DRN-4519096

The complaint

Mr D's complaint is about his Self-Invested Personal Pension ('SIPP'), administered by Suffolk Life Pensions Limited trading as Curtis Banks Pensions ('CBP'), and a Lifetime Allowance Tax Charge ('LATC') he incurred in the SIPP at age 75. The SIPP was a 'master plan', with four sub-plans within it.

He mainly says CBP is responsible for causing and/or preventing him (and/or his adviser) from avoiding the LATC; CBP's accounting practice for income from the SIPP (using the sub-plans instead of the master plan for the purpose of the LATC) contributed to the problem; and/or its administrative error in paying income from only one sub-plan, without instruction to do so, led to the problem; and that CBP breached its fiduciary and Consumer Duty obligations towards him/his SIPP in the matter. He is also dissatisfied with CBP's handling of his complaint.

CBP disputes responsibility for the LATC, except for the part of it caused by income paid between December 2018 and February 2019.

What happened

The master plan and two of the sub-plans shared the same leading three digits in their account numbers, but the master plan number ended with '013', and the two sub-plan numbers ended with '201' and '313'. The third and fourth sub-plans had different account numbers, one ended with '520' and the other with '506'.

Mr D's submissions have helpfully summarised the history of the SIPP, and income withdrawals from it, relevant to the complaint, and he explained that there were initially two master plans (the first opened in 2008) which were then merged in 2010 into a single master plan.

He says his initial instruction to CBP was to take income from across the sub-plans; this continued until 2013, and continued, as instructed, after he switched to a flexible drawdown arrangement in that year; however, in August of the same year CBP started paying income from only one plan (201); he was notified of this at the time but does not believe he was asked (and/or could ask), at the time, to nominate which sub-plan(s) he would prefer to draw income from; in November 2014 an isolated top up income withdrawal was taken from 520 (as instructed by his adviser's office); then in September 2015 CBP started paying income from 313, without instruction to do so; the SIPP's 2016 Annual Statement showed income values in 313, 520 and 506, and that income was only being taken from 313 (but because this sub-plan number was closely similar to the master plan number (ending with 013) this was not noted at the time); the statement used the master plan number to set out all the withdrawals and mentioned the ability to make changes in income payments but not to select which plans to draw from; in 2018 his adviser was notified that 313 was about to be depleted, in response the adviser instructed that income be paid from across the two remaining sub-plans; and in 2019 he instructed the stoppage of income payments, as they were no longer required.

He says his case relates to the second Lifetime Allowance ('LA') test that applies to funds in

drawdown at age 75 – which is what led to the LATC he/his SIPP incurred, which concerns a comparison between the value of his fund at age 75 and the value of his fund when it went into the drawdown arrangement, and which allows for the LATC to be applied to any growth between these values. In his case, he says there was no overall growth between the relevant values in terms of the master plan (as a whole) because of all the income withdrawn, but there was growth between those values in terms of sub-plan 520, on its own, because no regular income had been paid out of it since August 2013.

He also says CBP's accounting practice conflicted with the impression given by the relevant Benefits Crystallisation Event ('BCE') certificate because the latter treated the SIPP as one master plan, whereas the former did so as individual sub-plans.

For the above summarised reasons, Mr D says the manner in which CBP arranged the SIPP's income payments (failing to keep them spread across the sub-plans) and/or its accounting practice for the SIPP (isolating and using the sub-plans for the purpose of the second LA test) led to the LATC and/or prevented him (and/or his adviser) from avoiding it.

One of our investigators looked into the case and concluded that it should not be upheld.

Mr D commented on his reasons and the investigator made further enquiries in order to address those comments. Overall, the investigator mainly found as follows:

- CBP sent Mr D a BCE in 2008, when he started to take income from the SIPP, and it showed that he had used 94.76% of his LA at the time; in 2013 more funds in the SIPP were crystallised and the BCE issued in this year showed he had used 106.64% of his LA; his flexible drawdown application, also in this year, did not specify which sub-plan(s) income should be drawn from; then in December 2018 his adviser instructed that income should be drawn from across the two remaining sub-plans at the time.

- In 2022, as Mr D approached age 75, CBP calculated that sub-plan 520 had achieved growth [of around £67,600], and that led to the LATC [of around £16,900].

- In its response to the complaint, CBP has conceded that it failed to carry out the adviser's December 2018 instruction, so the payments (two of them) continued from one sub-plan until all payments stopped in February 2019, instead of across the remaining two. The LATC that resulted from these specific payments was £1,875, which it agreed to pay, thereby reducing the LATC to £15,014.02. It also offered to send him a gift hamper for the trouble caused by this aspect, but its position is that it committed no other wrongdoing in administering the SIPP.

- Mr D's adviser instructed, on his behalf, income payments from across the sub-plans on only two occasions – in 2009 and in 2018. No such instruction was given in 2013 during the flexible drawdown application, and none was given later in the same year when there was a request for a temporary pause in income payments and a request for a lump sum payment from the SIPP. He and his adviser were aware that income was being paid from only one sub-fund because the SIPP statements showed that.

- In terms of the structure of the SIPP and the accounting approach used by CBP, upon consideration of how the sub-plans progressed over time, transaction history evidence shows that over the relevant years there was growth within and income taken from 313 and 520, and that whilst there was growth in 506 no income was actually paid from it. Therefore, there was enough investment growth across the SIPP to create an LATC at age 75 and it was not inconceivable that an LATC would

arise at that point.

- By 2013 Mr D and his adviser knew he had used 106.64% of his LA and they would have known about the impending LA test once he reached age 75. The information available to them from the SIPP statements should have put his adviser in a position to know about growth within the SIPP and to consider any information required from CBP in that respect.

Mr D retains his disagreement with the investigator's finding and has asked for an Ombudsman's decision.

He maintains his claims and submissions. He says the investigator has missed the following key points – that it is the second LA test (and the considerations arising from it) that matters in his case, not necessarily the LA usage percentages the investigator has referred to; that, but for CBP's wrongdoings in its accounting approach to the SIPP's plans and in its failure to draw income from across the sub-plans, the LATC should have been avoided; and that there was no growth in the SIPP (as a whole) between the two dates relevant to the second LA test.

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 regulator's Handbook includes Principles for Businesses that CBP was obliged to uphold.

Principles 2, 3 and 6, in broad terms, require firms to conduct their services with due skill, care and diligence, to make reasonable efforts to manage and control their affairs responsibly and effectively, and to uphold their customers' interests and treat them fairly. Principle 7 requires firms to meet their clients' communication needs and to do so in a way that is fair, clear and not misleading.

Case law set by Ouseley J, in R (British Bankers Association) v Financial Services Authority [2011] EWHC 999 (Admin) confirms that The Principles are ever present requirements that firms must comply with.

Furthermore, and beyond The Principles, the Conduct of Business Sourcebook ('COBS') section of the Handbook contains, at COBS 2.1.1R, the client's best interests rule which complements Principle 6 and, as the title suggests, requires firms to uphold their clients' best interests.

The above broadly sums up key regulatory context, without being exhaustive, relevant to my consideration of the present complaint and to the fiduciary duty Mr D says CBP breached. He has also referred to breach of the Consumer Duty. However, the events in his case (including his complaint) happened before July 2023, which is when the Consumer Duty began to apply. It is therefore inapplicable to his complaint.

Before addressing the main issues, I acknowledge Mr D's dissatisfaction with CBP's handling of his complaint. According to the rules for our jurisdiction, I can determine complaints about regulated activities, like the SIPP administration related issues in this case. Complaint handling, in isolation, is not a regulated activity. It is also not an ancillary activity connected to the conduct of a regulated activity.

Sometimes a complaint to a firm and its alleged mishandling of it might form a part of the

substantive case. If so, addressing the firm's complaint handling might then be a necessary part of determining the overall complaint.

The present complaint is not that type of case. The substantive issues are about the LATC and that is remote to how CBP handled the complaint, so CBP's complaint handling is an isolated matter that is outside my remit.

For the above reasons, I do not address the complaint handling part of Mr D's case.

Prior to 2013, income was drawn from across the sub-plans. The sub-plans were converted from capped drawdown to flexible drawdown around April that year. Mr D confirms awareness in August 2013 that income was being paid from only one plan (201). There is evidence in the covering letter for the SIPP's annual report CBP sent him on 27 September 2013 showing that income was being paid from only 201, and not from any of the other three sub-plans. Thereafter, that sub-plan appears to have been depleted and closed (as CBP explained to Mr D's adviser in its email of 14 November 2022).

The SIPP's 2015 Annual Statement covered the period up to 1 September 2015 and captured pension payments up to August 2015. It appears 201 was depleted around this time and, as Mr D has said, 313 (alone) then began to be used for income payments from September 2015 onwards. The 2015 statement did not capture that, but the 2016 statement/its covering letter did. It clearly informed Mr D that there were income values available in 313, 520 and 506, but that income was being paid only from 313.

The statement/covering letter also invited him to contact CBP's Retirement Team if he wished to 'change' his income payments. There is no evidence that he or his adviser did that at the time. I note the two main comments he has made about this SIPP statement, but I am not persuaded by them.

Firstly, the layout of the relevant part of the letter shows a table of all three sub-plans with available income values (with description to match) and it is directly followed by a table of the specific sub-plan (313) from which income was being paid (with description to match). I do not consider that this information could reasonably have been mistaken for description of income from the master plan (013), despite the similarity between the two account numbers. The context in this part of the letter was quite clearly the sub-plans (those with income values and then the one from which income was being drawn), not the master plan. Mr D ought reasonably to have noticed that income was being paid only from 313.

Secondly, the letter's invitation to change the income payments was sufficient. Nothing in the text appears to exclude requests to change the source(s) of those payments, so the invitation to *change* the payments could have been understood as covering this too. If, at the time, Mr D wanted income drawn from across all the sub-funds, he ought reasonably to have noticed that was not already the case – as I addressed directly above – and he ought reasonably to have been reminded by the invitation in the statement's letter that he or his adviser could instruct CBP to arrange that. The 2016 letter reconfirmed what he had already been made aware of in 2013 – that income was not being drawn from across the sub-plans – so it is reasonable to conclude that, if he did not want that, nothing had been done to correct it since 2013 and the reminder in 2016 should have led to him doing so.

An argument about CBP initially changing, in 2013, the income payments from across the sub-plans to being from only one sub-plan *without* instruction to do so is somewhat moot. It is not completely clear to me why that change happened, but the facts are that Mr D knew about it as it happened, he knew the same arrangement had continued up to 2016 and throughout these periods he did not instruct CBP to undo that change and to return to drawing income from across the sub-plans. It was not until December 2018 that his adviser

gave instruction, on his behalf, for income to be drawn from across the sub-plans. That instruction could have been given at any time previously, starting from 2013, but was not. Therefore, up to December 2018, Mr D appeared to accept and/or affirm the payment arrangement that he has now complained about.

For the above reasons I do not find that CBP did anything wrong in how it administered the income payments from the SIPP up to December 2018. The matter of the period that followed has been resolved. In that December, Mr D's adviser instructed CBP to make payments from across the sub-plans and it failed to do so. It concedes this and it has undertaken responsibility for the part of the LATC that resulted from its failure to execute the instruction. It has also offered a gesture to Mr D as a form of apology for the trouble that caused. My understanding is that CBP has committed to the undertaking and the gesture. As such, there is no need to address this aspect further.

The remaining matter to consider is the accounting approach taken by CBP towards calculation of the LATC.

Mr D says it is unfair for CBP to rely, as it does, on the terms for the SIPP which state that all sub-plans are treated as separate arrangements. He says such an approach goes against the notion of having a 'master plan' (as the SIPP product was sold), with the implication that funds were to be pooled under the single master plan. He also refers to information about other SIPP providers with sub-accounts in the SIPPs who nevertheless treat the SIPP as one whole for the purpose of the LA test.

I am not persuaded by this argument. CBP is not bound by the practices of any other SIPP provider. The terms for its SIPP were what Mr D agreed in the course of opening the master plan and sub-plans, and they were what he would reasonably have been expected to read and understand before he agreed them. Therefore, it is not unreasonable for CBP to rely on those terms.

I understand the points Mr D has made about the second LA test, about the different outcomes of that test depending on if it was applied to the master plan or if it was applied to each sub-plan, and about how the LATC has arisen because it was applied to 520 (on its own).

Based on my understanding, parts of his arguments are that the BCEs were not as relevant as the investigator considered them to be, and that CBP had a responsibility to, in some way, highlight the potential effects of the second LA test with regards to the values of, and any growth within, the sub-plans. I am not persuaded by either of these arguments.

The BCEs in 2008 and 2013 should, at the very least, have meant that Mr D and his adviser were informed enough (and reminded in 2013) to apply tax related considerations to the SIPP. I accept he was around nine years away from age 75 at the time, so the second LA test was not a pressing matter. However, he and his adviser were already engaged, to some extent, in his 'retirement planning', given that income was already being drawn from the SIPP at the time. In this context, information that he had exceeded his LA should reasonably have put them on enquiry, to some extent, about his overall tax position.

CBP was the SIPP's administrator. It could not, and was not obliged to, give advice or manage the SIPP. Such enquiry (possibly, if not probably, including specialist tax advice) was for Mr D and his adviser to pursue. The information they needed was available from the SIPP statements, and if they needed more information I echo the investigator's point that they could have put questions to CBP.

Given the drawdown based set-up, ongoing income withdrawals and potential ongoing

growth in the SIPP were foreseeable up to the point he reached age 75. Even if their plan was that, over time and across the sub-plans, income payments would outweigh growth, that could not have been left unattended. It had to be managed over time, which is what appears to have happened. Therefore, mindfulness that there was no available LA capacity (with the LA having been exhausted and exceeded) to cover any additional growth after 2013 should have been part of the ongoing management of such a plan. This gives the BCEs, and the information within them, some relevance. It also shows how the matter was remote to CBP, because it had no role or responsibility to manage or oversee or comment on such a plan.

Given the particular facts of Mr D's case, I am not persuaded that there is a call to appraise CBP's accounting approach towards the sub-plans (with regards to the second LA test and the resulting LATC). For the reasons given above, I consider that, primarily, he knew about the change in the source of payments at the outset in 2013, he was reminded of this in 2016, he was aware there was no LA capacity to absorb any post-2013 growth in the SIPP, all these factors gave him and his adviser notices and opportunities to plan and mitigate his overall tax position and CBP had no responsibility in that respect. I consider these to be key findings in the complaint.

My final decision

For all the reasons given above, I do not uphold Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 30 June 2024.

Roy Kuku
Ombudsman