

The complaint

Mr S complains that Williams & Watt Financial Planning Limited gave poor advice about the amount of contributions that could be paid into his personal pension and as a result, the value of his pension is lower than it would have been if he had been given the correct advice.

What happened

Mr S runs a business together with his wife through a limited company, which I will refer to as K. They are the directors of the company, which pays employer's contributions into their pensions. They have been customers of Williams & Watt for some years. This complaint concerns the advice given to Mr S about his pension; Mrs S has also complained and her complaint has been looked at separately.

In November 2019, following a review of his pension arrangements, Mr S received a letter from Williams & Watt recommending that he increase his pension contributions. The adviser said they would review this again at the beginning of 2020, as Mr S would like to benefit from using the full allowance and would pay lump sums to bring his contributions up to the maximum allowed.

Following this, the monthly payments for Mr S increased and a lump sum was paid, to bring the total contributions for him up to £40,000 – the maximum allowed for the tax year.

The next annual review was in November 2020. He received a letter in March 2021 following that review (the advice having been delayed). Williams & Watt's adviser said they had been speaking to K's new accountant, who had advised they should pay more into their pensions, using the carry forward from previous tax years.

The adviser said they had checked Mr S' income details for each year since 2016 and deducted the pension contributions made to see what allowances would be used. The letter said Mr S had agreed to invest a lump sum into his pension to make use of the unused allowances for 2016/17, 2017/18 and 2020/21.

Williams & Watt sent a revised letter a few days later. The adviser explained that they had made an error in not maximising the carry forward from 2015/16. She agreed to waive some of the fees to acknowledge the error.

A further letter was then sent advising there had been an overpayment in 2019/20 due to an error by Williams & Watt. It also advised that they couldn't use the unused allowance from 2016/17 as it was only possible to go back three years from the year the overpayment was made. So they could only use the unused allowances for 2017/18, 2018/19 and 2020/21.

This meant the amount that could now be paid in was lower than anticipated. Williams & Watt agreed to waive some fees to compensate for the missed payment. New illustrations and contributions were provided. The maximum that could be paid to use the unused allowances was £49,504 and an employer's contribution for this amount was paid into the pension.

Mr S complained that:

- every year, he and Mrs S had asked if there was anything else that could be done with their pensions;
- it was upsetting to find they had missed the chance to use the 2016/17 allowance when they made the maximum payment in 2019/20 – he could have arranged a larger contribution then, if he had known;
- this error only came to light when Mrs S asked Williams & Watt to check this during the phone call in November 2020 – and the full details only became clear following the conversation in March 2021;
- even if the company's accountant should have noticed the error too, he relied on Williams & Watt's expertise in relation to his pension.

Williams & Watt sent a final response to the complaint, saying

- it did potentially miss the opportunity to maximise the contributions, but Mr S' accountant also had a role to play;
- until the tax year 2019/20, Mr S had never paid in the maximum contributions;
- it was only in 2020/21, once he had changed to a new accountant, that Mr S asked about this and by this time, he would not have been able to use the 2016/17 allowance as more than three years had passed;
- it wasn't clear he would have paid in over half the balance in K's account, as the company would then have lost the use of those funds.

Williams & Watt offered a goodwill payment to K of £7,500 (less some fees that had already been waived).

Mr S wasn't happy with this offer and referred his complaint to this service but our investigator didn't think it should be upheld. He said although there had been some errors, he didn't think these had caused any financial loss, and the 2019 advice in itself was suitable. He also said Williams & Watt wasn't able to say how much money K could afford to pay in contributions as that was a matter for the accountants; and the ability to carry forward unused allowances had been mentioned in earlier correspondence, so Mr S had been made aware of this.

Mr S disagreed and requested an ombudsman's decision. He said it wasn't the amount to invest that was disputed, but his right to have the option to invest or not. And he said he had been told by another adviser that he had missed out on investment growth.

The investigator didn't change his opinion. He said the advice that had been sought was how much Mr S could afford to invest in his pension, and that was something for an accountant to advise on, as was prompting the discussion about using the carry forward facility.

Before proceeding with a decision, I asked Mr S for some further information about what he would have done, if he'd been prompted to speak to the accountant at the time. In reply, he said

- it's not clear why he wasn't told about carry forward or what he should have said to Williams & Watt to prompt this;
- he would have preferred to have full advice on his pensions;
- he lost the chance to put more into his pension and the additional investment growth this would have led to;
- the funds were left in K's bank account – he didn't take further dividends as that would have required knowledge of how much tax liability he might have been exposed to, and being exposed to more tax would not have been beneficial.

Mr S also provided some further information from his accountant, which includes details of

K's profits and balance sheet for 2018 and 2019. The accountant says the indications are that K could have made bigger contributions in those years if they wished to; and the general rule is to make the maximum contribution in the current year, using up any carry forward available (starting with the oldest year first as that will be lost next year if not used).

Williams & Watt also provided some further comments, including:

- in 2019 Mr S wasn't paying his maximum contributions;
- he and Mrs S had always been reluctant to pay in too much as they wouldn't then be able to access those funds if needed for the business;
- it was only after it advised Mr S to pay in the maximum that he did so – after asking to defer until after Christmas as they needed to check K's cashflow;
- it stopped mentioning carry forward as it wasn't relevant – this only became relevant in 2020 as Mr and Mrs S were selling the business and didn't need to have large amounts of cash in it;
- it would have been better if they had mentioned selling K earlier.

After considering these further points I issued a provisional decision saying I was minded to uphold the complaint. I considered there had been a failing by Williams & Watt and although wasn't satisfied this had caused a financial loss I proposed to direct Williams & Watt to pay compensation of £500 to Mr S for the distress caused to him.

I set out my reasons as follows:

Williams & Watt accepted that some errors were made and that its adviser had potentially missed the opportunity to maximise the employer's contributions into Mr S' pension. But it said the accountant's role was also important, as the accountant should also have made him aware of the position, and would have been the right person to advise on affordability and on the tax implications of increased contributions.

Our investigator also thought responsibility for what happened lay more with the accountant than with Williams & Watt. Mr S disagrees – he says he relied on Williams & Watt's expertise in pensions to advise fully, and it could have liaised with the accountant if it needed to in order to advise.

So the question for me to decide is whether Williams & Watt is responsible for what happened and – if so – whether Mr S has suffered a loss as a result.

When advising Mr S, I'd expect Williams & Watt to comply with its duties which include, amongst other things, to exercise due skill, care and diligence, and to pay regard to its customer's interests and treat them fairly. Williams & Watt also had to take reasonable care to ensure the suitability of its advice.

Taken in isolation, the advice given to Mr S might be considered suitable. He wanted to make the maximum contribution to his pension and Williams & Watt gave him the information about the maximum allowance for that tax year. But I don't think the advice addressed the issue fully.

Williams & Watt knew Mr S hadn't been paying the maximum in previous years, so he had unused allowances that he could make use of. That meant £40,000 (the annual allowance) wasn't in fact the most he could pay in that year – the contributions could be more than that. So if Mr S was asking what was the most he could pay in, the appropriate advice to give was to explain that he could pay in more.

I note also that in earlier years, the advice had referred to carrying forward unused allowances but in the later years that wasn't mentioned. Williams & Watt says it stopped

mentioning this as it wasn't relevant, and only became relevant again in 2020 when Mr S asked about it, due to the fact he and Mrs S intended to selling the business and didn't need to have large amounts of cash in it. But if Mr S was specifically asking what was the most he could pay, then any unused allowance was relevant as that increased the amount of contributions that could be paid.

I appreciate it would have been for the accountants to advise on how much K could afford to pay in – and on whether any payments would qualify for corporation tax relief under the relevant HMRC tests. But the appropriate advice would have been to explain the allowances to Mr S and prompt him to take advice on this from the accountant before making a decision.

Looking at Mr S' circumstances at the time, the advice wasn't suitable if it didn't address the unused allowances. I appreciate that advice on this would have been needed from the accountant. But what should have happened was for Williams & Watt to raise this, and prompt Mr S to speak to the accountant.

So my view is that Williams & Watt was at fault. But I then need to consider the consequences of that, and what would have happened if the error had not happened.

Mr S has said it's not the amount to invest that is disputed, but his right to have the option whether to invest or not. I think that's right – he should have had the opportunity to seek further advice and decide whether to pay more into the pension, but he lost the opportunity to do that.

From the further information provided, it's not clear what would have happened, if he had been able to take further advice. The accountant has said K did have funds available in its account and could potentially have paid more. But the comments are in general terms. They don't persuade me that higher contributions would have been paid. There were other factors involved, such as the tax implications. And I note, for example, that in 2020 Mr S delayed arranging the further payments into his pension, wanting to check K's cashflow first.

When deciding what contributions to pay, they would have had to consider that K had future cash-flows and tax bills to think about. What's affordable is not as simple as how much cash is available in the company's accounts. All of these things would have needed to be discussed with the accountant and I don't know what the outcome would have been.

So although I can say Mr S lost the opportunity to have further advice, I don't think it's possible to say what the outcome would have been or whether he has suffered a loss.

There has been a loss of opportunity. And it would have been very upsetting to find that he might have been able to pay more into his pension. So Williams & Watt should pay some compensation in respect of that. Taking into account the degree of upset caused, I think a payment of £500 would be fair.

I appreciate this may seem a modest amount in relation to Mr S' pension. But it's not intended to compensate for any financial loss, simply the upset caused to Mr S on finding out what had happened.

Replies to the provisional decision

Mr S has replied saying he is satisfied that the complaint has been upheld, though the compensation for £500 doesn't cover the loss of investment growth caused by not being given the advice to use carry forward which she would have, as funds were available.

Williams & Watt doesn't agree that the complaint should be upheld. It says although there were some errors, it wasn't ultimately responsible as the accountant should have advised on how much K could afford in contributions and comment on the ability to carry forward unused allowances.

Williams & Watt has also advised that the goodwill offer of a payment to K is no longer open. But it has confirmed that the fees are waived and it will not ask for the fees to be paid.

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 the comments from Mr S and Williams & Watt, I see no reason to change my provisional decision. Although Williams & Watt doesn't think the complaint should be upheld, I'm satisfied there was a failing – as indeed Williams & Watt has accepted.

Whilst it was for the accountant to advise K on what payments might be made, Williams & Watt should have referred to the unused allowances and explained that more could potentially be paid into Mr S' pension (after discussing that with the accountant).

But Mr S hasn't been able to confirm what payments might have been made. As I explained in the provisional decision, although he lost the opportunity to consider further contributions, I'm not able to say what would have happened if further advice had been given. So the most I can say is that he lost the opportunity to consider this, and that would have been upsetting for him.

The compensation is not intended to make up for the loss of investment growth as it's not possible to say what loss, if any, there was; it's an acknowledgement of the upset caused. I've reviewed this but remain of the view that £500 is a fair amount.

In coming to my view on what would be a fair amount of compensation, I've taken into account the fact that Williams & Watt has confirmed its fees relating to this have been waived and it will not seek payment.

It will also be upsetting for Mr S to note that Williams & Watt is no longer offering a goodwill payment (£7,500 less the fees that had already been waived, as mentioned above). That offer was made to K. I have explained separately to Mr S why we can't consider a complaint on behalf of K, since that company is not an eligible customer under the rules that govern our service. So while I know this will be upsetting for Mr S, I can't comment on that offer or make any direction in favour of K.

My final decision

I uphold the complaint and direct Williams & Watt Financial Planning Limited to pay compensation to Mr S of £500 in respect of the distress and inconvenience caused to him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 January 2023.

Peter Whiteley
Ombudsman