

## **The complaint**

Mr C complains about the service he received from his former independent financial adviser (IFA), Allied Financial Services Ltd (AFSL), following the introduction of 'pension freedoms' in 2015. He is unhappy that AFSL didn't provide him with advice that enabled him to take advantage of a flexible arrangement at retirement while protecting his enhanced tax-free cash entitlement.

## **What happened**

The history leading up to this complaint is well known to the parties and therefore I have only summarised events below.

Mr C originally held a Section 32 policy and an Executive Pension Plan (EPP) which provided an enhanced tax-free cash entitlement (referred to from now on as protected tax-free cash or PTFC). Mr C was advised by a business subsequently acquired by AFSL to transfer these plans to a self-invested personal pension (SIPP) in 2011. As part of this transfer, Mr C's entitlement to PTFC (above the standard 25%) was retained.

AFSL agreed to provide Mr C with an ongoing service where it would review Mr C's investments annually to ensure they remained appropriate for his objectives and attitude to risk. I've seen evidence that the reviews occurred in at least 2012, 2015, 2016, 2018 and 2020.

In 2015, the government introduced changes to pension laws that allowed people more flexibility in the way they access their pension benefits. This legislation is commonly referred to as 'pension freedoms.'

In 2018, AFSL considered a transfer of Mr C's SIPP to a different provider whose charges were lower. The transfer was later cancelled. It appears this was because Mr C's PTFC entitlement. At this time AFSL told Mr C "we could always give you your tax-free cash at retirement and then swap the rest over to [the other provider] if this is still a cheaper option at that point."

AFSL continued as Mr C's IFA until 2020, when Mr C ended the relationship.

In the summer of 2023 Mr C began planning for his retirement in April 2024. Mr C said at this time he was told by his new adviser, a chartered financial planner, that by taking "any tax-free cash [he] would need to fully crystallise [his] pension". He said he was provided with a couple of options for taking his benefits, one that would allow him to retain his PTFC but would require alternative arrangements to be set up to hold the remainder of his pension funds in a tax efficient way. Mr C says he was also given the option of starting a flexible drawdown arrangement, but this option would require he forgo his PTFC. Following this advice, Mr C chose to move his funds to a flexible-access drawdown (FAD) plan and forfeit the PTFC.

Mr C subsequently complained to AFSL that following the introduction of pension freedoms, it should have done more to ensure that he'd be able to retain his PTFC and access a FAD

arrangement in retirement. Specifically, Mr C feels AFSL should have advised him to start a new plan, with flexi-access options, and divert his ongoing contributions to his SIPP to this new plan. He said this would have given him to access his PTFC and continued growth (including tax-free growth) on his other contributions. He believes the service agreement he had with AFSL required it to review his arrangements at certain trigger points to ensure that his needs were still being met. Mr C considers the introduction of pension freedoms in 2015 and in 2018 when he was 55/56 years old as appropriate triggers.

AFSL didn't uphold Mr C's complaint. It said that the original and subsequent advice was suitable, and that Mr C hadn't lost out financially because of its actions. It said it had told Mr C not to forgo the PTFC as there were tax efficient ways to invest the remainder, but Mr C chose to do so anyway, following someone else's advice. So it didn't think it was responsible for any loss Mr C may have suffered.

Dissatisfied with this response Mr C brought his complaint to this service for an independent assessment. One of our investigators looked into things and concluded that AFSL hadn't done anything wrong, so he didn't think the complaint should be upheld.

Mr C didn't agree, so his complaint has been passed to me for a 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.

Having done so, I have reached the same conclusions as the investigator and for broadly the same reasons.

When considering what is fair and reasonable, I have taken into account relevant law and regulations; regulator's rules, guidance and codes of practice; and what I consider to have been good industry practice at the time.

At the outset I think it important to explain, we are not a court. The Financial Ombudsman Service provides informal dispute resolution. Furthermore, this Service isn't intended to regulate or punish businesses for their conduct – that is the role of the industry regulator, the Financial Conduct Authority (FCA). Instead, this service looks to resolve individual complaints between a consumer and a business. It is my role to fairly and reasonably decide if the business has done anything wrong in respect of the individual circumstances of the complaint made and – if I find that the business has done something wrong – award compensation for any material loss or distress and inconvenience suffered by the complainant as a result of this.

It's clear to me that Mr C has strong feelings about this complaint. He has provided detailed arguments to support his case which I can confirm I've read and carefully considered. However, I trust Mr C will not take the fact that my findings focus on what I consider to be the central issues, as a discourtesy. The purpose of my decision isn't to address every point raised, but instead to set out my conclusions and reasons for reaching them.

The crux of Mr C's complaint is that he believes that as part of the ongoing advisory service he received from AFSL, he should have been told to start a new pension plan to take advantage of the changes made by pension freedoms legislation, while retaining his PTFC. However, I am not persuaded that AFSL's ongoing service agreement required this.

AFSL's client agreement with Mr C says:

*We offer two levels of service with regard to investments which we have arranged for you, including pension fund investments.*

*Premier Service: Investments will be regularly monitored and where considered appropriate we will recommend changes. We will endeavour to discuss investments and strategy with you once a year.*

*Standard Service: Investments which we have arranged for you will not be kept under review, but we will advise you upon your request, for which we reserve the right to charge a fee.*

...

*On issue of this letter any subsequent advice or recommendation offered to you will be based upon your stated investment objectives, acceptable level of risk and any restrictions you wish to place on the type of investments or policies you are willing to consider. We will issue you a suitability report to confirm our recommendation.*

From the evidence I've been provided, following the initial advice in 2011, Mr C agreed to the "premier client service" option. But the client agreement I've seen from 2015 indicates that Mr C opted for the "standard service." And from what I've seen this seems to be the case for all subsequent years.

However, even if I am wrong about this, importantly, neither service option provided for the kind of advice Mr C thinks he should have received. Specifically, the annual review reports issued for 2015 and 2018 both explain:

*This report relates solely to the review of the funds within your existing provision.*

*Should you require any further advice regarding any other area of your financial arrangements, or if you have any queries concerning this report or if you feel any of the above is in any way an inaccurate reflection of your circumstances, please do not hesitate to contact me.*

Therefore, from the evidence I've been provided, AFSL only agreed to review the investments Mr C held within the pension that it set up for him. This was to ensure that Mr C continued to be invested in line with this ATR and objectives. And given everything I've seen here, I am satisfied that AFSL provided this service.

I've also not seen sufficient evidence that persuades me Mr C ever made AFSL aware that his objective was to maximise his PTFC or to take benefits flexibly. In fact, in 2018, Mr C was 55 years old and therefore eligible to take his benefits, but I've seen nothing which suggests that he sought advice for taking his benefits, which would be a wholly separate advice process.

I've also not been provided with any evidence that Mr C sought advice from AFSL on the impact of pension freedoms legislation on his retirement arrangements. There was no requirement or industrywide best practice for advisers to proactively advise clients not at or approaching retirement about the pension freedoms legislation. AFSL, as his adviser, was required to give Mr C suitable advice. And I am satisfied it did so in its annual reviews. That there might have been another suitable option available does not make this advice unsuitable. Therefore, I don't consider that AFSL acted unreasonably or treated Mr C unfairly in not proactively recommending a new plan for Mr C.

Furthermore, Mr C is complaining that the financial loss he suffered (at least in part) is the additional tax-free cash he could have had. But Mr C lost this entitlement following the advice of his financial planner. AFSL have said that it may have been possible for Mr C to retain his PTFC entitlement, but he chose not to do so. AFSL believed this was possible in 2018 and in 2024, but I can't see any evidence that Mr C explored this further at either time.

And Mr C's financial planner also suggested at least one option that would have allowed him to keep his PTFC. Nevertheless, Mr C ultimately chose to forfeit the PTFC and move the rest to a FAD. I don't consider it fair or reasonable to hold AFSL responsible for the outcome of advice that it didn't provide. AFSL told Mr C that he shouldn't forgo the PTFC and that arrangements could have been made to achieve the flexibility he required. However, Mr C chose to forfeit his PTFC, seemingly to avoid having to make alternative arrangements.

With hindsight, it may now seem that a separate arrangement would have been the best option, but Mr C has not considered that this would have incurred additional costs and could have increased the complexity of his pension provision. He also doesn't seem to be aware that while typically, when taking PTFC all the benefits must be crystallised at the same time, this is not always the case. For example, pension providers are permitted the discretion to set aside existing scheme rules and allow the full range of options provided under legislation (this is known as a "permissive override"). This is a permissive rule, meaning providers don't have to offer this and a customer can't compel a business to do so. But given this, I don't consider that AFSL weren't incorrect to say that Mr C could still access his PTFC and move the rest to a flexible access plan. Therefore, I am unable to conclude from the evidence I've been provided that AFSL didn't provide Mr C with the service it agreed to or otherwise made a mistake that caused Mr C to lose out on his PTFC.

So, for all these reasons, whilst I know Mr C will be disappointed with this outcome, I'm not upholding his complaint.

### **My final decision**

For the reasons I have set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 30 June 2025.

Jennifer Wood  
**Ombudsman**