

The complaint

Mr M complains that Fiducia Wealth Management Limited (Fiducia Wealth) failed to ensure that the correct form of Lifetime Allowance (LTA) transitional protection was in place in 2014 and 2015 and gave him incorrect advice and information when he agreed to crystallise his pension benefits to release his tax free cash (TFC) in 2017. He says Fiducia Wealth's actions have caused him significant tax implications and he thinks it should pay the full tax liability that he has incurred. He also thinks it should meet any penalties or charges levied on him by HMRC and return some of its advice fees because of its unsuitable advice. He also doesn't think Fiducia Wealth has fully investigated his complaint and hasn't taken into account some of the conversations he had with it during 2023.

What happened

Mr M met with Fiducia Wealth in February 2014 to discuss his pension planning. The outcome was that Fiducia Wealth recommended the transfer of his pension plans – two of which were receiving regular contributions – to a new self-invested personal pension, to give more flexibility in his retirement. The effect of the LTA on his pension plans was also discussed. Fiducia Wealth set these out in a suitability report.

On 22 March 2014 it was confirmed that a lump sum of £51,000 had been paid into one plan and this was also the date that Mr M signed an application form for Fixed Protection to his LTA – known as FP14. His FP14 certificate from HMRC was dated 22 May 2014.

Mr M says this application was made by his adviser. However during the process of arranging the transfer regular contributions to his pensions continued – which invalidated his FP14.

In March 2015 Mr M agreed to transfer one of his plans – a self-invested personal pension – to a provider using a Fiducia Wealth investment portfolio.

In 2017, approaching his 75th birthday, Mr M crystallised the benefits from his pensions – withdrawing his TFC lump sum and transferring the residual funds into a flexi access drawdown plan. As his benefits were valued at 124% of the LTA, he paid income tax on the excess of £91,056. Mr M said he raised concerns about the tax he paid and other matters in June 2023, but they weren't addressed, and he tried to resolve the matter himself with HMRC.

So in January 2024 Mr M raised a formal complaint. He said that Fiducia Wealth should have treated his previous concerns as a complaint, but in any case, as his adviser, Fiducia Wealth had caused him to lose the FP14 he previously applied for. He also said its advice to crystallise his pension benefit in 2017 was unsuitable as it had subsequent tax implications for him.

Fiducia Wealth said that:

- It didn't believe that during the meetings in 2023 Mr M expressed dissatisfaction. It thought it was assisting him to collate the information that had been requested by

HMRC. It thought it was only in his letter from January 2024 that Mr M complained about its previous advice.

- It had clearly set out the terms for FP14 – including that continuing contributions would revoke the protection unless individual protection (IP14) was applied for. It didn't manage the two pensions into which contributions continued, nor did it have the ability to stop the direct debits being taken to pay the regular contributions. It also noted that Mr M didn't apply for IP14.
- But it accepted that its advice in 2017 had been misleading as it calculated the LTA tax charge against an allowance of £1.5 million when in fact Mr M's LTA at that time was only £1 million. It said Mr M should apply for IP16 as soon as possible to mitigate any extra charge and offered to pay any additional income tax due on the TFC paid of £375,000 and any late payment penalties levied by HMRC as a result. It also offered £1,000 as a gesture of goodwill.

Mr M brought his complaint to us where one of our investigators looked into the matter. He made the following points in support of his assessment.

- Although Mr M's formal complaint was only raised with Fiducia Wealth in January 2024 – which was more than six years after the 2017 advice was given – he thought Mr M only had cause to complain when he received a letter from HMRC in May 2023. So he thought we could consider the complaint about the suitability of that advice.
- It wasn't in dispute that Fiducia Wealth had incorrectly calculated Mr M's allowable TFC and therefore his tax liability against an LTA based on Mr M still having valid FP14. The consideration was therefore whether Fiducia Wealth had compensated Mr M appropriately for its error.
- He thought Fiducia Wealth's offer to pay any tax liability incurred as a result of the higher TFC withdrawn was fair, because the rest of the tax liability he incurred was correct as a result of not having FP14.
- He couldn't comment on whether it was Fiducia Wealth's responsibility that Mr M lost his FP14 because that question had been brought to Fiducia Wealth outside of the time limits that applied under our rules.
- He also thought it was fair that Fiducia Wealth should cover any penalties levied by HMRC for the late payment of the tax charge or the income tax charge on the excess TFC amount.
- He thought Mr M had suffered distress and inconvenience over the large and unexpected tax bill and having to now apply for IP16 to mitigate his loss. He thought Fiducia Wealth's offer of £1,000 was fair and reasonable in that respect.
- But he didn't think Fiducia Wealth should have to return part of its advice fees because if Fiducia Wealth covers the part of tax liability it accepted responsibility for, Mr M would then be in the position he ought to be in.

The investigator then issued another assessment to explain why we couldn't consider Mr M's complaint that Fiducia Wealth's actions in 2014 caused him to lose his FP14 and didn't replace it with IP14.

He said that Mr M ought to have been aware – because of information he was provided with and meetings that occurred – of a cause to complain by January 2015 at the latest. Therefore he concluded that part of Mr M's complaint had been brought outside of the permissible time limits and therefore couldn't be considered.

Mr M didn't agree. He said:

- This was complex matter for which he requested professional help and guidance. He put his faith in Fiducia Wealth and believed it had let him down in that respect.
- He paid Fiducia Wealth around £30,000 in advice fees for this matter and would like them to be refunded to him because of the poor advice.
- He thought Fiducia Wealth had charged him ongoing fees on the tax liability that shouldn't have been under its management had the LTA tax calculation been correct. He thought it should refund those fees with interest or investment growth added.
- He had no recollection of signing or agreeing to any documents in relation to an application for FP14.
- He thought Fiducia Wealth had made "*grave mistakes*" resulting in a large financial liability he was unaware of until contacted by HMRC.

The investigator said:

- He couldn't comment on the matter of FP or IP14 because that part of the complaint had been brought outside of the time limits.
- He hadn't overlooked the advice fee Mr M had paid but thought he would have gone to Fiducia Wealth for advice about the TFC withdrawal anyway (the £25,000 annual advice fee was for ongoing advice) and if Fiducia Wealth compensated Mr M in the way he had set out then Mr M would now be in the position he ought to be in. He took the same view of the funds that remained under Fiducia Wealth's management which should have been paid to HMRC.
- He didn't mention the incorrect national insurance number that was used within Mr M's FP14 application as this was the part of the complaint that he couldn't consider.
- He accepted that Mr M didn't recall receiving certain documents but thought the provision of suitability reports was standard practice in the industry. He provided Mr M with copies of the key documents he had used to reach his conclusions.

Mr M set out details of the adviser fee he was charged for 2016 to 2017. He also said:

- He disputed that part of his complaint had been made too late as he said he couldn't reasonably have had cause to complain until he received the letter from HMRC. He said he couldn't reasonably have been aware of the loss of FP14 by 19 September 2014. But, in any case, the investigator's view had been formed by "adviser notes" and internal memos, none of which he had seen or held copies of. He thought awareness of all his complaint points should begin from August 2023.
- He didn't think Fiducia Wealth should be able to benefit from its mistakes so should refund the overcharged fees accrued by keeping more of his funds under management than should have been held.
- He trusted the initial adviser who looked after him but with the changes which followed a management buyout of Fiducia Wealth he no longer held that trust and confidence.

Mr M asked for his complaint to be referred to an ombudsman – so it's been passed to me to review.

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 first considered the matter of our jurisdiction to look at the various aspects of Mr M's complaint, I've broadly reached the same outcome as the investigator. I imagine Mr M will be

disappointed with this outcome, and I have some sympathy for his position here - so I'll explain my reasons below.

The 2014 advice

Mr M's first complaint point is about the suitability of the advice he received in 2014 which he said led to the loss of his FP14 and caused a greater level of LTA tax charge in 2023. However before I can consider the merits of that advice, I have to consider whether that part of Mr M's complaint has been brought to us within the time limits allowed as Fiducia Wealth hasn't consented to us looking at that issue. That's because the regulator, the Financial Conduct Authority, sets out the rules regarding what complaints we can and can't look at in their handbook. They are known as the DISP rules.

DISP 2.8.2 states we can't look into a complaint if it was made more than:

- (1) *"six years after the event complained of;*
- (2) *or (if later) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;*

Unless, in the view of the ombudsman, the failure to comply with the time limits was as a result of exceptional circumstances; or the business has consented to the ombudsman considering the complaint."

The advice Mr M complains about took place in 2014 and continued into 2015 so, as he didn't complain to Fiducia Wealth until early 2024, this is clearly more than six years after the event (the advice) took place. So I have to consider the second limb of the DISP rule and whether Mr M ought reasonably to have become aware that he had cause to complain more than three years before 2024. I also need to consider that Mr M's complaint is that the advice he was given invalidated his FP14, didn't suggest IP14 as an alternative, and didn't make him aware of the potential LTA he would incur as a result of this advice.

A suitability report issued to Mr M in February 2014 set out Fiducia Wealth's recommendations for Mr M to make a single premium contribution to his pension before 5 April 2014 using an unused carry forward allowance. It noted the value of the pension fund – excluding investment growth – following the contribution, and that fixed protection could then be applied for before 5 April 2014. But there were also sections of the report which set out generic notes and warnings around the LTA. With respect to FP14 it was noted that *"if you have successfully applied for FP14 to keep his protection there are restrictions on future tax relieved pension savings after 6 April 2014. The basic requirement is that no further contributions can be paid into any pension schemes from that date."*

I've also been presented with the contemporaneous client meeting notes of subsequent discussions to look at what happened further during 2014 and 2015. I know Mr M says he hasn't been presented with these notes, but I have no reason to dispute or doubt the accuracy of what's been recorded.

In March 2014 Mr M met with Fiducia Wealth and, along with discussions around his ISA investments, had it confirmed that a single premium contribution to his pension plan had been received by the provider. It was also confirmed that Mr M has *"signed protection 2014 application, to be sent to HMRC."*

The notes from a meeting in September 2014 confirmed that Mr M wanted to proceed with a pension transfer and the required documentation had been requested but that, *"explained*

issue re: Protection, ongoing contributions have invalidated his fixed protection, but can still apply for personal protection. Need to ensure contributions stop."

Notes from a meeting in January 2015 confirmed the transfer of a pension to a new provider and also that "(Mr M) said he plans to continue the current regular contributions. He is aware he has breached the terms of the Protection arranged re: the LTA."

And a suitability report following the transfer in March 2015 said, "You were making personal contributions of £1,282 pm to the previous SIPP which can be carried forward to the new plan. However, we need to revisit the Lifetime Allowance issues. You applied for Fixed Protection to preserve the £1.5m limit, but that Protection was lost because the regular contributions to (his two plans) continued. We now have the opportunity to apply for Individual Protection and need to discuss this when we meet, but in the meantime I propose the ongoing £1,282 pm gross which was contributed to Standard Life is suspended."

So I think this evidence is clear in supporting the claim that Mr M was made aware that his FP14 was invalidated and therefore lost, and that the alternative of IP14 was also available.

I also note the FP14 certificate which was issued to Mr M set out "how can I lose FP2014." One element of which was around benefit accrual which was defined as "if you pay any contribution into a money purchase arrangement (for example a personal pension or a retirement annuity contract) at any time after 5 April 2014."

So I can't reasonably say that Mr M wasn't aware of this information by early 2015 at the latest and I think this ought reasonably to have alerted him to the fact that, having lost the protection and not applied for the alternative, he might be exposed to a higher LTA charge compared to that he would have anticipated if FP14 remained in place to protect an LTA of £1.5 million. I don't think Mr M needed to know the full extent of the tax problem as set out to him in 2023, simply that the loss of FP14 ought reasonably to have given him a cause for complaint at that time.

As I think Mr M was aware of facts relating to losing his FP14 by January 2015 (and had other notifications prior to this) he needed to make his complaint within three years of that date – namely January 2018. But he didn't complain about this point until he raised his more general complaint in 2023/2024. So I think his complaint about any subsequent issues around FP or IP14 arising from the 2014 advice have been brought too late and can't be considered here.

We can consider a complaint that's brought outside the time limit if exceptional circumstances apply. This generally means something like an illness or incapacity which could have prevented Mr M from bringing his complaint within the time limit. But this exception is generally a high bar. Mr M has said that these are exceptional circumstances because he didn't know he needed to complain until he received the letter from HMRC. But I've already set out why I don't think this excluded Mr M from registering his complaint within three years of being made aware that his FP14 application had been breached, and I haven't been presented with anything else which might constitute "exceptional circumstances" – so I don't think that applies here.

The 2017 advice

In October 2017 Mr M met with Fiducia Wealth again to discuss the withdrawal of his TFC before his 75th birthday. It was agreed at this time that Mr M was unlikely to draw further income from the SIPP from the remainder of his lifetime and so his 75th birthday would be a benefit crystallisation event (BCE) to test his pension funds against the LTA. The recommendation that followed included withdrawing £375,000 TFC, increasing the residual

value of his fund through the existing investment strategy, and paying the relevant tax following the BCE.

However, Fiducia Wealth explained that *“you can withdraw up to 25% of your protected Lifetime Allowance (LTA) as a tax-free lump sum; given the cap of £1,500,000, this amounts to £375,000.*

Once the full TFC has been withdrawn, £1,125,000 of your SIPP will enter drawdown and any withdrawals from this part of the fund will be treated as income and taxable at your marginal rate of income tax.

The current fund value is £1,830,000 so circa £330,000 of the SIPP value will be subject to an LTA charge once you reach age 75. That charge is 25% so the approximate tax is £82,500, although this figure will increase if the fund value increases prior to age 75.”

But this advice was incorrect as it was already known that Mr M had invalidated his FP14 by continuing to make contributions and therefore the £1.5 million LTA no longer applied. By this time the LTA was £1million. So if Mr M wanted to withdraw the maximum TFC Fiducia Wealth ought to have suggested that if he didn't want to pay tax he ought to restrict a withdrawal to a maximum of £250,000. The actions he was advised to take meant he had to pay income tax on the excess TFC of £37,500.

I've first considered whether we can consider this part of Mr M's complaint as the advice was given more than six years before Mr M complained to Fiducia Wealth. But in this case, I don't think the second limb of the same DISP rule ought to apply. I say that because there's no evidence to show that Mr M ought reasonably to have been aware of a cause to complain about this matter until it was uncovered when he began to receive communication from HMRC and Fiducia Wealth investigated the position. But even if there were any doubt about the time limits in this case Fiducia Wealth has consented to us considering this matter and, as I'll set out below, has accepted responsibility for its error and made Mr M an offer to resolve the situation with regards to the 2017 advice.

Compensation and Fiducia Wealth's offer

For the matter which I can consider, I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Fiducia Wealth has said that as a result of its incorrect advice in 2017, it would be willing to compensate Mr M for the additional income tax due on the TFC payment of £375,000 – as well as any penalties levied by HMRC for its late payment plus any penalties levied on the late payment of the LTA tax charge. However, it has said that if Mr M applies for IP16 (available up to 5 April 2025) then the tax charges will be reduced significantly.

I've thought carefully about this offer and – as I've said previously that we can't consider Mr M's complaint about the LTA arising from the loss of his FP14 – I think this offer does put Mr M in the position he would now be in had Fiducia Wealth correctly advised him about the maximum TFC he could have withdrawn in 2017.

In addition we would also expect Mr M to have mitigated his position as it would significantly reduce his entire LTA tax charge – not just the element that Fiducia Wealth is prepared to compensate him for. I note Fiducia Wealth's final response letter explained this to Mr M over a year before the deadline to apply for IP16.

Mr M has confirmed to us that he has applied for IP16 and, because he hasn't been told it hasn't been accepted, he assumes that his application was successful. So I think that Fiducia Wealth's offer is fair and reasonable in this case, and it should pay the amount it set

out in its final response letter on the basis that Mr M now holds IP16. In the unlikely event it turns out the application wasn't successful, it wouldn't be fair to reduce the redress amount if Mr M is able to demonstrate he wasn't able to get IP16 for reasons beyond his control.

Clearly this matter has impacted Mr M and it has caused him significant concern to discover that his LTA charge is now significantly higher than he expected. He has also had to spend considerable time liaising with HMRC to understand his position – which I know he thought was already clear and established. And he also had to apply for IP16 when he wouldn't have expected to go through that process. I think this whole matter had a significant impact on Mr M over a protracted period of time. So, having considered the matter carefully, I've concluded that Fiducia Wealth's offer of £1,000 compensation for the trouble and upset the matter caused is fair and reasonable in all the circumstances.

The advice fees and charges

Mr M has also complained about various aspects of Fiducia Wealth's charges. He believes it should refund him for any advice fees that it received at the times it made errors and gave unsuitable advice, and that he should be compensated for the fact that Fiducia Wealth kept around £125,000 of his funds under management – which should have been used to pay the LTA charge – thereby allowing it to receive further advice fees on this additional amount.

I've first looked at the annual advice fees that Fiducia Wealth applied as set out in its suitability report of 2017. It noted that *"our annual fee of 0.75% for providing you with ongoing advice and investment management has not yet been charged to you. We have agreed to reduce the outstanding amount from £31,261 to £25,000 and this will now be deducted from the SIPP, which should be more tax efficient for you as it will be taken from the excess funds above the LTA."*

Furthermore, we have now agreed to reduce our annual charge for you to 0.65% (circa £8,759 pa based on the remaining value after PCLS and fees/tax of £1,347,500)."

So I think it was clear that, apart from the tailored charge for the first year, Fiducia Wealth would be charging Mr M 0.65% each year for its advice and management services. I haven't seen any evidence to support the idea that Fiducia Wealth didn't provide appropriate services during the years other than Mr M's view of the advice he received in 2014 and 2017 – and Mr M hasn't directly complained about the overall level of fees and service provided. But if he believes that this is an issue then he should register a new and separate complaint about that matter to Fiducia Wealth in the first instance.

I've gone to look at whether the fees were justified, particularly in 2017 when Mr M was advised to withdraw his TFC. There's no dispute that the advice from 2017 was technically incorrect – but Fiducia Wealth has offered to now put Mr M in the position he ought to be had it advised him correctly. And it's offered further compensation for the distress the matter caused. So I think this compensated him fairly for any errors made.

Apart from that I think Fiducia Wealth provided the service and carried out the advice it said it would in its suitability report, so I think it's entitled to keep its advice fee – albeit its recommendation at the time has been shown to be incorrect. I think overall Fiducia Wealth has done what it said it would to justify its fees and additionally is prepared to put right any financial loss arising from it.

With respect to the funds that Fiducia Wealth kept under management, it's not clear to me – and I haven't been presented with any evidence to the contrary – that Fiducia Wealth refused any request to pay an LTA charge on Mr M's behalf from HMRC, or that it avoided

making that payment. I wouldn't expect it to discharge money from the pension plan until it was requested to be paid. And even if I am wrong about that matter, Fiducia Wealth has agreed to reimburse Mr M with any late payment costs and penalties that are applied to the charge. So I don't think it acted unfairly by keeping the money in the plan and therefore it doesn't seem unreasonable – as it was still managing the funds – that it retained any fees due on the whole amount.

But in any case, I assume the money remained invested across Mr M's entire pension fund and therefore it seems likely to me that he would have benefited to a greater extent from the growth on the funds when compared to the charges he paid. For me to recommend that Mr M should be refunded these charges would require me to consider the position his fund would now be in had the money been taken out when the LTA charge was due, and I've concluded that it's more likely than not that his fund would have been worth less now if that were the case.

When was the complaint first made?

Mr M also raised the question of whether his complaint should have been considered when he first approached Fiducia Wealth in 2023 having received the correspondence from HMRC. He says the matter would have been concluded sooner if it had. He then had to raise a formal complaint some months later for the matter to be investigated by Fiducia Wealth.

I've seen some of the correspondence between Mr M and Fiducia Wealth around that time and it's not clear to me that initially Mr M was expressing dissatisfaction with Fiducia Wealth or simply his frustration at HMRC's request. I can see that Fiducia Wealth's first action was to help him draft a letter to HMRC to explain his position and set out his case. I think that helps support the idea that Fiducia Wealth didn't view it as a complaint but a request for help.

But equally I can understand Mr M's frustration if he viewed his initial approach as a complaint. We wouldn't usually look into a complaint solely about complaint handling as that isn't a regulated activity within the regulator's rule book, although I can consider any regulated ancillary activities connected to or affected by the complaint handling. But in this case whether the complaint is deemed to have been made in 2023 or 2024 it doesn't affect whether the first part of Mr M's complaint is out time or whether the 2017 advice can be looked at – which I decided it could.

So the timing of Mr M's complaint is immaterial to the outcome in this case and hasn't itself caused Mr M any financial disadvantage. Any undue concern and distress caused by any perception the matter could have been investigated sooner is, in my view, adequately covered by Fiducia Wealth's offer of compensation.

Putting things right

To put things right Fiducia Wealth has offered to pay the tax charge that Mr M will have to pay arising from the withdrawal of TFC above the level he was eligible to take. It has also said it will pay *any* penalties or charges arising from the overdue payment of all tax charges. It has also offered £1,000 compensation for the distress and inconvenience arising from its incorrect advice and the subsequent efforts Mr M had to make to sort out the problem and raise a complaint.

I think that's a fair and reasonable solution to the matter and so that's what I think Fiducia Wealth should do. But the redress should be for the tax charge arising from the successful application for IP16 – which Mr M has confirmed to us is the case.

My final decision

For the reasons that I've given I think Fiducia Wealth Management Limited should pay Mr M the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 11 June 2025.

Keith Lawrence
Ombudsman