

## **The complaint**

Mr G complains that New Leaf Distribution Limited wrongly advised him that he didn't have time to maximise his pension contribution.

## **What happened**

Mr G wanted financial advice from New Leaf after receiving a large bonus.

In February 2021, Mr G met with an adviser. He says he told the adviser he wanted to maximise contributions into his pension before the end of the tax year. He says the adviser told him that he would need to consolidate his pensions first and so there wasn't time to do this. Based on this advice, Mr G didn't maximise his pension contribution in the 2020/21 tax year, and the majority of his bonus was placed into various investments.

In January 2022, Mr G again met with the adviser from New Leaf. He says he was advised to contribute £57,866.57 into his pension. Mr G says he understood from the adviser that in doing so, he would receive a rebate of £17,548.57 through self-assessment. However, he ended up only receiving a rebate of £4,445.60.

Mr G complained to New Leaf. He thought its adviser had wrongly advised him in 2021 that he couldn't top up his pension before his previous pensions were consolidated. He was of the view that he'd lost out on a tax rebate of over £30,000 as a result. Mr G was also unhappy that he'd been given wrong information about the rebate he would receive after topping up his pension in 2022.

New Leaf said the information from February 2021 reflected that the meeting was to focus on Mr G's investment requirements. It accepted that its adviser told Mr G that he would look to consolidate pensions where possible, but said there was no record that Mr G wanted to maximise the carry forward rules for that tax year.

New Leaf noted that its adviser met with Mr G on 24 March 2021 (once it had received some information about his various pensions) and it was recommended that he consolidate four of the pensions. It said the adviser recalled that Mr G raised the question about using the carry forward rules at this point, and the adviser told him there wasn't enough time to do this before the end of the tax year.

In respect of the January 2022 meeting, New Leaf said its adviser had told Mr G he would receive 20% tax relief at source and a 20% higher rate tax adjustment on his tax return.

Unhappy with New Leaf's response, Mr G brought a complaint to this service.

I issued a provisional decision on 12 June 2023. Here's what I said:

### *"2021 meeting*

*The fact-find from the February 2021 meeting and later suitability report confirms that pensions were discussed. The documents don't suggest that it was a priority for Mr G to*

*maximise his pension contributions before the end of the tax year.*

*However, Mr G has provided a handwritten note dated 2 February 2021 with an agenda of items to discuss with New Leaf's adviser. One of his agenda items was to establish if a pension top up was for three or four years. He wrote on there the adviser had said it was three. He also wrote that the adviser said to consolidate all pensions first, and 'not this year'.*

*New Leaf says that an advisor cannot undertake pension contributions on any basis, let alone carry forward, unless they're in possession of all pension contribution information from all providers in previous tax years. It says it wrote to Mr G's pension providers, but not all had responded before the end of the tax year. It says if it had arranged carry forward for Mr G without all the information it needed, then it would have been at risk of enabling a potential overpayment of a pension contribution.*

*New Leaf also says that if Mr G had asked about utilising the carry forward rules, then it would have advised him that the priority would have been to look at his existing pensions first in order to consolidate, and then looked at maximising pension contributions.*

*New Leaf's stance on the matter supports Mr G's recollections of what was discussed at the February 2021 meeting. On balance, I think it's more likely than not that Mr G had enquired about maximising his pension contributions, and that New Leaf advised him in February 2021 that it needed to firstly consolidate his existing pensions and so there wasn't time to do this. It's also the case that New Leaf accepts its adviser was aware in March 2021 that Mr G had asked about maximising his pension contributions, which was before the end of the tax year.*

*The next point for me to consider is whether it was reasonable for New Leaf to say that it wouldn't have been appropriate for it to consider using the carry forward rules until it had information from Mr G's various pension providers.*

*I appreciate New Leaf would want to see all relevant information about Mr G's existing pensions before advising on consolidation. However, I agree with our investigator that this information wouldn't be necessary in respect of making use of the carry forward rules.*

*The fact-find confirms that all of Mr G's pensions were paid up/preserved, except for his workplace pension that he was paying into at the time. So it seems to me that it would have been fairly straightforward to find out from Mr G what contributions he had made in the previous few tax years to establish whether he met the carry forward rules. I don't think New Leaf needed to contact all of his paid up/preserved pension providers first.*

*As a result of New Leaf's actions, Mr G missed out on using carry forward for the 2017/2018 tax year. I therefore intend to find that New Leaf should calculate how much tax rebate Mr G missed out on because of this. It should pay this to Mr G, plus interest. I also agree with our investigator that Mr G has been caused inconvenience and worry as a result of the matter, and so I intend to require New Leaf to pay him £300 compensation for this.*

## *2022 meeting*

*Mr G has also complained that the adviser told him in 2022 that he would receive a tax rebate of £17,548.57 if he maximised his pension contributions at that time. However, he says this advice was incorrect, and he only received £4,445.60.*

*The adviser emailed Mr G on 4 January 2022 and said, 'You will...receive basic rate tax relief at source on any contribution and as a Higher rate TAXPAYER YOU WILL RECEIVE AN ADDITIONAL 20% VIA SELF ASSESSMENT.'*

*I've also read the financial planning report dated 18 January 2022. In this report, the adviser said that Mr G wanted to maximise his tax-free pension contributions for the tax year, utilising the carry forward rules. He confirmed the annual allowance for pension contributions before paying tax was £40,000 that tax year, and said that if Mr G wanted to contribute more than this, he may be able to carry over any unused annual allowances from the previous three years. The adviser also confirmed that, under the carry forward rules, Mr G's contributions would be restricted to his maximum earnings in the current tax year, which Mr G had confirmed to be £75,415, and that he would like to make that contribution if possible.*

*The report included a table, which provided details of the contributions Mr G had made to his pension since 2018/19, and how much unused annual allowance he had remaining for each year. The adviser confirmed Mr G had made a pension contribution that year of £3,081, and so had £36,919 remaining of the £40,000 allowance. He said that to make the remaining contribution of £35,415 (this being the difference between £40,000 and Mr G's annual earnings of £75,415), Mr G could use a portion of the £38,226 available from the 2018/19 tax year allowance. Finally, the adviser confirmed that Mr G could therefore make a further gross pension contribution of £72,334. These figures appear to me to be correct.*

*I've also seen an undated document titled 'funding reference and amounts' that I understand was written by the adviser. This referred to funds to be withdrawn from an investment. This document stated 'tax relief...£17,548.57 added by HMRC now £17,548.57 tax rebate to [Mr G] during the next financial year'.*

*On 12 July 2022 (after the 2021/22 tax year had ended), the adviser wrote to Mr G and said that, further to previous discussions, he could confirm the likely tax treatment of the single pension contribution was as follows:*

*'Gross payment £72,333.04  
Basic rate Tax relief at source £14,466.61  
Higher rate tax relief on contribution exceeding basic rate threshold of £50,270  
= £72,333.04 - £50,270 = £22,063.04 x 20% = £4,412.60*

*Total tax relief is £14,466.61 + £4,412.60 = £18,879.21'*

*Mr G says he understood from the adviser that he would receive a rebate of £17,548.57 if he maximised his pension contributions in the 2021/22 tax year. And that it wasn't made clear to him that he would only receive higher rate tax relief on a proportion of his contribution, rather than his whole contribution.*

*The undated document does indeed say that Mr G would be entitled to a £17,548.57 tax rebate the following year. However, it's not clear how this figure was arrived at, or what it was based upon. Even if the adviser mistakenly thought that Mr G would be able to receive higher rate tax relief on the whole pension contribution, this wouldn't be £17,548.57. So I don't think this document is enough for me to conclude that the adviser misled Mr G about the tax rebate he might receive regarding his pension contribution.*

*The adviser was correct to say on 12 July 2022 that the contribution would have basic rate tax relief at source, and higher rate tax relief on the contribution exceeding the higher rate threshold of £50,270. I appreciate he could have made it clearer what 'at source' meant, and that Mr G could claim the higher rate tax relief through self-assessment, but that doesn't mean that he misled Mr G about this.*

*I also note that the January 2022 financial planning report made it clear the adviser wasn't a*

*tax specialist, and that Mr G should consult a tax specialist if he had any queries or concerns regarding the use of the carry forward rules.*

*Even if I'd found that the adviser had misled Mr G, he never would have been entitled to a rebate of £17,548.57. Therefore, he would have only suffered a loss of expectation rather than actual financial loss.*

*Mr G says he thinks the adviser ought to have told him to spread his pension contribution over the next three tax years, so he could receive higher rate tax relief on all of the contribution. He says if this had happened then he would have reduced his income to around the higher rate tax threshold and would have been able to keep child benefit for those years, and possibly marriage allowance transfer.*

*I understand that Mr G had his own tax adviser at the time. If Mr G had wanted advice on how to plan and minimise his exposure to tax and take into account any allowances, I think he should have sought advice from his tax adviser. Ultimately, Mr G wanted to maximise his pension contribution in the 2021/22 tax year, and I'm satisfied that New Leaf arranged this for him."*

I asked both parties for any comments they wished to make on my provisional findings.

Mr G responded to say he didn't only lose out on the tax rebate for the 2017/18 tax year, but also lost out on rebates for the 2018/19 and 2019/20 tax years. He also said that he had been a 45% taxpayer in 2020/21, and so would have been entitled to a higher amount of tax relief if he'd made use of carry forward in that year.

I explained to both parties that Mr G had made use of the carry forward rules for the 2018/19 tax year (in the 2021/22 tax year), and also could have done so for the 2019/20 tax year (in the 2022/23 tax year). That was why I had concluded that New Leaf's actions meant that Mr G only missed out on using carry forward for the 2017/18 tax year.

However, I thought Mr G had made a reasonable point that he was a 45% taxpayer in the 2020/21 tax year. I noted that Mr G was a 40% taxpayer in the 2021/22 tax year, but confirmed I didn't know what rate of tax he paid in the 2022/23 tax year. I also explained I didn't know whether Mr G had chosen to use the carry forward rules for the 2019/20 tax year (in 2022/23). So whilst there were some unknowns, I accepted Mr G's point that he could have received more tax relief if he had made use of the carry forward rules in the 2020/21 tax year for the previous three years, due to him being a 45% taxpayer at that time.

I therefore advised both parties that I intended to require New Leaf to do the following:

*'1) Calculate how much tax relief Mr G missed out on as a result of not making use of carry forward for the 2017/18 tax year, and pay this to him (to be clear, this should be tax relief at source, as well as the tax rebate he could have claimed). Interest at 8% simple per annum should be added from the date he submitted his tax return following the end of the 2020/21 tax year to the date of settlement.*

*2) Mr G did make use of carry forward for the 2018/19 tax year (in the 2021/22 tax year) and so received tax relief at source, and would have also been able to claim a tax rebate through self-assessment. However, he missed out on claiming an additional 5% tax rebate on this amount due to him no longer being a 45% taxpayer, as a result of New Leaf's actions. So I require New Leaf to pay this to him.*

*It's also the case that Mr G couldn't use all of the 2018/19 allowance available. This was due to his earnings in the 2021/22 tax year, and not because he didn't want to use it. I*

*understand there was £2,811 allowance remaining that was unused. So New Leaf should calculate how much tax relief Mr G missed out on by not utilising this full amount, and pay this to him. Interest at 8% simple per annum should be added to these amounts from the date he submitted his tax return following the end of the 2021/22 tax year to the date of settlement.*

*3) I don't know if Mr G made use of carry forward for the 2019/20 tax year (in the 2022/23 tax year). If he did, then the same reasoning would apply as point 2 above. Mr G should confirm to New Leaf his earnings for the 2022/23 tax year and how much of his 2019/20 tax year allowance was used under the carry forward rules, so that New Leaf can calculate any redress due (using the same principles in point 2). If Mr G didn't use the carry forward rules for the 2019/20 tax year allowance but his earnings were high enough in 2022/23 for him to have done so, then I don't intend to require New Leaf to pay any redress for this.*

*New Leaf should also pay Mr G £300 compensation, as mentioned previously.'*

Again, I asked both parties for any comments they wished to make.

Mr G confirmed he was a 40% taxpayer in the 2022/23 tax year, and that he didn't make use of carry forward for 2019/20. He accepted my new findings.

New Leaf responded with details of the redress it intended to pay Mr G.

### **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.

As Mr G didn't make use of the carry forward rules for the 2019/20 tax year, but his earnings were high enough in 2022/23 for him to have done so, I don't require New Leaf to pay any redress for this. It wouldn't be appropriate for me to find that New Leaf's actions meant that Mr G missed out on using carry forward for the 2019/20 tax year, when he had the opportunity to do so in the 2022/23 tax year, but didn't.

New Leaf has provided me with details of the redress it intends to pay Mr G. This should be provided directly to Mr G if he accepts this final decision.

Neither party has provided further comments about my provisional findings in respect of the tax rebate received of £4,445.60. I therefore remain satisfied that New Leaf didn't mislead Mr G about the tax rebate, and for the same reasons as set out in my provisional decision.

### **Putting things right**

New Leaf should do the following:

1) Calculate how much tax relief Mr G missed out on as a result of not making use of carry forward for the 2017/18 tax year, and pay this to him (to be clear, this should be tax relief at source, as well as the tax rebate he could have claimed).

Interest at 8% simple per annum should be added from the date Mr G submitted his tax return following the end of the 2020/21 tax year to the date of settlement.

2) Mr G did make use of carry forward for the 2018/19 tax year (in the 2021/22 tax year)

and so received tax relief at source, and claimed a tax rebate through self-assessment. However, he missed out on claiming an additional 5% tax rebate on this amount due to him no longer being a 45% taxpayer, as a result of New Leaf's actions. So I require New Leaf to pay this to him.

It's also the case that Mr G couldn't use all of the 2018/19 allowance available. This was due to his earnings in the 2021/22 tax year, and not because he didn't want to use it. I understand there was £2,811 allowance remaining that was unused. So New Leaf should calculate how much tax relief Mr G missed out on by not utilising this full amount, and pay this to him.

Interest at 8% simple per annum should be added to these amounts from the date Mr G submitted his tax return following the end of the 2021/22 tax year to the date of settlement.

New Leaf should also pay Mr G £300 compensation.

### **My final decision**

My final decision is that I partly uphold this complaint. I require New Leaf Distribution Limited to pay Mr G compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 31 July 2023.

Chantelle Hurn-Ryan  
**Ombudsman**