

The complaint

Mrs M has complained that advice from Investec Wealth & Investment Limited relating to a pension policy caused her to suffer tax charges unnecessarily, and it failed to resolve these tax related issues in a timely manner.

What happened

I have previously issued a provisional decision regarding this complaint. The following represents excerpts from my provisional decision, outlining the background to this complaint and my provisional findings, and forms part of this final decision:

“Mrs M is self-employed. She runs her business as a limited liability partnership (‘LLP’) in which she is a partner.

In August 2021 Mrs M had a meeting with an Investec adviser to discuss her retirement planning. The adviser recommended that Mrs M take out a self-invested personal pension (‘SIPP’) and make employer contributions into it, using funds from her business. He asked that Mrs M contact her accountant to obtain confirmation of her earnings relevant to making pension contributions for the tax years being considered.

The adviser proposed that Mrs M carry forward unused pension contribution annual allowance for the three tax years from 2018/19 to 2020/21. Together with a contribution for 2021/22, this resulted in Mrs M making a contribution of £160,000 (or £40,000 per tax year) into the SIPP. This was arranged as an employer contribution, and was therefore paid gross of tax.

In May 2022 the adviser recommended that Mrs M make a further employer contribution of £40,000 for the 2022/23 tax year into the SIPP, again using funds from her LLP business. Mrs M agreed to do so.

In October 2023 when completing Mrs M’s tax return for 2022/23, her accountant told her that she’d noted the SIPP statement showed the £40,000 premium to be an employer contribution. The accountant said that the LLP could not make an employer contribution because Mrs M was not an employee, and as a result this would need to be amended to be a personal contribution.

On 11 October 2023 Mrs M emailed Investec asking for this change to be made. The adviser said he would liaise with the accountant. In November 2023 the adviser established with the SIPP provider that it would be possible to change retrospectively the contribution type from employer to personal. However I understand that at this time nothing further was done to make any changes to the payments which had already been made.

In March 2024 Mrs M was liaising with her accountant regarding making a further contribution into the SIPP. The accountant pointed out that because this would be a personal contribution, the payment would receive 20% tax relief.

Mrs M contacted Investec to ask the adviser whether the £160,000 and £40,000 payments made previously had received tax relief. My understanding is that Investec did not respond directly to Mrs M at this time. However the adviser did contact the SIPP provider on 21 March, asking that these earlier premium amounts be amended to net of tax personal contributions. In response on 29 April the provider said that whilst it could amend the contribution type from employer to personal, it could not change the contribution amount.

On 3 May the adviser emailed Mrs M to explain that because the contribution type was being changed from 'gross employer' to 'net of tax personal', the £160,000 payment treated as a net amount would represent a gross amount of £200,000, and the £40,000 payment as a net amount would represent a gross figure of £50,000. In each of the five tax years these payments covered from 2018/19 to 2022/23, the annual pension contribution limit was £40,000 gross. The adviser explained that exceeding this threshold meant that Mrs M would now be subject to an annual allowance tax charge.

Mrs M complained to Investec that its advice had led to employer contributions incorrectly being made for her from the LLP business. This had resulted in Mrs M exceeding her annual allowance and incurring a tax charge. She was also unhappy about the time taken by Investec to resolve matters relating to changing the contributions to personal ones, saying that she might have lost the right to obtain some of the applicable tax relief.

In response Investec accepted that its adviser had not specifically asked Mrs M to check with her accountant that the LLP could make an employer contribution for her. It said this had led to a misunderstanding about what was permissible within tax legislation. Investec said that it was upholding Mrs M's complaint because specific confirmation had not been obtained from the accountant that an employer premium was allowable.

But it also said that it was reasonable to expect that in her professional capacity, the accountant would have questioned whether the contributions were gross or net, and whether they were being made as employer or personal payments. Its view was that the accountant was in part responsible for the annual allowance being breached. Investec offered to cover 50% of any detriment Mrs M had suffered by exceeding the annual allowance, and 50% of any interest charges or fines that HMRC imposed for this. Investec also offered £350 compensation for distress and inconvenience caused to Mrs M.

Investec explained the steps which would need to be taken to rectify the situation with the contributions. It noted that there was a possibility that Mrs M might be eligible for a partial refund of the payment which was to be converted to a gross amount of £200,000 because her relevant earnings for that year were lower than that, and this might reduce the annual allowance tax charge. It also explained how the tax charge might be paid.

Unhappy with Investec's stance on her complaint, Mrs M referred it to this service. She said that the adviser had failed to arrange for the contribution type to be changed from employer when she'd first raised this in October 2023, and it was only when making a further payment in March 2024 that Investec took action. Mrs M was concerned that this delay might have resulted in her losing the opportunity to claim tax relief for the earlier payments. She asked that Investec refund the fees she had paid in relation to the SIPP because it had given incorrect advice about making employer contributions, and had delayed rectifying this matter when she'd raised it. Mrs M said that her accountant had calculated that she was £530 worse off in terms of tax due to the contributions error, and she was awaiting confirmation if she'd be charged interest or fines by HMRC.

Since this complaint was referred to this service, the parties have confirmed that the SIPP provider has amended all payments made to personal contributions. It's also been confirmed that 20% tax relief has now been applied to these amounts. An annual allowance charge of

£5,679 was incurred under the payment made in 2021, and a charge of £4,000 was incurred under the 2022 payment. I understand that it's not yet known whether HMRC will be applying any interest charges or fines.

In answer to our investigator's question about how the £530 loss amount mentioned in her complaint form had been calculated, Mrs M said that her accountant had compared the position she was in to what would have been the case if the contributions had not initially been made as employer ones. She said the accountant had also looked at her "best tax optimised position", and this had led to the £530 figure.

Mrs M explained that the SIPP provider had charged a fee of £75 plus VAT for arranging payment of the annual allowance charge. She also confirmed that the provider had refunded £9,282.40 into her business account because it had been determined that for the 2021 payment, her relevant earnings were £188,397 rather than £200,000.

Mrs M said that the error made with the employer contributions and the subsequent handling of this had led her to lose trust in Investec and its adviser. She said she was upset by the adviser failing to respond to her, and Investec suggesting that the accountant was also to blame for the error. She said the adviser had never asked to speak to the accountant directly prior to the investment, and had only asked Mrs M to check with the accountant that there were sufficient funds in her business to make the contributions. Because Investec did not address the issue earlier, and because of what the adviser had told her in May 2024, she had been concerned that she'd lost the ability to claim tax relief on the 2021 payment. Mrs M reiterated that Investec had not dealt with issues around the contributions in a timely manner, and had not taken responsibility for the mistake made.

The investigator's view was that Investec was not solely responsible for Mrs M contributing above the annual allowance, and that consequently its offer to cover 50% of any detriment she had suffered by exceeding this was fair. He said that Investec had delayed correcting the error with the contributions, but he did not consider this delay had specifically caused Mrs M a loss. The investigator accepted this had caused Mrs M inconvenience, and that Investec's handling of matters more generally had caused her difficulties. His view was that the £350 compensation offered fairly reflected this.

Mrs M did not agree with the investigator's findings and asked that her complaint be reviewed by an ombudsman. She forwarded email correspondence she'd had with the adviser in 2021 and said this showed that he lacked understanding about her business and circumstances. Mrs M reiterated that the adviser had never asked to speak directly to the accountant. She also said she'd trusted the adviser to understand her tax status due to his professional position. Mrs M did not agree that either she or her accountant was responsible for the error which had occurred.

What I've provisionally 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.

On 2 August 2021 following an initial discussion, the Investec adviser emailed Mrs M to say:

"I do believe you could potentially benefit from making employer pension contributions into a private pension arrangement as a means of extracting funds from your business in a tax efficient manner."

It is clear that the idea to make employer contributions from the LLP business therefore came from the Investec adviser. The adviser said that he could provide advice about which

pension product to take out, a suitable investment strategy to use, and how to maximise contributions in current and future tax years. He also said it might be possible to use carry forward allowance to pay a larger sum in the first year. He explained this would require information from Mrs M's accountant about her relevant earnings in the 2021/22 tax year, and the three previous years.

Mrs M sent earnings figures to the adviser that had been produced by the accountant. In response the adviser emailed on 12 August stating that Mrs M could make £40,000 contributions into a pension that covered the tax years 2018/19 to 2021/22 inclusive, utilising the carry forward facility. He said: "If you and your Accountant are happy to proceed based on these assumptions we can take this forward and draft you an advice report". The adviser also said that Mrs M might want to consult with her accountant about how much she would feel comfortable investing into a pension, taking into account the liquidity her business required. Mrs M later confirmed that the accountant supported the decision to invest the maximum suggested.

A planning report was produced by the adviser on 1 October 2021. This confirmed Mrs M was the co-owner and director of the LLP business. The report also confirmed Investec's recommendation that Mrs M open a SIPP and fund it with £160,000 from the business cash reserves in the form of an employer contribution.

Investec has accepted that its adviser did not specifically ask Mrs M to check whether her accountant considered her eligible to make employer contributions from the LLP. However it says that if these figures had been passed on to the accountant, it should have been clear that they were the maximum permitted gross amounts, and if paid as personal contributions they would attract tax relief and exceed the available annual allowances. I note Investec's comments, but in my view it is relevant that the adviser did not ask Mrs M to liaise with the accountant about whether she could make employer contributions for her own pension provision using funds held in the LLP.

Further to this, I'm mindful that a pension is essentially a tax wrapper and it is used by consumers because it is a tax-efficient way of saving for retirement. When an adviser makes recommendations about paying money into a pension policy, in my view the tax benefits of such a transaction form a key consideration when determining whether the proposed action is advantageous to the consumer. Exceeding the permitted annual allowance contribution limit negates the tax benefits of investing money in a pension plan. As a consequence, I consider that an adviser should reasonably take steps to ensure the annual allowance limit is not breached when giving advice.

Investec says that its adviser's communications led to a misunderstanding about whether contributions were permissible under tax legislation. But the recommendation to make an employer contribution from the LLP came from the adviser, and in my view this was the key reason why Mrs M breached contribution limits and incurred charges for this. As explained above, the adviser did not ask Mrs M to check with the accountant that these employer contributions could be made for her pension plan. And even if it were to be found that the accountant played some role in the contribution limit being breached (and for the avoidance of doubt I've not made that finding based on the evidence provided), in my view the imposition of the tax charge directly flows from the advice given by Investec. As a result, I consider it fair and reasonable that Investec should cover all of the loss found to have been caused by the annual allowance limit being breached, rather than 50% of the loss as it has offered.

Mrs M has asked that Investec be required to refund her the fees she's paid it because its advice led to the annual allowance tax charge, and also because of the time it took for Investec to rectify the situation. I understand why she's requested this, but in my view the

fees Investec has charged relate more widely to the advice given to take out the SIPP, and how to invest the money in it. Mrs M has not suggested that the recommendation to take the policy out was unsuitable for her, or that the funds recommended were inappropriate.

Taking into account the complaint which has been made, my view is that the element of the advice given by Investec that was inappropriate related to the proposal to make employer contributions from the LLP. On balance I do not consider it would be reasonable to require Investec to refund fees charged to Mrs M, when the entirety of the advice is considered. Instead my view is that Investec should be required to reimburse Mrs M for any financial loss she has incurred as a result of being incorrectly advised to make employer contributions. I also agree with Mrs M that Investec did not arrange for the contribution type under the SIPP to be rectified in a timely manner, and I have considered the difficulties that caused her in the section below.

Fair compensation

My aim is that Mrs M should be put as closely as possible into the position she would probably now be in if she'd not been advised by Investec to make payments to her SIPP that resulted in her incurring an annual allowance tax charge.

It seems to me that it is difficult to say precisely what the tax position would have been for Mrs M individually and for her business if the payments made into the SIPP in 2021 and 2022 had been limited to the annual allowance limit of £40,000 for each of the tax years these payments covered.

The parties have confirmed the two annual allowance tax charges that have now been applied under the SIPP. Mrs M has said that's she potentially suffered a financial loss of £530 in terms of tax. She's explained that her accountant looked at three possible scenarios in arriving at this figure. I thank Mrs M for the detail she's provided in this regard. However I should explain that currently I'm not clear exactly how this loss figure has been determined.

As the payments to the SIPP were made from Mrs M's business, if the overcontributions had not occurred those excess funds would have remained, at least for some time, within the business, but it seems to me would have been liable to tax at some point. My understanding is that Mrs M's accountant has been considering this, and how payment of tax could best have been optimised.

Subject to the responses I receive to this provisional decision, I intend to require Investec to cover 100% of any detriment caused to Mrs M by contributing over the annual pension limits. But to be fair to both parties, and in order to ensure that fair compensation is paid in this complaint, in response to this provisional decision I would ask that Mrs M forward the basis of the calculations her accountant has carried out to establish the financial loss that she has been caused as a result of contributing in excess of the annual allowance limits. I should explain that I consider it's likely it will be necessary to provide a copy of these calculations to Investec, again for reasons of fairness.

In addition, Mrs M has said that the SIPP provider has charged a fee of £75 plus VAT for arranging payment of the annual allowance charge. I understand this would total £90. As that fee directly resulted from the incorrect advice Investec gave Mrs M to make employer contributions from the LLP business, I consider that Investec should also pay Mrs M compensation of £90.

I also intend to require Investec to cover 100% of any interest amounts or fines that HMRC charges Mrs M for breaching the annual allowance limit when making the payments in 2021

and 2022, if these occur in the future.

Mrs M has highlighted the length of time it took for her contributions to be amended to personal ones after she emailed Investec about this matter in October 2023. She has explained that she became concerned she would not be able to claim tax relief for the payment made in 2021 because of the time it took for Investec to resolve matters. Mrs M also says that she lost trust in the adviser and Investec due to the way that it handled correcting the contribution.

It is clear that Investec did not respond to this matter as quickly as it could have done, and this caused significant concern to Mrs M. I also acknowledge what she has said about losing her faith in the ability of Investec to deal appropriately with her policy. Taking into account awards made by this service on cases with similar circumstances, on balance I consider the offer made by Investec to pay Mrs M £350 for unnecessary distress and inconvenience caused to her is reasonable.”

Responses to my provisional decision

Mrs M forwarded calculations her accountant had provided her in relation to this matter. These gave further details of the three scenarios the accountant had looked at when considering whether Mrs M had suffered a financial loss due to being advised to make employer contributions from her LLP.

The accountant described the scenarios as follows:-

- 1/ The position Mrs M currently finds herself in.
- 2/ The position Mrs M would have found herself in if she'd been looking to maximise her pension without incurring an annual allowance charge.
- 3/ *“The best tax optimised position, which restricts the pension contribution level to remove any income being taxed at either 40% or 45%.”*

Under scenarios 1 and 2, the accountant confirmed that there was no difference to Mrs M's overall position when viewed against her total income, tax, the annual allowance charge and her pension fund.

Under scenario 3 the accountant said that Mrs M would have been £530 better off, but that her pension fund would be about £59,000 lower.

As I explained I was likely to do in my provisional decision, I forwarded the accountant's calculations to Investec. Investec's response to the provisional decision was that it was willing to pay Mrs M compensation for the £90 fee charged by the SIPP provider relating to the annual allowance charge, and agreed with distress and inconvenience compensation of £350. In terms of covering the cost of any future HMRC fines or penalties, it said that it would require evidence of these, and that it would not pay any interest for a period where it was not aware of the fine or penalty and could not therefore take any action.

In terms of the accountant's calculations, Investec said that it considered it was reasonable to assume that Mrs M was looking to maximise her pension contributions. This being the case, it said that in its view scenario 2 was more relevant than scenario 3. In particular it highlighted that under scenario 3, Mrs M would have had around £59,000 less invested within her pension.

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.

As I explained in my provisional decision, previously it was not clear to me how the £530 financial loss figure suggested by Mrs M's accountant had been determined. I thank Mrs M for providing her accountant's calculations. Having considered these carefully, my view is that it has not been shown that Investec's error in advising Mrs M to make employer contributions from her LLP has caused her a financial loss when taking into account her overall income, tax, charges and pension fund position.

The accountant has confirmed that there is no overall difference to Mrs M's position under scenarios 1 and 2 described above, albeit there are some differences in the tax paid, the annual allowance charge and the amount being invested in the pension.

As Mrs M has previously accepted, scenario 3 is hypothetical, looking at the best position Mrs M could have held if her aim had been to limit her tax rate. In order to achieve this, Mrs M would have invested about £59,000 less into her pension. To consider whether it is likely that this is the financial position Mrs M would have been in if Investec had not misadvised her about how to make pension contributions from the LLP, I have considered again the documentation that was completed when the adviser recommended taking out the pension.

It was recorded that Mrs M had not made pension contributions for several years, and was looking *"to save as much as possible between now and full retirement."* As noted above, in making pension contributions, one of the objectives was to do so in a tax efficient way. But in my view, based on the evidence from when the pension policy was taken out, there was clearly also an objective to boost Mrs M's retirement funding.

Mrs M's accountant has identified a way in which Mrs M could have restricted her pension contributions to optimise her tax position, leaving her £530 better off when looking at her net spend and pension in comparison to scenarios 1 and 2. But it seems to me on balance that funding Mrs M's pension was an important consideration for her. Consequently my view is that, had Investec correctly advised Mrs M about how pension contributions would need to be paid if funded from her LLP, it is unlikely that she would have chosen to arrange her finances in line with scenario 3. I consider instead that it is likely she would have arranged her finances in line with scenario 2, looking to maximise her pension without incurring an annual allowance tax charge.

I appreciate that Mrs M is likely to be disappointed with my findings on this aspect of her complaint. However because scenario 2 does not evidence a financial loss for Mrs M when compared to the position she currently finds herself in under scenario 1, my conclusion is that Investec does not need to pay compensation in this respect to Mrs M.

My view remains that, in light of its advice to make employer contributions from Mrs M's LLP, Investec was the party at fault for causing the annual allowance limits to be breached and a tax charge to become payable. Consequently I consider that, aside from my initial proposal that Investec cover the full amount of any financial loss incurred as a result of exceeding the annual allowance limits, the other items of compensation I proposed in my provisional decision remain fair and reasonable.

My final decision

My final decision is that I uphold this complaint, and require Investec Wealth & Investment Limited to carry out the following actions:-

- Pay Mrs M £90 to cover the fee charged by the SIPP provider for arranging

payment of the annual allowance charge.

- Pay Mrs M any interest amounts or fines that HMRC charges her in the future for breaching the annual allowance limit in relation to the payments made in 2021 and 2022.
- Pay Mrs M £350 to reflect distress and inconvenience caused to her, if it has not already paid this amount.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 19 August 2025.

John Swain
Ombudsman