The complaint

Mr S has complained that Evelyn Partners Investment Services Limited gave him wrong information about tax paid on his pension withdrawal and claims that as a result he's incurred a financial loss.

What happened

Mr S held a Self-Invested Personal Pension (SIPP). In this decision I will refer to the provider of Mr S' SIPP as Firm A. Mr S' financial adviser in respect of his SIPP was Evelyn Partners Investment Services Limited (Evelyn).

Mr S needed to raise capital to proceed with building work he was undertaking. On 23 March 2023 Mr S asked Evelyn what would be the net of tax sum he'd receive if he encashed his SIPP in its entirety. Evelyn replied to Mr S on the same day to say: "*Your current fund is £1,446,742 and the total net payment would be £809505 although you would be emergency taxed and this might bring it down to £795000 and require you to reclaim the difference through self assessment*".

In April 2023 Mr S withdrew £200,000 from his SIPP and on 25 July 2023 Mr S posted completed withdrawal instruction forms to fully encash his Firm A SIPP to Evelyn. After initially asking Evelyn to hold off taking any action with these forms, Mr S emailed Evelyn on 1 August 2023 to tell it to go ahead and process his pension withdrawal. The remaining balance in Mr S' SIPP was then approximately £1,260,000. Evelyn said that Mr S decided to proceed with the complete encashment of his pension plan on an insistent investor basis and as a result it didn't give him any advice on the pension withdrawal.

On 11 September 2023 Evelyn emailed Mr S to say that Firm A had completed the encashment of his SIPP and that payment had been sent to his bank account. On the same day Mr S replied to Evelyn by email and said: "*Thanks, payment received. Is the payment net of tax?*" Also on the same day, Evelyn replied to Mr S' question and said: "*Yes, the amount is net of tax. You will in due course receive the final report from (Firm A)*".

Mr S says that he subsequently sold two of his cars and bought two new replacement and more expensive cars and progressed the next stage of his building project.

Mr S was subsequently told by his accountant that he had additional tax to pay on the pension withdrawal. Mr S complained to Evelyn on 21 February 2024. He said the above information he'd been given by Evelyn on 11 September 2023 was incorrect, as only basic rate Income Tax had been deducted from his SIPP withdrawal payment by Firm A. Mr S said that he'd based his spending decisions on this incorrect information from Evelyn and now had an unexpected and large tax bill to pay. Mr S said that he'd suffered a financial loss because of the incorrect information he'd received from Evelyn on 11 September 2023.

On 29 February 2024 Evelyn responded to Mr S' complaint. In its response Evelyn said that Mr S had asked if the payment he'd received in September 2023 was net of tax and was told by Evelyn that it was. Evelyn went on to say that it transpired only basic rate Income Tax had been deducted meaning there was additional tax to payable.

Evelyn said that, based on notes made of a meeting which took place on 2 March 2023, Mr S was made aware that his SIPP withdrawal would be subject to Income Tax at 45% and he would pay tax in the region of £600,000. Evelyn also said that it had been correct in telling Mr S that tax had been deducted from his SIPP withdrawal, albeit that the total tax liability hadn't been deducted.

Evelyn also said that because it had previously told Mr S that by withdrawing his total SIPP fund he would have an Income Tax charge of more than £600,000, it was clear that the tax deducted from Mr S' September 2023 withdrawal was considerably less than the full amount of tax he would need to pay. Evelyn added that it hadn't advised Mr S to withdraw all his SIPP savings had instead "*merely assisted in facilitating it*". Evelyn didn't uphold Mr S' complaint.

However, on 4 March 2024 Evelyn wrote to Mr S again to say that in recognition of any distress caused because of the information it had given to him it wanted to offer £1,000 as a goodwill gesture, on a without prejudice basis.

Mr S wasn't happy with Evelyn's response, so he brought his complaint to the Financial Ombudsman Service. Mr S said that based on the information that he'd received from Evelyn that tax had been paid on his pension withdrawal he had sold his two cars and bought new replacement cars and had progressed the next stage of his building project. Mr S says that he's subsequently had to take a loan to cover the increase in his Income Tax bill, which he says he wasn't expecting and had also lost money on the two new cars he'd bought.

One of our Investigators reviewed Mr S' complaint. Their view was that whilst Evelyn could have been clearer in its 11 September 2023 email regarding the tax deducted from Mr S' pension withdrawal, they couldn't fairly say that Evelyn was responsible for the financial decisions Mr S had made following his receipt of email. Therefore, our Investigator didn't uphold Mr S' complaint.

Mr S didn't agree with our Investigator's view, so he asked for his complaint to be considered by an Ombudsman.

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 its final response letter to Mr S' complaint, Evelyn said: "*Following discussion with your financial planner (XXXX XXXX) you decided to withdraw the entire cash sum from your SIPP to fund a building project. This decision was taken by you on an insistent investor basis, meaning you did not receive any formal advice from Evelyn Partners*".

However, Evelyn has now told this Service that Mr S wasn't an insistent client and that it used incorrect terminology in its final response letter. Evelyn has said that it should have referred to Mr S' pension withdrawal having been completed on a "*non-advised*" basis.

Evelyn has provided this Service with a copy of the Firm A pension withdrawal form completed by Mr S. In answer to the question in the withdrawal form: "*Have you taken advice from a regulated financial adviser in relation to taking money from your pension fund?*", Mr S answered "*No*" and initialled next to his answer.

On 1 August 2023 Evelyn emailed Mr S to say: "*I just want to make sure that you want to now go ahead with the withdrawals and closure of the accounts. Once I start the process I will not be able to reverse the transactions*". Mr S replied to Evelyn on the same day and said: "*I'm afraid I have no option so please proceed with all the withdrawals*".

Therefore, as Mr S confirmed in his pension withdrawal form that he hadn't received any advice in respect of his pension withdrawal, I think it's reasonable to conclude that Evelyn hadn't given him any advice on withdrawing all his Firm A pension fund. I also think that Mr S told Evelyn that he had no option but to withdraw all his pension fund and instructed Evelyn to process the withdrawal for him.

However, although Evelyn completed Mr S' pension withdrawal on a non-advised basis, I think that it still needed to provide Mr S with correct information. I will therefore consider what tax information Evelyn gave to Mr S. In doing so I think it's reasonable for me to consider all the tax information that Evelyn gave to Mr S and not just what Evelyn said in its email of 11 September 2023.

I don't think that there is a dispute about the amount of Income Tax that is payable against the pension withdrawal that Mr S made from his Firm A SIPP. Instead, I think that Mr S is claiming that a financial loss has resulted from the spending decisions he made after he'd received Evelyn's email of 11 September 2023. I will therefore also consider whether it's reasonable to conclude that Evelyn was responsible for the spending decisions made by Mr S.

On 23 March 2023 Evelyn told Mr S by email that his then current pension fund value was £1,446,742 and that the payment he'd receive net of Income Tax would be £809,505. I think that from this information Mr S should have understood that Evelyn was telling him that the Income Tax he would pay against his pension withdrawal would be £637,237 (£1,446,742 minus £809,505).

Firm A produced an Income Summary document for Mr S' SIPP on 4 April 2023. This said that Mr S' Pension Commence Lump Sum had already been paid to him out of his SIPP and that all of Mr S' remaining pension fund was crystallised. As a result, the statement showed that Mr S' remaining potential pension commencement lump sum was zero. I think that this meant that Mr S had no more tax-free lump sum that he could draw from his SIPP and therefore any money that he now drew from his SIPP would be subject to Income Tax.

Later in April 2023, Mr S withdrew £200,000 from his SIPP. I think it's reasonable that Mr S should've understood that by having completed this earlier withdrawal, the amount that he'd receive net of Income Tax liability when he completed the full withdrawal of his remaining pension fund would be much less than the net figure of £809,505 he'd been given by Evelyn in March 2023

However, the payment made into Mr S' bank account by Firm A when he encashed his SIPP in September 2023 was £1,008,099.35, which was approximately £200,000 more than the net figure of £809,505 that Evelyn had told him to expect in March 2023. This was despite Mr S having already withdrawn £200,000 from his SIPP in April 2023, and his SIPP value was little changed during the intervening period. I therefore think that the payment Mr S received in September 2023 from Firm A was significantly greater than the net amount he should reasonably have been expecting to receive.

Mr S emailed Evelyn when he received his net payment from Firm A on 11 September 2023 to say: "*Thanks, payment received. Is the payment net of tax?*" Mr S didn't send his email to his Evelyn financial adviser who'd told him in March 2023 what his net payment was likely to be. Instead, he sent his email to the Evelyn employee who had administered his pension withdrawal for him. From emails that this employee had previously sent to Mr S, this employee had the title of "*Client Administrator*".

The Evelyn client administrator emailed Mr S back to say: "*Yes, the amount is net of tax. You will in due course receive the final report from (Firm A)*". Mr S has said that he took Evelyn's reply to mean that all the tax due on his pension withdrawal had been taken and that he would have no more tax to pay. As a result, Mr S used some of the withdrawal payment to help buy two luxury cars and gave the go ahead for building work to start.

I do however think that it wouldn't have been unreasonable for Mr S to have made more detailed enquiries of Evelyn to ask why the net payment he'd received from Firm A was so significantly more than his Evelyn financial adviser had told him he would receive in March 2023. I also think it would have been reasonable for Mr S to have done this before he then committed himself to his spending decisions. But I've seen no evidence to show that Mr S made any further enquiries of Evelyn beyond the above single email before he then committed himself to spending the payment he'd received.

I've also considered the question that Mr S asked Evelyn as well as the response that Evelyn gave to Mr S. Mr S asked if the payment he'd received was "*net of tax*" and in reply Evelyn said "*Yes, the amount is net of tax*". I think that Evelyn's reply to Mr S' question was correct, in so far that the payment had been made net of tax. However, only basic rate Income Tax had been deducted from the pension withdrawal and not any 40% or 45% Income Tax liability, but Evelyn didn't explain this to Mr S in its reply email.

The gross pension withdrawal that Mr S made from his SIPP was for approximately £1,260,00 and from this Mr S received a net payment of £1,008,099.35. I think it reasonable that Mr S should have understood that Income Tax of approximately £250,000 had been deducted by Firm A. I also think that a straightforward calculation would have indicated that the deduction for Income Tax taken by Firm A equated to approximately 20% of the gross pension withdrawal. I don't think it would have been unreasonable for Mr S to have understood from Evelyn's email of March 2023 that higher rate Income Tax would be due against his pension withdrawal, and therefore he would still have further higher rate Income Tax to pay.

Mr S has said that he isn't a tax expert. Mr S has said that his accountant told him that he had the additional Income Tax liability to pay on his pension withdrawal on completion of his annual self-assessment return. As Mr S used the services of an accountant then I don't think that it would've been unreasonable for him to have asked his accountant if he would have any further tax liability on his pension withdrawal when he received the payment before he committed to his spending decisions.

I also think it reasonable to conclude that Mr S should have been aware that his overall tax liability for the tax year when he made his pension withdrawal would only be determined after the end of that tax year, when his accountant would then hold details of all the income Mr S had received in that tax year and could then calculate his Income Tax liability But I think that Mr S proceeded with his additional spending soon after he'd received his payment from Firm A, so before he'd reached the end of the tax year in question.

My conclusion is that Evelyn should have provided a more detailed reply to Mr S' question of 11 September 2023, but I also think that Evelyn gave Mr S correct information in March 2023 about how much Income Tax he would have to pay on encashing his pension.

As I've explained above, I think that because the withdrawal payment Mr S received from Firm A was significantly more than he should have been expecting, it wouldn't have been unreasonable for him to have made more detailed enquiries to either Evelyn or his accountant about the amount of Income Tax due on his pension withdrawal before he went ahead with his spending decisions. I also think it's reasonable to conclude that if Mr S had done this then he would likely have been told that only basic rate Income Tax had been deducted from his pension withdrawal by Firm A and that he still had a further Income Tax liability to pay.

Therefore, taking all the above into account, on balance I don't think it would be fair or reasonable to hold Evelyn responsible for the spending decisions that Mr S made after he received Evelyn's email of 11 September 2023 and because of this I'm unable to uphold Mr S' complaint.

Evelyn has offered Mr S payment of £1,000 as goodwill gesture in recognition of any distress its actions caused. I think this is a fair outcome and therefore won't be asking Evelyn to take any further action in respect of Mr S' complaint.

My final decision

My final decision is that I don't uphold Mr S' complaint against Evelyn Partners Investment Services Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 March 2025.

Ian Barton
Ombudsman