

## The complaint

Mrs C complains that Openwork Limited, trading as The Openwork Partnership (Openwork) gave her unsuitable advice to take some of her pension benefits as an Uncrystallised Funds Pension Lump Sum (UFPLS). And that this has led to her being restricted to the Money Purchase Annual Allowance (MPAA) on further contributions to her pensions.

## What happened

Mrs C had three small pensions with providers I'll refer to as provider S, provider N and provider A. I understand that each pension had a value of under £10,000.

In November 2020, Mrs C wanted financial advice as she was considering consolidating her three pensions into one policy. So she contacted Openwork. She said that after an initial consultation over the phone and then an online meeting, she filled in a risk profile questionnaire on 16 November 2020. She also sent the adviser brief details about her three pensions.

Very little documentation has been provided about the preparatory work the adviser carried out on Mrs C's behalf in November 2020. Openwork said that it didn't provide any advice or recommendation to Mrs C so it doesn't hold any sales or advice documentation. Mrs C has provided a copy of the unsigned risk questionnaire. This shows that she was an inexperienced investor with household income of up to £25,000 and investible wealth of up to £10,000. And that she had a balanced attitude to risk.

After considering Mrs C's situation and the value of her pensions, the adviser emailed Mrs C on 25 November 2020 to tell her that he felt that the fees associated with the advice meant that it wouldn't be good value for her to receive advice. He said he'd decided not to provide a recommendation as he would normally only consider providing advice if a client had funds that were in excess of £30,000.

The adviser said:

*"Therefore I feel that you will be better off completing any transfers yourself, by requesting each provider to move the funds, to perhaps the [provider S] plan as this give you more variety. Alternatively, as you will be 55 next year, you may wish to consider releasing the small pots by taking an Uncrystallised Fund Pension Lump Sum (UFPLS)."*

Mrs C later decided to access some of her pension with provider S as an UFPLS withdrawal. This then triggered the MPAA.

Mrs C was unhappy that she'd inadvertently triggered the MPAA after following what she felt was the adviser's advice/recommendation. So she complained to Openwork in February 2023 about that advice. She said when she'd contacted Openwork, she hadn't known what her options were. And that she felt the 25 November 2020 email had advised her to take a UFPLS. She felt she'd suffered financially as her future pension contributions were now restricted to the MPAA. She said she'd aimed to top up her pension contributions as much as possible in the next ten years until her retirement. And now she was distressed and

worried about the future pension contributions she'd be able to make for her financial security in retirement.

Openwork acknowledged Mrs C's complaint and asked her to send it a copy of the 25 November 2020 email she'd referenced. It said it had no record of her as a client of Openwork. Mrs C then shared a copy of the email in question with Openwork.

Openwork issued its initial response to the complaint on 9 March 2023. It felt the 25 November 2020 email had suggested that Mrs C had the options of completing any transfers herself, perhaps to provider S, or that she could consider releasing some of her small pots.

Openwork acknowledged that Mrs C felt that the 25 November 2020 email constituted unsuitable advice. But it explained why it didn't agree that any advice had been given. It said that the adviser had declined to advise Mrs C because the fee would've been excessive for the size of her pensions. It felt that the adviser had simply tried to be helpful when he'd sent the email.

Openwork said that if Mrs C disagreed with its view, she should provide it with full details of all the pensions she held in 2020. It also asked her to tell it what information about her pensions she'd supplied to the adviser at the time of the alleged advice. And to explain what action she had taken which she now felt was unsuitable for her. It also asked her to tell it how much she would ideally like to contribute to her pensions. It said that it needed this information so it could fully investigate her concerns.

I understand that Mrs C didn't provide Openwork with any of the information it had requested. So it issued its final response to the complaint on 12 April 2023. It didn't think it'd provided any financial advice. And said that Mrs C had never been a client of Openwork. So it wouldn't be able to further consider her complaint. However, Openwork provided Mrs C with referral rights to this service.

Unhappy with Openwork's response, Mrs C referred the complaint to this service. She said she'd followed the adviser's recommendation/advice to release the small pots by taking an UFPLS once she'd reached age 55. But that he hadn't explained about the MPAA or how it would restrict her future contributions. Mrs C said that she'd been financially disadvantaged by the MPAA pension contribution restrictions. She wanted Openwork to take steps to remove the MPAA restrictions so that she could contribute any amount she wanted into her pension each year.

Mrs C felt that the adviser was regulated by the FCA. But that the advice he'd provided had been detrimental to her pension situation. She said she'd lost all confidence in contacting another regulated financial advisor in the future.

Our investigator didn't think that the complaint should be upheld. When he spoke to Mrs C about his view, he said that Openwork hadn't provided regulated advice as the adviser hadn't provided a recommendation. He told Mrs C that the complaint was probably not in this service's jurisdiction as there was no regulated event. But he said he would issue a view on the complaint to try to help Mrs C.

In his view, our investigator felt that the adviser had made it clear in his 25 November 2020 that he wouldn't provide Mrs C with advice. But he had provided information about some of the options she could consider for herself. Our investigator said that when Mrs C had decided to withdraw funds from her pension with provider S as an UFPLS withdrawal, it triggered her MPAA. He felt that as advice hadn't been provided, Openwork couldn't reasonably be held responsible for the MPAA being triggered.

Mrs C didn't agree with our investigator. She still felt that Openwork had advised her to take an action which had led to the MPAA being triggered, causing her financial loss.

Our investigator provided Mrs C with a link which detailed what constituted a personal recommendation. He said that a financial adviser must provide one before he could be held liable for any advice. He said he hadn't upheld the complaint because Openwork hadn't provided Mrs C with such a recommendation.

Mrs C said that the qualified, experienced, regulated financial adviser she'd spoken to had known the value of her pensions and her circumstances. And that he'd provided her with written information and with options for her to take. She felt that her interaction with a financial adviser should've led to a positive outcome for her pensions, not a negative one.

As agreement couldn't be reached, the complaint has come to me for a review.

### **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.

Having done so, I'm not going to uphold it. I know this will be very disappointing for Mrs C. I'll explain the reasons for my decision.

Openwork has provided Mrs C with its final response letter to her complaint, including referral rights to this service, despite the fact that it disputes that it provided her with any advice or recommendation. It also didn't object to our investigator's view on the complaint, which considered its merits. Therefore, while I acknowledge Openwork's position, I've gone on to consider the merits of this complaint.

Before I do that, I want to provide some background about both the MPAA and UFPLS payments.

#### *MPAA*

This was introduced alongside greater pension freedoms in April 2015. It aimed to ensure that there were no potential recycling issues with individuals claiming further tax relief on any new contributions made having just taken their pension benefits under the new pension flexibility rules.

The MPAA was initially set at £10,000, then reduced to £4,000 on contributions made from 6 April 2017, but has now been put back to £10,000 on contributions made from 6 April 2023.

MPAA applies when a consumer:

- is already in a flexible drawdown (not capped drawdown), whether any funds have been taken or not;
- starts to receive an income using the flexi-access drawdown option;
- takes benefits from a pension fund using the UFPLS option;

It doesn't apply if a consumer only takes the 25% tax free cash sum out of their pension but no income. But once a consumer has flexibly accessed their pension – including through taking an UFPLS payment – they'll trigger the MPAA.

There is also something called the “small pots” rule which allows a consumer to cash in any number of workplace pension pots below £10,000 and/or a maximum of three personal pension pots below £10,000 without triggering the MPAA. The gov.uk website states the following about “small pots”:

*You can usually take any pension worth up to £10,000 in one go. This is called a “small pot” lump sum. If you take this option, 25% is tax-free.*

*You can usually get:*

- *up to three small pot lump sums from different personal pensions*
- *unlimited small pot lump sums from different workplace pensions*

### *UFPLS*

UFPLS is a way to take money purchase pension funds as a lump sum, or a series of lump sums. Normally, 25% of the lump sum is tax-free, with the balance subject to income tax. UFPLS will trigger the MPAA, because it is a method of flexibly accessing pension benefits.

Mrs C, in taking her benefits, however inadvertently, is now caught by the MPAA limit. Because of this, she can't now make further contributions to a money purchase plan in excess of the current MPAA without incurring additional tax penalties. So I understand why this situation is so upsetting. But whilst I accept that Mrs C didn't realise this at the time, I don't agree that Openwork advised her to take this action.

Mrs C says that Openwork shouldn't have recommended that she took an UFPLS without explicitly making her aware of the implications. I understand why she feels this way. But I agree with our investigator that Openwork didn't make any recommendation or provide any advice. Instead, I'm satisfied that Openwork simply provided Mrs C with information about some of her options in its 25 November 2020.

I do agree with Mrs C that the statement in that email: *“you may wish to consider releasing the small pots by taking an Uncrystallised Fund Pension Lump Sum (UFPLS).”* is ambiguous. I say this because a “small pots” release wouldn't have triggered the MPAA, but the UFPLS route does. But just because the information in the email was ambiguous, that doesn't mean that it constitutes advice. Nor does it mean that I can fairly hold Openwork responsible for the implications of taking any of the actions covered by the email. I say this because I agree with our investigator that the email didn't tell Mrs C what she should do.

I agree with Mrs C that the email provided no information on the consequences that might stem from her taking any of the options listed. But I'm also satisfied that the email didn't constitute regulated advice. I also agree that if Mrs C had paid for regulated advice, Openwork would've been responsible for any detrimental consequences of not informing her that the MPAA would be triggered if she took actions it'd recommended. But as Mrs C didn't pay for advice, no advice was given. Instead, Openwork sent Mrs C an email which provided some limited information about some of her options.

I appreciate that Mrs C said that she took the action she did because she treated the email as advice. She felt that if the adviser wouldn't have given her regulated advice to action an UFPLS, he shouldn't have provided her with unregulated advice to do just that. I understand why Mrs C holds this view. But I don't agree that the adviser did recommend that Mrs C actioned an UFPLS.

I say this because his email provided two other options – consolidating her pensions into her

pension with provider S or using the “small pots” rule, neither of which option would’ve led to the triggering of the MPAA. So while I acknowledge that the wording was ambiguous, I consider that it was clear that the adviser was simply trying to provide information for Mrs C. And I would expect her to have further considered that information – either herself or by asking for help from elsewhere – before she went ahead with one of the three options outlined.

I also note that Mrs C told this service that she approached Openwork because she was considering whether or not to consolidate her three pension plans. I can’t know exactly what was discussed when Openwork initially spoke with Mrs C. But I can see that the first piece of information about Mrs C’s potential options that the adviser mentioned in his 25 November 2020 email was that she could transfer two of her pensions into her pension with provider S. This seems to be in line with Mrs C’s initial reason for seeking advice. I think this shows that there was no specific focus on the UFPLS option in the 25 November 2020 email.

I do understand why Mrs C felt that the adviser hadn’t been helpful when he’d provided the options he did. And that he shouldn’t have provided those options without explaining the consequences. She said the adviser had been aware of her circumstances but had provided the unsuitable suggestions anyway.

While I agree that it would’ve been more helpful if the adviser had explained the consequences of each of the options he outlined, I’m not persuaded that he was required to under the circumstances here. Nor am I persuaded that in providing the options outlined the adviser caused the situation Mrs C now finds herself in. I say this because, as I noted above, two of the three options provided as information wouldn’t have led to the MPAA being triggered.

I’m sorry that Mrs C is now restricted by the MPAA. And that her confidence has gone because she feels she’s been given the wrong advice. But I can’t fairly say that Openwork provided her with unsuitable advice, as I’m satisfied it made it clear that it wouldn’t provide her with any advice. And I’m not persuaded that it would be fair to hold it responsible for the actions Mrs C decided to take once she’d considered the options that Openwork had outlined in its 25 November 2020 email. Therefore I don’t uphold this complaint.

### **My final decision**

For the reasons explained above, I don’t uphold Mrs C’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs C to accept or reject my decision before 19 June 2024.

Jo Occleshaw  
**Ombudsman**