole transfer advice. As a result I consider Wren Stirling was fair when it classed Mr W as an insistent client. And I'm also satisfied that Wren Stirling had made him sufficiently aware of the implications of this.

Was the advice to transfer and the recommended plan suitable?

The suitability of the advice to transfer the benefits within Mr W's OPS into a personal pension has not been questioned – indeed, it was something that Mr W wanted and apparently still does. It is the recommended destination which is in dispute. Mr W wanted the funds transferred into his existing SIPP, but Wren Stirling recommended an alternative arrangement with a different provider - Aviva.

As I've said above, Mr W's objective of taking £100,000 tax-free cash can be safely discounted as he said he would take this from his existing SIPP whether the transfer was recommended or not. So the remaining objectives were to improve the death benefits and to consolidate his pension arrangement. I will take these objectives in turn:

I can see transferring into a personal pension arrangement would mean that the death benefits available to his nominated dependents would be improved on what was available in his OPS. Although the OPS provided a guaranteed spouse's income for life, should Mr W's wife pre-decease him these benefits would be lost. In a personal pension arrangement, in the event of his death, the remaining value of his fund would be paid to his beneficiary tax-free. So I can understand why this arrangement was attractive to Mr W and would be a strong argument to recommend a transfer.

But I don't think Mr W's wish to consolidate his pension into one arrangement was a particularly persuasive one. I say this because he already had an IFA, to whom he was paying for ongoing financial advice. So his pension arrangements were being managed by a finance professional and as such I can't see that how they were arranged was particularly significant to Mr W himself. And whilst I can understand Mr W's wish to have some clarity about the total value of his fund, this could be arranged with his existing IFA.

The recommended plan with Aviva, with his funds being managed by a DFM was cheaper than Mr W's existing SIPP. And as the FSA had said in its guidance, there had to be 'good reason' for recommending a more expensive arrangement. And the only significant difference between Mr W's SIPP and the recommended arrangement with Aviva was cost – Mr W's SIPP was considerably more expensive overall. Mr W has contended that the illustrated costs of his SIPP provided by Wren Stirling were exaggerated as they included its ongoing advice service which he would not have taken up. But I can see this charge was included in the illustration for both the SIPP and Aviva arrangement – so it ultimately made no difference to the cost comparison. Mr W's SIPP was more expensive than the recommended arrangement with Aviva.

Mr W had agreed that his ATR when considering his OPS was 5 out of 7. This was described in the recommendation document as:

"This indicated a preference for investments which included a balanced mix of high-risk investments such as shares and lower-risk and medium-risk investments such as cash and fixed interest."

And although this point hasn't been disputed, I've looked at the portfolio which was recommended to be held with Aviva, and I can see it comprised 59% of *growth assets*. I'm satisfied that this matched Mr W's ATR and capacity for loss so was also suitable.

I've also considered whether I think it significant that Mr W's existing DFM was not on Wren

Stirling's panel of approved providers. And I don't. An IFA is permitted by the regulator to have a panel of approved providers if it ensures such a panel is "*sufficiently broad in its composition...*". Whilst I have seen the list used and have no reason to think it doesn't comply with the Regulator's requirement, I think this is irrelevant here. I can see Wren Stirling did consider Mr W's existing DFM even though it wasn't on its panel. And it was deemed unsuitable on the grounds of cost, not solely because it wasn't on the panel. And as I've said above, I think the cost comparison was the significant factor here.

It's important to note that I consider that there's sometimes more than one product or approach that might meet the consumer's circumstances and objectives. Another adviser might take a different approach, but that doesn't mean what was actually recommended was unsuitable. For me to find that Wren Stirling treated Mr W unfairly when it didn't recommend he transfer the benefits of his OPS into his SIPP, I would have to be satisfied that what it did recommend was unsuitable. And as I've said, I'm not satisfied that this was the case.

Mr W has said that his OPS CETV has lost about £30,000 as a result of the delays in this process. As I've said above, the regulatory requirements when advising on this type of transfer mean they are complicated and necessitate a considerable amount of work to obtain and then assess the required information. And Mr W, apparently acting on the advice of his ex-employer and his IFA did not obtain a guaranteed CETV, so this was always going to fluctuate. It seems he was advised to do this because it would only be valid for three months, and it was likely that the process could take longer than that. So whilst I understand Mr W's frustration that his CETV has apparently fallen (although I've seen no evidence of this) this hasn't actually caused a financial loss as he's not transferred his OPS.

However, I need to consider the service that Wren Stirling provided to Mr W. Wren Stirling, in its complaint response, has acknowledged that there were occasions during the process where it has caused unnecessary delays, particularly when it wrongly addressed the LOA to X. It also has said it could have been more proactive in keeping Mr W updated and managing his expectations. It is unclear what this particularly relates to, but having assessed the timeline of the process that Mr W has provided I think it is probably where Wren Stirling have not kept him updated on the delays and how and why the process was taking significantly longer than he'd been led to believe. And I can see he was unable to speak to his adviser on a few occasions, and this was significant to him as the process was important.

Wren Stirling has offered Mr W £250 compensation for this. I think this is fair and generally in line with the approach our Service takes in terms of compensation for distress and inconvenience, so I'm satisfied that it doesn't need to do anything in addition to this.

My final decision

I require Wren Sterling Financial Planning Limited to pay Mr W £250, if it hasn't already done so, for the distress and inconvenience he's been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 17 August 2023.

Chris Riggs
Ombudsman