DRN-3645250

The complaint

Ms R complains about the advice that Lonsdale Services Ltd gave in relation to a pension drawdown strategy. She says she's now suffered a financial loss as she's paid more tax than she was expecting.

What happened

Ms R had several different pensions.

She initially approached Lonsdale for advice in 2015. According to a financial planning report that Lonsdale produced, Ms R had bought a property and intended to use some of her existing pension provision to fund the renovations. It noted that Ms R expected she'd need to drawdown an income "*soon",* with the likelihood being that she'd deplete the fund over about a 24-month period "*as and when"* she required the funds. Ms R was employed at the time and also received income from self-employment.

Lonsdale noted that Ms R's existing pensions didn't allow flexibility for income withdrawals without switching to an alternative product. So, it recommended she switch to a plan with a different provider. It also noted that Ms R understood (if she remained on her current level of income) she'd be paying 40% tax on any additional income after she'd taken a 25% tax-free cash lump sum. Due to that, it said her intention was to try and keep any income she took within the 20% tax bracket. However, it noted that if she needed to take more income, she was comfortable with the fact that it may take her into the 40% tax bracket, as she had no other means of funding the renovations. Ms R didn't proceed at that time.

She again sought Lonsdale's advice in 2018. Amongst the information Lonsdale noted was:

- Ms R was retired and a non-tax payer. She intended to start the renovation of the property, so it could be used as a holiday let from 2020.
- According to Ms R's own calculations, she needed an overall amount from her pension of £150,000 including an initial tax-free lump sum of £25,000 and the balance of the tax-free cash (about £25,000 also) around October 2018. She'd be looking to draw down a regular monthly income of £6,500 from October 2018 to December 2019.
- Once the renovation was complete, Ms R's target annual income was £33,000. Thereafter, no further income would be required from the pension and it would leave a residual fund.
- Her total investments were valued at £194,280.72.
- Her assets were worth £410,000.
- Her monthly net income from her state pension would be £780. Her expenditure was around £458.
- She had savings of £1,200.
- She wasn't able to fund the project through other means, such as securing credit.
- Ms R's attitude to risk was low to medium and she had low capacity for loss.

Lonsdale noted that Ms R mainly wanted advice about the following:

- Taking tax-free cash and a regular income for around 12-18 months to fund the conversion.
- Ms R wanted to keep her pension arrangements in a tax efficient and flexible environment (so she didn't want to buy an annuity). Her future income needs could then be varied to reflect her changing needs and circumstances.

Lonsdale recommended, in a suitability report prepared in April 2018, that Ms R switch her pensions to a flexi drawdown personal pension with a provider I'll call R. It said that would allow her to withdraw her tax-free cash in two instalments - £25,000 immediately and the remainder in October 2018. She'd also be able to draw down an income of £6,500 a month net of tax from October 2018 to December 2019. Whilst invested, Ms R's remaining fund would benefit from tax advantaged growth. It was to be invested in a portfolio, which had a low to medium risk rating and reflected Ms R's attitude to risk.

Lonsdale also said under a heading "*Risk Warnings*" that "*by taking all of the pension benefits in one go, or in stages, may incur higher tax liability as a consequence and may also compromise future retirement income and state benefits entitlement".*

Lonsdale completed a further suitability report in September 2018 focusing on similar objectives to those documented in April 2018. It noted that "*between now and December 2019 the conversion has to be completed".*

It recommended Ms R draw benefits from her pension as follows:

- A further tax-free cash lump sum of £23,855.08 (on top of the payment of £25,000 already taken).
- From October 2018 to December 2019 income of £8,125 a month. Lonsdale pointed out that didn't equal Ms R's stated requirement of a net figure of £100,000 (according to her own calculations) after the two tax free cash payments had been made.
- It added that "*it does put your earnings in both tax years impacted in the higher rate as per the cashflow".*
- The balance of the funds that Ms R needed could be taken from the remaining pension funds.

In both suitability reports under the heading '*taxation'* Lonsdale said*: Income Tax:*

Personal Allowance - £11,850 rising by inflation

Basic Rate – 20% for £34,500 band rising by

inflation Higher rate – 40%."

In an email sent to Lonsdale in August 2019, Ms R said despite leaving some of her money invested in her pension, she needed all of it to fund the property conversion as *"the framework is proving to be much more expensive"* and she had unbudgeted costs and other changes to allow for. She asked Lonsdale if she'd need to contact R directly to drawdown the remainder in the 2020/2021 tax year to reduce the tax liability. Lonsdale suggested that Ms R may deal with R directly if she was looking to withdraw the whole fund, but if only taking part "*I would guess they would require you to come via us".* Lonsdale pointed out that as Ms R took the permitted tax-free cash earlier, all of the remaining fund would be liable for income tax. So, if she took it all in one go, the tax deducted would be high.

Ms R contacted Lonsdale and said that her pension provider, R, had paid out her pension to her completely when she'd only expected to take an income drawdown until December 2019 to minimise any tax liability. As she'd continued to receive an income drawdown until April 2020, she'd paid a larger amount in tax due to her having been put into a higher tax bracket. She also mentioned that she was intending to draw down the balance of the pension, but not until the 2020/2021 tax year, in order to further maximise her tax benefits.

Ms R later complained to Lonsdale about the advice she'd been given. There was apparently also a dispute about the amount Ms R wanted to draw down and the period over which that would happen. Ms R appeared to accept that her initial plan (as per her own calculations) was to take income of £6,500 a month between October 2018 and December 2019. But she says this was revised in discussion with Lonsdale to twelve monthly payments of £8,125 gross (£6,500 net) over two tax years. Ms R felt that would keep her within the lower tax band because her income after her personal allowance had been deducted would be less than £50,000 in any one tax year (total income of £58,110 less, according to Ms R's figures, a personal allowance of £12,500 =£45,610, therefore keeping her within a basic tax band of £50,000).

Lonsdale upheld part of the complaint. It said that Ms R's need for income of £6,500 a month between October 2018 and December 2019 was *"replicated"* in virtually every document it had. And that Ms R's own spreadsheet showed a requirement for income of £150,000, which had to come from her pension plan as there were no other means to secure it. Lonsdale said it was unable to explain why Ms R now said she only wanted to draw down payments for six months and that the amount to be taken was a gross figure. However, Lonsdale said it wasn't able to query the amounts Ms R's business needed and whether they were appropriate, nor could it advise on the "*rights and wrongs of running a lettings business".* In fact, Lonsdale thought it was surprising that the amounts hadn't been queried earlier as it felt the withdrawal amounts probably needed to be higher at the outset given Ms R's overall requirement to secure £150,000.

However, Lonsdale accepted that the intention was for payments to cease after December 2019 and that this hadn't been communicated to R, as its application form didn't allow for this. Also, it accepted the suitability letter should have made it clear that it was Ms R's responsibility to stop income withdrawals after December 2019 – not least because she hadn't signed up for an ongoing advice service.

Lonsdale felt that withdrawing the sums required by December 2019 would have made avoiding a 40% income tax deduction a "*challenge".* However, it accepted that, with the benefit of hindsight, there was no requirement for Ms R to withdraw the amounts of income at the rates she thought she'd need - not least due to delays on the build. And had those delays been known at the outset, it said it might have been possible to spread payments over a longer period to avoid Ms R paying higher rate tax. However, it thought that period was probably over about five years, which wouldn't have met Ms R's initial requirements. Lonsdale agreed to refund the additional tax Ms R paid because payments hadn't stopped in December 2019 as expected. It also offered to make a goodwill payment of £348.24 (to round the overall payment up to £4,250).

Ms R wasn't happy with Lonsdale's response, so she complained to our service. One of our investigators looked into the complaint and upheld it. He said:

- Given what was noted in the various suitability reports and fact find, Lonsdale should have given an instruction to R about income payments ceasing in December 2019. As Lonsdale offered redress in connection with that, the investigator said he wouldn't be asking it to do anything else about that aspect.
- Lonsdale acknowledged in the fact find that Ms R would become a higher rate tax payer if she withdrew £8,125 a month from October 2018. However, the investigator didn't think enough emphasis was placed on that in the April 2018

suitability report to ensure that Ms R was aware of the drawbacks. So, he didn't think Lonsdale had appropriately communicated the tax implications of Ms R's objective.

- Tax efficiency was clearly a key factor for Ms R. And he thought she would have chosen a more tax efficient path if she'd been properly made aware of the tax implications.

The investigator recommended that Lonsdale contact Ms R's accountant about the overpayment of tax between October 2018 and December 2019. And pay that amount to her together with interest.

Ms R accepted the investigator's assessment, but Lonsdale didn't. Amongst its comments it said:

- It had never argued that monthly payments should have stopped in December 2019.
- Its suitability report and cashflow model pointed out the tax implications.
- With hindsight, if it had been told that the project had been delayed, it could have suggested that income payments were altered to reduce the amount of tax paid.
- It was actually informed that the project was costing more money; but accepted that further payments could have been made in the following tax year.
- There was no tax strategy possible to take pension income over three years other than the one attempted. For the tax strategy to be longer, Lonsdale would not have been able to meet Ms R's objectives. And it felt that had the project been delivered on time, Ms R would have achieved her own objective and there would be no complaint.

The investigator considered Lonsdale's comments. And whilst he accepted that Lonsdale's advice was in line with Ms R's objectives, he thought that if she'd been advised differently about the tax implications, she'd have altered the amount she wanted to draw down or taken it over a different period.

Lonsdale asked for an Ombudsman to consider the matter afresh, so it's been passed to me to decide.

My provisional decision

I sent Ms R and Lonsdale my provisional decision on 19 July 2022. I've included the main extracts in which I said:

"*...unless I receive other evidence or comments to cause me to change my mind, I'm currently intending to reach a different outcome to our investigator. I'll explain why.*

What was Lonsdale required to do?

There are a number of fundamental obligations on firms like Lonsdale. Those include the principles for businesses, which are set out in the Financial Conduct Authority's (FCA) Handbook.

In addition, the regulator places other important responsibilities on financial firms. When it comes to a consumer switching their pension funds to a different arrangement, the firm would be expected to show overall that the switch was in the consumer's best interests so as to make the advice suitable. Generally speaking, in a case such as this, I'd take account of things such as (this is by no means an exhaustive list) why the consumer was looking to switch; whether their wants or needs were reasonable taking account of their *circumstances at the time and whether they switched to an alternative pension that matched their attitude to risk. When it comes to a pension drawdown strategy, firms need to consider things such as the consumer's income needs in retirement and whether drawing down regular income would leave enough to provide sufficient income in their retirement.*

Amongst her concerns, Ms R doesn't believe that Lonsdale's recommendation appropriately considered and advised on the tax implications of what she wanted to do. And she's gone as far as saying that Lonsdale didn't give her the opportunity to revise her plans so as to minimise her tax liability. As a consequence, Ms R says she's had to pay more tax than would otherwise have been the case and that's something she feels Lonsdale is responsible for.

Did Lonsdale give Ms R suitable advice?

Lonsdale accepted it hadn't advised Ms R of the need to cancel drawdown payments after December 2019. And it didn't think it unreasonable for her to assume that's what would happen. However, payments continued. And, according to Lonsdale, that meant Ms R incurred income tax at 40% on payments that would otherwise have attracted 20% income tax. Whilst I'm intending to uphold that part of the complaint, I can see that Lonsdale has already offered to pay Ms R compensation of £4,250 in total to cover the financial loss she suffered including an additional goodwill payment of £348.24. I think Lonsdale's response here is reasonable.

Whilst I accept that Ms R didn't want or need those extra payments, she has ultimately had the benefit of the money. And that would likely have incurred income tax. So, in the circumstances, it seems fair for Lonsdale to pay compensation of an amount equivalent to the extra tax that became due, together with an additional goodwill payment to recognise the inconvenience caused. It's not entirely clear if Ms R has since accepted that payment. But if not, I'm intending to say that Lonsdale should now award that amount to Ms R.

Turning now to the key outstanding issues in relation to this complaint.

Ms R believes there were a number of errors with Lonsdale's advice concerning the drawdown strategy. There also seems to be some dispute that Ms R's main goal was to complete the renovations by December 2019, using the pension drawdown funds. Ms R's indicated that her main objective when asking Lonsdale for advice was for it to give her a recommendation that enabled her to stay below the 40% tax bracket. And she's added that all discussions were about making sure the drawdown was done in the most tax efficient way.

In contrast, Lonsdale says Ms R's need to draw down an income of around £6,500 a month between October 2018 and December 2019 was "replicated" in virtually every document it had. In other words, it seems to be saying that this was the overarching priority for Ms R.

Where there's a conflict, as there is here, I need to decide things on balance taking account of all of the evidence before me. And having thought carefully about Ms R's comments, I'm not persuaded by some of what's been suggested. I'll explain why.

I agree with Ms R to the extent that the evidence does show (even as early as 2015) that she was concerned about keeping her tax liability to a minimum. But that also needed to be considered in the context of what she was trying to achieve. I can see she was working when she first asked Lonsdale for advice and was also in receipt of self-employed income. Lonsdale told her she'd likely be paying 40% tax on any income she took once she'd taken a 25% tax-free cash lump sum. Ms R didn't proceed with her plans at that time. And whilst not clear, her decision may well have been linked to the tax implications of what she wanted to do.

When she approached Lonsdale again in 2018, Ms R had retired and was due to *receive a state pension. And it's possible that this change in circumstances may, in part, have prompted Ms R to get in touch with Lonsdale again.*

However, by the time she'd contacted Lonsdale in 2018, Ms R had already drawn up a business plan setting out the amount of income she needed and over what period. And no doubt that was with her objective in mind of completing the renovation work and getting her holiday lettings business underway. I think Ms R was right to expect Lonsdale to consider the most tax efficient way of doing things, but I think it also needed to consider that against Ms R's objectives and whether they could be achieved whilst keeping the tax liability to a minimum. I also agree that it needed to explain the tax implications of anything Ms R decided to do. However, I'm not persuaded from the evidence I've seen, that this means Ms R's overarching objective was to agree a drawdown strategy that would ensure she remained below the 40% tax bracket.

I say that because had that been her primary objective, it seems unlikely that Ms R would have come to Lonsdale with a figure in mind whilst stating the period over which it needed to be drawn down. Instead, it seems more likely to me that, Ms R would have sought advice about the level of drawdown income that was likely to help her stay within the lower tax bracket, once her state pension had been factored in. And she'd then have gone away and formed a business model around that – even if that meant it would take much longer to complete the renovation project. The fact she didn't suggests that time was of the essence for Ms R. And I'm inclined to agree with Lonsdale's point that drawing down smaller amounts over a longer period, whilst remaining in the lower tax bracket, may not have enabled Ms R to realise her objective in the period suggested.

It wasn't for Lonsdale to give Ms R accountancy advice – that's for an accountant to do. But it wasn't simply a case of it agreeing to transact for her either. Bearing in mind that she'd already ruled out other ways of generating the income she needed (such as securing credit) and was looking to use her pension to fund the project, it was Lonsdale's role to advise her about the feasibility of doing that. In doing so, it needed to bear in mind that Ms R was looking to draw down fairly sizeable amounts (relative to how long retirement income would typically be expected to last), so it needed to consider whether that was in her best interests when taking account of her objectives. Importantly, it also needed to make her aware of risks such as the knock-on tax implications.

So, that's the backdrop against which I've considered whether Lonsdale gave Ms R suitable advice overall.

Lonsdale noted in the April 2018 suitability report that Ms R's only source of income was her state pension. And whilst she had assets worth over £400,000, as I understand the position, those weren't assets that could easily be relied upon if Ms R's pension provision fell short. That's because the figure included the value of the conversion property itself. But Lonsdale would also have been aware that, until renovated, the property probably couldn't achieve its full value.

I'm satisfied from the suitability report that Lonsdale considered Ms R's pension in the context of her overall assets and investments. And it was aware that according to her business plan, Ms R could potentially achieve income of around £33,000 a year by letting the property. According to Ms R's testimony, other similar businesses in the area were successful and were presumably achieving similar returns.

As I've indicated, Lonsdale needed to consider this in the context of the risk that Ms R could deplete her pension funds too early into her retirement and with little obvious means for her to replenish them. I can see that it considered the income that Ms R might eventually generate from her rental business along with the level of income that she thought she might need in retirement. And it concluded that Ms R wouldn't be able to generate the same level of income from her pensions, especially given her low to medium attitude to risk. I think that seems a reasonable conclusion to reach.

Ms R had no other obvious means to realise the funds she needed. Her existing pensions didn't give her the flexibility of income drawdown. And she only had a relatively small amount of savings to support her retirement income. But, as I've said, Lonsdale also knew that Ms R couldn't achieve the rental income expected until such time as the renovations were complete. And even allowing for the income drawdown needed to fund the project, Ms R was able to leave a proportion of her pension invested in funds suited to her attitude to risk and in a way that allowed for tax advantaged growth. So, this seems to meet Ms R's objectives at least in part. And as Ms R also wanted to keep her pension arrangements in a flexible environment (so her future income needs could be varied to reflect her changing needs and circumstances) Lonsdale's advice and recommendation seems to meet that need too.

Ms R said Lonsdale didn't advise her that the plan agreed was at risk of generating 40% tax on some of the income. She added that the drawdown figures discussed led her to believe that she'd remain within the 20% tax band. Whereas she now knows that she should only have drawn down £34,500 a year (taking account of her state pension and personal allowance) to stay within the lower tax band.

It's difficult to see from the evidence I have how Ms R could have achieved her objectives whilst staying within a lower tax bracket. I say that because, realistically, the renovations would have taken a much longer time to complete if funded mainly from her pension drawdown. And that would have had a knock-on impact on when Ms R could start to generate rental income. I understand that despite drawing down the amounts suggested, the project was delayed. And, with hindsight, I accept that Ms R didn't ultimately need the amount of income she took. Had that not happened, she may well have been able to reduce her tax liability by taking payments over a longer period. But I don't think that's something that Lonsdale could necessarily have foreseen at the time.

I do think that Lonsdale could perhaps have made it crystal clear even earlier that Ms R would end up with a higher tax liability if she drew down the amounts expected over the period concerned. But for the reasons I'll go on to explain I don't agree that Ms R wasn't told of the risks concerning the amount of tax that might be payable.

In its April 2018 suitability report, Lonsdale noted under a heading "Risk Warnings" that "by taking all of the pension benefits in one go, or in stages, may incur a higher tax liability as a consequence and may also compromise future retirement income and state benefit entitlement". It gave a similar warning with its September 2018 suitability report. However, in that report it did go as far as saying "it does put your earnings in both tax years impacted in the higher rate as per the cashflow". So, I think that made the risks much clearer.

And in its 2018 fact find under the heading "What are the tax consequences of taking pension benefits" Lonsdale noted "Basic rate tax – will become higher rate. The fact find is a note of the discussions between the adviser and the consumer. So, I think it's reasonable to conclude that the likely tax implication was acknowledged or discussed to some degree.

Given all of these things together, I think Ms R would have been put on notice of the likelihood of becoming a higher rate tax-payer if she drew down her pension income in the amounts suggested. And, as I understand things, those amounts were put forward by Ms R rather than Lonsdale.

I wouldn't expect Ms R to be an expert in tax matters. But Lonsdale also said in both suitability reports under the heading "taxation":

> *Income Tax:*
>
> *Personal Allowance - £11,850 rising by inflation*
>
> *Basic Rate – 20% for £34,500 band rising by*

inflation

Higher rate – 40%."

I think this ought to have given Ms R cause to think that would probably apply to her given the amounts she expected to draw down (a gross income of around £8,905 a month including her state pension). And she could also have sought specialist tax advice if she wasn't sure. Whilst I take Ms R's point that as payments were drawn down on the first of each month that meant an extra payment being taken in the 2018/19 tax year, I don't think it would have made a difference overall. I think payments drawn down in each year were already likely to be above the threshold for basic rate tax, which in 2018 was £34,500.

So, this, when taken together with the other warnings I've referred to, means I'm satisfied that Lonsdale did make Ms R aware of the potential for increased tax liabilities. Further, it looks like Lonsdale sent the September 2018 suitability report to Ms R around 13 September 2018. So, had she been concerned at the time, I think there was probably an opportunity for Ms R to revise her business model and drawdown strategy before the first monthly payment was made in October 2018 if reducing her tax liability was her overarching objective. For the reasons I've already set out, I'm not persuaded it was. And I'm mindful that drawing down smaller amounts over a potentially longer period wouldn't have enabled Ms R to complete the renovations by December 2019 (as expected at the time of the advice).

Taking account of everything I've seen, I'm currently satisfied that Lonsdale's recommendation for Ms R to switch her pensions (to allow for a drawdown strategy) was suitable based on her circumstances and objectives at the time. I'm also satisfied that Lonsdale appropriately advised her of the likely tax implications of doing so. Given that, I can't fairly say that Lonsdale was responsible for the losses that Ms R says she's suffered as a result of proceeding with the drawdown strategy.

Responses to my provisional decision

Lonsdale hasn't responded.

Ms R sent me a copy of the income release form to R and has made detailed comments. Those include:

- Lonsdale's adviser made several administrative errors regarding her pension. These didn't become apparent until after most of it had been drawn down.
- Her main objective in releasing her pension was to create a plan that was as tax efficient as possible. At no time did she say her objective was needing to release the money by a specific time.
- December 2019 is the "*erroneous"* date detailed on the forms to R that the Lonsdale adviser completed on her behalf. Ms R believes this was "*an invention by Lonsdale to mitigate their mistakes".* Ms R believes that Lonsdale knew the refurbishment was a long-term project as her partner was doing most of the work in his "*downtime".*
- Ms R disputes that she went to Lonsdale with a business plan – she says it was completed with the adviser's help to justify her actions in releasing the pension and to show how it would be used to contribute to her future income.
- The £6,500 a month drawdown was suggested by the adviser as a gross figure (although she said that it made a mistake in later treating that as a net figure) and was to be drawn over 12 months across two tax years, with payments ending in September 2019. All of this was calculated to ensure Ms R didn't go into a higher tax bracket once her state pension and personal allowances were taken into account.
- At no time did she state a need for a specific amount of money, nor were there any time constraints for releasing her pension.

- The reason for her leaving a residual amount in the pension was to ensure, again, that she didn't draw down too much in any one year. She says she contacted Lonsdale towards the end of the agreed drawdown period to ask for its advice on how to release the balance of her pension in a new financial year. Ms R says it was only at this point it became apparent to her that there was no money left in her pension pot. And it was then that she realised the drawdown amount had been higher than was agreed and the period over which it would be drawn down had been extended. Ms R says that's despite her having made it clear to Lonsdale at every interaction that it needed to make sure the pension release plan would keep her in the lower tax bracket. And that was always her intention and main objective.
- She adds why would anyone want to pay 40% tax "*if they can avoid it - especially as, unlike an employee, I can prevent this by spreading the drawdown over several tax years?".*
- Ms R says there is nothing within her files that would clearly show the plan would put her into a higher tax bracket. She adds that she didn't pay too much attention to Lonsdale's paperwork because she thought her objectives and instructions were clear. She also said she found Lonsdale's paperwork *"impenetrable and overwhelming".*

In summary, Ms R says "*I would not have gone with this plan if they had spelled out the higher rate tax implications. As far as I am concerned, this likelihood was not pointed out, explained or explicit".*

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.

I'm not intending to address each individual point that Ms R's made. Instead, I'll mainly focus on those I see as being central to this complaint.

I'm not persuaded by Ms R's point that her plans were never time critical and that the December 2019 date was an "*invention"* by Lonsdale to mitigate its mistakes. December 2019 is a date that's littered throughout the evidence and particularly in the suitability reports, including the one that Lonsdale drafted around April 2018. Bearing in mind that suitability reports are usually prepared following a fact find with a client, it's reasonable to conclude that Lonsdale simply recorded the detail it was given. Lonsdale had nothing to gain from inventing this date. The only reason I can see for its inclusion was that this was the date that Ms R had told it she intended to complete the renovations by. And as Lonsdale included this date in its advice from the outset - even when Ms R didn't act on that advice in April 2018 – I don't agree it's something invented by Lonsdale in order to "mitigate" for any mistakes. That's because, at that point Lonsdale couldn't have known that Ms R believed it had made mistakes.

And in her later communication with Lonsdale (around July 2020) Ms R herself accepted that her original intention was to take an income of £6,500 until December 2019. So, I'm satisfied that Ms R did tell Lonsdale that she needed an income of £6,500 a month up until December 2019 and that Lonsdale recorded this accurately and appropriately incorporated it into its advice.

However, Ms R seems to be suggesting now that it was only ever intended to be a gross figure. And that she wanted to take that amount over two tax years, beginning in October 2018, as that would ensure she remained within the lower tax bracket.

I can't say exactly what was and wasn't discussed at the time. But I'm satisfied that Ms R appears to be mistaken when saying that Lonsdale later (incorrectly) treated the £6,500 as a net figure. That's because, in exchanges with Lonsdale in July 2020, she referred explicitly to expecting to receive six monthly drawdown payments in the 2018/19 tax year of £8,125, coming to a total of £48,750. So, given that Ms R herself said that she expected to receive £8,125 a month gross, I'm satisfied that she didn't imply or tell Lonsdale that she only needed £6,500 a month gross rather than net. And its notable that, in fact Ms R drew down exactly what she expected to in the 2018/19 tax year.

Ms R also says that she only wanted to take six monthly payments in the 2019/20 tax year. That is the period from April until September 2019. But, because of mistakes by Lonsdale, those drawdowns continued. As I've said above, there is clear evidence that Ms R had said she wanted her drawdown income to continue until December 2019. That said, there is some support for Ms R's position that she wanted to take income (of £8,125 a month) over a 12-month period. That's because the income release form Lonsdale sent to R suggested an income of £97,500 should be drawn down, which would be achieved in 12 months by making a monthly drawdown of £8,125. But, the suitability report clearly said, "*from October 2018 to December 2019 income of £8,125 a month".*

So, while the income release form indicated a drawdown period of 12 months, the suitability report said that the period would be 15 months. It's apparent that Ms R didn't query this date at the time as, by her own admission, she didn't pay too much attention to Lonsdale's paperwork as she felt her instructions were clear. But regardless of how clear Ms R thought her instructions to Lonsdale were, she'd still be expected to check the details and to let Lonsdale know whether they reflected what was discussed. Ms R's instructions to Lonsdale involved a considerable amount of money and there is always – in any transaction - the possibility of an instruction or advice being misinterpreted or misunderstood, which is why it's important for advising firms like Lonsdale to set out their advice in a manner that's clear, fair and not misleading. I think Lonsdale did that on this occasion. And, if there were mistakes or misunderstandings (other than the one that Lonsdale has already accepted), but Ms R didn't identify those because she didn't read the paperwork, I don't think that's something that Lonsdale could be held responsible for now.

Having said that, even if Ms R had queried the dates at the time, it may not have made a difference in terms of whether the income fell within the lower or upper tax limits (although it obviously would have made a difference to the *actual* amount of tax due). I say that because Ms R is clearly under the impression (according to what she said in an email to Lonsdale around July 2020) that if she took an income of £8,125 a month (gross) over six months in each tax year, it would keep her within the lower tax bracket, because she'd be earning less than £50,000 a year. But I don't think that's right. As I said in my provisional decision, in 2018/19, the basic tax rate of 20% was on annual earnings above the pay as you earn (PAYE) tax threshold (which in 2018/19 was £11,850). So this meant that basic rate tax would be paid on any earnings above that amount up to £34,500. That means that higher rate income tax became payable once income went above £46,350 (£11,850 + £34,500). But, after factoring in Ms R's income from her state pension, her income would still have gone into the higher income threshold.

And I'm satisfied that Lonsdale did try to spell that out to Ms R. It referred to taxable allowance rates in both of its suitability reports. And, in its September 2018 suitability report it said explicitly "*it does put your earnings in both tax years impacted in the higher rate as per the cashflow".* So it did tell Ms R that the recommended drawdown strategy would move her into the higher rate tax bracket. And I don't think it would be Lonsdale's fault if Ms R didn't pay attention to that in the paperwork.

It seems to me that Ms R's position is also influenced by an apparent misunderstanding of how tax allowances work. In her July 2020 correspondence to Lonsdale Miss R set out what her income was for 2018/19 was and how the taxable allowance would affect that. She said:

"*Total income in this tax year @£58110 - less personal allowance £12500 = £45610 keeping my annual income in the basic rate tax allowance of £50000*"

But that's not my understanding of how a tax personal allowance is applied. It's not a question of it being deducted from overall income. Rather, it just means that Ms R wouldn't pay tax on any amount up to that level. So, using Ms R's figures (although it looks like the personal allowance in 2018/19 was £11,850 a year) she'd have paid no tax on her first £12,500 of income. She would then pay 20% tax on any income from £12,501 up to £46,350 and 40% tax on income above that.

So, while it's now apparent that Ms R perhaps didn't have a clear understanding of how personal allowances work, given that Lonsdale did set these out in its suitability reports, and did tell Ms R that she would go into the higher tax bracket, I don't think Lonsdale is responsible for any misunderstanding that occurred.

Overall, I'm satisfied that Lonsdale did enough to let Ms R know that she was likely to move into the higher rate tax bracket. And if she was of the view that keeping her tax liabilities low was her overwhelming priority, there would have been an opportunity to have flagged this with Lonsdale sooner because the income drawdown didn't take effect until October 2018. And, again, whilst Ms R seems to be saying that she didn't pay particularly close attention to the information Lonsdale sent her, it wouldn't be fair to say that's something that Lonsdale should be held responsible for now.

For all of these reasons, I'm not minded to change what I said in my provisional decision.

That said, Lonsdale accepts that it did make a mistake in failing to stop payments after December 2019. So, I've set out below what it needs to do to put that right now.

My final decision

I partially uphold this complaint.

I direct Lonsdale Services Ltd to pay Ms R the £4,250 it previously offered (if it hasn't already done so). This recognises the additional tax that became due as a result of Lonsdale's failure to stop drawdown payments when expected. The payment also includes a goodwill payment in respect of Lonsdale's error. I'm satisfied that recognises the distress and inconvenience caused to Ms R.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 22 September 2022.

Amanda Scott
Ombudsman