DRN-4544202

The complaint

Mr B complains that some advice he received about making pension contributions, from Quilter Financial Services Ltd ("Quilter"), was incorrect.

What happened

Mr B, along with other family members, was a director of a limited company. He first approached Quilter in early 2021 to seek advice about the company making pension contributions on his behalf to a new personal pension plan. Given the funds the company had available at that time Quilter advised Mr B that the company should make a single contribution of £160,000 utilising both his current annual contribution allowance and allowances carried forward from the previous three years. Mr B accepted that advice and the company paid the agreed contribution.

The following year, in May 2022, Mr B sought further advice from Quilter about the company making a similar pension contribution. Mr B says that, at that time, if the contribution hadn't been made to his pension plan, the company might have made a contribution to a pension plan on behalf of another director, or alternatively purchased two electric vehicles. Quilter advised Mr B to accept a further pension contribution of £160,000 from the company.

Shortly afterwards Quilter realised that the advice Mr B had been given was incorrect. The maximum contribution that could be paid into Mr B's pension plan that year (given he had no allowances to carry forward) was £40,000. So, as a result, Mr B says he will become liable for a tax charge of £47,882.50. That charge will become due for payment on 31 January 2024.

Quilter accepted that the advice it provided to Mr B in 2022 was incorrect and failed to take account of the annual contribution limits. So it offered to pay him compensation for the tax charge he will need to pay. But it said it would reduce that compensation to reflect the corporation tax saved by his company on the pension contribution. So it said it would be willing to pay compensation for the tax charge less £30,400 for the saved corporation tax. It also said it would pay Mr B £500 for the additional accountancy fees he has incurred, and a further £300 for the distress and inconvenience he had been caused. Mr B didn't accept that offer so brought his complaint to us.

Mr B's complaint has been assessed by one of our investigators. She considered what would be reasonable compensation for Quilter to pay. Since Mr B would need to pay the tax charge from his own funds, initially she thought that the deduction for the saved corporation tax should take account of any income tax Mr B would need to pay in taking that money as a dividend from the company. But later she agreed with Quilter that it would be reasonable for Mr B to fund part of the tax charge, equivalent to the saved corporation tax, by paying HMRC directly from his pension savings using the "scheme pays" option.

Mr B didn't accept that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide.

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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr B and by Quilter. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

Quilter has accepted that the advice it gave to Mr B in 2022 was incorrect, and as a result he will incur a significant taxation charge. And I am satisfied that Mr B's accountant has reasonably set out what that charge will be. So what I need to decide here is what should be done in order to put things right. What I need to consider is whether there are other factors that need to be considered to ensure that Mr B is not unduly enriched by any compensation that will be paid.

I've thought carefully about what would have happened if nothing had gone wrong. It seems that both parties accept that the advice Mr B should have received would have been for a pension contribution of £40,000 to be made by his company in 2022. That would have been within the annual allowance (since there was no allowance to carry forward from previous years) permitted by HMRC. So it seems clear that Mr B's pension savings have been increased above where they would have been at that time. And the profits of the company will have been reduced by the payment of a higher than allowed pension contribution so potentially saving some corporation tax liability.

Mr B has set out some alternative approaches the company might have taken had he been given correct advice by Quilter in 2022. He says that the company could have made a pension contribution to another director instead. Or he says that the company could have used the excess funds to purchase two electric vehicles. He says that in either instance current HMRC regulations would have meant a similar reduction in the company's corporation tax liability.

But I am not persuaded that there is sufficient evidence to suggest these alternative approaches might have been followed. I note that the discussions with Quilter appear to have taken place less than a month before the end of the company's financial year, leaving little time for either vehicle purchases to complete, or new pension arrangements to be set up. So on balance I think there was an expectation from Mr B that making the additional pension contribution would be relatively straightforward and something that could be left until near the end of the company financial year, and so leaving little time for any alternative approaches to be investigated and implemented.

When our investigator was first thinking about what Quilter should do in order to put things right, it seems that Mr B accepted her recommendation that he should take income (in the form of a dividend payment) from the company equivalent to the corporation tax that would have been saved by making the excess pension contribution. As I will now go on to explain

I don’t think the ultimate position that would be reached if that proposal was adopted is materially different from the final recommendation of the investigator, that I am supporting in this final decision.

The tax charge that Mr B will incur as a result of the excess contribution to his pension has been calculated by his accountant to be £47,882.50. The excess contribution that was made totals £120,000 (the actual contribution of £160,000 less the annual allowance of £40,000). So the corporation tax saved by Mr B’s company is £22,800. So that amount of money has been retained by the company rather than being paid to HMRC as a result of the increased pension contribution.

Mr B has incurred a significant tax charge as a result of the incorrect advice he received from Quilter. It seems fair and reasonable that he shouldn’t be out of pocket as a result of that tax charge. But, as I’ve set out above, both he and his company have benefited from the excess contribution. Mr B has received a substantial uplift in his retirement savings. And the company has reduced its corporation tax liability. So I need to take those into account when assessing what Quilter should pay.

Our investigator initially proposed that Mr B should take a dividend payment from the company equal to the £22,800 corporation tax saving. But that would then be subject to income tax, most likely at a rate of 33.75%, reducing its value to Mr B and so increasing the compensation Quilter would need to pay. But calculating the compensation in that way would mean that Mr B does not personally lose out as a result of any taxation charges that apply to either the pension contribution or dividend payment.

But Quilter has proposed an alternative approach that reduces the amount of compensation it needs to pay. Quilter has said that Mr B should use the “scheme pays” option to pay the required £22,800 part of the compensation from his pension savings. And it would then pay the remaining compensation directly to Mr B.

I’ve thought carefully about Quilter’s proposal. The net cash cost to Mr B is the same in both options – effectively nil. But Quilter’s proposal results in monies being retained in Mr B’s company, and a reduction in his pension savings. Whilst that might seem to be less attractive to Mr B I do think it places him closer to the position he should have been in. His pension savings are currently £120,000 higher than they would have been had nothing gone wrong. And, any reduction they face using the “scheme pays” option could be made good by an additional contribution from his employer in the next tax year (using the £22,800 it has now retained). Whilst that approach does restrict Mr B’s ability to add to his pension savings in the next tax year, it still leaves him with more in his pension that he would have held had nothing gone wrong.

I am persuaded that this matter will have caused some distress and inconvenience to Mr B, both in terms of the disruption to his finances, and the need to deal with the situation he found himself in after following the incorrect recommendations of his professional advisor. So I think it reasonable that Quilter should pay Mr B some additional compensation for that distress and inconvenience. In the circumstances here I currently think the offer that Quilter has made, of a payment of £300, is fair and reasonable. And I note that Mr B has told us that the offer Quilter has made, to pay £500 for his additional accountant’s fees, is acceptable.

I accept that my decision might be disappointing for Mr B. But I think it fair that the savings in corporation tax made by his company be used to offset some of the compensation Quilter needs to pay him. And I think the methodology I have set out in this decision provides a fair method of providing those corporation tax savings to Mr B in a form that he can use to pay the balance of the tax charge that is due to HMRC.

Putting things right

Quilter should pay compensation to Mr B of £25,082.50 (the tax charge of £47,882.50 less the nominal corporation tax saving of £22,800). It should pay that compensation within 28 days of it being notified of Mr B's acceptance of this final decision. Should payment be delayed past that time, Quilter should add simple interest at a rate of 8% per annum to this amount from the date of my final decision to the date of settlement. HM Revenue & Customs requires Quilter to take off tax from any interest. Quilter must give Mr B a certificate showing how much tax it's taken off if he asks for one.

If Mr B chooses to use his pension savings to pay the remainder of the taxation charge, Quilter should provide all reasonable assistance to Mr B, at no cost to him, to facilitate the payment of the required £22,800 balance using the "scheme pays" option.

Quilter should additionally pay Mr B £500 in respect of the accountancy fees that this matter will have caused him to incur.

And Quilter should pay the sum of £300 to Mr B in respect of the inconvenience he has been caused.

My final decision

My final decision is that I uphold Mr B's complaint and direct Quilter Financial Services Ltd to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 February 2024.

Paul Reilly
Ombudsman