

## The complaint

Mrs A is unhappy with the service she received from Cullen Wealth Limited (CWL) regarding withdrawals from her personal pension plan in 2022 and 2023. She is also unhappy that CWL did not take advise her about another pension plan of hers, which she has only recently discovered still exists.

## What happened

Mrs A first engaged CWL as her financial adviser in 2011. CWL says it requested information on all her pension plans, including a small pension plan held with a business that I will refer to as Provider B. At this time, this Provider B plan (which I will refer to as Plan S from now on) was valued at around £2,000 with a vesting date of 15 February 2012, Mrs A's 60 birthday.

No evidence has been provided regarding any advice given in 2011. But CWL said recently that given the low value of Plan S and that it had enhanced tax-free cash, it is unlikely CWL would have recommended it be transferred at that time.

Provider B subsequently issued a retirement options pack for Plan S to Mrs A, with copies provided to CWL, in February 2012. CWL said Mrs A was not looking to retire at this time. I understand no instruction was given to Provider B regarding Plan S, so Mrs A's retirement age was changed to age 75, though she remained free to take her pension benefits at any time before this.

In early 2015 Mrs A sought advice from CWL and CWL requested information from her pension providers. Provider B sent CWL another retirement options pack for Plan S in February 2015.

Mrs A's circumstances at the time were recorded as:

- 62 years of age, married with three financially independent children
- self-employed as an accountant, earning approximately £100,000 per annum
- owned a 30% shareholding of her accountancy practice
- owned three rental properties generating good income
- highest medium (7 out of 10) attitude to risk

A suitability letter, dated 13 March 2015, was provided to Mrs A and explained that the focus of the advice was retirement planning and specifically, the review of Mrs A's existing pension arrangement and whether this remained suitable for her requirements.

At this time, Mrs A's main pension provision was a personal pension, also held with Provider B (referred to in this decision as Plan R), valued at approximately £62,000.

The letter explained Mrs A's primary objectives were "to implement an appropriate investment strategy with pensions and to ensure that [she] can continue to receive an ongoing advisory service between now and [her] eventual retirement." Mrs A was also looking to make a £20,000 contribution to her pension.

CWL advised Mrs A to transfer Plan R to a self-invested personal pension (SIPP), also with Provider B.

The suitability letter also noted that Mrs A had three smaller pension plans, including Plan S, and said:

*we agree that we would not include as part of this review and our advice in relation to these plans will follow once we have obtained full plan details from the providers.*

*At this stage we therefore agreed to review your existing [Provider B] pension arrangement to ensure both the investment strategy and the contract remained appropriate for your circumstances.*

For the advice, CWL charged Mrs A 2% of the funds transferred to the SIPP and the single contribution. CWL and Mrs A also agreed to an ongoing fee of 0.5% per annum to cover regular reviews and the ongoing administration of her SIPP.

In May 2021, following the sad passing of Mrs A's husband, CWL provided Mrs A with advice on the inherited pension death benefits. CWL recommended that Mrs A transfer these benefits, totalling around £472,000, to a flexi-access drawdown account with Provider B.

The advice letter further explained:

***Payment on death***

*The value of the pension fund is available to your beneficiaries on your death. This can normally be withdrawn as a lump sum or left within the pension wrapper to be drawn on to provide a regular or ad-hoc income.*

*Death benefits, whether drawn as a lump sum or income, are normally payable tax free to your beneficiaries if you die before age 75. If you die after age 75, death benefits withdrawn are taxable on the recipients as earned income.*

CWL didn't charge for this recommendation but explained that it would continue to receive an ongoing fee of 0.5% of the pension portfolio value each year as per its fee agreement.

CWL conducted an investment progress review with Mrs A in early 2022. This was followed by a letter dated 1 February 2022 which set out Mrs A's then current objectives and confirmed those objectives were being achieved with her existing investment strategy. This letter noted that Mrs A had £213,000 in a SIPP with Provider B and another £492,000 in her Provider B beneficiary's pension fund (referred to as the "inherited pension"). The letter also stated:

*You are considering gifting the children £50,000 each, I have checked with [Provider B], and this cannot be done via the beneficiary's pension under the original nomination.*

The letter confirmed that other areas were discussed as follows:

*We also discussed your need for any additional income withdrawals from your pension, you confirmed that this was likely to be necessary during 2022, and that as a former Accountant, you would look into your earnings for the tax year to*

*determine the remaining basic rate headroom, and that we should withdraw that figure, to be confirmed, from your own pension.*

Mrs A subsequently sought advice to withdraw £20,000 from her pension. By letter dated 23 February 2022, CWL explained, in relevant part:

*You have your own Pension Portfolio and the Inherited Pension Portfolio. You anticipate that this tax year is likely to be the only year you will have basic rate tax band remaining and you anticipate making withdrawals from the inherited pension to gift to your children. You are aware that you could take the withdrawal tax free from your inherited pot, however, you would like to take advantage of the basic rate tax band you have available as you anticipate using the tax free pension in the future.*

This letter said that Mrs A calculated the withdrawal amount and confirmed to CWL that her basic rate band is sufficient for her to be able to withdraw £20,000. And “you have completed the calculations yourself and as an accountant you are confident that your figures are accurate.”

In October 2022, Mrs A sought to withdraw a further £20,000 gross from her SIPP. In its recommendation report regarding this withdrawal CWL said:

*You also having the inherited pension demonstrated above ... which you wish to pass on to the children for mortgage repayments, possibly next year. Therefore, you do not intend to draw on the funds within this pension and won't be using this to fund your retirement spending. You do not wish to borrow money to raise capital. You have no debts and do not wish to take on any further debt.*

*You have completed the calculations yourself and as an accountant you are confident that your figures are accurate.*

This was repeated in a subsequent recommendation letter issued to Mrs A in August 2023, following her request to withdraw £24,000 gross from her SIPP.

Sometime after that Mrs A started working with a different financial adviser at CWL. And in April 2024 she sought to withdraw £25,000. At this time, it was agreed the withdrawal would come from the inherited pension, not her SIPP.

Mrs A subsequently queried why she hadn't been advised to use the inherited pension for all her withdrawals. She said that she thought the inherited pension was inheritance tax (IHT) free so her children would inherit it all and her pension was subject to IHT, which would be charged at 40%. With this understanding, she explained it made sense for her to withdraw from her pension and pay basic rate tax on it. But the new CWL adviser clarified her understanding of the IHT position and so Mrs A now considers that the withdrawals should have all come from the inherited pension.

CWL responded to these queries, but Mrs A remained dissatisfied and raised further concerns about the service she'd received. CWL treated this as a formal complaint. Also included in the complaint was Mrs A's concerns about Plan S which she said she'd only recently discovered had not been transferred in 2015 as she thought.

CWL issued its final response to the complaint on 15 July 2024. In summary it said:

- Mrs A disputed that she was interested in gifting to the children directly from the inherited pension, but there'd been regular reference to this in correspondence from

CWL and at no time had Mrs A refuted or raised any questions about those references. This implied to her adviser that his understanding was correct.

- CWL has no evidence that her adviser led Mrs A to believe that her pension pot would be subject to IHT and considered part of her estate on death. Furthermore, its records show that conversations about IHT were had but Mrs A indicated this was not a primary concern and there is nothing to suggest that looking at ways of mitigating the IHT payable on her estate was one of Mrs A's objectives.
- Mrs A's recorded objectives focused heavily on income tax efficiency and showed less concern about IHT.
- Mrs A had a desire to utilise her full basic rate tax band each year and CWL was guided by her accountancy experience on how much she was able to withdraw when making its recommendations. At each withdrawal point Mrs A confirmed with CWL that the withdrawals would be kept under the 20% basic rate band limit, in line with her objective for tax efficiency.
- Advice wasn't provided on Plan S because in 2015 it did not have full details of the plan and Mrs A was approaching her selected retirement date. CWL didn't receive any further information about this plan, including annual statements which would have alerted CWL to its continued existence. Because of this CWL says there was nothing to suggest that the plan was still in existence between 2015 and when Mrs A complained.
- CWL didn't uphold Mrs A's complaint, but it did offer to review Plan S at no initial cost and to remove the ongoing advice fees for one year.

Dissatisfied with this response, Mrs A brought her complaint to this service for an independent assessment.

One of our investigators looked into Mrs A's concerns but didn't think the complaint should be upheld. She reasoned that CWL carried out its responsibilities as Mrs A's financial adviser in a fair and reasonable manner. The advice reports all show that the adviser discussed the benefits of making withdrawals from either the inherited pension or from her SIPP and Mrs A made it clear which pension she wanted to withdraw from to maximise tax efficiency and preserve the inherited pot so that it could be gifted to Mrs A's children at a later date.

The investigator also didn't think CWL erred regarding Plan S. The investigator explained that CWL made clear in 2015 that it was not providing advice on her smaller pensions, including Plan S, at that time. And she hadn't seen evidence of any further discussion of this pension, or evidence that Mrs A made CWL aware that she wanted advice on this plan anytime before it was raised as part of her concerns about CWL in 2024.

Mrs A didn't agree so the complaint has been passed to me for a final 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.

Having done so, I have reached the same conclusions as the investigator and for broadly the same reasons.

It is my role to fairly and reasonably decide if CWL has done anything wrong in respect of the individual circumstances of the complaint made and – if I find that it has done something wrong – award compensation for any material loss or distress and inconvenience suffered by the complainant, Mrs A, as a result of this.

When considering what is fair and reasonable, I have taken into account relevant law and regulations; regulator's rules, guidance and codes of practice; and what I consider to have been good industry practice at the time.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Mrs A's complaint concerns two main points; I will address each in turn.

#### Advice on withdrawals

Mrs A is unhappy that CWL didn't advise her to take withdrawals from the inherited pension plan instead of her SIPP. As her financial adviser, CWL was required to provide her with suitable advice based on her circumstances and objectives.

I've looked into the advice provided to Mrs A for the withdrawals between February 2022 and August 2023. Having done so, I consider the advice was suitable in each instance, given Mrs A's circumstances and stated objectives each time.

The advice reports all show that the adviser discussed the benefits of making withdrawals from either the inherited pension or from her SIPP. And it said Mrs A made it clear which arrangement she wanted to withdraw from to maximise tax efficiency and preserve the inherited pot so that it could be gifted to her children later.

Mrs A disputes this intention, but the evidence I've been provided persuades me that Mrs A's objective throughout this time, at least insofar as it was communicated to CWL, was to maximise tax efficiency and to preserve the inherited fund for future gifting. This was well documented in correspondence between CWL and Mrs A. And CWL produced cashflow models in 2022 and 2023 which accounted for £150,000 expenses for gifts to Mrs A's children when she reached age 73 (in 2025). I've not seen evidence that Mrs A made CWL aware she wanted it to focus on inheritance tax issues. And I've seen no evidence that Mrs A disputed her intention to make gifts to her children from the inherited pension at any time before raising her present concerns.

I also note that CWL did explain to Mrs A that her pension would not be subject to IHT were she to pass away. The inherited pension would also fall outside of her estate after her passing so no IHT would apply here either.

And CWL made clear to Mrs A that she could take withdrawals from the inherited pensions tax free. The 2021 advice given to Mrs A about what to do as the sole beneficiary for her husband's pension funds, explicitly states "the benefits can now be drawn down tax free." But Mrs A wanted to inherit the pension funds in her own name "and draw amounts in a flexible manner at a time of [her] choice with the ability to leave some of the pension funds to [her] children" after her death.

The withdrawal advice letter in February 2022 said:

*You anticipate that this tax year is likely to be the only year you will have basic rate tax band remaining and you anticipate making withdrawals from the inherited pension to gift to your children. You are aware that you could take the withdrawal tax free from your inherited pot, however you would like to take advantage of the basic rate tax band you have available as you anticipate using the tax free pension in the future.*

The advice for the subsequent withdrawals in 2022 and 2023 also said the *“inherited pension demonstrated above ... which you wish to pass on to the children for mortgage repayments, possibly next year. Therefore, you do not intend to draw on the funds within this pension.”*

Furthermore, internal correspondence from CWL during this time shows it considered advising Mrs A to take the withdrawal from the inherited pension. However, it was determined that since Mrs A was looking to make a substantial gift (possibly £100,000) to each of her three children, she was likely to exhaust the inherited pot, so it would make sense to use her own pension provision during a time when she'd only be charged basic rate tax, since all future withdrawals would be net of 40% tax.

Were Mrs A to have used the inherited pension to fund her withdrawals instead of her SIPP, then it is possible the inherited pension would not have been sufficient to make the gifts to her children Mrs A indicated to CWL she was planning to make. This means that those funds would have to come from her SIPP and be subject to tax, likely some or all of which at 40%. I consider this in line with maximising tax efficiency, which CWL reasonably understood to be Mrs A's objective.

Therefore, I consider the advice CWL provided to Mrs A was suitable based on the objectives she told CWL.

#### Advice on Plan S

Mrs A is also unhappy that CWL did not provide advice on Plan S in 2015 and believes she has lost out as a result.

As an initial matter I have considered whether this complaint point is one we have authority to look into because there are time limits that apply to bringing complaints to us. The rules I must follow in determining whether we can consider this complaint point are set out in the Dispute Resolution ('DISP') rules, which form part of the Financial Conduct Authority's (FCA) Handbook.

Under the timeliness rules set out in DISP 2.8.2, this service does not have jurisdiction to consider a complaint about events that occurred more than six years before the complaint was raised, or if later, more than three years from when the consumer was aware, or ought reasonably to have been aware, she had cause for complaint, unless the business consents and CWL does not. Although this complaint point concerns events from 2015, more than six years ago, I am satisfied that Mrs A raised this complaint within three years of when she became aware, or ought reasonably to have become aware that she had cause for concern.

CWL said Mrs A should have been aware that she'd not been given advice about this plan in March 2015 and so her complaint, raised more than three years later, is too late. I do not agree. In March 2015 Mrs A was told that advice was to follow, once CWL received complete details about this plan. CWL never contacted Mrs A or Provider B again about this plan, and it is unclear if it ever received the complete details it needed to provide advice. So at this point in time, I don't think Mrs A ought reasonably to have been aware she had cause to complain.

Mrs A then received no further correspondence about this plan from either CWL or Provider B until Provider B contacted her until 2024. And it seems Mrs A took this lack of communication to mean the plan had been dealt with.

Mrs A said she realised in 2024 that Plan S had not been transferred as she thought. And she complained about this to CWL a couple months later. Having been provided no evidence

that persuades me Mrs A ought reasonably to have known she had cause to complain sooner than she did in 2024, I am satisfied that I have jurisdiction to consider Mrs A's complaint about the lack of advice about Plan S.

Turning to the merits of this part of Mrs A's complaint, she said there was an "overarching instruction to deal with all [her] pension affairs appropriately on [her] behalf". However, I've seen no evidence of a contract or fee being paid for advice on Plan S. CWL said before it undertook chargeable work, such as providing advice about Plan S, a fee agreement for the charge would first be signed. CWL would then engage in the work, including issuing a suitability report. CWL does not have evidence of either document for this plan.

I appreciate CWL said in its 2015 suitability report that it would provide advice on her small pensions, including Plan S, when it had received the full details of the plans and this was not done. I don't know why this advice wasn't provided but I've seen no evidence of further advice being requested by Mrs A or provided by CWL. I consider, on balance, had Mrs A wanted advice on this pension arrangement, she would have followed up with CWL at the time. But I've been provided with no evidence to indicate this happened.

CWL said that it had no reason to believe that the plan was still in existence beyond 2015. I'm persuaded by the evidence that this isn't unreasonable. When Mrs A didn't take benefits from this pension plan in 2012, Provider B amended the retirement date of the plan, and no further information was provided to CWL or Mrs A about it after 2015 until 2024. I've seen no evidence that CWL was made aware that Plan S existed beyond 2015 or that Mrs A still wanted this advice. And since there was no service agreement or fee arrangement to provide further advice on this pension plan, I don't think it was unreasonable that advice wasn't provided.

And I note that when Mrs A did bring this to CWL's attention again as part of her complaint in 2024, it offered to review this pension plan at no cost. I understand Mrs A declined this offer, though she may wish to contact CWL to see if this option is still available to her.

I know that Mrs A is unhappy with the service she's received from CWL, but having carefully considered everything I've been provided, I don't think CWL has treated her unfairly or unreasonably. So, whilst I know Mrs A will be disappointed with this outcome, I'm not upholding her complaint.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 25 February 2026.

Jennifer Wood  
**Ombudsman**