

## **The complaint**

Mr B complains that Portal Financial Planning Limited advised him to encash his pension plan which resulted in him triggering the Money Purchase Annual Allowance (MPAA). This means he can now only pay £10,000 per year into a pension, and he says if the adviser had alerted him to this he wouldn't have gone ahead with the encashment.

## **What happened**

Mr B's complaint was considered by one of our investigators. He sent his assessment of it to both parties on 17 May 2024. The background and circumstances to the complaint were set out in that assessment, so I won't repeat them all again here. However in summary, Mr B had a longstanding business relationship with his adviser at Portal. He'd had an Executive Pension Plan (EPP) with a well-known pension provider (which I will refer to as Provider A) for a number of years. Mr B had speculated about transferring it over a period of time. Mr B said that Portal's adviser had explained that to some degree this wouldn't be practical due to the complexity of the policy. Although Mr B's preference was to combine it with his other pension, he said the adviser advised him to encash it when this became an option when he reached aged 55.

Mr B did encash the EPP with Provider A. He completed the relevant forms to authorise a one-off payment in January 2023. Mr B subsequently found out that this meant he was subject to the MPAA, and the amount he could contribute to the pension fell from £60,000 a year to £10,000.

Mr B said he'd been making significant contributions to his pension over recent years and wanted to maximise that opportunity. He said he'd ticked yes to say that he'd dealt with a financial adviser on the forms completed for Provider A, and so felt had no need to discuss the matter with it.

When Mr B complained to Portal it said that Mr B had had the EPP before his relationship with the adviser began. It said it was never on its books, and it hadn't had authority over the plan. It said it never formed part of its advice remit. Portal said it believed Mr B contacted Provider A directly to discuss the withdrawal and that Provider A had given Mr B a 30-day cooling off period that he hadn't used.

In summary, Portal's position was that it had no authority to advise on the EPP, had never advised Mr B about it and had received no fee for doing so. It said it was unaware that Mr B had encashed the plan until November 2023. Portal concluded that Mr B wanted to surrender the plan, had done so at the earliest opportunity, and Provider A had stated in its paperwork that the action could have an impact on the MPAA.

Our investigator didn't recommend that Mr B's complaint should be upheld. He said, in summary, that although he accepted that it was likely that the EPP would have been discussed with Portal's adviser at some point as it formed part of Mr B's overall financial provision, he'd seen no evidence to suggest that Portal had provided formal regulated financial advice on it. He said as the value of the EPP appeared to be just under £20,000, it meant Mr B could encash it without taking financial advice. And he said Provider A had

supplied Mr B with the relevant information that was required to make his decision.

The investigator said Mr B had ticked to say he wanted to proceed with the transaction without taking guidance or advice from Pension Wise - albeit he had ticked to say he had already received financial advice. He said Mr B signed a declaration form when taking the benefits which included the following statement – amongst others:

- *I understand I will be subject to a reduced Money Purchase Annual Allowance of £4000 after the one-off payment is made.*

The investigator said he thought the evidence showed the transaction was effectively carried out on a non-advised basis, and that Aviva had provided sufficient information about the MPAA.

So in summary, the investigator said that he didn't think Portal had been authorised to advise on the EPP; he'd seen nothing to suggest the adviser had recommended the surrender of it; Provider A had a regulatory duty to provide Mr B with all the information that he needed to make his decision, and he thought the surrender of the EPP was conducted on a non-advised basis. So the investigator didn't think Mr B's complaint should be upheld.

Mr B didn't accept the investigator's findings and his complaint was passed to me to decide.

### **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.

I've listened to the telephone call recordings between Mr B and Provider A, and the adviser and Provider A. However the calls don't provide anything material to support Mr B's assertion that he was advised by Portal's adviser to encash the EPP.

On the one hand, Mr B is adamant that he was advised to cash in the EPP. He has said that when he asked if he could transfer the EPP the adviser told him it was not possible due to its complicated nature, and the best option was to cash it in when he reached aged 55. Mr B said when he completed Provider A's documentation to take the EPP he ticked to say advice was not needed from Provider A, because as far as he was concerned, he'd received appropriate advice from Portal's adviser. He said he'd made maximum contributions to his pension over the previous four-year period, and the adviser had had ample opportunity to warn him about the MPAA.

However on the other, the adviser has said that Mr B had asked him numerous times over the years when he would be able to take the benefits from the EPP. And that he'd told him he could do so at age 55 – he says he was just answering Mr B's question and didn't consider this was providing 'advice' on the EPP. The adviser acknowledged that he *could* have also discussed the MPAA at some stage, but was equally adamant he wasn't providing wider 'advice' about the EPP.

I don't think whether or not the adviser had the relevant regulatory permissions to advise on the EPP is material – if he provided advice it would be subject to the usual regulatory requirements to be suitable. On other occasions where 'advice' had been given the adviser had provided written documents setting out his recommendations. There's no documentation here recording such 'advice'. However whether or not what the adviser said during discussions was technically 'advice' would depend on the particular circumstances, what was said, and in what context. It's clearly not possible for me to know with any reasonable degree of certainty exactly what was said and discussed about the EPP. And like the

investigator, I don't think there is sufficient weight of evidence to conclude that the adviser did 'advise' Mr B to encash the pension.

However it's not in dispute that the adviser provided information to Mr B – at the least that he could take the benefits from the EPP from age 55. That could have had implications depending on how Mr B took those benefits. So it could be argued the adviser should have gone on to have explained the MPAA to Mr B. Again, however, I think the lengths that the adviser had to go to and his obligations to explain the wider consequences of taking benefits from the EPP depended on the context of the conversation and exactly what was asked and said. And as I've said, I can't reasonably determine the content of those conversations.

I think what's key here however, is that when Mr B took the benefits from the EPP he was provided with information about the MPAA from Provider A. Whilst I understand that Mr B may have approached the matter on the basis that he'd been advised about taking the benefits, he still, acting reasonably, had a responsibility to read the information that he'd been given about an important financial transaction.

As the investigator noted, Mr B signed a declaration which included the following warning just above his signature.

- *I understand I will be subject to a reduced Money Purchase Annual Allowance of £4000 after the one-off payment is made.*

Provider A had also sent Mr B a document headed **Your retirement - what's next?** dated 13 January 2023. In the section **Withdraw all your money in one go** it said.

*What's next?*

*We'll send you all the details to help you decide if this is the right option for you.*

*Are you sure...*

*You need to answer the following questions so we can be sure you have all the information you need to make the choice that's right for you:*

*Do you know how taking an Uncrystallised Funds Pension Lump Sum could affect any future pension contributions?*

Mr B ticked No.

Mr B clearly read this part of the form and must have considered the question as he ticked no. I think the question in itself ought to have at least alerted Mr B that by taking the EPP as a lump sum there *might* be implications to the amount of future contributions he could make and which he recognised he didn't know about.

Provider A sent Mr B a retirement pack dated 20 January 2023. This included the signed declaration and had a section titled: **Risks you need to know about** which included **Taking all your money from this plan as a lump sum**. This said:

**Contributing to your pension in the future** – *Taking your money like this will trigger the reduced money purchase annual allowance (MPAA). The annual allowance is the amount you can save into a pension before tax charges could apply. You will still have an annual allowance of £40,000 in total, but not more than £4,000 can be paid into a defined contribution pension (money purchase scheme) with the balance being available for other pension savings. If you wish to contribute to a pension in the future you should seek financial*

*advice or guidance before choosing this option.*

Mr B was also sent a brochure headed ***Withdraw all the money in your pension pot. This included:***

*Taking your pension pot as an Uncrystallised Funds Pension Lump Sum will trigger the money purchase annual allowance. You will still have an annual allowance (the amount you can save into a pension before tax charges apply) of £40,000 in total (2022/23), but no more than £4,000 can be paid into a defined contribution (money purchase) pension.*

So I think there were several warnings in the information Provider A sent to Mr B that explained he would be impacted by the MPAA, and which ought to have alerted Mr B to the limit on future contributions or, at the least, ought to have prompted Mr B to look into the matter further.

I do appreciate Mr B's position – that he completed the paperwork in the context that he'd been advised to cash in the pension. But as I've said, Mr B did have a duty to read the information that was sent to him. And in my opinion that information ought to have alerted Mr B that if he took the EPP as a lump sum it would affect the amount of future contributions he could make to his pension. It wasn't something that was briefly referred to in the literature - it was mentioned on a few occasions and in my opinion in an understandable manner.

As I've said, I don't think there is sufficient weight of evidence to conclude Mr B was likely 'advised' to cash in the EPP. And the circumstances of the conversation about the EPP with the adviser, and therefore the extent of the adviser's obligations aren't clear. However I am satisfied that Mr B ought to have been alerted to the MPAA by the information sent to him by Provider A in any event. So whilst I recognise that Mr B will be very disappointed with my decision, taking all the above into account and in the particular circumstances, I'm not persuaded that Mr B's complaint should be upheld.

### **My final decision**

My final decision is that I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 May 2025.

David Ashley  
**Ombudsman**