

The complaint

Ms H complains about advice given by MPA Financial Management Limited ("MPA") which led to withdrawals from her personal pension. This triggered the Money Purchase Annual Allowance (MPAA). The impact of this has resulted in a limitation of future annual pension contributions for which Ms H would like to be compensated. She further complains she has received incorrect information and poor service which has led to a loss of expectation and reputational damage, for which she would also like to be compensated.

What happened

I set out the background to this complaint in my earlier provisional decision. For clarity I repeat it here.

Ms H engaged MPA as her advisers in 2016 when she transferred a personal pension on their advice from Scottish Widows to Prudential.

Our investigator set out a timeline of events and as this seems to be broadly accepted by both parties, I repeat it here.

5 June 2018 – MPA sent an email to Ms H's accountant showing the values of four pension plans held with Prudential as well as the amount of tax-free cash (TFC) available.

20 July 2018 – Ms H said she was looking to withdraw TFC from two of her Prudential PPP's. MPA issued a suitability report where they recommended a withdrawal of 25% from each plan. The total amount you received was circa £6,800.

24 September 2018 – Ms H enquired about the possibility of making a further withdrawal from her pension to fund a house purchase.

4 October 2018 – Ms H was told by MPA that if she decided to take a withdrawal greater than her available TFC, this would trigger MPAA. Ms H decided not to proceed at that time.

10 October 2018 – Ms H received a notification from an administrator at MPA that she was still entitled to some further TFC on one of your PPP's. On the same day, MPA then clarified that they had spoken to Prudential and that she didn't have any TFC remaining.

Oct-November 2018 – Ms H sends a number of chase emails to MPA regarding clarification of her current pension provision and TFC.

7 December 2018 – an administrator from MPA emailed Ms H to confirm the valuation of each of her four PPP's and to confirm that no TFC was remaining on any of the plans.

21 March 2019 – Ms H requested to withdraw all the funds from two of her PPP's via flex access drawdown. MPA issued a suitability report for this and issued the following risk warning.

'In addition, if you wish to continue to pay contributions to another pension scheme you will be restricted to a maximum of £4,000 per year if your income and lifetime allowance allow under the Money Purchase Annual Allowance.'

29 April 2019 – a letter was issued from Prudential to MPA and to Ms H confirming net payments of £34,371.94 and £19,696.39 had been paid to your account and that the respective plans had closed.

13 Feb 2020 – Ms H emails MPA to request P60 and to notify of a change of address

25 Feb 2020 – MPA confirm information provided and Prudential hasn't issued P60

2 July 2020 – Ms H emails MPA for a pension update with clarification on current pension values, fund available for withdrawal and possibility and/or implications of closing.

15 July 2020 – MPA email Ms H to say they have requested information from Prudential several times but there are currently delays in receiving information from them.

20 July 2020 – Prudential provides current values of remaining two pension plans

8 October 2020 – Ms H submits a written complaint to MPA and Financial Ombudsman Service.

An investigator looked into matters for Ms H. He issued his first view on 9 October 2021.

In summary the investigator found:

- MPA provided incorrect information about the amount of TFC available to her in June 2018. At this time, it said the TFC available was just over £20,000
- It provided a suitability report in July 2018, which gave the correct fund details but didn't specify the actual value of the TFC, only that it was 25% of the fund.
- He could understand why Ms H was confused when her TFC amount was just over £6,000
- But he could also see that in October 2018, MPA clarified why the amount was different after discovering some TFC had been taken at an earlier date.
- The trigger for the MPAA was actually in April 2019 after Ms H withdrew £54,000 (after tax) by taking two pension plans in their entirety. This followed a suitability letter issued in March 2019 where he felt MPA had clearly pointed out the risks and consequences of taking this course of action.

As a result of his findings, the investigator did not uphold Ms H's complaint.

Initially Ms H accepted the investigators view, but after consideration she raised further points in an email dated 3 November 2021. She says the misinformation of the amount of TFC she could take affected her professional reputation, prevented her from proceeding with a property investment and, as such, put her at a financial disadvantage. She also raised a number of concerns about the profession conduct of MPA.

The investigator reviewed all of the information and considered the points raised by Ms H and issued a second view.

He remained of the view that he thought Ms H was in an informed position that there was no tax-free cash remaining and that any subsequent withdrawal would trigger MPAA. So, he still didn't hold MPA responsible for any future losses that Ms H may suffer as a result of triggering MPAA.

But with regard to Ms H complaint regarding the misinformation by MPA in an email to her accountant in June 2018 where they incorrectly stated that she had over £20,000 tax free cash remaining from your Prudential PPP's. He upheld this part of the complaint.

He could see that there was a period of around 5 months (between June 201-October 2018) before MPA had clarified the TFC was £6,800 and the reason why it was this amount. He agreed this could have led to Ms H having a loss of expectation when the correct amount was clarified. But he didn't find that Ms H had suffered a financial loss as a result.

In his view, Ms H had made it very clear that she would not proceed at this point if the MPAA was triggered and as such she would only ever have been able to receive the amount of TFC available, which was £6,800.

Having spoken with MPA, it agreed to pay Ms H £100 for the trouble and upset it caused by providing incorrect information between June and October 2018. The investigator felt this was a fair and reasonable offer to put things right.

Ms H didn't agree.

In summary she says:

- there was a financial loss because had she known she could only take £6,800 TFC, she would have left her money invested and as a result she has lost out on the growth of the funds in her plan. In an email dated 13 December 2021 to this service, she says she actually withdrew £20,000 and it was sat in a bank account doing nothing.
- she didn't find there was any acknowledgement or compensation of the embarrassment, loss of credibility and reputational damage. She said she was in collaboration with a number of other partners to purchase the property and when this fell through it had an impact on her.
- MPA did not treat her fairly and failed to respond promptly to her complaints over an extended period of time and there has been no recognition of this in the compensatory offer.
- There has been no recognition of MPA's failure to mitigate loss, she says if MPA had made her aware of the error she would have asked to return the money, she says she wasn't aware this was an option.

Ms H asked for an ombudsman review.

In my provisional findings I revisited all the information available from both parties. As Ms H has raised a number of concerns following the investigators second view, I am issuing a provisional decision to allow both parties to provide me with any further evidence they wish me to consider before I issue a final decision.

First, I said I was very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

I explained our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

In deciding this complaint, I took account of the law, any relevant regulatory rules and good industry practice at the time. I carefully considered the submissions that have been made by Ms H and MPA. I explained where the evidence is unclear, or there are conflicts, I have to make my decision based on the balance of probabilities. In other words, I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

I said at the outset I thought it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I said I found Ms H's complaint centred on three main points.

- The events that led up to the MPAA being triggered and the advice provided by MPA prior to that event and;
- The original error in the amount of TFC available to Ms H sent in an email to her accountant in June 2018 and subsequently corrected in October 2018.
- The impact that error had on Ms H's financial position, the reputational damage she says it caused and the distress and inconvenience she suffered as a direct result of MPA's actions.

When was the MPAA triggered and did MPA wrongly advice Ms H at the time?

The MPAA was introduced on 6 April 2015. With the advent of greater pension freedoms at that time, more people were flexibly accessing their pensions and potentially then adding money back into the pension, obtaining further tax relief at a later date. To restrict this, the MPAA was introduced. It was first set at £10,000 each year. The government reduced the MPAA to £4,000 on contributions made from 6 April 2017.

The MPAA doesn't apply if a consumer only takes the 25% tax free cash sum out of their pension but no income.

In an email dated 5 June 2018, after Ms H approached them for information on the maximum TFC she could take from her pension plans, MPA provided information showing the pension plans held with Prudential, with three having TFC available. The total available was shown as £21,099.65. This comprised of three separate amounts of £14,312.98, £2,682.50, and £4104.17 respectively.

In July 2018, MPA issued a suitability letter which then show TFC available on two plans only. On Page 8 of the report it details the total value of the plans being circa £27,287.26 25% available as TFC, giving an amount of circa £6,800.

MPA recommended the remaining funds be placed in a flexi-access drawdown investment as the report states Ms H had no requirement for income.

Ms H said in her email dated 13 December that:

"To be clear, I did not withdraw £6,800 on 20 July 2018. I withdrew circa £20,000 after discussion with both my trusted advisors (MPA) and my accountant. The sum sat in my current account, awaiting discussion and clarification."

I said from what I'd seen Ms H received £6,800 as TFC and the remainder was placed in a flexi-access drawdown investment with Prudential, so I have no evidence to support a withdrawal of £20,000 in July 2018. It's not always easy to remember the exact detail of a decision made 4 years ago, but if Ms H can provide a bank statement to show the withdrawal was more than £6,800 TFC, I said I would be happy to look at this again.

The reason I said I found this unlikely is that the event in July 2018, didn't trigger the MPAA as only the TFC was taken from the two plans.

On 19 March, Ms H sent MPA an email to say she wished to cash in two of her remaining plans in their entirety to receive a total value of circa £87,000 and MPA issued a suitability letter. The executive summary read:

*Further to our discussions, you confirmed to me that you wish to utilise the new pension rules from 6th April 2015 to secure monies from your **existing** drawdown plan as follows:*

Provider Plan Number Current Value* Required Withdrawal

- Plan 1 £59,236.16 100%
- Plan 2 £32,612.61 100%

Please note that values are not guaranteed and can fall as well as rise

Having discussed the options, we shall be utilising Flexi-Access Income Drawdown – this enables you to take the whole of your fund if so required, with the required withdrawal added to your declared income to determine the amount of tax that you will pay.

If you take all of the benefits from the plan, this would extinguish your pension fund completely, leaving you no income from this source in retirement.

In addition, if you wish to continue to pay contributions to another pension scheme you will be restricted to a maximum of £4,000 per year if your income and lifetime allowance allow under the Money Purchase Annual Allowance (MPAA). There are also reporting requirements to consider if the MPAA applies as pension providers have up to 31 days to advise you of the date that you flexibly accessed pension benefits, including an explanation of the possible implications. Clients are then required to pass on the information they receive from the pension provider they were flexibly accessing funds from to all other administrators of money purchase pension schemes they are contributing to within 91 days (unless they've already done so as a result of an earlier event).

The report goes on to set out in detail the risks of encashing two pension plans in terms of present and future financial implications.

So, I said from what I have seen it was the encashment of these two plans that triggered the MPAA and MPA did advise Ms H about the risks of doing so and the future consequences of triggering the MPA, as such I said I was satisfied that Ms H was in an informed position that she had no TFC remaining and that any withdrawal would trigger MPAA. So, I can't hold MPA responsible for any future losses that she may suffer as a result of triggering MPAA.

I explained I hadn't upheld this part of Ms H's complaint.

Did MPA provide misleading information and what impact did that have, if any, on Ms H?

I said there's no dispute here that MPA sent an email on 5 June 2018 to Ms H's accountant which detailed an additional amount of TFC was available, that subsequently turned out not to be correct.

MPA has explained that the plan which it thought had a TFC element was held by Prudential after it had been crystallised and the TFC accessed.

It explained this to Ms H in emails on 10 October and 7 December 2018. So, between June and October 2018, I said it was fair to say Ms H could have been under the impression she was going to receive a higher amount of TFC than was actually available. MPA has acknowledged this and offered £100 by way of compensation, but Ms H says this doesn't represent the distress and inconvenience caused.

Ms H told this service that a property deal fell through as a direct result of her not having the funds available and she suffered damage to her reputation. I explained It is difficult to make an assessment in financial terms of the impact on Ms H.

So, as I said earlier where the evidence is unclear, or there are conflicts, I reached a decision based on the balance of probabilities. In other words, I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

The email with the misinformation was sent on 5 June 2018, but in the suitability, letter dated 20 July 2018, it is clear the recommendation refers to 25% of the only two plans with TFC available. The total value shown on page 2 of the report is for a fund value of circa £27,287.26 and the withdrawal is to be 25% of that amount.

I can see from the evidence that Ms H is an articulate professional who is able to raise legitimate queries and concerns, so I would have expected to see some form of communication that indicated a pending property deal required more than the £6,800 in order to progress, but I can't see anything that suggests this is the case. In fact, there is an express instruction in 2018 for MPA not to exceed her TFC.

On balance, I said it seems Ms H was weighing up the advantage of a property investment with the implications of breaching the MPAA. Her emails suggested at that time she was not prepared to take more than the TFC available. As soon as the suitability report was issued it was clear there wasn't £20,000 available as TFC. In order to say Ms H suffered a financial loss I said I'd be looking see if she had entered into a contractual agreement which she then couldn't fulfil. I said I appreciated she wanted to engage in some cash purchases, but she hadn't entered into a purchase as far as I can see from the evidence available.

I said on this basis I wasn't persuaded Ms H has suffered a financial loss as a result of the email sent in June 2018. In my view, the suitability letter in July 2018 clearly shows the TFC available is not that indicated in the earlier email and this is further confirmed in October and December 2018.

In terms of any reputational damage I said I would be looking to see what the impact has been, if any, either directly or indirectly as a result of MPA's actions on Ms H. I considered whether any specific damage can be identified, what evidence there is that Ms H's professional reputation has been called into question. I appreciate that Ms H feels strongly about this, but I wasn't persuaded of sufficient evidence to lead me to think Ms H had suffered reputational damage as a direct result of MPA's actions.

Between June and October 2018, although there was a query regarding whether there was an additional amount of TFC, there was no indication in any of the communication between the parties, of any pressure to complete a contractual arrangement and an urgent need for more funds or any commentary that Ms H had been unable to maintain her part in any agreement with a third party.

So, again I said I wasn't persuaded that any reputational damage suggested by Ms H was directly linked to MPA's actions.

When Ms H did decide to proceed with a property investment, she encashed two pension plans in their entirety for significantly more than the amount she was looking at in 2018. This may well have been a different opportunity, but the relevant point is that Ms H was in a position to proceed in 2018, had she chosen to do so.

So I said, whilst I can agree that there may have been a loss of expectation between June and at the very latest October because of an error in an email, I haven't been persuaded

there is sufficient evidence to uphold her complaints about any financial loss or reputational damage.

I said, if Ms H has additional evidence, she wants me to consider in relation to either of these points I will consider it carefully before issuing a final decision.

Because this service is a free alternative to the courts wards for trouble and upset are relatively modest and I'm persuaded MPA's offer of £100 is fair and reasonable redress in the circumstances of this complaint.

Finally, Ms H, raised a number of concerns regarding professional standards, professional indemnity, industry regulation and protecting consumers. I explained I hadn't commented on these specifically where I don't find them relevant to the crux of the complaint. As I mentioned earlier, the role of this service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. I have looked at the MPA's actions in this matter to determine if they have treated Ms H fairly and if not what I find a fair and reasonable approach to put things right.

Ms H responded to my provisional and said she had no further submissions to make.

MPA responded and said it accepted my provisional 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.

Having considered all of the evidence again and taking into account the comments from both Ms H and MPA, I have seen nothing to lead me to depart from my earlier conclusions. It follows I have received the same outcome as that of my provisional decision and detailed within my final decision.

My final decision

For the reasons I have given I uphold this complaint in part and direct MPA Financial Management to:

- Pay Ms H £100 for the distress and inconvenience of providing misleading information between June and October 2018.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 26 October 2022.

Wendy Steele
Ombudsman