

The complaint

Ms T has said that Fangdale Financial Ltd gave her unsuitable and inadequate advice relating to her pension arrangements, specifically in relation to a transfer of her existing pension arrangements, the fees charged and the tax consequences of making pension withdrawals.

What happened

Following the purchase of the client bank of a different business, Fangdale contacted Ms T and her husband to arrange an introductory meeting, which then took place in December 2014.

A fact find was completed, which recorded that Ms T was 52, in good health, and intended to retire at the state pension age of 67. Ms T was married, with no financial dependants, and employed with an annual income of around £45,000.

Ms T was a member of her defined benefit occupational pension scheme (OPS), and she had a linked defined contribution additional voluntary contribution (AVC) plan.

Ms T was recorded as being inexperienced in investment matters and as having a moderate attitude towards investment risk. She said that she didn't wish to control her investments and that she was content to accept higher charges for the potential of improved performance – there was a projected income shortfall in retirement of around £1,000 pm in her existing pension arrangements - and easier administration.

In a subsequent recommendation report, Fangdale recommended that Ms T establish a personal pension policy (PPP) with Scottish Life, with an initial single contribution of £23,500 and ongoing regular contributions of just over £100 pm.

In support of this recommendation, Fangdale said that Ms T didn't need the facilities or flexibility of a self invested personal pension (SIPP), but that a cheaper stakeholder plan wouldn't offer enough fund choice.

Although not mentioned in the report, Ms T would also be moving a stakeholder plan held with Aviva to a Scottish Life PPP, the justification for which in a separate replacement business form was that Ms T would be able to receive advice on the plan and switch funds without charge in the future, in addition to there being some additional features with the PPP. There would also be no initial charges for switching and no exit penalty was being applied by Aviva.

Ms T's pension funds would be invested in the Balanced Active Lifestyle Strategy (Pension & Cash), which meant that her investments would gradually be moved from higher to lower risk portfolios as she approached retirement.

The charge for the advice was a 4% initial investment fee and this would be paid in instalments from the recommended products (the advice incorporated ISA recommendations). A further 1% pa review service fee would be also incurred.

The transfer of the Aviva stakeholder plan to the PPP completed in January 2015.

Following discussions with a third party in June 2019, Ms T was told by a different financial adviser that she'd been incorrectly claiming tax relief on her pension contributions, and that unnecessary changes had been made to her pension arrangements.

Ms T removed Fangdale as her financial advisers the following month and also stopped making additional payments to her OPS. She also paid the tax which was due.

Ms T complained to Fangdale in April 2020, saying that that the recommendation report hadn't covered the transfer of the Aviva policy, and that there'd been no comparison of charges or the benefits/disadvantages of transferring.

Further, Ms T said that the recommendation to take flexible benefits from the transferred policy meant that the Money Purchase Annual allowance (MPAA) was triggered. The implications of this weren't explained to her, she said, and as a result she'd continued to contribute to her OPS and faced a tax charge over several years. The fees charged for the work undertaken by Fangdale were excessive and hadn't been properly explained, Ms T added.

Fangdale didn't uphold Ms T's complaint, however, saying in its final response of October 2020 that it had already offered – in a previous response - the difference in charges for Ms T's (and her husband's) policies and so it considered that it had already addressed the matter of the transfer to the new pension policy.

And with regard to the MPAA, it said that Ms T had been affected by the changes in the allowance from £10,000 pa to £4,000 pa in April 2017, rather than by any advice it had given in March 2016 which related to Ms T beginning to draw on her money purchase pension benefits.

In its previous response, Fangdale had also said that, as Ms T was, in March 2016, continuing to contribute to a defined benefit scheme, this wouldn't in any case have been affected by the MPAA being invoked. The OPS later changed to a money purchase scheme, but it said that Ms T hadn't informed Fangdale of this and so it was unable to offer advice on her updated circumstances, despite explicitly requesting that she do so in documentation sent to her.

Fangdale further said that it wasn't responsible for the fees which Ms T had incurred by moving to a new firm of advisers, saying that it was Ms T's choice to make the move and that all fees it had charged had been clearly set out.

However, it said it remained prepared to refund the difference in plan charges it had already offered in its previous response, in addition to a refund of the "ad hoc" charges, despite, it said, this being in respect of additional work undertaken on Ms T's behalf.

Dissatisfied with the response, Ms T referred her complaint to this service, where one of our investigators considered the matter. He thought the complaint should be upheld, saying the following in summary:

- He noted that the suitability report detailed the PPP which would be established to receive a contribution from Ms T's bank account, but that it appeared that Ms T's Aviva stakeholder plan had also been transferred into a PPP. Fangdale had confirmed that there were errors in the report in this regard.
- But the investigator said that he wouldn't expect there to have been such errors in a

suitability report upon which Ms T was relying when considering the advice which was given.

- Having compared the two plans, and in particular the charges levied by the providers, he noted that there was an additional 0.18% pa levied on the replacement Scottish Life PPP. And as he couldn't discern any robust justification for the transfer, he thought that the transfer hadn't been suitable.
- With regard to the MPAA, the investigator noted that, at the time Ms T was planning to begin pension withdrawals, the MPAA was £10,000. He also thought that the evidence supported the position that Ms T was made aware of the nature of the MPAA, what would trigger it, and the contributions limit which would then apply. He specifically referred to the "welcome" letter from Scottish Life dated 4 February 2016.
- He further noted that Ms T's money purchase contributions were comfortably below the £10,000 limit and that she hadn't spoken to Fangdale about increasing her money purchase contributions. So he didn't think that Fangdale had erred in not specifically discussing the MPAA with her.
- When the MPAA limit reduced to £4,000 pa, Fangdale informed Ms T of this, but it didn't seem to be the case that Ms T had informed Fangdale of the change within her OPS from defined benefit to defined contribution, despite the suitability report inviting her to inform it of any changes to her circumstances.
- As such, the investigator didn't think that Fangdale could be held responsible for any tax charges incurred by Ms T due to the MPAA.
- Addressing the matter of adviser charges, the investigator said that there was an agreement for Fangdale to be paid initial and ongoing commission from the recommended product provider rather than directly from Ms T. This information was set out in the documents provided to Ms T.
- But the investigator couldn't find evidence of information relating to the ad hoc charges which would be charged to Ms T having been shared with her, and this had amounted to around £770 over four years – or roughly 0.5% pa. The fee agreements documents did cover ad hoc services, but this section hadn't been ticked by Ms T.
- The investigator therefore concluded that Ms T hadn't been treated fairly in respect of these.

In conclusion, the investigator recommended that a loss assessment be conducted comparing the notional value of Ms T's stakeholder plan with the replacement PPP, and if there was a loss, Fangdale should either pay this into her PPP, or if this wasn't possible, to her directly with a notional deduction for income tax.

He also said that Fangdale should return all of the charges it had levied for ad hoc services, in addition to £150 in respect of the distress the matter would have caused her.

Fangdale agreed with the investigator's conclusions, but Ms T had some continuing concerns, as follows:

- She hadn't received the letter dated 4 February 2016 about the MPAA, and even if she had, she wouldn't have understood the implications – these should have been explained by Fangdale.

- But even if she had received the letter, Fangdale had triggered the MPAA in 2015. However, she hadn't needed tax free cash at the time, and had the implications been explained, she could have chosen not to proceed.
- If she had suspected that she was doing something which wasn't right, she wouldn't have proceeded. That she had unwittingly been claiming a tax benefit to which she wasn't entitled had made her feel like a criminal. She hadn't understood the implications of the changes within her OPS and she wasn't advised by the scheme administrators to consider her other pension arrangements. Fangdale was aware of her OPS and she'd told it that she was paying as much into it as she could.
- Ms T also expressed concerns that Fangdale would be the party undertaking the loss calculation.

The investigator responded, saying that he thought that the first pension withdrawal had occurred in 2016, but that he could look at this further if Ms T could provide evidence of it being in 2015.

He also said that the letter to which he'd previously referred had been sent by the product provider and would have been repeated each time Ms T accessed her pension benefits.

He further commented that pensions could be complicated, but that, although Ms T may not have understood the implication of the changes to the OPS, he couldn't see that Fangdale had been informed of this. Had they been made aware of this, they would have been better placed to advise Ms T accordingly. But he also noted that, although Fangdale had understood that Ms T was contributing just over £3,000 in the 2013/14 tax year, this would in any case have been below the reduced £4,000 threshold implemented in 2017.

Regarding the calculations, the investigator said that it was this service's approach to allow the business to undertake them, but if Ms T had reason to believe that they'd not been done properly, then she would be able to separately investigate whether that was the case, for example by employing an actuary.

Ms T, in reply, agreed that pensions could be complicated, and agreed that the first year of withdrawals, and so triggering the MPAA, had been 2016. Ms T also acknowledged that she would have received letters from the product provider, but that she had thought the investigator was referring to something which had been sent by Fangdale.

Ms T also observed that Fangdale had agreed with the investigator's recommendations, and that this presumably meant that they accepted that inappropriate charges had been applied. But she didn't think it fair that she should need to pay to check that it had undertaken any loss calculation correctly.

In conclusion, Ms T said that she was in no hurry for the complaint to be resolved, but that she hoped that lessons would be learned from her experience and that it would prevent it from happening to others.

Both the investigator and Ms T agreed that the matter should be referred to an ombudsman for review. And so the complaint was passed to me.

I issued a provisional decision on the matter on 6 September 2022, in which I said that the complaint should be upheld in respect of the transfer of Ms T's existing pension arrangements, but not with regard to the MPAA. The following is an extract from that decision.

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done so, I broadly agree with the findings set out by the investigator, and for similar reasons. But I'm sending this as a provisional decision due to slight differences in the proposed redress, including an income tax assumption, and to provide both parties the opportunity to respond.

As neither party has challenged the investigator's findings with regard to the transfer of Ms T's stakeholder pension, I won't labour that point, but suffice to say that I agree that there doesn't appear to have been either a robust rationale at the time (and not in any case documented to Ms T) nor one in retrospect, for transferring that pension policy – especially given the increase in charges.

And so I agree with the investigator's proposal that there be a comparison between the notional value of the old policy and the replacement to determine whether Ms T has incurred a loss.

I also agree that the ad hoc charges should reasonably be refunded. I acknowledge that they will have been levied in respect of work undertaken by Fangdale, but I'm persuaded by the investigator's point that Ms T hadn't agreed to pay these. Again, I note that neither party has in any case objected to this.

Turning then to the matter of the MPAA, I can appreciate and understand Ms T's frustrations and concerns at what has happened. I'd firstly take the opportunity to reassure Ms T that she should in no way feel like she has done anything wrong in terms of claiming the tax benefits of her pension plan. My view would be that the available evidence supports the position that she did so in good faith, and without knowing the effect that the changes in her OPS had had on her ongoing contributions.

But I also need to determine whether Fangdale somehow made a mistake in this regard. And having reviewed the available evidence, I don't think I can fairly or reasonably conclude that it did. At the time of the pension withdrawals commencing, Ms T was contributing to a defined benefit OPS (which would be unaffected by the MPAA), and the known additional money purchase contribution was comfortably below the MPAA limit of £10,000 at the time. And so, on the basis of the situation at that time, the proposal of Ms T taking withdrawals from her pension funds wouldn't have been inappropriate.

Ms T was then unfortunately affected by the dual effect of the OPS becoming a defined contribution scheme, and the MPAA limit reducing to £4,000 in 2017. But I do also agree with the investigator that, whilst Ms T may not have appreciated the implications of either of these, Fangdale had requested that she keep it informed of changes in her circumstances. And I think a change in the format of the OPS would reasonably have been something which could make a material difference to Ms T's pension planning – and so would also then reasonably have been something which could have been communicated to Fangdale.

Had this happened, then appropriate steps could have been taken which would have meant that Ms T wouldn't have run into difficulty with the MPAA. Again, I should emphasise that I would in no way apportion blame to Ms T for not making Fangdale aware – but by the same token, in order to uphold that aspect of the complaint, I would need to be able to fairly and reasonably apportion responsibility for it to Fangdale. And for the reasons given, I don't think that I can. It seems to me that it's simply an unfortunate combination of the OPS changing and the MPAA reducing in 2017.

So overall, whilst I can see that there were failings here on the part of Fangdale, which it has

itself acknowledged, I think these related to the transfer of Ms T's stakeholder pension and the ad hoc charges. As such, I'll set out below how the matter should be put right.

Putting things right

As directed by the investigator, Fangdale Financial Ltd should compare, as at the date of this decision, the notional value of Ms T's Aviva plan, had it remained in place, with that of her PPP with Scottish Life. If there is a loss, i.e. the existing plan would have had a higher value, Fangdale Financial Ltd should, if possible, pay an amount into the PPP to make up the difference, taking into account any available tax relief, existing protections and allowance (particularly in this case MPAA) issues.

If it's not possible to pay into the PPP, or it would conflict with protections or the annual allowance, then any loss should be paid directly to Ms T, but with a notional deduction of income tax to reflect that this would have been payable from the PPP. Assuming that Ms T would be a basic rate taxpayer in retirement (and if either party disputes this, they should let me know in response to this decision), and that she would take full tax free cash, this would result in an overall 15% deduction.

As also directed by the investigator, Fangdale Financial Ltd should refund Ms T the ad hoc charges, and to these should be applied 8% simple interest pa from the date that they were applied up to the date of settlement.

Fangdale Financial Ltd should also pay Ms T £150 in respect of the distress the matter has caused her."

In response, Ms T said that she accepted the decision but that she would like the £150 paid to a specific charity.

Fangdale also accepted the decision, but said that it would need access to information about Ms T's plans to perform the necessary calculations. The correspondent at Fangdale also sought to manage expectations around the timeliness of future responses due to a planned medical procedure.

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.

My view on the complaint remains the same as that set out in the provisional decision.

Putting things right

Fangdale Financial Ltd should undertake the calculation as directed in the provisional decision, using the date of this final decision as the calculation date. I've noted the comments relating to the timeliness of future responses from Fangdale. It's usual that this type of decision would in any case allow 28 days from the date of notification of the complainant's acceptance for settlement to be made, so I think this should provide enough time to settle the matter.

If it takes longer than 28 days to settle, simple interest at the rate of 8% pa should be applied to any loss amount from the date of this decision to the date of settlement. Fangdale Financial Ltd may extend that timeframe by the number of days – beyond say a reasonable turnaround timeframe of four days – that it might take for Ms T to respond to a request for a letter of authority to access information about her pension arrangements.

I've also noted Ms T's request that the £150 be paid to a charity, but that isn't something I can require of Fangdale Financial Ltd in this decision. My decision is that it should pay the amount to Ms T, but if the parties wish to agree a separate course of action, then they may do so.

My final decision

My final decision is that I uphold the complaint and direct Fangdale Financial Ltd to implement the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 12 October 2022.

Philip Miller
Ombudsman