

## **The complaint**

Mr B complains that an appointed representative of The On-Line Partnership Limited trading as IN Partnership ("OLP") failed to provide him with appropriate advice about the pension contributions he was receiving from his employer.

## **What happened**

The advice that was given to Mr B was provided by an appointed representative of OLP. So, although it had no direct contact with Mr B at the time, it is OLP that is responsible for the advice, and for dealing with his complaint. For ease, in this decision, I will simply refer to OLP, rather than the appointed representative, when discussing what has happened.

OLP has a long-standing relationship with Mr B. In July 2021 Mr B met with OLP, via a video call to discuss some matters in relation to his pensions with a view to him retiring in a couple of years' time. The suitability report that was issued after the meeting contained the following facts that I think are pertinent to this complaint;

- Mr B's annual earnings amounted to £240,000
- He was expecting an increase in the pension contributions he received from his employer to £37,000 per annum.
- There was an increasing risk that the value of Mr B's overall pension savings, both in his employer's scheme and in other pension plans he held, would exceed the lifetime allowance limits set by HMRC.

OLP advised Mr B to consolidate his personal pension plans onto a new platform. It didn't provide any recommendation in relation to Mr B's employer provided plan. And as an appendix to the report (on pages 19 to 22) OLP set out generic information about the relevant pension legislation. On page 21 it noted that annual contribution allowances would be reduced by HMRC for persons that had "adjusted earnings" in excess of £150,000 per annum.

In late 2022, Mr B's accountant was preparing his self-assessment tax return. He informed Mr B that the pension contributions he had received from his employer had exceeded his annual contribution allowance for the tax year 2021/22. And the accountant told Mr B that the same situation would occur in relation to the tax year 2022/23. Mr B says that, in total, he has incurred taxation charges of £25,382 due to exceeding the annual contribution allowances.

Mr B complained to OLP that the advice he had been given had failed to make him specifically aware that his annual contribution limits would be reduced given the level of his annual income. He said that information was a key component of the advice he should have been given. OLP didn't agree with Mr B's complaint. It said its advice was limited to Mr B's personal pensions – and it gave him no advice about the pension provided by his employer. Unhappy with that response Mr B brought his complaint to us.

Mr B's complaint has been assessed by one of our investigators. She thought that OLP had been deficient in the advice and information it had provided to Mr B. So she thought that

OLP should compensate Mr B for the pension taxation charges that he'd needed to pay in the two affected tax years.

Mr B accepted the investigator's findings. OLB told us that, without any admission of any liability, it was intending to make a settlement offer to Mr B. But despite being provided with a number of extensions to the deadline for making that offer, no offer has been made by OLP. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr B accepts my decision it is legally binding on both parties.

### **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 OLP. 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.

As my starting point for deciding this complaint I have looked at the report that was given to Mr B by OLP following the meeting in July 2021. But I am mindful that the report doesn't necessarily cover all the things that might have been discussed in the meeting. Importantly Mr B says that the only question he asked in the meeting was about the financial sense of continuing the pension contributions being made by his employer. And OLP says that it would not have made any comments on the contributions made by his employer – it says that was outside the scope of its advice.

I'm not persuaded that it is reasonable for OLP to say that its advice only covered Mr B's personal pension plans. It is clear from the meeting report that there were at least some discussions about the risks of Mr B's total pension savings (of which his employer's scheme was the only one receiving additional contributions) breaching the HMRC lifetime allowance limits. I think those discussions should also have included information, and potentially advice, to Mr B around the risks of breaching the annual contribution limits given what OLP knew about his earnings.

It doesn't appear that OLP is making any claim that the annual contribution limits were discussed with Mr B. I have considered that some generic information was provided about the tapering of annual allowances as an appendix to the report. But that information was not in any way personalised to Mr B or his circumstances. And given the nature of the way that information was presented I don't think it reasonable to conclude that Mr B should have been aware of it.

Without any awareness that his annual limits would be reduced, given his high income, Mr B continued to allow his employer to make the contributions to his pension plan that he had set

out in his discussions with OLP. And since the amount of those contributions breached the annual allowances, Mr B has incurred a large tax charge.

I think that, had OLP provided Mr B with appropriate information or advice, he would have stopped the pension contributions from his employer – that was exactly the action Mr B took when his new accountants informed him of the issue. So had he been given better information or advice I don't think Mr B would have become liable for the taxation charge.

I have considered that Mr B's pension savings have been enhanced, above the level they would have been, by the additional pension contributions. But I am mindful that, to access those pension savings, Mr B will need to pay income tax on them. Whilst he might make a saving of some of that tax by taking advantage of a pension commencement lump sum, the amounts of income tax might be broadly similar to what might have been paid had Mr B been offered the pension contributions as additional salary. So I'm not persuaded that I need to make any deductions from the compensation in this regard.

So, in summary, I think that Mr B has incurred taxation charges as a result of the incomplete information he was given by OLP. I think it fair and reasonable that OLP pays Mr B compensation equivalent to the value of the additional tax he has needed to pay.

### **Putting things right**

Mr B has provided us with the calculations that were performed by his accountant when preparing his annual self-assessment tax returns. And he has shown us the amounts that were calculated as having been included on those tax returns. Over the tax years 2021-22 and 2022-23 Mr B was required to pay pension tax charges totalling £25,382.

Given that I have decided those tax charges were only incurred as a result of the poor information provided to Mr B by OLP I think it fair and reasonable that OLP should pay Mr B compensation of £25,382 to settle this complaint.

### **My final decision**

My final decision is that I uphold Mr B's complaint and direct The On-Line Partnership Limited trading as IN Partnership 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 5 July 2024.

Paul Reilly

**Ombudsman**