DRN-4264983

The complaint

Mr P complains that The On-Line Partnership Limited (On-Line) gave him unsuitable advice to switch his defined contribution occupational pension scheme (DCOPS) to a personal pension plan (PPP) with flexible access drawdown.

What happened

This complaint is about the advice that On-Line gave Mr P regarding his DCOPS in July 2018. He'd been made redundant by his employer in June 2018.

This advice followed on from a recommendation that On-Line had given Mr P in January 2017 when he became aware of the impending redundancy. Mr P was aware at that stage that he would receive a redundancy payment around £110,000. And had decided to take the maximum amount that he could take tax free as income. Which was £30,000. He decided to use the remaining £80,000 redundancy settlement as a contribution to his DCOPS. Which meant he had a DCOPS fund around £200,000 when obtaining this advice from On-Line.

In its advice in 2017 On-Line recommended that Mr P transfer the deferred benefits that he held in a defined benefit occupational pension scheme (DBOPS) to a PPP. Which meant that, when this advice was being given Mr P also had a PPP that had a fund size in the region of £290,000 as a result of that transfer.

On-Line were aware of the following facts regarding Mr P's circumstances:

- He was aged 57 and married with no dependent children
- He had no outstanding mortgage having used his redundancy settlement to clear that
- He was working two part time jobs earning a total of £12,000 a year
- He had no other savings and no other debts
- His state pension age was 67

In its written recommendation On-Line described Mr P as having the following objectives:

- Wanted to have flexibility to take the income he needed from this pension
- Wanted to use his pension to subsidise his part time income to reach a target income around £24,000 a year
- Wanted to be able to pay for ongoing financial advice from his pension provider
- Wanted to have all pensions in one place.

On-Line recommended that Mr P switch his DCOPS to his existing PPP that allowed flexible drawdown. And recommended that the transferred value went into the same investment fund as the existing balance in that PPP.

Mr P complained to On-Line, via a representative, in 2022 about the advice given in both 2017 and 2018. The complaint was that it was against Mr P's best interests to transfer both of his occupational pension schemes.

On-Line rejected Mr P's complaint explaining that it thought Mr P, "*would be able to meet his objectives of reducing his mortgage, replenishing his emergency cash fund, and taking flexible income allowing him to accept work at a lower rate of pay".*

Mr P brought his complaint to our service. Our investigator looked into what happened in 2017 and 2018 and thought that both of Mr P's complaints should be upheld. On-Line didn't agree with our investigator's opinion and this case was referred to an ombudsman.

I looked into what happened and issued both parties a provisional decision. I explained that I wasn't minded to uphold this complaint for the following reasons:

- I thought that Mr P's circumstances meant that he had a genuine need to fund a shortfall in his income after his redundancy.
- I had separately decided that the advice to transfer the DBOPS in 2017 was unsuitable and explained how On-Line should compensate Mr P for that. But that meant that I didn't think Mr P would likely have needed to have accessed that pension until its normal retirement age.
- Mr P's decision to take most of his redundancy settlement as a pension contribution meant that he would likely need to access his DCOPS to supplement his income up to his retirement age. So transferring this to enable him to do that wasn't unsuitable.

I've had no responses to my provisional decision on this case. But I have been made aware that On-Line has compensated Mr P for the loss he suffered from its recommendation to transfer his DBOPS in 2017.

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.

As I have referred to above, Mr P also complained about the earlier advice On-Line gave him in January 2017. I considered the circumstances of that case in a separate complaint and didn't think On-Line's recommendation was suitable for Mr P. I didn't think it was in his best interests to transfer his DBOPS.

On-Line's recommendation that is the subject of this complaint was given around 18 months later. But followed on directly from that earlier advice. Both recommendations were addressing how Mr P would be able to manage his financial position following his June 2018 redundancy. Because of the earlier advice, Mr P had a PPP that allowed flexible drawdown. And had a fund size of £290,000. It meant that Mr P already had the means to be able to fund any immediate and medium term income deficit following his redundancy without needing to transfer his DCOPS in 2018.

But there are very close links between these cases and I've considered the circumstances of both complaints jointly. I therefore think that it's fair and reasonable to take into account my decision regarding On-Line's 2017 recommendation when deciding what ought to have happened in this case. I say that because our role is to try to put a consumer into the position they would most likely be but for a business's mistake. And On-Line has already compensated Mr P to put things right regarding his DBOPS transfer. Which I decided was a transfer he would likely not have made if given suitable advice in 2017.

On-Line identified a number of objectives for Mr P in 2018. They were set out for Mr P in its written recommendation. So I think that Mr P was aware of the objectives On-Line considered him to have. And didn't question or challenge those. I don't think that it is a coincidence that Mr P sought financial advice when he was made redundant. I therefore think that his most likely motivator was to help him understand how he could meet his financial needs following the loss of his main salary.

On-Line's fact-find of 2016 indicated Mr P had a salary of £38,000 a year from his employer. As well as a part time salary of £6,000 a year. In contrast, by July 2018 Mr P was working two part time jobs earning a total around £12,000. He had been able to pay his remaining mortgage which saved him around £4,000 a year in mortgage payments. But he was still facing a significant drop in his available household income following his redundancy.

On-Line determined that Mr P wanted around £24,000 a year in income after his redundancy. Given the income and expenditure exercise that On-Line did in November 2016, this did seem to be a figure that would allow Mr P to comfortably exceed his household expenditure.

Only £30,000 of Mr P's £110,000 redundancy settlement could be made tax free according to HMRC rules. Mr P could have taken the remaining £80,000 as a lump sum but would have had to pay tax and National Insurance contributions on that sum. Given his other income in that year, much of it would be taxed at 40%. Mr P instead made the decision to have it paid into his DCOPS. I haven't seen that he was advised to do this by On-Line. But I wouldn't expect On-Line to have advised him against it. This decision provided Mr P with a means to access that redundancy settlement in a controlled way and meant he was likely to end up paying less tax on it. So, as a starting point, I don't think that Mr P would have been better advised to have taken his redundancy payment as a one off lump sum in 2018.

On-Line were basing its advice on, amongst other things, Mr P's need to find another £12,000 a year to complement his income. As I've already said, the existence of Mr P's existing PPP in 2018, that allowed flexible drawdown, meant that he could already use drawdown to meet this objective without switching his DCOPS. But Mr P has argued that it wasn't suitable for him to have transferred his DBOPS to that PPP. And in my decision on that complaint I agreed with that. And he's been compensated now as if he hadn't done that. So, in fairness in considering this complaint, I've thought about what would have been a suitable recommendation for the DCOPS had Mr P been advised not to transfer his DBOPS.

I've already explained that I think Mr P's objective of raising an additional £12,000 a year to supplement his reduced income was reasonable. And given that Mr P has said that he ought not to have had a PPP with a fund of £290,000 in July 2018, I've considered how Mr P might have otherwise met this objective.

He had no access to other savings. He may have continued to have looked for other, better paid, work. But that was not guaranteed, and I believe he would quite reasonably have wanted to use the pension that was available to him at that time to raise the income he needed. His DCOPS fund size of £200,000 meant that he could flexibly take the income he needed, varying it in the future if he found other work. But Mr P's DCOPS didn't allow flexible access drawdown. Which means that I think Mr P would, more likely than not, have needed to have switched his DCOPS into a PPP that did.

I understand that other objectives were given that On-Line said made its recommendation suitable. But I don't intend to comment on these greatly as I find the other objectives to be far less convincing. Mr P already had a degree of fund choice in his DCOPS for example. And it paid out death benefits in a similar way because it was still a defined contribution pension fund.

I also recognise that Mr P's DCOPS offered very good value. Any PPP or stakeholder pension would have annual management charges. Which Mr P did not have to pay for his DCOPS. But, taken as a whole, I think it was more suitable in Mr P's circumstances to recommend this switch as an appropriate way for him to start taking his benefits, rather than the DBOPS transfer. The pension fund was built up in order to provide benefits in retirement (or from the age of 55). And it wasn't unsuitable to recommend Mr P use it in this way.

I've considered whether the recommended PPP was suitable. It was provided by a mainstream provider. On-Line have shown that it considered Mr P's attitude to risk and decided that he had a low to balanced attitude to risk. The recommended investment choice appeared to be in line with Mr P's agreed attitude to risk. So I don't think that the PPP or fund chosen were unsuitable for Mr P.

For the reasons I've given, and considering the overall sequence of events following Mr P's first involvement with On-Line, I don't think it is fair or reasonable to uphold Mr P's complaint about this pension switch. I think the journey to this point would have been different for Mr P if On-Line had given him suitable advice throughout. And the reasons that On-Line gave for this switch may not have been entirely suitable following on from its earlier, unsuitable advice. But I think that Mr P would still have ended up with a recommendation to switch this pension. Only for slightly different reasons. So I don't intend to uphold this complaint.

My final decision

For the above reasons I do not uphold Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 23 August 2023.

Gary Lane
Ombudsman