

The complaint

Mr C complained about information he says he was given in respect of a Self Invested Personal Pension ("SIPP"). He says the information he was given constituted financial advice and was incorrect.

Mr C held the SIPP on a platform operated by Dentons Pension Management Limited ("DPML"). He says information DPML gave to him, in February 2022, led him to believe he could access a substantial amount of tax-free cash from his SIPP. However, in 2023 he became aware that no such tax-free cash could be removed from the SIPP.

As Mr C wanted to use the cash to pay down a mortgage which was required to be paid in 2023, he wants DPML to pay him the tax liability that would have been incurred by paying down the mortgage with taxable cash, rather than using the tax-free cash he says he was led to believe would be accessible by DPML. He calculates this tax amount as being £168,750.

What happened

Mr C's circumstances as of February 2022 were broadly as follows:

- He was almost 74 years old.
- Mr C had substantial financial assets and his affairs were predominantly managed through a long-standing relationship he held with an independent financial adviser (IFA) which I'll refer to as "Firm S".
- Mr C had previously acquired 'Enhanced Protection' from HMRC. Enhanced Protection was intended to protect very large pension funds which had already been built up under the pre 'A-Day' rules.
- The approximate value of his SIPP with DPML was £1.136 million¹. He also held other significant pension and other financial assets outside DPML.
- Mr C had an outstanding interest-only mortgage on a property which he had been renting out for some time. This is relevant because he said that it had been his intention to use all the tax-free cash from his SIPP to pay down this particular mortgage, upon reaching his 75th birthday (Spring 2023)².

Mr C first complained to DPML in June 2023 which is around when he realised the tax-free cash element wasn't available. But DPML said it hadn't done anything wrong. It said it hadn't provided financial advice to Mr C – it had only given him information in accordance with its duty as a SIPP platform provider. It said Mr C had misunderstood what he was told and therefore it didn't uphold his complaint.

¹ Taken from a valuation dated 28/2/2022.

² 75 is often regarded as a significant milestone age in personal pension terms, for a variety of tax and other reasons.

Mr C then raised a complaint with the Financial Ombudsman Service. One of our investigators looked into the matter and they too recommended that the complaint ought not to be upheld.

As Mr C still disagrees with this, it falls to me to make an ombudsman's 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.

I am grateful to Mr C for all the information he has sent in and for the comprehensive way he has set out his complaint. I've taken great care to look at all the information we have and the documentary and 'phone recorded evidence that exists. I've also spoken myself to Mr C to ensure his complaint has been fully understood and that he's been able to send us everything he considers to be relevant.

Having done all this, I'm not upholding Mr C's complaint. I'm sorry to disappoint him.

Background information

I think it's helpful to start by setting the scene in respect of Mr C's affairs.

Mr C had, by the standards of most people, considerable financial assets. From information he himself supplied, his IFA, "Firm S", had been personally known to him and engaged as his financial adviser over many years. In my view, it's reasonable to conclude that "Firm S" had a significant oversight of Mr C's wider financial affairs. We know, for instance, that it was "Firm S" which recommended the original DPML platform for his SIPP many years before, in 2008. I'm satisfied that the SIPP was set up with DPML and that Mr C was told on the terms and conditions of business that he would not receive advice from it. He was also told that accessing pension benefits would depend on the prevailing pension legislation in force at the relevant time.

It's also probable that as his IFA, it was "Firm S" that likely understood Mr C's circumstances and financial situation better than any other firm. This included, but was probably not limited to, a detailed knowledge of the other pension(s) and assets Mr C had.

At around the time these matters were being considered, in 2022 and 2023, "Firm S" also knew that Mr C had already drawn substantial pension benefits from elsewhere. So, with all this knowledge at hand, I think this would have long revealed to "Firm S" that Mr C's DPML SIPP was always going to be liable for income tax when crystallised (taken), even if Mr C himself didn't fully understand the increasing complexity of tax and pension legislation.

What the complaint is about

Essentially, the complaint brought by Mr C is relatively straightforward.

DPML was not his financial adviser. However, he says he was contacted by DPML via a letter dated 24 February 2022 and this confirmed that upon accessing his SIPP, he would be able to take up to 25% of the SIPP's current value as a tax-free lump sum. It seems Mr C was possibly under this impression for just over a year because in early-to-mid 2023, when he was considering accessing it, Mr C's IFA - "Firm S" - told him that because he'd already crystallised certain other pension benefits, the DPML SIPP wouldn't produce any tax-free cash after all. All withdrawals from the SIPP had to incur income tax.

Mr C wasn't happy about this because he had plans for the tax-free cash. He had an existing mortgage on a property he had bought several years ago. He had redeveloped the property and subsequently rented it out commercially. He told us that the mortgage he'd taken out on the property to facilitate this was £375,000 and a condition of it was that it needed to be repaid by his 75th birthday.

Mr C says that his understanding of what tax-free cash he was allowed from the SIPP came from the February 2022 letter. He says this told him he could withdraw up to 25% of the balance which would be tax-free and so it was his intention to use this cash to pay off the mortgage completely when it became due in just over a year's time.

Correspondence received by Mr C about his SIPP

In a letter accompanying an annual SIPP statement dated 13 January 2022, Mr C was told by DPML that *"under HMRC rules your pension fund will be subject to a test (or tests) against your Lifetime Allowance (LTA). These tests will occur when you draw pension benefits from your SIPP, when you reach age 75 or in the event of your death (if before your 75th birthday). Should the total value of your pension fund exceed your LTA at that time, your pension fund will be subject to a substantial tax charge"*.

There is evidence that Mr C then went back to DPML to discuss this further and after a 'phone call, he was sent a second letter, on 24 February 2022. I've looked at the letter Mr C was then sent. It informed him that he could disregard the *"75 HMRC test"* (mentioned in the first letter, above) because he had Enhanced Protection. It also said that *"when you decide to take benefits 25% of the crystallised value can be taken tax-free up to a maximum of £375,000 (25% of the protected £1.5m)"*.

I do accept that this letter of 24 February could have been worded in a much better way to make sure it was not possible to be construed incorrectly. Looked at in isolation, I accept it might even give the impression that Mr C's aspiration to withdraw cash on a tax-free basis might be possible. I think it's also fair to point out that DPML itself now accepts this, and indeed has taken some learning points as a result of this matter being raised. It could, for example, have qualified the statement in the letter about withdrawing tax-free amounts with, *'unless you have already taken your tax-free cash from elsewhere'*.

However, this information failing doesn't necessarily mean Mr C is due the substantial compensation he says he is. Mr C is supported in making this complaint by "Firm S". Both contend that the letter of 24 February 2022 contains direct and personalised financial advice. They further contend that Mr C has lost out financially as a result. And they contend that he should be paid up to £168,750.

However, I'm afraid I don't agree. I'll explain why.

It's fair to say that as of 13 January 2022, the information from DPML was clear that taking a tax-free element from the SIPP in Mr C's circumstances was possibly unlikely. I also think it's reasonable to say that Mr C himself knew – and likely had known for years - that his pension affairs were relatively complex and subject to a plethora of rules. As far back as 2006 he had secured Enhanced Protection at which point I think it's fair to assume he would have known that any further pension withdrawals would be the subject of greater taxation scrutiny. So, when just a few years later, in around 2008, when he began accessing a large defined benefit pension elsewhere, I think it would have been obvious that this would further reduce, or more likely eliminate, any future tax-free entitlements from his pension portfolio.

Having said this, I do also accept that pension legislation has become somewhat detailed in recent years and also wish to place on record that I genuinely sympathise with Mr C whose

views of what happened - and how he interpreted the said pension rules – are no doubt very honestly held. But when Mr C was written to by DPML in January 2022, the information he was given about his SIPP potentially being “*subject to a substantial tax charge*” came against the backdrop I’ve mentioned above where both his regular IFA and Mr C himself should have reasonably known this could indeed be the case.

I have accepted the 24 February letter could have been clearer; a more knowledgeable or experienced member of DPML’s staff could have easily ‘shut down’ Mr C’s possible misinterpretation of there being any tax-free cash still available for him to access. It’s unfortunate this didn’t happen, but the letter still didn’t represent financial advice, in my view. Nor did it cause Mr C to take (or not take) any course of action which then resulted in a financial loss.

Both Mr C and “Firm S” say now that the February 2022 letter has somehow caused him to lose money because it represented regulated financial advice. This view is apparently based on:

- a) That a lump sum under Enhanced Protection from a SIPP cannot have been determined without financial advice being an element under consideration,
- b) That this was a personalised letter, not generic literature, and
- c) the DPML member of staff sending the letter was later removed from a customer facing role.

However, I’m afraid I don’t agree with this perspective.

Firstly, I think there’s very reliable evidence that Mr C had long obtained his default financial advice not from DPML but from “Firm S”. I think it was also clear that the later letter quite obviously used ‘round figures’ which were not specific to Mr C’s own SIPP balance. Doing so would have clearly produced a much more refined tax-free lump sum amount had this letter been intended as specific financial advice relating to Mr C’s actual pension balance.

I also don’t think the letter recommended that Mr C should or shouldn’t do something. It was merely setting out information (which I’ve accepted was poorly explained). And I don’t think it being personalised to some degree was particularly relevant, as one would surely expect a firm managing these sums of money to include some personal details and write personally to Mr C at his home address. The letter also referred to a previous call between the parties and so was rightly personalised to this extent.

Finally, I don’t think the member of staff later being redeployed changes anything related to this particular matter. I’ve seen nothing which shows this redeployment specifically resulted from giving direct advice to Mr C which they shouldn’t have given.

However, to be clear, it was “Firm S” that was Mr C’s IFA. This had been the case for many years and Mr C was aware of this. I can’t say whether or why he didn’t immediately bring what would have seemed like an anomaly about the tax status of his funds to “Firm S’s” attention directly after either the January or February letters. But I have seen evidence from 8 April 2022 of DPML writing to “Firm S” about Mr C. This said, “[Mr C] *has been in touch recently and in our conversation we touched on the fact that although he is nearly 74 he has yet to crystallise benefits and that he may wish to consider doing so before he is 75. I stressed we cannot give advice and that the above was not to be construed as such, but I did say I would let you know so that you can give him a qualified opinion on the matter.*”

I think it's reasonable to conclude that there were many similar exchanges of information in the past about Mr C's SIPP which were sent out by DPML to "Firm S", as his IFA. I've seen nothing showing DPML wanted to (or actually did) provide financial advice to Mr C and as his primary adviser, I would have expected this important information in April 2022 to have been discussed between Mr C and "Firm S". So, all the evidence I've seen tells of an existing and long-term relationship with "Firm S" as his IFA and *not* DPML.

By comparison, I've seen no evidence that DPML ever provided Mr C in the past with anything other than *information* about his pension administration. In my view, DPML's roles were clearly limited to being a provider of a platform with web-access, annual pension statements, and general regulatory compliance matters, all in its role as the *provider*, rather than *adviser*.

I've also come to the conclusion that the mortgage Mr C says he wanted to pay off using tax-free cash from his pension on the DPML platform was likely set up completely independently of the SIPP. What I mean by this is that whilst it may have become Mr C's intention at some point in time to pay down the mortgage using tax-free cash from a pension, the mortgage itself was never set up with this in mind as a specific payment vehicle.

Rather, the mortgage post-dated the SIPP and the two were not connected in any way. It was originally £300,000 and then further added to. It was on an interest-only basis and the property was subsequently rented out commercially after being redeveloped. In my experience, the normal model used in such ventures is to use rent to pay the interest-only mortgage with the expectation that the property asset would then increase in value and the mortgage could then be paid down. Mr C has since implied that he has benefitted from increasing property values and he still owns the property to this day.

In any event, as of early 2022, 25% of the value of Mr C's SIPP as shown above would only amount to £284,000 – considerably short of the £375,000 outstanding on the mortgage. I accept this could grow in the meantime until his 75th birthday. But it could also fall and so I think this gives further assurance that the SIPP was never originally designed as the payment vehicle. So, I'm afraid there's simply no evidence that the mortgage was ever established with a specific intention of ultimately using guaranteed and ring-fenced tax-free cash from this SIPP to pay it back. Nor is there any evidence that DPML was ever involved in advising Mr C in this respect. It seems to me that Mr C only came to the view that using cash from his SIPP to (*help*) pay back this mortgage might be possible either very close to, or at, the actual time DPML sent him the letter he is now complaining about.

Therefore, when Mr C says now that, "*I had planned for many years to repay my £375,000 mortgage on my selected retirement date as I had always been told that I could,*" I don't think there's any persuasive evidence that DPML is responsible for such a belief or that paying off the mortgage was wholly dependent on Mr C's obtaining cash on a tax-free basis and that this was guaranteed.

Has Mr C lost any money?

Although I wholeheartedly accept that this matter has been a source of distress to Mr C, I've seen no evidence that he's actually lost any money. I don't have the exact details of the mortgage which he wanted to pay down, but he told us that it was an interest-only loan of around £375,000. Mr C himself appears to have then calculated that paying the income tax he wasn't expecting to pay has 'cost' him £168,750³ which I've assumed is a figure derived from a 45% tax calculation (£375,000 x 45% = £168,750).

³ This figure was provided by Mr C himself in his complaint.

However, my understanding is that the mortgage was eventually paid down using a tax-free Individual Savings Account (ISA) to pay around 50% of the mortgage amount followed by taking a further loan from a bank for the rest. In this context, Mr C has paid off half the mortgage using a slightly different – but still a tax-free vehicle - and he would appear to still have a debt with interest, although a much smaller debt than he had before. However, Mr C also still owns the existing property asset.

I therefore don't agree that Mr C has 'lost' £168,750.

Summary

I have carefully considered this complaint.

The evidence is persuasive of Mr C having his own long-standing IFA in the form of "Firm S". The letter he received in February 2022 should therefore be viewed against a backdrop of that long-term and close relationship.

There is clear evidence that Mr C's IFA was regularly copied into important milestone events concerning his DPML SIPP. There is also solid evidence that his IFA had a good oversight of Mr C's wider pension affairs, which by the standards of most people, were relatively complex. I think there's persuasive evidence that Mr C was warned by DPML in the past that taking tax-free cash from his SIPP was highly dependent on his wider financial circumstances. And lastly, by mid-2022 Mr C's IFA already knew – or should have known – of Mr C's misinterpretation of what he could or couldn't do when he eventually came to access his SIPP at the age of 75.

I do accept that tax and pension rules have become progressively complex. I also accept that Mr C may genuinely have interpreted the 24 February 2022 letter DPML sent to him in a certain way as it was poorly worded. However, it would be unfair to categorise this one letter as specific financial advice which caused Mr C such a large loss, as he implies. In my view, there has been no such loss.

As for the mortgage Mr C took out and which he says he wanted to pay back using tax-free cash from his pension, it's my view that this mortgage was never established with the SIPP as a particular repayment vehicle in mind. The two were simply not connected. So, I'm not persuaded of a long held understanding or intention that this SIPP was to be used for paying off Mr C's mortgage in full. And there's certainly no evidence DPML advised him as such.

Essentially, what happened here was that Mr C was given some conflicting information on one occasion. However, the bigger picture was always that Mr C's circumstances were such that any further pension crystallisation after around 2008 generated a tax liability which by law he was always destined to pay.

For the reasons I've comprehensively explained above, I'm not upholding Mr C's complaint.

My final decision

I do not uphold the complaint. I do not require Dentons Pension Management Limited to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 15 January 2025.

Michael Campbell

Ombudsman