

The complaint

Mr A and Mrs A ('the complainants') became clients of Lowes Financial Management Limited ('Lowes') in 2012, when they both retired. Lowes advised on their portfolio – Mr A's Self-Invested Personal Pension ('SIPP') and Stocks & Shares Individual Savings Account ('SSISA'), and Mrs A's SSISA. They say Lowes failed to advise Mr A on avoiding, in his portfolio drawings, foreseeable and avoidable higher rate tax, and that it gave Mrs A incorrect advice in the transfer of her SSISA which caused a loss of tax-free income.

Lowes disputes the complaint.

What happened

The complainants say –

- they routinely withdrew from their SSISAs under consistent advice from Lowes to do so, alongside its consistent advice to take nothing from Mr A's SIPP;
- their main income was from Mr A's separate occupational pension arrangement, so the drawings were supplementary;
- they temporarily stopped the drawings in 2020 during the pandemic, because their expenditure reduced in the circumstances at the time;
- Mr A's state pension began in 2021, then in 2023 (and in discussion with Lowes) they learnt that it would have been in Mr A's interest, in terms of tax efficiency, to make withdrawals from the SIPP (instead of the SSISA) and to have done so at a certain level for around six years before he reached the state pension age;
- had that happened, his income would have remained in the 20% tax rate bracket into the future;
- however, because that did not happen, and due to the 2021 personal allowance and higher tax rate threshold freeze (which remains in place until 2028) and the index linked increases that nevertheless continue to apply to his occupational pension income, his income will inevitably end up in the 40% tax rate bracket;
- and he has calculated that over around 15 years he would have to pay an extra £18,000 in tax that could have been avoided.

The complainants assert that Lowes ought reasonably to have foreseen this, especially in and no later than 2021 when it was aware Mr A intended to restart drawings (after the suspension in 2020) and was aware of the *tax freeze announcement* that year.

On the other issue, they refer to Lowes' disclosure to them in 2023 that most of their portfolio was performing poorly; to their decision, in reaction, to move their SSISAs into Cash ISAs; to Lowes not offering Cash ISAs, leading to their applications to NatWest in this respect; to a deadline for transfers of funds into the NatWest Cash ISAs they had opened, in order to benefit from a specific time limited interest rate offer; to Lowes' contrasting advice that there was no time restrictions on transfers of funds between ISAs; to Mr A's ISA funds transfer happening in time but Mrs A's being a couple of days late, thereby being rejected for, and missing out on, the interest rate offer; and to the blame they place on Lowes' incorrect advice on the time limit, for her loss of the interest rate offer (and, as they have calculated, loss of around £1,500 tax free income).

Lowes mainly says as follows –

- It is true that the index-linked nature of Mr A's occupational pension income has meant his income tax liability is steadily moving towards the higher rate tax bracket. However, it does not automatically follow that its advice to make withdrawals from the SSISA was unsuitable. That advice was based on the withdrawals being, in themselves, tax efficient (as they were tax free). On this basis the advice was in his best interest at the relevant times and was suitable. Despite the tax freeze until 2028, in the long run tax bands and rates are always subject to changes. In this context and given the suitability of its advice, there is no basis to hold Lowes responsible for the complainants' conjecture about possible future tax liabilities that may or may not arise.
- With regards to the performance issues in 2023, it held the opinion that "... *'riding out' the adverse market conditions, benefitting from the market recovery and beyond that the prospect of future growth is for most investors the most suitable solution*". The complainants' move to transfer their SSISAs to the NatWest Cash ISAs was therefore made without its advice. It did not recommend the transfer. Both transfer requests were submitted at the same time and the timescales thereafter were out of its control.

One of our investigators looked into the complaint and concluded that it should not be upheld.

He considered that the foundation of the complaint about future higher rate tax liability is to be found in the March 2021 spring budget announcement about the tax freeze until 2026 (later extended to 2028), and that evidence shows the complainants have no issues with Lowes' advice and service prior to this. He also noted that its original recommendation to draw from the SSISAs was based on circumstances, including tax related circumstances, at the time and that the advice gave warning about the possibility tax circumstances could change in the future.

The investigator referred to a meeting between the parties in August 2022 in which the correlation between Mr A's pension income and its tax implications was discussed, and that previously in April 2022 he had instructed the resumption of drawings from his portfolio, having suspended them in 2020. In this context, he found that the allegation that Lowes wrongly failed to advise on the correlation immediately after the March 2021 announcement is unsupported, because Mr A was not taking drawings at the time, so the matter was not relevant for advice.

Overall, the investigator said the spring budget announcement and tax freeze could not have been foreseen during Lowes' previous advice, its previous advice was suitable for Mr A in the circumstances as they were, the effect of the announcement does not alter that, and the correlation between his drawings and his tax liability was addressed when raised for discussion.

On the SSISA to Cash ISA transfers issues, the investigator noted the complainants have previously claimed that NatWest had caused the delay in the transfer process, due to a problem with their online system. Mindful of this, he did not consider it fair to blame Lowes for the consequences of the delay.

The complainants disagreed with this outcome and asked for an Ombudsman's decision.

Mr A mainly said – he does not allege that Lowes' advice prior to March 2021 was unsuitable, the issue is about its failure to review its advice to him immediately after the

spring budget announcement (with regards to the future tax implications on his drawings and pension); the meeting the investigator referred to happened in 2023, not 2022; it is at this 2023 meeting that he, not Lowes, initiated the idea of mitigating his future tax position by withdrawing from the SIPP; Lowes had no excuse not to foresee that this was in his best interest; it knew from 2012 that he intended to draw down from his portfolio during his lifetime, he suspended the drawings in 2020 but Lowes was informed in a January 2021 email that he intended to resume them later that year, so by March 2021 it ought reasonably to have been aware of the announcement's impact on his plan; and another email to Lowes, in February 2022, confirmed his plan to resume the drawings around April/May that year, yet there was still no advice from Lowes on the implications of the announcement.

The matter was referred to 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.

Having done so, I have reached the same conclusion expressed by the investigator. Overall, on balance, and for the reasons given below, I do not uphold the complainants' complaint.

The future tax liability matter (regarding Mr A)

As I mentioned above, Mr A appears to confirm that suitability of Lowes' advice prior to March 2021 is not the complaint. Having said this, comments he has made about Lowes' previous lack of foresight on the merits of withdrawing from his SIPP and about the better position he believes he would be in had he begun such SIPP withdrawals around six years before 2021 (when he reached state pension age), would suggest that a part of his case still questions suitability of Lowes' pre-2021 advice.

The main aspect of the pre-2021 advice relevant to the case is the recommendation to take drawings from the SSISA instead of doing so from the SIPP. On balance, I do not consider that this advice was unsuitable in the circumstances as they were. Before addressing this further, it should be noted that a firm's obligation to give suitable advice does not extend to an obligation to giving the 'most' suitable advice, or 'more' suitable advice than a suitable alternative. It is also possible that, depending on facts and circumstances, different recommendations could each be suitable. I am persuaded that determination of this future tax liability matter could be met with an approach along these lines. In other words, even if Mr A's is correct to assert that Lowes should have given him the advice he describes – which, on balance and for the reasons I address below, I do not support – it could still be the case that the advice Lowes gave him was still suitable in its own right.

The idea, prior to the events in 2021, of tax efficient/tax free drawings from the SSISA does not come across as being unsuitable for Mr A. Lowes has referred us to fact find evidence from the relevant time showing that this approach reflected his desire, at the time, to avoid taxable drawings, and it has noted that this desire remained in place until he changed his position in 2023. As I refer to 2023, I should note that Mr A is correct in his description of the meeting that took place in this year and the discussion of cause to draw from the SIPP within the meeting. Lowes does not dispute this.

Returning to the pre-2021 advice to draw from the SSISA, Lowes has explained the following to us – *"... we feel it is best practice to deplete a S&S ISA before making withdrawals from a pension anyway. The withdrawals are tax-free from an ISA whereas with a pension although 25% can be taken as a tax-free lump sum, the remaining 75% would be taxed at their highest marginal rate. Within a pension this would mean a higher gross amount would need*

to be taken in order to meet the net income requirement which would deplete the pot quicker than taken from an ISA. Also, with an IHT consideration the benefits of passing on a pension are greater than ISAs. Although ISAs can be inherited tax free by a spouse or civil partner, if they are passed to anyone else it still forms part of the donor's estate on death whereas a pension can be passed onto to any beneficiary on death free of IHT".

The arrangement appears to have followed from its 2016 advice, and it has also referred us to content within the advice document which gave notice to Mr A that *"Any reference to taxation, tax allowances or tax reliefs is based on our interpretation of current taxation law and practice, which may be subject to change"*. At the time, available evidence suggests he was a basic rate taxpayer with annual income (from his occupational pension plans) well below the higher rate tax bracket, whilst Mrs A was a nil rate taxpayer.

In the above context, and contrary to what Mr A appears to expect, I am not persuaded that Lowes, at any point between 2016 and 2021, should have had the foresight towards an unpredictable tax freeze in March 2021, or that it should have found a cause to recommend withdrawal of taxable income from the SIPP. There was no cause for such a recommendation. It could not foresee and predict the tax freeze. Furthermore, and based on available evidence, the idea of tax-free drawings from the SSISA appears to have appealed to Mr A during this period and, as quoted above, Lowes concluded that there was suitability in that approach. On balance, I agree that conclusion, for broadly the same reasons expressed in the above quote.

I do not consider that the March 2021 announcement should have prompted Lowes to review the approach. Mr A had suspended the drawings in the year before. He refers to emails in early 2021 and early 2022 expressing his plan to resume them, but I have not found anything in his indications to resume the drawings that should have given Lowes cause to consider abandoning the SSISA drawings approach, which had been reasoned and suitable for him up to that point. He expressed no relevant change in his objective (concerning the drawings) in these emails, and he gave no direct instructions to depart from the SSISA drawings.

If Mr A says the 2021 tax freeze should have created cause for the alternative advice he has described, it would be an argument that assumes Lowes could have unilaterally dismissed his previous objective to have tax-free drawings. It could not have reasonably done that. It was not unreasonable for it to continue to believe, until told otherwise, that he still wanted tax-free drawings. I am mindful that this was a reasonable objective, one that Mr A continued to stand by at the time and one which is commonly held by investors and pension holders, so I would not expect Lowes to have unilaterally questioned it. Until Lowes became aware that Mr A was prepared to drop and substitute that objective with one based on taking taxable drawings (from the SIPP), in his reaction to the tax freeze and its effect on his pension income, I do not find it reasonable to expect that it should have initiated and recommended such a fundamental change of strategy.

Mr A did not make Lowes aware of the change of objective until 2023, and in response to that Lowes advised him on taking drawings from the SIPP. This was the correct sequence of events and, for the reasons given above, I disagree with his argument that Lowes should have initiated the idea before he changed his objective.

For the above reasons, I do not uphold the complaint about this matter.

The NatWest Cash ISA matter

As far as I am aware, the complainants have not rebutted the investigator's conclusion on this matter (in which he did not uphold it). It is unclear if this means they concede to his view

on the matter and/or no longer wish to pursue it. However, in the absence of their express withdrawal of it, I consider it unsafe to assume it has been withdrawn, so I will address it.

In support of Lowes' position on the matter, there is no documentary evidence that it initiated or recommended the SSISA to Cash ISA transfers. By the complainants' admission, it was initiated and pursued by them. They have referred to Lowes agreeing with their decision and assisting in the transfer arrangements, but that does not automatically amount to recommendation of the transfers. I am aware that they maintain, as expressed in their submissions to us, that the transfers were advised by Lowes. In the absence of documentary evidence of advice in this matter, I am not persuaded enough to agree, but in any case, I do not consider this point to be as pivotal as they might consider it to be.

Whether advised or not, the transfer pursuit happened for both complainants, and available evidence is that their applications were submitted at the same time.

Their issue is that whilst the transfer of funds part of Mr A's application met the deadline for NatWest's time limited interest rate offer, that part of Mrs A's application did not; and they consider that they could have worked towards avoiding the risk of such an outcome had they not been misled, as they allege, by *advice* from Lowes leading them to believe there was no associated time limit or deadline in the process.

The complainants have described the events as follows – “[Mr A's] *transfer went ahead but there were problems with NatWest's online system and it took slightly longer for [Mrs A] to open her Cash ISA account. She submitted the funds transfer request as soon as she had the details of her NatWest account but received a letter from NatWest informing her that her transfer request had not been received until after the closing date of 14 August 2023 ...*”.

Therefore, and irrespective of the debate over *advice* from Lowes, it is evident that something went wrong in the matter only in relation to Mrs A, because Mr A's NatWest Cash ISA set-up and the funds transfer that followed were successful in meeting the time limited offer. It is also evident that what went wrong was remote to Lowes. In the above quote, the complainants refer to, and blame, problems with NatWest's online system. I do not have enough evidence to comment further on this, but the point to note is that the problem(s) had nothing to do with Lowes. Lowes did not unduly delay the process, as shown by Mr A's successful transfer, which would not have been the case if it caused a delay to the applications. Therefore, the complainants' transfer applications began in good time to meet the time limited offer, regardless of what Lowes did or did not say about the time limit, and the fact that Mrs A's application ended unsuccessfully had nothing to do with Lowes.

For the above reasons, I do not uphold this matter.

My final decision

My decision is that I do not uphold the complaint from Mr A and Mrs A.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mrs A to accept or reject my decision before 28 April 2025.

Roy Kuku
Ombudsman