DRN-4801309

The complaint

Mr P complains that Seven Street Wealth Ltd (SSW) gave him unsuitable advice about the withdrawal of tax-free cash (TFC) from his Self-Invested Personal Pension (SIPP) in 2018. And that this led to him paying an immediate Lifetime Allowance tax charge that he could've delayed/avoided.

What happened

Mr P met with SSW in 2015 as he was considering transferring the benefits from his Occupational Pension Scheme (OPS). The benefits from the OPS had a protected retirement age of 50.

SSW carried out a fact find and risk assessment in July 2015. The client agreement it shared with Mr P at that time stated:

"*…any advice or recommendation that we offer to you, will only be given after we have assessed your needs and considered your financial objectives and attitude to risk that may be involved*".

SSW recommended that Mr P transferred his OPS benefits to a SIPP with a provider I'll refer to as provider A. In order to maintain the protected retirement age, a buddy transfer with one of Mr P's colleagues had to be completed. This meant that if Mr P decided to partially transfer his SIPP before age 55, he would lose his protected retirement age.

Mr P had Fixed Protection 2016, which meant his Lifetime Allowance was fixed at £1.25M. His maximum TFC entitlement was therefore £312,500. Any amount over his Lifetime Allowance would attract tax at the point he accessed it.

Mr P said that SSW emailed him on 9 March 2017 about crystallising his pension benefits. It said:

"As we discussed £1.25m of your fund is within your LTA and can be taken under normal Tax Free Cash (TFC) and income tax parameters. Therefore 25% of £1.25m, £312,500 can be taken as TFC and the residual £937,500 can be taken at your behest and will be subject to income tax at your highest marginal rate. Please note that the LTA will be indexed from 2018.

The residual fund will suffer a tax penalty of 55% if you decide to take the fund as capital and 25% if taken as income. As discussed, it would be my view to hold this element of the fund for as long as possible given that it will be free of IHT. Your final benefit crystallisation date will be age 75 and at this point you will have to select capital or income and for the fund to pay the tax charge."

Mr P contacted provider A as he wanted to take the maximum TFC lump sum of £312,500 from his SIPP. On 13 September 2018, provider A told Mr P he'd have to crystallise all uncrystallised rights on the same day. And that this meant that he'd have to crystallise the whole SIPP, rather than just the protected amount of £1.25M. It further told him that he'd either have to pay an immediate tax charge of 55% if it paid him the excess over the Lifetime Allowance as an excess lump sum, or that he could keep the excess in his SIPP, which would be subject to an immediate tax charge of 25%. Mr P said he then had conversations with provider A about ways to avoid the immediate tax charge.

Mr P said that he'd emailed SSW about the immediate tax charge. He said: "*To be clear, is this a scheme rule as in a requirement of the transfer which was made by [former OPS employer name] or an HMRC rule? - can you forward the relevant clause in either case?".*

Mr P said that SSW told him that it would look over the OPS rules again to double check there was no way it could've for example separated/segmented the SIPP into two wrappers, one for £1.25M and the other for the excess. Had this been possible, he felt he would've only needed to crystallise the £1.25M, and could've delayed the tax charge.

Provider A emailed Mr P on 17 September 2018. It said it had: "*received instruction*" from SSW that Mr P wanted to retain the excess benefits in his SIPP, designating it into drawdown, subject to an immediate tax charge of 25%.

Mr P then forwarded the information he'd received from provider A to SSW for its review. The email said: "*before we give final instructions to [provider A], you mentioned you were going to give everything the once over to check that there is no way to avoid the whole fund crystallisation and resultant penalty, ie it can't be split or segmented to avoid this*."

SSW replied to Mr P the same day. It reconfirmed that for the buddy transfer, the only option for accessing TFC alone was to crystallise full benefits. The email stated: "*As you will be aware, you have protection of £1.25m and so a 25% tax charge on the excess is unavoidable".*

SSW also said it was surprised at provider A's use of the word "instruction". It said it'd only contacted provider A to find out about the forms it would send Mr P to facilitate drawdown.

Mr P said that three days before the transfer, he emailed SSW again. He said: "*Please can we double check this, obviously very important and also urgent as I'm trying to draw down effective this Thursday*".

Provider A emailed Mr P to explain his options. It said he could partially transfer to a specific second SIPP with it, or he could: "*go ahead with the crystallisation and excess tax charge*". Provider A explained that it would take some time to open a second SIPP. It also said that Mr P wouldn't be able to access the funds he transferred into that SIPP until age 55, and that the excess charge would apply at the point of access. Provider A said that if Mr P went ahead with the full crystallisation and paid the excess tax charge, the TFC should be paid within 5 to 10 working days of the request for funds.

Provider A emailed Mr P again on 18 September 2018 to tell him that its technical team had confirmed that splitting the SIPP into two arrangements as it'd outlined wouldn't be effective. It said it was still possible for him to partially transfer his excess funds to another scheme either with it or another provider. But that the transfer would need to be complete before it could crystallise his SIPP and pay him his TFC. It also said that any funds transferred would lose the protected retirement age of 50. And noted that the transfer itself could be a lengthy process.

Mr P told provider A that he'd decided to keep one SIPP, given how urgent his timescale was. This meant that he would now have to pay an immediate tax charge.

Provider A emailed SSW on 21 September 2018 to confirm receipt of Mr P's completed benefit form. This email also showed that he'd been provided with cancellation rights.

On 28 September 2018, provider A emailed Mr P, copying SSW. It sent a copy of the confirmation letter and schedule of benefits. This stated that a TFC lump sum of £312,500 had been paid to Mr P's bank account. And that £1,478,547.06 had been placed into capped (income) drawdown within his SIPP.

The letter included cancellation rights. It stated:

"If you decide that you no longer want to take these pension benefits, you have a legal right to change your mind. You have 30 days from the date that you receive this letter to exercise your cancellation rights. If you do decide to cancel, you must return any lump sum and pension payments that you have received from your SIPP."

The letter also noted that the Benefit Crystallisation Event had used 143.28% of Mr P's Lifetime Allowance. I understand Mr P had to pay an immediate tax charge of around £180K.

In late 2022, Mr P complained to SSW about the immediate tax charge he'd paid in 2018. He felt the tax could've been avoided: *"albeit access to the surplus part would have been 55 not 50*". Mr P said he didn't have the time to set up the second SIPP as provider A had presented this potential solution two days before he'd taken the TFC.

SSW replied to Mr P. It still felt that the transferred fund couldn't be partially transferred/crystallised while retaining a protected retirement age of 50 and taking benefits at that age. It noted that the buddy transfer had to replicate the OPS. And said that if Mr P had taken benefits from the OPS at age 50, the total income and TFC would've been subject to a Lifetime Allowance charge.

SSW issued its final response to the complaint in August 2023. It didn't think it'd done anything wrong. It said that provider A had explained that if Mr P didn't want to pay the immediate tax charge, he had the option to partially transfer the excess funds, but that would have to be completed before the crystallisation taking place and would lead to the loss of the protected retirement age.

SSW said that the evidence showed that Mr P had been in regular communication with provider A throughout the process. It said although he'd shared his plans with it, he hadn't asked SSW for a formal recommendation. And it hadn't provided one. It said if it had, it would've carried out a full review of his circumstances, considering all available options, before it provided its recommendation. And that this process would've taken a number of weeks. SSW also said that it didn't have an agreement in place with Mr P to provide him with ongoing advice.

SSW said that Mr P had been given the opportunity to consider all the options provider A had outlined. And that, having done so, he'd decided to proceed based on the information provided. It felt that it'd been clear that Mr P had needed to make his decision quickly. And that he'd made that decision without its advice.

Unhappy with SSW's response, Mr P brought his complaint to this service. He said SSW had advised him for many years. He felt that SSW had told him in 2018 that his "*only option*" was to pay the immediate tax charge. He said he had trusted his adviser, so he'd paid the immediate tax charge. But he now felt that it'd provided him with incorrect advice.

Mr P made the following points:

- After he'd paid the initial fee to SSW, his arrangement with it was that when he made new investments into new products, fees would be payable at that time. He said he also presumed his adviser took a rolling commission on the existing investments. Mr P acknowledged that no additional explicit fees had been charged for advice in September 2018.

- He said provider A had told him that he'd have to pay the immediate tax charge because his SIPP had been set up as one SIPP. And that if it'd been set up as two SIPPs from the start, with one containing funds up to £1.25M and one for the excess, he would've simply been able to access the one up to £1.25M at age 50. Then he could wait until age 55 for the balance, and not pay the immediate tax charge. Mr P said that his SSW adviser didn't think this was correct.

Our investigator didn't think the complaint should be upheld. He didn't think SSW had given Mr P incorrect information. He felt that Mr P had been given the option to delay paying the tax charge before he'd made his decision. But that he'd decided not to transfer his excess funds to another scheme before accessing his cash given his urgent need for his TFC at that time.

Mr P didn't agree with our investigator. He felt that his adviser had clearly been incorrect to tell him that his only option for accessing just his TFC was to crystallise his full benefits and immediately pay the tax charge. He said it wasn't the only option, as he could've accessed his TFC by splitting his SIPP first. Mr P said that he'd only incurred the immediate tax charge because his trusted adviser had told him he couldn't split or segment his pension. He said he had relied on SSW's advice.

Mr P felt that:

- SSW had given him incorrect advice on the immediate tax charge. He felt it could've been delayed.
- It had given him incorrect advice on whether the whole fund had to be crystallised. He felt it could've been partially crystallised.
- He felt SSW had been wrong to tell him he only had one option.

Mr P acknowledged that time was short and he'd needed access to the funds. But said that he could've delayed the access by a few weeks to save £180K if he'd believed provider A rather than SSW. He also felt that he hadn't needed to go back to SSW to confirm provider A's advice on 18 September 2018 that he could split his SIPP into two. He said this was because he'd already had SSW's advice that he only had one option confirmed.

SSW said that it wasn't retained by Mr P to give any advice on the issue at the heart of this complaint. And that it made no formal recommendation. Nor did Mr P pay it any fees for an ongoing advice service. It said Mr P had only considered the best way to access his TFC with provider A.

SSW said Mr P had clearly not suffered a loss or been disadvantaged in any way by anything it had or hadn't said. It said that as at 18 September 2018, provider A had provided Mr P with the two possible options. It said he'd then made an informed decision to withdraw his TFC subject to the immediate tax charge. SSW therefore felt that if there was any loss, it was because of Mr P's decision not to consider the alternative option. It felt he'd chosen to access his TFC in the manner he had due to urgency, and in full knowledge that this would lead to an immediate tax charge.

Our investigator considered Mr P's points. But he still didn't think the complaint should be upheld. He felt that Mr P had been aware of the alternative option for avoiding the immediate tax charge before he made his decision. But that he'd chosen to take the option which would require him to pay the immediate tax charge as he had an urgent need for the funds. Our investigator therefore felt that, even if SSW had presented the alternative option to Mr P, he would've still taken the same action.

Mr P didn't agree with our investigator. He made the following points:

- He didn't feel that our investigator had acknowledged that SSW had given him incorrect advice. He felt that SSW had set up his SIPP incorrectly in the first place.

- He felt that the incorrect initial set up of his SIPP had led to him running out of time to choose the alternative option. And that this had led to his financial loss. He wanted this service to assess both the initial advice and the advice he felt SSW had given him in September 2018.

As agreement couldn't be reached, the complaint has come to me for a review.

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 considered all the circumstances of this complaint, I'm not going to uphold it. I know this will be disappointing to Mr P. I'll explain the reasons for my decision.

I first considered whether SSW provided Mr P with formal advice in 2018.

Did SSW provide Mr P with formal advice in 2018?

SSW said it didn't have an ongoing advisory relationship with Mr P in 2018. It said he was a financially literate and experienced individual, who'd chosen not to pay any ongoing advice fees following the 2015 transfer advice. And that this was reflected in his fee agreement. It said that if Mr P wanted to obtain any advice, it would be provided on an ad hoc basis and would require the payment of a fee.

Mr P has himself confirmed that he paid no fee for any advice from SSW in September 2018.

Documentation from the 2015 advice shows that any ongoing adviser charges would be: "*agreed on a case by case basis*". Mr P signed this document on 6 October 2015, indicating his agreement. Other documents from 2015 show that SSW made it clear that it would only give Mr P advice: "*after we have assessed your needs and considered your financial objectives and attitude to risk that may be involved*".

SSW said Mr P didn't seek any advice from it about his desire to access his TFC in 2018. And that it'd received no fees from him for that. It said that provider A dealt with Mr P's requests and provided him with advice on the options open to him.

Mr P said he'd complained to SSW in late 2022 as he felt the tax could've been avoided: *"albeit access to the surplus part would have been 55 not 50*". He also said that he hadn't had the time to set up a second SIPP at that time as that option had only been presented to him by provider A two days before he'd taken the TFC.

I consider that this shows Mr P also didn't consider he had the time to get formal, considered advice from SSW in 2018.

Based on the documentary evidence, I'm not persuaded that SSW provided Mr P with formal advice in 2018. I say this because there's no evidence that it agreed a fee with Mr P, or that it then took steps to assess his needs. I consider this shows that no formal advice was sought or given.

I next considered if Mr P could reasonably consider SSW's September 2018 response to his questions to be formal advice.

Could Mr P reasonably consider SSW's September 2018 response and its earlier responses to be formal advice?

Mr P said that SSW had been his IFA for many years at the time he wanted to access his TFC. So he relied on its advice in 2018. He acknowledged that he needed to access his TFC. But said he could've delayed that access if he'd believed provider A rather than SSW. Mr P also said that he shouldn't have needed to ask SSW to confirm provider A's advice, as it'd already said he only had one option.

The evidence shows that SSW wrote to Mr P in March 2017 about crystallising his pension benefits. I've not been provided with any further details about the discussions between SSW and Mr P at this time. Nor have I been provided with any other context leading up to this response.

However, having considered the contents of this email, I'm not persuaded that there's anything incorrect in it. I consider that it correctly states that Mr P would face a tax charge as soon as he took benefits from the funds he held over his £1.25M Lifetime Allowance.

The evidence shows that on 13 September 2018, provider A wrote to Mr P to tell him that as he'd decided to take benefits using his protected retirement age of 50: "*HMRC legislation states that when someone with a protected retirement age takes their benefits, they must become entitled to all the benefits under the scheme on the same day. This condition also applies if there has been a block transfer. The receiving scheme must crystallise all uncrystallised rights on the same day. If all benefits are not crystallised, the crystallised benefits are classed as unauthorised payments (UP). This means that the whole SIPP must be crystallised, rather than just up to the protected amount of £1,250,000*."

Provider A then asked Mr P to choose how he wanted it to treat the balance of his SIPP above £1,250,000. It said that it had discussed his two options with him before. It then confirmed that these options were:

a) *Have the excess paid as a lifetime allowance excess lump sum, subject to an immediate tax charge of 55% Or*

b) *Retaining the excess in your SIPP designating it into drawdown, subject to an immediate tax charge of 25%.*

By 17 September 2018, when provider A wrote to SSW, Mr P had confirmed his decision to retain the excess benefits in his SIPP, designating it into drawdown, subject to an immediate tax charge of 25%. But he'd asked SSW to review the information he'd received from provider A before he finalised his instruction. He asked SSW to check that there was no way to avoid the whole fund crystallisation and resultant penalty. SSW replied to confirm that for the buddy transfer it had arranged, the only option for accessing TFC alone was to crystallise full benefits and pay the excess tax charge. As I noted earlier in my decision, there's no evidence that Mr P had engaged SSW to provide him with formal advice on this.

After this, provider A emailed Mr P to tell him he could partially transfer to a second SIPP, which would potentially be a lengthy process. It said the transfer would need to be complete before he could access his TFC. It said taking this option would lead to Mr P not being able to access the funds transferred into the new SIPP until age 55, and that the excess charge would still apply at the point of access. Alternatively, provider A said that Mr P could get his TFC paid within 5 to 10 working days if he went ahead with the full crystallisation and paid the excess tax charge. Mr P then confirmed his decision to keep one SIPP, given how urgent his timescale was.

Mr P said SSW had been wrong to tell him he only had one option. He said he could've accessed his TFC by splitting his SIPP first, thus deferring the tax charge. He felt SSW was also wrong when it didn't agree with provider A about how the pension could be split. Mr P felt that the correct advice would've been to recommend a partial transfer first and then crystallise, although he acknowledged that the excess tax charge would still be payable in future.

I've carefully considered Mr P's point that he could've delayed his access to his TFC if he'd believed provider A rather than SSW. And that he shouldn't have needed to ask SSW to confirm provider A's advice, as he felt it'd already confirmed he only had one option.

While I acknowledge Mr P's reason for not asking SSW to consider the options provider A had outlined to him, I'm not persuaded that he didn't believe the alternative option wasn't possible. I think if he hadn't believed the second option outlined, he would've challenged provider A about the alternative it'd suggested – or at least asked SSW to consider it. The fact that he did neither of these things persuades me that it was his urgent need for his TFC that meant he chose the option which would provide that cash most quickly.

I can also see that Mr P told this service that it was the fact that SSW had set up his SIPP incorrectly in the first place that led to him running out of time to choose the alternative option. I'm satisfied that this shows that he believed he could take the other option, but just didn't have the time to do so.

As Mr P didn't ask SSW for advice on his options, I can't reasonably say it did anything wrong here. I say this because I'm not persuaded that SSW had any meaningful input on Mr P's decision. But even if Mr P had asked SSW for formal advice, I'm not persuaded the outcome would've been different.

I say this because I consider that the evidence shows that Mr P was fully aware of both of his potential options at the time that he made his decision. He had a good level of financial understanding, meaning that he understood his options and the timescales involved. Provider A had given him the option to transfer part of his SIPP so that he could access his TFC without incurring the tax charge, but he chose not to take this route. I think this was because his pressing need for the TFC outweighed his desire to defer the inevitable tax charge.

I also say this because I can see that Mr P had time to consider the decision he'd made – provider A had two cooling off periods built into its process.

Overall, I can't reasonably say that Mr P could fairly expect SSW's September 2018 response to him to have fully considered all of his circumstances and the potential alternative options he might have. So I can't fairly hold it responsible for any loss he may have suffered. I say this because the evidence shows it was his decision not to seek formal advice, and his decision not to take the steps provider A had outlined to defer the payment of the immediate tax charge.

I do acknowledge Mr P's point that he relied on SSW's advice in 2018. But I'm not persuaded that he did. I say this because provider A's 13 September 2018 email, which outlined his initial options, stated that he'd decided to take his TFC at age 50. There's no evidence that he'd asked SSW for any advice on this decision. Instead, he proceeded without formal advice, despite being told that an option he might be interested in was available.

Therefore I'm satisfied that Mr P, having considered both of his options, decided he'd rather quickly access his TFC and pay the immediate tax charge than take formal advice. I'm also satisfied that due to his urgent need for his TFC, he didn't have time to take formal advice. Nor did he have time to set up a second SIPP. I can't fairly hold SSW responsible for these issues.

I finally considered Mr P's points about the original advice SSW had provided to him.

SSW's original advice

Mr P felt that SSW had set up his SIPP incorrectly in the first place. And that this had led to him running out of time to choose the alternative option provider A had explained. He wanted this service to assess both the initial advice and the advice he felt SSW had given him in September 2018.

Mr P said that he now understood that his original transfer from his OPS could've been split into two SIPPs at that time.

SSW said that it wouldn't have been possible. It said this was because the transfer was part of a 'block transfer' which was required so that Mr P could retain the right to take his pension benefits at the protected age of 50. It said that if it'd split the transfer into two SIPPs at that point, Mr P would've lost the right to access his TFC at the age of 50.

I'm not satisfied that Mr P has raised a complaint about that original advice with SSW. It has told this service that if he does, it considers that advice to be subject to a time bar, and therefore it will not give its permission for this service to consider the merits of such a complaint. I therefore can't consider the 2015 advice in this decision. However, I can say that I've not seen any evidence of incorrect advice from that time.

I'm not persuaded that SSW provided Mr P with incorrect advice in 2018, as it was never asked to advise him on his options. I'm also not persuaded that SSW's actions caused Mr P to take an action that unnecessarily led him to pay a Lifetime Allowance charge. And I don't uphold the complaint.

My final decision

For the reasons I've set out, I don't uphold Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 10 December 2024.

Jo Occleshaw
Ombudsman