

The complaint

Mr D complains that CPN Investment Management LLP requested the withdrawal of cash from his self-invested personal pension (SIPP) despite being aware that the value of the SIPP had fallen. Mr D considers that CPN's adviser had a duty of care to check whether Mr D still wanted to go ahead with the withdrawal before proceeding with it. He believes CPN's actions have caused him to suffer a financial loss.

What happened

In February 2020, Mr D met with CPN's adviser. During the meeting, Mr D explained that he had some credit card debt that he wanted to pay-off. He wanted to withdraw cash from his existing SIPP, which held around £25,000, in a tax-efficient way. CPN's adviser recorded that Mr D would draw down £10,000 in the 2020/21 tax year and the remaining balance when the new tax year began in April 2021.

£10,000 was drawn down as planned in March 2020. The adviser subsequently sent a further request to the SIPP provider for a withdrawal of the second amount of £10,000 in the new tax year. This was drawn down in May 2020. However, Mr D only received around £7,000, rather than the £10,000 he'd been expecting. That's because the value of Mr D's SIPP fund fell during the period of market volatility caused by the Covid-19 pandemic.

Mr D was unhappy with CPN's actions. He initially complained that the adviser agreed to move all of Mr D's SIPP funds to cash immediately after the February 2020 meeting, in order to protect the fund value. Mr D also felt that before proceeding with the second withdrawal, the adviser ought to have checked that Mr D was still happy to go ahead. He asked us to look into his complaint.

Our investigator considered the available evidence from the time of the adviser's meeting with Mr D and the initial income drawdown form which had been sent to the SIPP provider. He didn't think the evidence indicated that the adviser recommended selling the underlying SIPP investments and holding the fund as cash. He was persuaded that Mr D and the adviser agreed to make withdrawals of £10,000 over different tax years. And he didn't think CPN could be held responsible for the value of Mr D's fund dropping between February and May 2020.

Mr D disagreed. He acknowledged that he agreed to withdraw the SIPP funds over separate tax years. However, he provided an email from the SIPP provider. This showed that following the submission of the second income drawdown form, which requested a further withdrawal of £10,000, the SIPP provider contacted the adviser. It let CPN know that there were insufficient funds in Mr D's wrapper to facilitate an income payment of £10,000. CPN's adviser responded to the SIPP provider to say that Mr D wanted to withdraw the remaining value of his fund and to proceed on that basis.

But the adviser hadn't checked with Mr D whether he wanted to go ahead despite the lower fund value. And Mr D maintained that if the adviser had done so, he definitely would have decided against proceeding with the second draw down. He said he had access to other savings, so he hadn't needed the money. And while he acknowledged the value of the fund

could've fallen, it conversely could've risen too.

Our investigator reconsidered the matter. He felt that given the email from the SIPP provider, CPN ought to have let Mr D know that he wouldn't be receiving the £10,000 cash he was expecting. But he still wasn't persuaded that it was most likely Mr D would've decided against the second withdrawal if he'd been aware of the fund's fall in value. So he didn't think Mr D had shown he'd suffered a financial loss as a result of this failure on CPN's part.

But he did think that CPN had caused Mr D to suffer a loss of expectation and he thought it would be reasonable for CPN to compensate him for the upset that caused him. He therefore recommended that CPN should pay Mr D compensation of £250.

CPN accepted the investigator's recommendation without prejudice to its position.

Mr D disagreed and stated again that he definitely wouldn't have gone ahead with the May 2020 drawdown had CPN told him that his fund had fallen in value.

I issued a provisional decision on 11 November 2022. In it, I explained the reasons why I thought the fair outcome to this complaint was for CPN to pay Mr D £250 compensation. I said:

'Mr D initially complained to CPN and to us that CPN's adviser told him, in February 2020, that following the meeting, they would sell the investments held in Mr D's SIPP with the proceeds to be held in cash. I'll consider this first.'

Currently, I think the contemporaneous evidence from around the time of the meeting does indicate that it's more likely than not that CPN and Mr D agreed to sell £10,000 worth of SIPP assets each tax year. I'll explore this further.'

It's unfortunate that CPN doesn't have a copy of the fact-find it carried out with Mr D, or a letter explaining his recommendations. The available contemporaneous evidence of the meeting and follow-up is the adviser's meeting notes and the amend income drawdown form Mr D signed in March 2020.'

I've looked carefully at the adviser's notes from the meeting which say:

'After discussing various ways of implementing the withdrawal, we agreed to sell down £10,000.00 in the 2020/2021 tax year and then the remaining balanced (sic) when the new tax year commenced in April 2021.'

The adviser's notes state that the adviser and Mr D agreed that this was the most tax-efficient way to withdraw the funds from Mr D's SIPP. And the notes also state that the adviser:

'Would organise for the first tranche of £10,000.00 to be sold to cash and withdrawn and that the balance would be moved and withdrawn in the new tax year.'

CPN says its standard process of withdrawal of funds across tax years was as follows:

- *Sell enough assets to cover the costs of the initial withdrawal;*
- *Process the withdrawal;*
- *Wait until the new tax year;*
- *Sell enough assets to cover the costs of the second withdrawal.*

I note that the amend income drawdown form which was sent to the SIPP provider states

that Mr D wanted to make an ad-hoc withdrawal of £10,000. This form was signed by Mr D and dated 9 March 2020.

Based on the adviser's notes of the meeting and the withdrawal request which was made a short time later, I find it's more likely than not that Mr D and the adviser did agree that £10,000 of investments would be sold in each tax year and drawn down as cash. On balance, I think the evidence indicates that CPN acted in line with the actions Mr D and the adviser had agreed. I haven't seen enough evidence to demonstrate that it's more likely than not that the adviser and Mr D agreed that CPN would sell all of Mr D's investments immediately after the meeting and hold them in a cash account.

I've also considered whether CPN treated Mr D in a fair and reasonable way when it knew that his fund value had dropped so significantly.

There's no dispute that the first transfer, in the 2020/21 tax year, completed as Mr D had expected. However, after the adviser submitted the second amend income drawdown form to the SIPP provider for a further draw down of £10,000, the provider got in touch with CPN's adviser on 24 April 2020 to let them know that Mr D's SIPP didn't hold enough funds to carry out such a payment. Mr D indicated to the adviser, only two and half months before, that he thought his pension fund held around £25,000. Clearly then, there was a fairly significant shortfall between what Mr D was expecting to receive and what he actually was going to receive. So I think it would've been reasonable for the adviser to call Mr D to explain the situation to him and give him an opportunity to decide whether or not he wanted to go ahead with the second withdrawal. Especially given the prevailing market conditions at that time.

However, this didn't happen. Instead, CPN's adviser told the SIPP provider to proceed with a drawdown for the remaining fund value. On balance, I don't think that this was a fair or reasonable way for CPN to have approached this. The change in fund value was sufficiently significant that CPN ought to have considered that it had a bearing on the earlier agreement with Mr D. So should have verified with Mr D prior to proceeding that he wanted to go ahead with the drawdown.

So I've gone on to think about whether CPN's failure to call Mr D at this point caused him a financial loss. In considering this, I've thought, amongst other things, about the relevant regulator's Principles for Business. In particular, I've considered Principle 2, which requires financial businesses to conduct their business with due skill, care and diligence. And Principle 6, which requires firms to pay due regard to the interests of their customers and to treat them fairly. I've considered too the regulator's Conduct of Business Sourcebook which provides at 2.1.1.1 that 'a firm must act honestly, fairly and professionally in accordance with the best interests of its client.'

Mr D says that had the adviser called him, he definitely wouldn't have withdrawn the rest of the fund. He says he didn't need the money, as he had access to other savings and there was the possibility that the fund values could increase.

I've thought about this very carefully. As the investigator said, there's no way of knowing for certain what Mr D would've done had CPN's adviser let him know that there'd been a clear drop in his fund value. It's possible, given the impact that Covid-19 had on the investment markets around that time, that Mr D might've wished to withdraw his remaining funds to protect them from any further fall in value. Alternatively, as Mr D says, he might have decided against taking funds he didn't need and waited for the market to recover. So I have to make a decision based on what I think is most likely to have happened.

CPN sent us copies of emails between Mr D and its adviser in late May 2020, following the second withdrawal. On 28 May 2020, the adviser said:

'Just to confirm if you want the funds to go back in to the pension we can do that at no cost to you...and this will in effect put you back where you were before the withdrawal.'

There was obviously a breakdown in communication over the second withdrawal but my understanding was that you wanted the funds as soon as possible into the new tax year. I appreciate now that in hindsight you would have liked a phone call and obviously if I could wind the clock back I would have made that call. That said we can get you back into pretty much the same position as you were in by reinvesting the funds back into the pension schemes as detailed in my email of last week. The sooner we can do this the sooner the funds will be back in the market.'

It seems to me then that the adviser offered Mr D the option to reinvest the £7,000 he'd drawn down from the SIPP at no cost, which he said would effectively put Mr D in the position he would've been before the withdrawal. In my view, this would've given Mr D the chance to reinvest the funds which had been in the SIPP prior to the second withdrawal and wait for the market to recover from its volatility. However, there's no evidence that Mr D chose to take up this course of action, which would've effectively unwound the second withdrawal and allowed him to wait and see whether the fund value increased. Instead, it appears that he chose to keep the funds he'd withdrawn rather than reinvest them.

Given that Mr D decided against the opportunity to reverse the payment so soon after it had been made, I don't think I can reasonably or safely conclude that Mr D would've taken a different course of action if he'd been told in advance of the fall in the fund value. And so I don't plan to direct CPN to pay Mr D any difference between his fund value in February 2020 and the date it was disinvested.'

I went on to consider whether it was fair and reasonable for CPN to pay Mr D an award for distress and inconvenience. I felt the impact of the shock of learning about the fall in the value of Mr D's fund could have been reduced had the adviser told him in advance about the reduction in the fund value and checked whether he wished to proceed with the drawdown. This would've given Mr D time to consider his options. And he wouldn't have been put to the trouble and inconvenience of needing to contact the adviser to query why he hadn't been informed in advance about what had happened. So I concluded it was right that CPN compensated Mr D for the impact of the additional trouble and inconvenience its failure to contact him ahead of the drawdown caused him.

Having considered everything, I found that the £250 compensation which CPN had agreed to pay was fair and reasonable in all of the circumstances. And so I intended to direct CPN to pay that amount to Mr D.'

I asked both parties to send me any additional evidence or information they wanted me to consider.

CPN didn't respond by the deadline I gave.

Mr D disagreed with my provisional findings and I've summarised his response:

- He was perplexed by CPN's offer of £250 compensation, as he didn't think this reflected his inconvenience nor its mismanagement of his financial affairs;
- It appeared that the adviser had misled him both in his communications but had also failed to apply the advice he had charged fees for. That's because the adviser had charged ongoing fees, but had placed the responsibility of making drawdown and investment decisions at Mr D's door;

- There is a reasonable expectation that the adviser should have contacted him about the portfolio given the Covid-19 pandemic;
- The adviser had said the reduction in payment value was due to a tax miscalculation by the SIPP provider, but at that point, he would already have given the instruction to exhaust the portfolio. CPN hadn't disputed this and I hadn't commented on it. So he wanted to know what actions would be taken against the adviser and CPN in regard to its conduct;
- The meeting in February 2020 set an expectation that he would receive two payments of £10,000 across two tax years and the balance across the third. But even before the first drawdown, there had been fluctuations in the stock market. So the adviser should've been aware of this before the first drawdown and the potential impact on the investment strategy;
- He was under the assumption all of the investments would be liquidated in cash, so he questioned why he would have realised that they'd dropped in value as a result of stock market falls;
- Neither the adviser nor CPN had been in contact with him to discuss the impact of or make any adjustment for Covid-19;
- He felt that the adviser should have discussed the implications of withdrawing the second tranche of cash with him. But instead, the adviser had chosen to lie;
- At the time of the second drawdown, Mr D hadn't needed the money. So he questioned why he'd have accepted the payment and crystallised losses of between 20 and 25%;
- CPN hadn't acted with due care and attention. Given the adviser had taken the view that Mr D's pension fund could further decrease if not encashed at the time of the second drawdown, this approach should've been applied in February 2020;
- He expected to be paid the difference between what he'd expected to receive and what he had been paid; a refund of advice charges and a higher award of compensation.

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 done so, whilst I'm sorry to disappoint Mr D, I still think CPN's offer to pay him £250 compensation is a fair offer to resolve this complaint and I'll explain why.

First, I'd like to reassure Mr D that while I've summarised his detailed response to my provisional decision, I've carefully considered all he's said. In this decision though, I haven't commented on each point he's made and nor do our rules require me to. Instead, I've focused on what I think are the key issues.

Second, Mr D has questioned what actions will be taken against CPN and its adviser in relation to their conduct. We're not the industry regulator and we have no power to fine or punish the businesses we cover. Our role, in essence, is to consider individual complaints brought by consumers to decide whether a financial business has done something wrong and if so, whether it needs to take any action to put things right. In assessing complaints, we consider, amongst other things, the regulator's rules and guidance. As I've explained, I've taken these considerations into account when deciding Mr D's complaint.

Moreover, Mr D has now raised further concerns which do not appear to have previously been raised with CPN, such as its handling of his investment portfolio ahead of the first drawdown. He's referred to the fluctuation in stock market values before the impact of Covid-19 was felt by the market. And he now complains about CPN's failure to contact him ahead

of the first drawdown to discuss whether he wished to maintain his original investment and drawdown strategy. Under our rules, a financial business must be given a chance to investigate and respond to a complaint before we can look into it. So Mr D will need to raise a separate complaint with CPN about this particular issue before we can potentially help with it.

It's clear Mr D still considers that the adviser had agreed to move *all* of his pension funds to cash immediately, rather than only encashing the funds which were due to be drawn down during the first tax year. But I still think the contemporaneous evidence from the time of the meeting shows it's most likely that Mr D and the adviser agreed to sell £10,000 of assets in each tax year, so that cash could be drawn down. This is in line with CPN's best execution process. And I've still seen no persuasive evidence that the adviser told Mr D that he'd liquidate all of Mr D's assets in February 2020 and hold the total as cash. So it remains the case that I don't think the adviser had any responsibility to sell all of Mr D's assets at the outset.

I've explained above why I think it would've been reasonable for CPN's adviser to call Mr D once he learned from the SIPP provider that Mr D's SIPP didn't hold enough funds to complete the full second drawdown. I haven't changed my view on this point. I appreciate Mr D says CPN's adviser gave him a different explanation for the shortfall amount, but I don't think this makes a difference to the outcome of the complaint overall. That's because while Mr D may have been frustrated by potential misinformation, ultimately, his fund was worth less than he'd expected – irrespective of the reason. And it's still the case that I think the adviser ought to have called Mr D to check that he wanted to go ahead with the second drawdown given the fall in his fund value, regardless of a potential tax miscalculation or fall in fund value. But it's common ground that this didn't happen.

Mr D feels strongly that fair compensation for this failing should be for CPN to pay the difference between what he expected to receive and what he actually received. I disagree. Mr D was only entitled to draw down the cash value of the assets he held at the time they were sold. Unfortunately, there had been a significant fall in asset value in the weeks between the initial agreement and the second drawdown. So even if the adviser had called Mr D at this point, the fact remains that he'd have had to choose whether or not to go ahead with the withdrawal at the lower value or to allow the funds to remain invested in his SIPP.

And as I've set out, I can see that on 26 May 2020, the adviser *did* give Mr D the choice to reinvest the money taken in the second drawdown into the same pension schemes it'd been in previously. The adviser said this would put Mr D back into pretty much the same position as he'd been in before. At this point, Mr D had the choice to reinvest his drawn-down funds into the same funds and place him in a broadly similar financial position as he'd been in prior to the second draw-down. This would've mitigated Mr D's position and the funds would've had the potential to recover their value, thereby mitigating the losses.

But it still appears that Mr D didn't choose to take up this option and instead chose to keep the funds disinvested. I accept Mr D may have had access to other funds at the time and didn't need to access his SIPP. But based on Mr D's decision to keep the drawdown monies disinvested, I'm still not persuaded that Mr D would've taken a different course of action even if the adviser had called him in advance.

I appreciate Mr D says he isn't a sophisticated investor. But I do think the adviser gave Mr D a clear option to reinvest the money in an understandable way. I don't think he was placing all of the responsibility on Mr D to make investment decisions – I think he was simply giving Mr D a reasonable option to try and recover the value of the funds if he wished to do so.

Overall, I don't find it would be fair or reasonable to require CPN to refund Mr D's fees as a

result of its failing here. And I remain satisfied that £250 is fair and reasonable compensation to reflect the trouble and upset I think Mr D was likely caused by CPN's failure to contact him ahead of the second drawdown. So it follows that I'm directing CPN to pay this amount to Mr D.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I partly uphold Mr D's complaint.

I direct CPN Investment Management LLP to pay Mr D £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 1 February 2023.

Lisa Barham
Ombudsman