

The complaint

Mr S complained that he has suffered a financial loss as KW Wealth Planning Limited trading as Kingswood (KW) provided incorrect advice about making payments into his pension. He also complains that a service he had paid for was not provided.

He would like to be compensated for any financial loss he has suffered as a result, as well as a refund on the charges for the service he did not receive and a payment to reflect his distress and inconvenience.

What happened

Mr S wished to make additional contributions via a personal pension and sought advice from KW on maximising his pension contributions. He wanted to take advantage of carried forward income tax relief using both 'salary sacrifice' from his employment income and contributions from his own capital.

He met with KW on 28 February 2022, to discuss his options for maximising his pension contributions. The discussion included information he provided about his income and the fact that all contributions made to his workplace pension plan from his income were made using a 'salary sacrifice' arrangement.

A subsequent report was produced on 7 March 2022, recommending a lump sum contribution of c£73,000 into a personal pension.

On 14 March 2022, KW wrote to Mr S to advise him he would not be able to use the full carry forward amount from previous tax years, because of his income

Being less than £40,000 for this tax year.

It went on to say:

For employees, the carry forward amount is limited to the available salary in the tax year of payment....

....sorry I missed this at our meeting

An amended suitability report was produced on 18 March 2022 which recommended that Mr S make a lump sum contribution to his pension of c£13,500 gross, which he did in March 2022. Following this, however, Mr S asked KW to check its calculations as he became concerned that he could have made additional contributions as the assumptions used about his income and the treatment of payments into his workplace pension were incorrect.

KW wrote to Mr S on 29 June 2022 to tell him that he was correct, and that it concluded that he could have contributed a further c£3,500 gross into his personal pension plan. It said that these figures had been confirmed by a third party pension compliance firm.

Mr S raised a complaint with KW on 11 July 2022 and followed this with a phone call on 5 August 2022 and another email on 9 August 2022 when he received no response. He

claimed that he had missed the opportunity to make full use of the carry forward of unused tax relief from the tax year 208/19.

KW responded to his complaint on 26 September 2022. It upheld his complaint and concluded that he had suffered a loss of £706.80 owing to lost tax relief. It also offered him £100 for the distress and inconvenience that he had suffered. It did not uphold his complaint point relating to a loss for the current tax year (2022/23) as he still had the ability to make contributions in that year.

Mr S did not accept this and asked KW to reexamine the evidence.

On 20 November 2022, KW issued a further response to his complaint. In this, it calculated that he had lost some c£2,500 of tax relief and increased the payment for the distress and inconvenience to £200.

Mr S remained unhappy with its conclusions.

KW revisited its calculations in January 2023 and concluded that Mr S had actually missed the opportunity to contribute c£19,000 gross which would have equated to a loss of tax relief of c£4,000. It offered to compensate him for the loss of tax relief and increased its offer in respect of his distress and inconvenience to £500.

Mr S was also unhappy that he had been paying for an ongoing service arrangement with KW, under which his situation should be reviewed in February 2023. Owing to capacity issues, KW was unable to offer him a meeting before the end of the tax year and suggested that he make a pension contribution direct to his personal pension provider. He felt that as KW had not fulfilled its obligation to provide him with a review meeting before the end of the tax year, he should not have to pay for the service.

Unhappy with KW's response to his complaint, Mr S brought it to this service. Mr S told our investigator that he believed that he should be compensated not only for the loss of tax relief, but also for lost future investment growth. He also stated that he had originally planned to invest a much larger sum in his pension but had instead spent the balance of the sum on home improvements once KW had incorrectly calculated how much he could invest. He was unsure if he would be able to invest a similar amount in the future and was seeking compensation to reflect the loss of future retirement income that would have accrued.

Our investigator reviewed the evidence and formed the view that the complaint should be upheld. KW accepted their findings but Mr S remained unhappy with the compensation that the investigator proposed, however, and so the complaint has been passed to me to 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.

Having reviewed all the evidence in this case, I agree with our investigator and uphold this complaint. I do, however, consider that the compensation that our investigator proposed is fair and reasonable in the circumstances of this complaint, and so I won't be asking KW to do any more than our investigator recommended.

I can appreciate that this will be disappointing to Mr S, so I will explain how I have reached my decision.

Firstly, I think it's important to reflect upon the role of this service. Our role is to impartially review the circumstances of a complaint and make a decision on whether a business has made errors or treated a customer unfairly. Our role is not to punish a business for making mistakes, but where we find it has, to make a determination of what the business should do to put things right and place the customer back in the position they would have been, had the mistakes not occurred.

Having said that, and having reviewed the evidence in this case, I am satisfied that KW did indeed make some mistakes, causing Mr S to suffer a financial loss and a significant amount of distress and inconvenience.

KW itself has upheld Mr S's complaints. It has accepted that it misinterpreted how the salary sacrifice contributions he made to his workplace pension should have been treated and also underestimated his earnings. These two mistakes are what have led to his financial loss, and missed opportunity to make significantly higher pension contributions to his personal pension, using previous years' tax relief carried forward.

Given this, my key task is to consider how he should be compensated to put him back, as closely as possible, into the financial position he would have been in were it not for KW's mistakes.

To do this, I've carefully considered the evidence about the extent to which Mr S has been disadvantaged by these mistakes.

The first element of this is the loss of tax relief on the amount of contribution that Mr S intended to make. I'm satisfied that he intended to maximise his contributions and so the amount of tax relief he lost should be based upon this. KW have provided a calculation that concludes this amount is £3,803. While I appreciate Mr S has little confidence in KW's calculations, this service is unable to check compensation calculations. Interest at 8% per annum simple should be added to this to reflect that Mr S has been deprived of the use of this money over a considerable period of time.

In terms of Mr S's request that he be compensated for future investment growth that the contributions would have attracted, I find, on balance that this is not a compelling argument. While I can well appreciate his thinking, as he did not invest this money in his pension, he still had access to it to invest in any other way he chose. In this case, he chose to invest the money into making home improvements. These improvements would conceivably have added value to his property, so he would have gained from them. Given this, I do not think it appropriate to ask KW to compensate him for any future losses from the investment he intended, but was prevented from, making into his pension.

Moving on to consider the fees Mr S paid to KW for ongoing services, including an annual financial review, I can see that it did not conduct the review he asked for and that should have been provided in February 2023. Given this, I think it fair and reasonable for KW to refund the payment Mr S made in respect of this ongoing advice.

Finally, I have considered the evidence Mr S has provided about the distress and inconvenience that he has been caused while dealing with this complaint. I can well appreciate how this may have caused significant stress and taken a considerable amount of time and effort for him to deal with it. Having said this, I agree that the sum of £500 already offered by KW is fair and reasonable in the circumstance of this complaint.

Putting things right

In order to compensate Mr S fairly, KW Wealth Planning Limited trading as Kingswood should:

- Pay Mr S the sum of £3,803 in respect of lost tax relief.
- Interest at 8% per annum simple should be added to this sum from the date he made the initial investment into his personal pension until the date of this decision.
- Pay Mr S a sum equivalent to all the ongoing annual fees he incurred while a client of KW.
- Interest at 8% per annum simple should be added to these sums from the date he incurred the charge until the date of this decision.

KW should provide Mr S with details of all its calculations in a clear, simple format.

Lastly, KW should pay Mr S a total of £500 for the distress and inconvenience it has caused him, including any payments it has already made to him.

My final decision

For the reasons explained above, I uphold Mr S's complaint.

My final decision is that KW Wealth Planning Limited trading as Kingswood should pay Mr S the sums calculated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 May 2024.

Bill Catchpole
Ombudsman