

The complaint

Mr B complains that CASLP Ltd (Sanlam) failed to issue him with forms to complete and return in time for his payments from his pension policies to be processed in line with his instructions. He feels this has led to increased income tax liabilities.

What happened

Mr B had some capped drawdown policies with Sanlam. As he was approaching age 75, after which Sanlam no longer offered capped drawdown on his policies, Sanlam wrote to Mr B on 16 July 2021 to tell him that he might want to consider converting his policies to Flexi-access drawdown under its OneSIPP pension product.

Sanlam wrote to Mr B again on 28 September 2021 to set out Mr B's options and the actions he'd need to take. Sanlam said that it wouldn't offer capped drawdown pension beyond age 75. Instead, Mr B had the following options:

- a) he could choose to take all his pension fund, in the form of Flexi-Access Drawdown from his current policy, as a one-off cash lump sum payment, or
- b) he could switch to its OneSIPP contract, in which he could continue to receive a regular and/or ad-hoc income from his pension fund through Flexi-Access Drawdown, or
- c) he could transfer his drawdown pension fund to another provider.

Sanlam wrote to Mr B again on 8 October 2021 about his capped drawdown policies after his 75th birthday.

Mr B completed a Maturity Options Form on 12 January 2022. He said he wanted to take his pension funds as a one-off cash lump sum payment. Sanlam said it received the completed form on 14 January 2022.

Sanlam replied to Mr B on 14 January 2022. It said that before it could proceed with his request, it would have to find out what advice/guidance he'd been given about the decisions he was now making and establish if he was acting in line with that advice/guidance. And identify what potential risk factors existed for his chosen option and notify Mr B of the risks identified. It asked Mr B to complete a Lifestyle Questionnaire & Assessment form.

Mr B wrote to Sanlam on 26 January 2022. He said he'd received advice that in order to minimise his tax exposure he should take part of his pension funds in the current tax year (2021/2022). And transfer the balance into a Nominees and Successors Drawdown Facility, then take the balance in the 2022/2023 tax year. He asked Sanlam if this was possible, and what the potential costs would be.

Sanlam replied to Mr B with security questions on 28 January 2022. Mr B responded to this the same day.

Sanlam next wrote to Mr B on 2 February 2022 to tell him his intended withdrawal method would be possible. It said it would move Mr B to its OneSIPP product to facilitate the

drawdown. Sanlam also provided a website link with information about the product. And said that if Mr B wanted to proceed, he should complete and return the risk assessment it had sent him on 14 January 2022.

Mr B completed the Lifestyle Questionnaire & Assessment form on 16 February 2022. And Sanlam said it received it on 21 February 2022.

Mr B complained to Sanlam on 6 April 2022 after he'd noticed he'd been sent a payment from his capped drawdown policies after his 75th birthday. He felt Sanlam had completely disregarded his wishes. And that he would now have to pay additional income tax.

Sanlam issued a preliminary response to Mr B's complaint on 4 May 2022. It acknowledged that it should've issued him with paperwork when it had received his completed Lifestyle Questionnaire & Assessment form. And that as it hadn't, the process to complete Mr B's request had stalled, leading to him missing the opportunity to minimise his tax liability. Sanlam said the forms were only sent to Mr B on 17 May 2022.

Sanlam said it needed to establish the loss and calculate the appropriate redress. So it needed documentary evidence from Mr B of his total earnings for the 2021/2022 tax year and his projected earnings for the 2022/2023 tax year over and above the drawdown payment requested.

On 5 May 2022, Sanlam confirmed to Mr B that a scan of his most recent tax return would be sufficient evidence of earnings.

Sanlam issued its final response to the complaint on 31 May 2022. It upheld the complaint. It said that when it had received Mr B's completed form on 21 February 2022, it should've sent him a Flexi-Access Drawdown Form, a Capped Drawdown to Flexi-Access Drawdown conversion form and Risk Warnings for signing. But as it had failed to do so, the process had stalled and Mr B had missed the opportunity to take the actions he'd wanted to take.

Sanlam apologised for its error and the inconvenience it'd caused. And said that it didn't yet know the exact amount of any additional tax liability Mr B would incur due to the whole amount of his pension being encashed in the 2022/2023 tax year, rather than in both the 2021/2022 and 2022/2023 tax years. It said it'd asked Mr B on 4 May 2022 for documentary evidence which he hadn't yet provided. And that without that information, it couldn't assess the financial loss.

Sanlam also sent Mr B a hamper as a goodwill gesture in recognition of the error it'd made when it'd failed to send the forms on 21 February 2022.

Mr B wasn't happy with Sanlam's response, so he wrote to it again on 6 May 2022. He didn't know why Sanlam needed him to repeat his intentions on the required forms, given he'd made clear what he wanted to happen over two tax years. He accepted Sanlam's apology and that the forms had been missed due to an administrative error, but wanted to know how Sanlam was going to put things right. Mr B sent Sanlam his own calculations of his April 2021 and April 2022 income tax liability.

Sanlam replied to Mr B on 1 July 2022. It said that the exact amount of any additional tax liability was still unknown. And that although it was prepared to reimburse Mr B for any additional tax he'd have to pay as a result of its error, it could only do this once the charge had actually been incurred and the exact amount was known. It also said that Mr B had yet to return completed application forms to allow the process Mr B wanted to go ahead. It said it had therefore had to extend Mr B's capped income in the meantime.

Mr B replied to Sanlam on 6 July 2022. He felt he'd complied with all Sanlam's requests. And said that he would bring his complaint to this service. To put things right, Mr B would like compensation for the poor customer service he's experienced. And for Sanlam to cover the additional tax he will end up paying.

Sanlam told this service it was surprised Mr B had brought his complaint to this service before he'd actually incurred any tax loss. It said it was committed to redressing any future tax loss for Mr B.

Mr B wanted to know whether Sanlam would continue to pay him income from his capped drawdown policies. He said he had plans for the cash lump sum he'd wanted which would now have to wait. He also wanted Sanlam to cover the postage expenses he'd incurred in pursuing his complaint.

Sanlam said that Mr B was still receiving capped drawdown income payments, which although permitted, wouldn't normally be possible within his pension policies after age 75. It said it was still trying to transfer Mr B into the OneSIPP product so it could proceed with his request but he still hadn't completed and returned the OneSIPP docs. Sanlam also said that there was no way it could calculate Mr B's loss until it had received the paperwork to advance the conversion of the old policies to a OneSIPP so that it could allow the required drawdown to happen.

Sanlam acknowledged that there was a possibility that Mr B's first cash payment could've been made by the end of the 2021/2022 tax year if he'd been sent the appropriate documentation on 21 February 2022. But said that he would've had to return the forms in a timely manner for that to be the case. And noted that he hadn't historically done that.

Our investigator asked Sanlam specifically which documents Mr B needed to sign so that the process could be completed. And what the next steps would be for the process itself and for the financial loss calculation.

Sanlam provided the required forms on 30 September 2022. And said that the next steps would be to convert Mr B's policies. It said it still needed to establish what tax relief Mr B had left in the 2021/2022 tax year before he would become liable to higher rate income tax. And that although it had asked Mr B for suitable evidence, he had yet to provide it.

Our investigator acknowledged that Mr B was frustrated with how long the complaint was taking to resolve. But considered Sanlam's offer to put things right was fair and reasonable under the circumstances. He said that once Mr B had returned the required forms to Sanlam, his policy would be converted and he'd be able to encash his funds. He said Sanlam still needed income tax information from Mr B before it could calculate the required redress.

Mr B asked our investigator to send him a summary of what Sanlam still needed from him. Our investigator confirmed that Sanlam still needed the forms he'd recently sent to Mr B to be completed and returned. And evidence of Mr B's total earnings in the 2021/2022 tax year. He explained that Mr B's own calculations weren't able to be used as evidence.

Mr B told our investigator he was reluctant to complete the required forms as he never wanted to move his funds into a flexi-access drawdown. Our investigator said that Sanlam had said that this was the only way it could carry out his request. He also said that because Sanlam had initially sent the required forms to Mr B in May 2022, he couldn't reasonably say that it could've processed Mr B's request until the forms had been completed and returned. Mr B eventually returned the forms to Sanlam who received them on 8 November 2022.

Mr B had a number of questions for Sanlam, as follows:

- When would the balance of his pension be paid?
- How much would be paid?
- What compensation would Sanlam pay him for its errors and the payment delay?
- Would Sanlam itself correct the additional income tax?
- Would it pay all costs and reimburse him for postage?
- Would it pay interest on all amounts due after 5 April 2022?

Sanlam wrote to Mr B on 23 November 2022 about his transfer. The transfer was paid on 6 December 2022.

On 16 December 2022, Mr B acknowledged the transfer of £31,382.78 into his bank account. He said he was extremely disappointed that there was no detail about how the payment had been calculated. He asked Sanlam to provide the value of his fund on 5 April 2022, and to explain how the income tax had been calculated, leading to the payment of £31,382.78.

Sanlam confirmed that the gross amount of the payment had been £54,705.74. Income tax of £23,322.96 had then been deducted, leading to a net payment of £31,382.78.

Sanlam also said that it had covered the compensation it would pay Mr B in its final response letter.

Sanlam said that it still hadn't received appropriate confirmation that Mr B had any basic rate tax relief remaining by the end of the 2021/2022 tax-year. It asked if this service could obtain Mr B's 2022 P60 and forward it to them. It said it could then carry out a loss calculation.

Sanlam also said that it couldn't simply deduct any additional tax from any payments made to Mr B. It said it was legally obliged to deduct tax as directed by HMRC. But it said it would cover any reasonable and directly attributable costs which wouldn't otherwise have been suffered by Mr B, such as postage costs.

In response to Mr B's question about whether Sanlam would pay him interest on all amounts due after 5 April 2022, Sanlam said that it had issued the required forms to conclude the process on 17 May 2022, but that Mr B hadn't returned them until 8 November 2022. So it was unsure what its liability period should be.

Our investigator shared Sanlam's responses to Mr B's questions with him. He still felt that Sanlam had made a reasonable offer to put things right. He didn't consider that Sanlam should pay interest on all amounts due after April 2022 because it hadn't received the required forms to process the request until November 2022.

Mr B felt that Sanlam had enough information about what his 2021/2022 and his 2022/2023 taxable income would be. So he felt that it could've already calculated how much of his basic rate allowance had been used. He said he expected Sanlam to further compensate him for time wasted and interest lost as a result of not complying with his initial request.

Mr B provided this service with scans of his P60s on 3 February 2023. This service shared the information with Sanlam. Sanlam confirmed on 3 March 2023 that it had received all of the information it needed, except that it would also still need Mr B's 2022/2023 P60 for the loss calculation. Our investigator asked Mr B to send this to Sanlam once he had it.

Mr B provided this service with his 2022/2023 P60 on 4 May 2023. And our investigator shared this with Sanlam. It confirmed on 15 May 2023 that it now had everything it needed to calculate any loss. It asked for guidance from this service on the calculation.

Sanlam said that although it had taken Mr B so long to return the forms, so it wasn't certain that if it had sent the forms out on time his instructions could've been met, it would accept a date of 4 April 2022 (or closest trading date) for the first 50% withdrawal in the 2021/22 tax year.

Sanlam told this service on 12 June 2023 that it was still working on the loss calculation. And that it would take a few more weeks to finalise. On 11 August 2023, as the calculation still hadn't been finalised, our investigator wrote to Sanlam to give it two weeks to complete the calculation or he would move the case to final decision.

As agreement couldn't be reached, the complaint came to be for a review.

I issued my provisional decision on the complaint on 6 September 2023. It said:

I've considered all the evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I intend to uphold the complaint. I agree with our investigator that Sanlam's compensation offer is broadly reasonable. But I consider that the loss calculation needs to be more clearly specified. And I also consider that Sanlam should repay Mr B for the postage costs he's incurred whilst pursuing his complaint. I'll explain the reasons for my decision.

What happened?

Mr B told Sanlam he wanted to terminate his drawdown policies at age 75. He then wanted to take fifty percent of the balance as taxed cash in the tax year ending in 2022 and the remaining funds in the tax year ending in 2023. Sanlam confirmed this would be possible.

Instead, initially because Sanlam didn't send Mr B the required forms to process his instruction, and then because Mr B didn't complete and return those forms, Sanlam made a special concession so it could continue to pay Mr B's income drawdown payments from his policies. It also sent Mr B a hamper to apologise for its administrative error.

Mr B feels that Sanlam has ignored his instructions. Sanlam feels that it made an administrative error when it failed to send the required forms to Mr B on 21 February 2022.

Despite Mr B taking almost six months to complete and return the forms required for his instruction to be processed, Sanlam has accepted that its failure to send out the required forms on 21 February 2022 led to Mr B's request not being carried out in a timely fashion. It committed to providing redress for any future additional tax Mr B might have to pay as a result of his instructions not being processed when he wanted.

Sanlam wrote to Mr B to tell him what it still needed from him in order to process his claim and carry out the redress calculations. This included income tax information so that it could accurately calculate what the losses were.

Mr B provided different tax information from that Sanlam had requested. He felt that Sanlam should've been able to work out what the income tax loss was from the information he'd provided. But Sanlam said it needed documentary evidence.

An accurate calculation wouldn't be possible until after the end of the tax year in which Sanlam made the final payment from Mr B's policies. I say this because Sanlam couldn't reasonably be asked to carry out a tax loss calculation based on estimated figures that it had no documentary evidence for. And accurate income tax information for Mr B would only be available after the end of the 2023 tax year.

Therefore, I consider that Sanlam acted reasonably when it asked Mr B for additional information. And although I do understand that Mr B has become very frustrated with how long the loss calculation is taking, I can't reasonably say that Sanlam was in a position to carry out that calculation until after it had received the information it needed from him in May 2023.

I next considered if Sanlam's offer of compensation was fair.

Was Sanlam's offer fair?

As our investigator said, our approach is to ensure that if a business has done something wrong, it will need to put the consumer back in the position they should've been in, had the error not occurred.

Sanlam's failure to send the required forms to Mr B on 21 February 2022 led to him paying additional income tax that he wouldn't have paid had his instructions been followed. It also led to Mr B being deprived of the use of the after-tax value of half of his policies' value for several months.

Mr B has also clearly been frustrated at how long the process to put things right has taken. It's also taken him time and effort to try to get a resolution to his complaint. But I agree with our investigator that the only evidence of an error by Sanlam is that it didn't send the required forms in February 2022. It apologised for this oversight, sent Mr B a hamper, and said it would compensate Mr B for the additional income tax he'd incurred.

I'm satisfied that Sanlam's offer was broadly reasonable. This is because I agree with our investigator that although there was a wider impact of the error, it was a relatively small one.

However, I intend to uphold the complaint. I say this because I consider that Sanlam should also pay Mr B interest on the funds he didn't receive in April 2022, as it effectively deprived him of that money for a period of time. It should also pay interest on the overpayment of tax, as Mr B has also been deprived of this money. I also intend to ask Sanlam to cover Mr B's postage costs incurred during his complaint.

Response to my provisional decision

Sanlam didn't respond to my provisional decision.

Mr B said he broadly agreed with my provisional decision. But that he wanted to make a couple of points:

- He'd only failed to return the forms in a more timely manner because he'd never received them in the first place
- He felt that the start date for accruing interest should be one day later than I'd suggested.

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 understand Mr B's rationale for amending the start date, but I don't consider his suggestion to be materially different to the start date in my provisional decision.

As no new information has come to light, I remain of the view I set out in my provisional decision.

Putting things right

What I require Sanlam to do

A fair and reasonable outcome would be for Sanlam to put Mr B, as far as possible, into the position he would now be in but for the administrative error, which led to delays. Sanlam is prepared to concede that the first 50% payment should've been made on 4 April 2022, so I will use this for the first payment date.

But Mr B only returned the required forms for the process on 8 November 2022. And this led to his funds being paid to him on 6 December 2022. Therefore I consider that a reasonable date to use for when the second payment should've taken place is 6 December 2022.

Income tax loss calculation

I require Sanlam to ensure that Mr B ends up paying the same £ amount of income tax on his policies' funds as he would've paid if his funds had been paid out as follows:

- 50% of the 4 April 2022 fund value paid out on 4 April 2022
- The remaining fund value paid out on 6 December 2022.

Sanlam therefore needs to calculate what tax should've been paid over the two tax years that the payments should've been made in, and compare this with the income tax Mr B has actually paid on his income drawdown payments and on the final payment made on 6 December 2022.

If the income tax actually paid by Mr B is greater than the income tax he should've paid, Sanlam should pay Mr B the difference, uprated if necessary to allow for the fact that Mr B will be a basic rate taxpayer in the tax year 2023/2024. For the avoidance of doubt, if Mr B has overpaid tax by £5,000, Sanlam should pay him compensation of £6,250, to ensure that after 2023/2024 basic rate tax has been deducted Mr B is back to the position he should've been in.

However, if Sanlam is able to pay the compensation in a way that doesn't attract income tax, it won't need to uprate the payment in the way I've outlined above.

"Loss of use" interest

Mr B was deprived of the use of the after-tax value of 50% of his 4 April 2022 fund value from 4 April 2022 to 6 December 2022. He was also deprived of the use of the additional income tax he paid. Therefore I also require Sanlam to:

- Calculate 8% annual simple interest on the after-tax value of 50% of Mr B's 4 April

2022 fund value from 4 April 2022 to 6 December 2022.

- Calculate 8% annual simple interest on the after-tax value of the income tax loss calculated above from 6 December 2022 to the date of my final decision.
- Pay Mr B the total amount of the above calculations.

Income tax may be payable on any interest paid. If Sanlam deducts income tax from any interest it should tell Mr B how much has been taken off. Sanlam should give Mr B a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Costs incurred

Mr B has also told this service that he can evidence £16.50 of postage costs, incurred when sending evidence to this service.

Therefore I also require Sanlam to reimburse Mr B £16.50 in respect of these costs.

My final decision

For the reasons set out above, I uphold Mr B's complaint. CASLP Ltd must take the actions detailed in the "Putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 19 October 2023.

Jo Occleshaw
Ombudsman