

The complaint

Mr W and Mr W2 complain that R.A. Cowen & Partners (Financial Services) Limited failed to provide adequate advice or service for their Small Self-Administered Scheme (“SSAS”) following the departure from R.A. Cowen of the financial adviser who had been advising them.

What happened

Mr W and Mr W2 are trustees of a SSAS and have been customers of R.A. Cowen for many years. For ease, I will refer to them as “the trustees”. The SSAS is administered by another firm, which I’ll call T.

In March 2020 Mr W told R.A. Cowen that the trustees would no longer require its services and were receiving advice from another firm. He said the new adviser had identified a number of issues with the SSAS.

The trustees complained about a wide range of issues concerning the way the SSAS had been managed between 2017 and 2020. R.A. Cowen said the majority of the complaints were unfounded, so the trustees brought the complaint to this service. They complained that there had been various issues including a lack of face to face meetings, poor service and documentation not being completed properly. And they said due to these failings in the service provided by R.A. Cowen, they had incurred substantial costs with their new adviser and with T. They asked for a refund of these fees together with other costs and losses.

Before commenting on the merits of the complaint, our investigator explained that he was only able to investigate a limited number of the concerns raised, as many of the points were outside the jurisdiction of this service. He said he could only look at events after April 2019, and identified the following as issues that could be considered:

- the inheritance tax implications of taking tax-free cash not being explained;
- liquidity issues within SSAS;
- third party access given to the SSAS bank account; and
- copies of general insurance documents not being sent to T.

The investigator went on to explain that he did not think any of the above complaints should be upheld.

The trustees did not agree and have requested an ombudsman’s decision.

Before proceeding with this decision I explained to the parties that I could not comment on issues relating to the insurance arrangements, as these were the responsibility of a different firm.

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.

The trustees have provided detailed comments and a large number of documents in support of their complaint but, as explained, only a limited number of issues are within our jurisdiction. So I will confine my comments to those issues.

I will first set out the services R.A. Cowen were to provide and then deal with each issue in turn.

The basis of the relationship between R.A. Cowen and the trustees is set out in a document headed “service proposition & engagement schedule of agreed costs & services”. In relation to an ongoing service, this document says it includes, amongst other things:

- Annual assessment of the scheme
- Review of employer costs and contributions
- Scheme communication review
- Scheme provider performance review
- New member enrolment support
- Review of provider’s renewal documentation.

Another document, the “corporate client agreement” says the following:

“Ongoing servicing

We will discuss the full range of our on-going services during our initial consultations.

These services include, but are not limited to, providing you with:

- *structured reviews to give you peace of mind*
- *assessment of your circumstances and any changes to your plans that are needed*
- *regular updates and information*
- *a choice of differing levels of support depending on your needs*
- *ongoing support with correspondence and administration issues”*

“Our costs are based on the number of annual review meetings with you and the members of the scheme; as well as any additional reporting and administration time which typically range from £200 per hour for an adviser and £40 per hour for administration.

Therefore, if the adviser would typically spend 8 hours a year working on the scheme; with the same amount of administration hours our yearly fees would be £1,600 for the adviser time and £320 for administration time, totalling £1,920 per annum.”

So this sets out the level of service provided to the trustees, for which R.A. Cowen charged £1,250 per month or £15,000 per year.

Tax-free cash

In 2019 the trustees decided to use their entitlement to take some tax-free cash from the SSAS. They say R.A. Cowen failed to explain the inheritance tax implications of taking their tax-free cash entitlements and as a result, the lump sums they received increased the values of their estates, leading to a risk of being liable to inheritance tax.

This issue was set out in a recommendation letter R.A. Cowen sent in July 2019. This followed a discussion about whether the trustees should draw their tax-free cash and a review of the investments in the scheme. The letter said:

“We discussed the advantages and disadvantages of drawing your respective PCLS amounts from the scheme and agreed that this is a decision for each member to take

with personal financial planning advice, as there is 'no one-size that fits all'. I will be delighted to offer an individual service to each trustee to outline their current financial position, goals and objectives and advise accordingly. Please be in touch as and when appropriate."

In the meeting before the letter was sent, where this was discussed, the notes include the following:

"I advised the trustees of the amount of PCLS available for each member... We then discussed the pros and cons of drawing PCLS and agreed that this is a decision for each member to take with personal financial planning advice."

Based on this, I'm satisfied R.A. Cowen advised the trustees they should each take financial advice before proceeding with a decision on tax-free cash, since the implications would depend on their respective financial circumstances.

A letter was sent in November 2019 to the trustees confirming the tax-free cash had been paid. So there was some time between the advice and the payment of the lump sums, during which the trustees had the opportunity to seek personal financial advice. I haven't seen anything showing R.A. Cowen was to provide this.

In these circumstances, I don't consider there was a failure by R.A. Cowen on this issue. Even if there was a failing, I understand the trustees requested the tax-free cash as they intended to use the funds. If the funds were spent, it would likely fall outside their respective estates for tax purposes. And the trustees could still take steps to mitigate any risk if they wished. But as I've said, I don't consider there was a failing.

Liquidity issues within SSAS

The trustees say R.A. Cowen failed to highlight liquidity issues within the SSAS in relation to their income requirements. But the recommendation letter from July 2019 says:

"you confirmed that the balance of the SSAS bank account stands at £150,000 and you are hopeful this will be topped up imminently by around £300,000 once the... property sale has been completed."

As such we discussed the merits of holding such a large amount on deposit. You advised that you may buy a further property and so we agreed that the cash held in bank account would remain; this provides liquidity and ensures there are adequate funds available"

So I think the SSAS bank account held enough funds for their requirements at the time – as I understand it, their income requirements were £60,000 per year and the balance of liquid assets stood at £150,000, with a planned increase of £300,000. The advice documents also included 'investment risk warnings' which included a warning of the liquidity dangers related to property investments, which made up the majority of the SSAS:

"property investment has advantages and drawbacks and much depends on the expertise of the investment manager, the type of property and the need to access the funds... buildings may not be easy to sell"

So R.A. Cowen identified there was enough liquidity at the time, and explained that the nature of the property investments in the SSAS could pose liquidity issues.

Third party access to SSAS bank account

The trustees say there were no proper limits, with a number of people given access to the account and able to undertake unauthorised transactions.

From what I've seen, the other individuals mentioned were also trustees. But in any event R.A. Cowen's responsibility was to provide ongoing advice to the SSAS. It wasn't responsible for the administration of the SSAS – that was the responsibility of T, a different firm. I don't think it would be reasonable to hold R.A. Cowen responsible for the arrangements relating to the SSAS bank account. The corporate client agreement does indicate R.A. Cowen will provide support with correspondence and administration issues. But providing support with those issues doesn't mean it was responsible for the administration of the bank account.

Taking all of the above into account, I don't think the complaint – to the limited extent we are able to consider it – should be upheld.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mr W to accept or reject my decision before 21 October 2022.

Peter Whiteley
Ombudsman