

The complaint

Mr B complains that The On-Line Partnership Limited, trading as IN Partnership ('INP'), didn't inform him that he would incur an income tax charge when he took a withdrawal from his pension fund in March 2023.

In addition, Mr B says that INP failed to explain that in taking the withdrawal, it would impact the amount he was able to contribute to his pension in future years and that it could impact his inheritance tax (IHT) position on death.

To put things right, Mr B wants INP to pay the income tax liability he incurred as a result of the withdrawal along with compensation for not being able to maximise his pension contributions in the final years in the run up to his retirement.

What happened

In February 2023, Mr B contacted INP explaining that he was looking to purchase a property and needed some funds for the deposit. Mr B wanted to understand how much tax-free cash (TFC) was available to take from his existing self-invested personal pension (SIPP) with AJ Bell that INP managed for him.

After checking Mr B's plan, INP explained that there was £1,590 of TFC remaining within his SIPP. INP went on to explain the balance of the TFC had previously been taken a number of years ago when the SIPP was held elsewhere. That meant, they said, if Mr B wanted to go ahead with any withdrawal, he'd need to consider any tax deduction as AJ Bell had explained that they would debit emergency tax of c38%.

After a number of email exchanges, Mr B confirmed to the adviser that he wanted to proceed with a withdrawal from his SIPP. INP then informed Mr B that they'd sold down his HSBC shares. On 2 March 2023, INP contacted Mr B stating that they could send the instruction for the income payment of £150,000 (gross) to his bank that day and asked him to confirm if he was happy to go ahead and Mr B provided confirmation the same day.

On 14 March 2023, AJ Bell wrote to Mr B explaining that as a consequence of the withdrawal, he'd now be subject to the money purchase annual allowance (MPAA) and that the withdrawal would be taxed using the emergency tax code on a month one basis until they received the correct tax code from HMRC.

The same day, INP emailed Mr B to confirm the net payment from the SIPP would be £84,225. Mr B replied explaining that he'd yet to receive the payment and questioned why emergency tax had been applied to the payment. INP stated that the delay in receiving the payment was a result of AJ Bell needing to alter the plan from capped to flexi-access drawdown, which had previously been highlighted.

On 16 March 2023, INP provided a breakdown of the tax that AJ Bell had debited and set out to Mr B how he could go about reclaiming any overpaid tax with HMRC. Shortly

afterwards, Mr B decided to formally complain to INP. In summary, he said that he was changing his adviser as he wasn't happy with how the withdrawal had been undertaken. Mr B also said that he didn't think the taxation implications were made clear to him, particularly the impact of income tax, IHT and the MPAA.

After reviewing Mr B's complaint, INP concluded they were satisfied they'd done nothing wrong. They also said, in summary, that they'd clearly set out the level of Mr B's TFC that had already been depleted aside from a very small balance, and that AJ Bell would apply emergency tax to the remainder. In addition, INP explained that both AJ Bell and themselves had already highlighted the impact of taking a taxable withdrawal from the plan and this meant in practice that the MPAA would be triggered. Finally, INP explained that they'd also pre-warned Mr B that in withdrawing monies from his pension, it may become assessable for IHT in the future.

Mr B was unhappy with INP's response, so he referred his complaint to this service. In summary, he repeated the same concerns that he'd set out to INP. The complaint was then considered by one of our Investigators. She concluded that INP hadn't treated Mr B unfairly because from what she'd seen, Mr B was provided with sufficient information prior to proceeding with the withdrawal.

Mr B, however, disagreed with our Investigator's findings. In summary, he said that he didn't believe his adviser had the appropriate level of knowledge to provide pensions advice. He also said that INP should have done more to ensure that he didn't trigger the MPAA. Finally, Mr B explained that he felt that INP had provided advice to him about the withdrawal so they should be accountable for the issues that subsequently arose.

Our Investigator was not persuaded to change her view as she didn't believe Mr B had presented any new arguments she'd not already considered or responded to. Unhappy with that outcome, Mr B then asked the Investigator to pass the case to an Ombudsman 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.

I have summarised this complaint in less detail than Mr B has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts.

My role is to consider the evidence presented by Mr B and INP in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, I'm not upholding Mr B's complaint and it's largely for the same reasons as our Investigator – I'll explain why below.

Was advice given?

Mr B is of the view that INP should have undertaken a full assessment of his circumstances and made a personal recommendation to him about how the monies for his house deposit should have been financed – rather than just taking his instruction to withdraw monies from the SIPP. As such, because of the tax bill that's followed, Mr B believes INP should be accountable for it as, he says, he would've funded the deposit through other means. However, INP say that they only processed Mr B's withdrawal request and didn't provide any advice, so they weren't obligated to provide a formal recommendation to him.

Having looked at the nature of Mr B's pension, it doesn't appear to contain any of the features (such as for example, safeguarded benefits) that would obligate INP to provide formal advice, so that means INP weren't required to produce a formal recommendation to him when he wished to access his benefits – unless that is, Mr B wanted or needed advice on the best way to access his benefits rather than just needing information.

In determining what constitutes simply providing information, to the point at which it moves to giving advice (which then necessitates the need for a personal recommendation to be made), I've considered the Financial Conduct Authority's (FCA), 'Perimeter Guidance', which is often referred to as 'PERG'. In PERG8.28.1, it states:

"In the FCA's view, advice requires an element of opinion on the part of the adviser. In effect, it is a recommendation as to a course of action. Information, on the other hand, involves statements of fact or figures".

And, in PERG8.28.2, it states:

(1) In general terms, simply giving information without making any comment or value judgment on its relevance to decisions which an investor may make is not advice.

(2) The provision of purely factual information does not become regulated advice merely because it feeds into the customer's own decision-making process and is taken into account by them.

(3) Regulated advice includes any communication with the customer which, in the particular context in which it is given, goes beyond the mere provision of information and is objectively likely to influence the customer's decision whether or not to buy or sell.

(4) A key to the giving of advice is that the information:

(a) is either accompanied by comment or value judgment on the relevance of that information to the customer's investment decision; or

(b) is itself the product of a process of selection involving a value judgment so that the information will tend to influence the decision.

(5) Advice can still be regulated advice if the person receiving the advice:

(a) is free to follow or disregard the advice; or

(b) may receive further advice from another person (such as their usual financial adviser) before making a final decision.

I've looked closely at the various email exchanges between Mr B and INP and from what I've seen, Mr B's initial email and subsequent messages didn't ask for advice, didn't seek a

personal recommendation and were looking for information of a factual nature only. And, the various email exchanges all appear to have been undertaken between Mr B and an office administrator at INP (who are not authorised to provide advice) rather than an adviser so I can't conclude that Mr B would have thought that an adviser was providing him with a personalised recommendation or sense checking his decision making.

Mr B's SIPP contained direct equity holdings in VW, easyJet, Valeant, Carnival and HSBC, but it was Mr B that set out what shares he wanted INP to sell to fund the house deposit. So, it seems to me that INP's interactions with Mr B didn't meet the regulator's threshold that would necessarily require them to provide him with a formal recommendation about the merits of a particular course of action - INP provided information only.

When Mr B needed to alter his existing pension from a capped to a flexi access drawdown arrangement, he signed AJ Bell's conversion form. However, so did INP's adviser who completed the 'Adviser's declaration and undertaking' section on the form, which included the following statement:

"I hereby confirm that I have given advice to the customer named above in accordance with the instructions contained in this form and, where required, I have provided an illustration of the benefits their remaining fund can provide."

So, despite having not provided any assessment of the customer's circumstances or issued a formal recommendation to Mr B about the merits and drawbacks of the withdrawal he was considering entering into, INP provided a warranty to AJ Bell that they had.

Information about the likely income tax position

As Mr B had previously extracted the majority of his tax-free cash allowance from the SIPP, there was very little monies he was able to take without income tax being applied. And, I'm satisfied that on balance, Mr B was properly informed of that.

Having looked at the initial email exchange between Mr B and INP, I'm of the view that INP's messaging was clear on this particular issue – on 17 February 2023, INP set out precisely the remaining amount of money that was available to take from the SIPP tax-free - £1,589.84. When Mr B questioned this, INP investigated the previous tax-free withdrawals that Mr B had taken when his SIPP was held elsewhere and provided him with a breakdown of the amounts taken. I've not seen any evidence to suggest that INP told Mr B that he had monies in excess of the £1,589.84 that could be taken without the deduction of tax.

INP also explained that if Mr B wanted to pursue taking funds from the SIPP for the house purchase, AJ Bell would debit emergency tax of 38% and it could be the case that higher rates may also be due depending upon whether he was a higher rate taxpayer. So, I can't reasonably conclude that Mr B was not placed in an informed position about the impact of income tax before deciding whether or not to proceed with the withdrawal.

Mr B states that he would've used other resources to fund the house deposit had he known how much tax he'd pay, but INP were clear about the limited amount of tax-free cash available and that any balance taken over that would be subject to tax – despite this, he still choose to progress down the path of withdrawing monies from the SIPP.

I've not seen any evidence to suggest that Mr B contacted INP before the withdrawal to clarify the tax position further once advised of the emergency tax or ask for help in identifying alternatives to raise the deposit monies. As INP were explicit in their messaging around the minimal amount of funds that were available tax free, it therefore follows that any funds taken from the SIPP in excess of the £1,589.84 wouldn't be tax free.

For completeness, I will comment on INP's email of 24 February 2023 that confirmed the payment would be £150,000 net. All of INP's other messaging on the issue stated that the £150,000 would be gross and taxable so I'm satisfied on balance, that Mr B had all of the necessary information upon which to base his decision making on, so I can't conclude that they've done something wrong on this particular issue.

MPAA

At the initial point that Mr B wanted to take the withdrawal from his SIPP, it was configured as a capped drawdown plan. That effectively meant the amount he could take from his plan each year was limited, so the pot had to be altered to a flex-access policy to allow for the size of the intended withdrawal that Mr B wanted for his house purchase plans. INP positioned this with Mr B in their email to him on 2 March 2023 when providing AJ Bell's conversion form.

I've looked closely at the form Mr B signed when he applied to alter his SIPP from a capped to a flexible access drawdown arrangement. It states, in bold text on the first page of the form:

"Future pension contributions

Once you convert your pension benefits to flexi-access drawdown, the amount you can contribute to all money purchase pensions each year, including your SIPP or Retirement investment Account, while receiving tax relief on those contributions, may be reduced.

If you take any pension from your SIPP or Retirement investment account after converting to flexi-access drawdown your annual contribution allowance will be reduced to £4,000.

If you want to make large contributions in the future, you should carefully consider how you access your pension".

I've not seen any evidence that Mr B contacted his adviser to raise any concerns about the impact of the MPAA on him personally in the future or to seek out further clarification on the topic. Despite the warning within the form, Mr B signed to confirm that he understood what he was entering into by asking AJ Bell to make the alteration.

I'm satisfied that the information within the form was given sufficient prominence and was clear enough that even an individual with no to limited pension knowledge (which Mr B states he is) would be clear of the likely impact of altering their plan and then any withdrawal which followed. So, I'm satisfied that Mr B was made well aware of what the impact would be on any future contributions into his pension plan following the withdrawal.

IHT

Whilst the issue of IHT wasn't specifically mentioned in Mr B's complaint form to this service, it was addressed in his complaint to INP so for completeness, I will comment on it. By virtue of the fact that Mr B has raised the issue of any monies having been taken out of a pension pot being subject to IHT, suggests to me that he does have some degree of understanding of the implications of his pension fund withdrawal. But, in any event, as I've already explained above, as Mr B didn't seek out advice about whether the withdrawal was appropriate for him, I can't conclude that INP have done anything wrong by not highlighting this to him.

Summary

Despite INP providing a warranty to AJ Bell that they had assessed the suitability of the withdrawal (which I don't think they should have done), I can't reasonably conclude that it's made a difference to the position that Mr B has found himself in. I say that because Mr B was informed of how much tax-free cash he had left, he was informed of the income tax position of taking monies out of his pot and he was made aware of the MPAA. And yet, he still decided to proceed. I'm therefore satisfied that he was placed in an informed position ahead of deciding to use his SIPP to extract funds for his house deposit and it was his decision to do so and as such, I don't think it's reasonable to expect INP to cover the tax bill that then followed.

My final decision

I'm not upholding Mr B's complaint and as such, I won't be instructing The On-Line Partnership Limited, trading as IN Partnership, to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 June 2025.

Simon Fox
Ombudsman