DRN-4013318

The complaint

Ms R complains that The Private Office Limited ('TPO') failed to alert her to a tax liability she incurred in relation to her student loan when providing her with investment advice about bond encashment.

What happened

In April 2021, Ms R approached TPO for financial advice. She held existing investments elsewhere and wanted to review her finances and explore options for maximising her capital.

Ms R completed TPO's fact find document which asked questions about her financial situation and explored her investment needs and objectives. This was followed up with an online meeting with TPO's advisor who recommended, amongst other things, encashing investment bonds currently held by Ms R with a view to releasing some cash and moving the rest of the money to more tax efficient investments managed by TPO.

After acting on TPO's advice, Ms R was shocked to discover that she had incurred an additional amount of more than £5,000 on her annual tax bill as a result.

TPO didn't agree it had done anything wrong or that Ms R had lost out in money terms. In brief summary, it said:

- Ms R hadn't made the advisor aware of her student loan, despite being asked to provide information about loans and liabilities
- based on the information Ms R provided to TPO, its advice had been suitable
- Ms R hadn't incurred any additional tax as a result of acting on TPO's recommendations since the payment had gone towards paying off her student loan
- encashment of bonds was likely to happen at some point during Ms R's working life and this would always have incurred a student loan repayment.

When our investigator looked into Ms R's complaint, she agreed with TPO that Ms R wasn't worse off financially as she was required to repay her student loan and she would now benefit from paying less interest overall as a result of making this lump sum payment as part of her tax return. But our investigator felt that TPO should have specifically checked whether Ms R had any student loans and its failure to do this caused Ms R considerable worry and inconvenience as she had no warning that her next tax bill would be approximately £5,000 more than she expected to pay. Our investigator felt that £500 was fair compensation for the trouble and upset she'd been caused as a result.

Ms R said she was happy to accept the investigator's findings and agreed with the outcome. TPO takes a different view. It mainly says:

- TPO asked Ms R about loans and liabilities as part of its fact find so it would be reasonable to expect Ms R to have included information about her student loan and TPO wasn't responsible for the fact that she forgot to include it
- TPO was entitled to rely on the information Ms R provided so her complaint shouldn't be upheld

- in any event, £500 is a disproportionate amount of compensation and, in line with guidelines issued by us, an award here should not be more than £300. TPO referred to other settled complaints showing awards of up to £300 for trouble and upset.

As the complaint hasn't been resolved informally, it comes to me for 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.

The crux of the matter seems to me to be whether TPO's failure to have elicited information about Ms R's student loan amounted to a service failing on the part of TPO and, if so, the extent to which this impacted on Ms R and what amount would be fair compensation. So this is the focus of my decision.

I find that Ms R was entitled to expect a better level of service from TPO than she experienced, for the following reasons.

Despite what TPO has said about student loans being essentially like any other loan, a student loan is unlike other loans in a number of key respects – it is paid to HM Revenue and Customs and collected through taxation with repayments deducted at source each month through the PAYE system. Repayment starts only after the student's course ends and annual income exceeds the threshold set by the government. Crucially to my mind, Ms R doesn't have to actively do anything to 'make' her monthly student loan repayment. So I can understand why Ms R might have either forgotten or not realised this was information that should have been included on the fact find.

TPO's questions about loans and liabilities make no specific reference to student loans. I don't think the wording or layout of the fact find was enough to have prompted Ms R to volunteer information about her student loan. I think it's more likely she thought she was only being asked about things like credit card debt and other borrowing where she made monthly repayments to creditors.

TPO however had an obligation to provide suitable advice to Ms R. This put the onus on TPO to think carefully about Ms R's circumstances alongside her financial situation and it needed to ask appropriate questions. Irrespective of the fact that Ms R made no mention of a student loan on her fact find, this was something the advisor should have considered. Recollections differ about whether Ms R made the advisor aware that she had graduated from university and the advisor's notes don't show this happened. But in any event, I consider that the advisor should reasonably have asked a question about this, given the information in TPO's fact find that suggested the possibility of someone with Ms R's profile having an outstanding student loan.

Advising about potential tax implications was a key part of the advisor's role. The advisor had alerted Ms R to the benefits of disinvesting from one of her existing bonds over a two year period in order to mitigate potential tax liability. TPO ought to have advised Ms R about the impact that encashing bonds in line with its recommendation would have on her next tax bill – which didn't happen here.

For these reasons, I find TPO acted unfairly and unreasonably towards Ms R and I am upholding Ms R's complaint that TPO failed to provide her with an adequate service. So I have considered the question of fair redress.

Did Ms R suffer any financial loss?
The investigator explained why she didn't think TPO's failure to alert Ms R to all the tax consequences of encashing bonds had resulted in actual financial loss. She thought that Ms R would still have gone ahead with bond encashment, even if she'd known about the tax implications so far as her student loan was concerned, and said TPO's recommended investments had been suitable for Ms R. Both parties agree with this part of the investigator's assessment. So I don't need to say more about this, except that I agree Ms R is no worse off in money terms as a result of what happened.

Did Ms R suffer any other detriment?
If TPO had found out that Ms R was paying a student loan and mentioned the impact that encashing bonds would have on her next tax bill, as should have happened, then Ms R could have avoided the shock of finding this out for herself, after the event.

Ms R had a portfolio of investments and I think it's fair to say her financial situation meant she wasn't facing any immediate prospect of having to struggle financially with everyday bills and living costs, even with this unexpected tax bill.

But I don't think it follows, as TPO suggests, that she wouldn't have suffered the degree of stress she claims. I can completely understand that what happened was very upsetting and frustrating for Ms R. The tax demand came as an unwelcome and alarming surprise. It was a substantial sum to suddenly find out she needed to pay upfront and she hadn't factored this into her financial planning as she hadn't known about it. Her background and circumstances placed her in a position where she was entirely reliant on TPO's financial advice and she trusted that the advisor had told her everything she needed to know about. So it's understandable that she felt very let down and anxious when she found out that TPO hadn't warned her about all the implications of its advice. And I have no good reason to doubt Ms R when she says that her reaction was to worry about where she would find the extra money…' *in the middle of a cost of living crisis, where interest rates, energy costs and food costs are all skyrocketing*...' keeping in mind also that she believed at the time she was paying an additional '*charge*'.

Fair compensation needs to properly reflect the impact on Ms R of TPO's service failings on this occasion. The £500 suggested by the investigator matches the level of award I would make in these circumstances had it not already been proposed. I don't doubt that TPO's poor handling of matters, as described above, caused Ms R significant distress and anxiety and whilst the impact on Ms R may have been relatively short-term, it was nevertheless significant and serious. I am satisfied that £500 is in line with the amount this service would award in similar cases and it is fair compensation for Ms R in her particular circumstances.

Putting things right

To put things right for Ms R, if it hasn't already done so, TPO should pay Ms R £500 compensation for the impact on her of the service failings I have identified.

My final decision

I uphold this complaint and direct The Private Office Limited to take the steps set out above to put things right for Ms R.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 11 September 2023.

Susan Webb

Ombudsman