

The complaint

Mr V complains about pension advice provided by Charles Stanley & Co Ltd (CS).

What happened

The events that occurred aren't disputed by either party. So, I'll only briefly summarise here insofar as setting out the basic relevant facts.

Mr V met with CS in 2020. Mr V paid CS to complete a calculation to provide him with a "carry forward figure" – how much he could contribute for that tax year including previous years carry forward allowances. Following this, Mr V wished to review his group personal pension (GPP). He wanted to invest a further lump sum and look at his investment fund options.

In January 2021, CS provided Mr V with a report that confirmed the amount Mr V could pay into his GPP, including taking advantage of the available "carry forward allowance" from the previous three tax years, to make as much contribution as he could to his pension. Mr V also sought a recommendation as to how the pension should be invested. This was based on information provided by Mr V including payslips and P60s. Mr V paid a one-off fee for this advice and no ongoing advice arrangement was agreed.

Shortly after receiving this report, Mr V instructed his employer to increase his pension contribution via "salary sacrifice" for the month of March 2021. Mr V believed this wouldn't affect his annual allowance as it wouldn't be paid into his pension until April – the new tax year. Mr V told CS of his plans and it confirmed he could proceed with investing the lump sum as per the original advice.

However, whilst the salary sacrifice wasn't paid into Mr V's pension until April 2021, it was taken from Mr V's salary in March 2021, and this had the effect of reducing his annual salary for the tax year 2020 / 2021. This in turn reduced the total amount he could pay into his pension for that tax year. Mr V went on to pay the lump sum he was told he could by CS in to his GPP in March 2021, but this meant he ended up exceeding his annual allowance.

Mr V complained to CS. He asked it to do a number of things in response to his complaint, including refunding all advice fees and deductions from his pension taken by CS as well as paying any fines or tax charges levied by HMRC.

CS responded to Mr V's complaint. It said, in summary, Mr V had only paid a fee for advice at a single point in time, not an ongoing service. CS said that the figure provided for carry forward tax relief was based on information provided by Mr V at the time and was correct. It couldn't be held responsible if the information the advice was based upon had changed.

Unhappy with this response, Mr V referred the complaint to us where one of our Investigators looked into it. Our Investigator thought CS had missed a chance to correct Mr V's understanding and explain to him the affect that increasing his contribution via his employer would have on his income and therefore his annual allowance. She noted that CS had revised its calculations in March 2021 but hadn't taken into account what Mr V had said

regarding his additional salary sacrifice contribution. Our Investigator set out how CS should put right the loss caused by the overpayment being made into his pension. She also noted that CS would've charged around £1,500 plus VAT to complete the contribution calculation. So, she thought it fair that CS refund half of this amount (a total of £900). The Investigator also recommended CS pay £400 compensation for the distress and inconvenience this matter had caused and make a payment equivalent to 30% of the amount that had been overpaid to Mr V's pension.

CS accepted that some of its communication with regards to the impact of salary sacrifice on relevant earnings could potentially be mis-leading. CS suggested it contact the pension provider to see if the excess pension contribution could be unwound – that is the amount paid by Mr V returned to him and the tax relief returned to HMRC. It agreed to pay £900 as a partial refund of the advice fee Mr V paid. And it said it would offer Mr V £400 for the trouble and inconvenience this matter had caused. CS also said that if Mr V wasn't able to have the overpaid amount of £2,519 repaid, it would offer Mr V 30% of this as suggested by our Investigator.

Mr V declined this and said he would accept a refund of £1,500 plus VAT in respect of the advice fee paid, £400 compensation for the distress and inconvenience this matter had caused and 30% of the overpaid amount paid into his pension or the overpaid amount returned to him.

CS attempted to speak to the pension provider but didn't have authority to act on Mr V's behalf. Our Investigator asked Mr V to contact the provider himself. Mr V did so and confirmed that the provider will return the overpaid amount to him with the tax relief being returned to HMRC. Mr V confirmed that he still wished to have the complaint be reviewed by an ombudsman. So, it's been passed to me to consider and make a final 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.

I note that Mr V has submitted his complaint to us in great detail. And he's said he requires answers to a number of questions he's posed, including specifics on who was at fault for various issues. I want to reassure Mr V that I've read and considered everything he's said. If I don't mention or go into detail about certain points, that's not because I've ignored it. This simply reflects the informal nature of our Service as an alternative to a court. My role is to consider whether a financial loss has been incurred as a result of actions or a mistake by CS. And, if it has, to put right that loss. So, I'm going to focus on what I consider is the crux of this complaint – the incorrect figure for the "carry forward allowance" provided to Mr V.

It's clear from correspondence between Mr V and CS that Mr V was reluctant to spend more on advice than was absolutely necessary. And I think it's clear that, following the advice given in January 2021, there was no further agreement for advice to be provided. I have noted Mr V's comments that the advice letter recommends further pension reviews. But this is a recommendation, not an agreement to carry them out, nor to do so for free.

I've also thought about Mr V's comments that the advice should've been delayed to a later time as his income situation was fluid. But I don't agree. He asked CS for advice based on his situation at the time, and this is what was provided. The advice letter did make clear that this was based on what CS knew of Mr V's situation at the time. And, leaving it any later, given the time this would take and the complexity of these calculations, may have meant Mr V missed the opportunity to make his contribution in that tax year.

By increasing his pension contribution via his employer, Mr V in effect reduced his salary. The consequence of this was it also reduced the amount he could pay into his pension as a lump sum due to HMRC rules. Mr V asked CS in March 2021 if this would have an impact on the amount he could pay as a lump sum into his pension. I think that CS could've refused to provide further information at this time given that no agreement for further advice was in place. However, CS' advisor tried to help Mr V. Whilst I've no doubt this was done in a genuine effort to help Mr V, this is unfortunately where the mistake was made in that the advisor didn't tell Mr V of the impact of the additional amount he was paying into his pension via salary sacrifice. And, based on this, Mr V proceeded with making the recommended lump sum payment into his GPP, in addition to the further salary sacrifice contribution via his employer. So, I'm satisfied a mistake by GPP did lead to Mr V to exceed his annual allowance.

There was the potential this could cause Mr V a financial loss. However, he's now confirmed that the pension provider is in the process of refunding the overpaid amount and the excess tax relief will be repaid to HMRC. So, this puts right the financial impact of the mistake. By this, I mean that Mr V will not have overpaid into his pension, he will have the money returned to him and he will not be liable for any excess charges or tax to HMRC. So, whilst there has been no financial loss, I need to go on to consider if the impact this mistake has had on Mr V and whether any further compensation is warranted.

Mr V originally suggested that the entire advice fee of around £3,600 should be refunded. He's since reduced this suggestion to £1,500 plus VAT. In order to consider whether this is a fair outcome I've looked at what advice the fee covered. This fee covered more than just the calculation of the amount Mr V could pay into his pension using the carry forward allowance. It also covered the research and recommendation of what fund to invest in and the overall pension advice. And I can see Mr V has asked a number of questions of CS and received further information and opinion following the initial letter of recommendation. And there is no suggestion that the investment advice given to him was unsuitable. So, overall, I'm satisfied the advice was fairly charged for work carried out.

Whilst CS did make a mistake, as I've set out above, this was after the advice he'd paid for was provided. And was, in part, due to Mr V changing his plans. I'd normally require CS to correct any financial loss that has been incurred and compensate Mr V for any distress and inconvenience this matter has caused. However, Mr V's pension provider has been able to unwind matters, so no loss has occurred.

CS has offered to refund half of what it would've charged for the carryover calculation on its own. This works out to a total of £900. I've thought about this, and I think this is fair in the circumstances and reasonable in the circumstances.

CS has also offered £400 compensation for the distress and inconvenience this matter has caused. Our Investigator suggested this amount and felt it fair. Whilst this has clearly been frustrating for Mr V, and has taken him some time and effort to resolve the matter, I agree that this amount is a fair reflection of the trouble this matter has caused.

Putting things right

To put things right, I'm going to tell Charles Stanley & Co Ltd to:

- Refund £900 of the advice fee (made up of £750 fee plus VAT).
- Pay £400 for the distress and inconvenience this matter has caused.

My final decision

I uphold this complaint and direct Charles Stanley & Co Ltd to put matters right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 30 May 2023.

Rob Deadman
Ombudsman