

The complaint

Mr W has complained that Mercer Limited advised him to make contributions to his pension plan which breached his Money Purchase Annual Allowance (MPAA). This has resulted in tax charges and interest becoming payable.

What happened

Mr W held a Group Personal Pension which was transferred to a Standard Life (SL) self-invested personal pension (SIPP) in June 2016 on the advice of Mercer. When he transferred to SL, Mr W took tax-free cash (TFC) and a small amount of income.

On 28 June 2016, Mr W received a one-off payment of £1,516.86 from his SIPP and SL wrote to him to confirm that he'd flexibly accessed his pension.

The letter from SL explained the conditions relating to the MPAA, which meant that Mr W's annual allowance for additional contributions became £10,000. Anything in addition to this would be subject to an annual allowance charge.

Mr W took no further income from the SIPP, and he didn't make any contributions until 2019 when he sought further advice from Mercer.

In a financial planning report dated 10 October 2019, Mercer said that one of Mr W's objectives for taking the advice was:

- To ensure he would have the full personal allowance available to him for income tax purposes by making a personal pension contribution to his SIPP.

The report then set out the Mercer's recommendation as follows:

"I recommend that [Mr W] makes a personal pension contribution of £31,250 gross to his SIPP. The contribution is made net of basic rate income tax and therefore the amount that should be paid is £25,000. This amount can be made by bank transfer. In making this recommendation, I have assumed that you have not made any other pension contributions in this tax year."

Following this advice, Mr W emailed his adviser on 9 November 2019 to confirm he had paid £25,000 into his SIPP as recommended.

At the end of November 2019, Mr W contacted his adviser as he'd received a bonus from work, and he wanted to know how much more he could contribute to the SIPP in the tax year. On 11 December 2019, Mercer emailed him to say the following:

"Hi [Mr W], you can personally put in £32,000 Net of 20% basis rate tax relief each tax year so long as total income is below £150,000. (£40,000 x 0.8 = £32,000)."

For every £2 over £150k you lose £1 of your allowance, down to 10k. If income 160k you'd lose 5k of your allowance, so 35k available. Once income exceeds 210k the allowance is 10k."

Following this information Mr W then emailed his adviser on 16 December 2019 to confirm he'd *"just paid another £7k into the WRAP today."*

It seemed that Mr W also made further contributions to the SIPP in the next tax year. An email from Mercer to Mr W said the following:

"Dear [Mr W],

I am writing to confirm that Standard Life have received your pension contribution and we have now keyed the expectation as per your instruction."

On 22 October 2020, Mr W had an annual review meeting with his Mercer adviser. The notes from the review meeting explained that Mr W's only objective at that time was *"to top up his pension to his maximum annual allowance. He confirmed that there is no carry forward available. He has already contributed this year, so it will be a payment for the balance."*

Mercer produced a recommendation report following this meeting on 13 November 2020. It recommended that Mr W contribute £7,000 net into his pension and confirmed he had sufficient annual allowance remaining for this amount.

A further contribution of £40,000 was made to the SIPP in April 2021, however this was done on an execution only basis. A letter to Mr W dated 7 April 2021 confirmed this, as follows:

"With reference to our recent conversation, you expressed that you wished to contribute £40,000 to your Standard Life SIPP referenced above, to be invested proportionately across MMPS 6, 7IM AAP Balanced C Acc & Stan Life ASI MyFolio Mkt IV PN B.

You felt that advice on this occasion was not necessary, and we therefore agreed that we would proceed with this transaction on an Execution Only basis."

Following these contributions, Mr W received a letter from SL on 31 July 2023 which notified him that his contributions in the 2022/23 tax year had been above the £4,000 money purchase allowance (it had reduced from £10,000).

A statement of contributions recorded that Mr W had made approximately the same level of contributions every year from 2019 onwards, however Mr W has said this was the first letter he'd received setting out this information from SL. Mr W tried to contact Mercer several times to discuss this further and to find out what had happened. He also requested specific documentation to discuss it with his accountant.

Mercer issued a final response to Mr W's complaint in November 2024 saying that it considered his complaint to be out of time.

Mr W referred his complaint to our service, and a different ombudsman issued a decision on our jurisdiction to consider the matter, concluding that the complaint had been raised in time.

As such, the investigator proceeded to consider the merits of the complaint. She thought that it should be upheld, saying the following in summary:

- Mr W's MPAA was triggered following the transfer to the SL SIPP in 2016, which was recommended by Mercer. At this time Mr W took TFC and a further additional income payment of £1,516.86. This was the point at which the MPAA was triggered.
- Mr W had confirmed that his complaint wasn't regarding the 2016 advice, so this aspect hadn't been considered.
- The 2016 income payment was the only one Mr W had received from this SIPP, which followed the original advice to transfer. There was also no evidence to suggest Mr W made any contributions to the SIPP before 2019. So, it was clear that he'd had limited involvement with the SIPP since the transfer, and certainly none without the advice from Mercer.
- It was therefore clear that Mr W relied on the knowledge and advice of Mercer when dealing with this pension and when he contacted it in 2019.
- When providing advice, regulated firms such as Mercer must follow the guidance and regulations set out by the regulator, The Financial Conduct Authority (FCA). The FCA Handbook contains eleven Principles for businesses, which are fundamental obligations firms must comply with (PRIN 1.1.2 G in the FCA Handbook). These included the following:
 - Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
 - Principle 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
 - Principle 6, which requires a firm to pay due regard to the interests of its customers.
 - Principle 7, which requires a firm to pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading.
- So, in 2019 Mercer had a responsibility to ensure it had a full understanding of Mr W's circumstances and the status of the pension on which it was advising, in order to provide advice in his best interests.
- The Personal Financial Planning Report from October 2019 set out that Mr W's main objective was to make a personal pension contribution to his SIPP to be tax efficient. Given that Mercer had dealt with Mr W at the time he triggered the MPAA on the SIPP, it ought reasonably to have been aware that he'd be subject to the MPAA in 2019.
- However, even if it wasn't, given that it was specifically advising on contributing in 2019, it should have ensured that it was aware of Mr W's circumstances before providing any advice.
- Looking at the advice reports and emails between Mr W and his adviser in 2019, it seemed to be the case that Mercer had based the recommendations on the annual allowance figure and his income situation. However, there was no evidence to show that it checked whether the pension plan had been used to pay any income already, or whether any other limits would apply to Mr W. It was the adviser's responsibility to ensure that they were acting in his best interests, and it was clear in this instance that they didn't do this.

- Mr W has complained that it was his dealings with Mercer in 2019 and 2020 that led him to make the increased contributions in the tax years 2019/20 and 2020/21. And the evidence showed that his adviser advised on the contributions totalling £39,868.75 in that tax year.
- In 2020 there was an advice report dated 13 November 2020 which advised Mr W to contribute £7,000 net to the SIPP. This report said the following:

“Based on the last carry forward calculations we conducted on your behalf and looking at the total contributions you paid to date, I can confirm that you have sufficient annual allowance for this pension contribution.”

- The investigator considered the fact the pension statement from 2023 showed £40,000 was contributed in the 2020/21 tax year and whether Mercer was involved in this full amount. He’d seen an email from 22 April 2020 in which Mercer said the following:

“I am writing to confirm that Standard Life have received your pension contribution and we have now keyed the expectation as per your instruction.”

- The investigator concluded therefore, on the balance of probabilities, that this email referred to the rest of the amount contributed in the 2020/21 tax year. This demonstrated that Mercer was involved in all contributions in 2020 as well. This was especially so, given that Mr W had clarified with his adviser his remaining contribution allowances in December 2019 – and so it was more likely than not that this was also based on Mercer’s guidance.
- Once the adviser was involved and advising/arranging the lump sum contributions, it was their responsibility to ensure that they were acting in Mr W’s best interests. So regardless of whether the April 2020 contribution was as a result of formal advice, there was still a responsibility to ensure that Mr W was accurately informed about his options in taking this action. If the adviser had alerted Mr W to the implications of the MPAA at the time he advised on and/or arranged the £40,000 contribution, it’s likely Mr W wouldn’t have made further contributions to the SIPP.
- Mercer had explained that it had tried unsuccessfully to obtain further information from SL to determine exactly what Mr W knew about the MPAA over the years. The investigator had also attempted to obtain further documentation from SL, but unfortunately this wasn’t forthcoming. However, this wouldn’t in any case change her findings on the complaint. This was because she was satisfied that Mr W’s 2019 and 2020 contributions were the responsibility of the advice he’d received from Mercer.
- The investigator said that she’d seen the email from SL which said that it wouldn’t have sent Mr W any statements until she made the contributions in 2019. SL said it would have sent him a statement in 2020 following the first contributions which would have made him aware that he’d exceeded the MPAA. However, Mr W had said that he didn’t receive anything until the letter from SL in July 2023.
- The investigator said that she was inclined to believe Mr W’s testimony in this respect, especially given that he took action to query it and obtain relevant documentation after receipt of that letter. It was therefore reasonable to suggest that, if Mr W had received notification about the breach of the MPAA prior to 2023, he’d have taken action earlier and he wouldn’t have made the later contributions.

- It was clear that the contributions Mr W made in 2019 and 2020 were based on the recommendation from Mercer. If the adviser had alerted Mr W to the implications of the MPAA as part of its advice and conversations in 2019 and 2020, then it was likely he would have limited his contributions into the SIPP to the maximum MPAA allowance and he would have invested the rest of the funds differently.
- Although Mr W did contribute further in 2021 and 2022, these contributions were made on an execution only basis and Mercer wasn't involved with these. It wouldn't therefore be fair to conclude that Mercer was responsible for any penalties or costs incurred because of these contributions.

The investigator said that her aim in setting out what Mercer should do to resolve the complaint was to ensure that Mr W was put back in the position he ought to have been in, or as close as possible, had the adviser made him aware of the MPAA implications in 2019 and 2020. She considered that he would have contributed the maximum allowed under the MPAA and invested the remaining funds in these years elsewhere.

Whilst the investigator acknowledged Mr W's position that he would have invested elsewhere had he been given the correct information about the MPAA, she couldn't be certain where or how he would have invested. She also appreciated that the contributions had benefitted from investment growth within the SIPP. She couldn't therefore fairly conclude that Mr W had lost out on further investment growth because of the unsuitable advice – and so wouldn't be accounting for losses for this in her outcome.

What was clear, however, was that as a result of the unsuitable advice Mr W received in the relevant years, he'd incurred unnecessary tax charges and interest charges from HMRC.

The investigator therefore thought that Mercer should reimburse Mr W for the specific charges and interest relating to these contributions in the 2019/20 and 2020/21 tax years. Mr W had said that these costs have now been paid to HMRC, so Mercer should reimburse Mr W directly for these costs, the investigator said.

Interest at the rate of 8% simple should be paid from the date the interest and/or tax charges were paid until the settlement date. This would reflect the loss of use of that money for that period.

Where interest was being added at 8% simple per annum, this was likely to be subject to tax applied by HMRC. If Mercer were to deduct tax, it should tell Mr W how much it had deducted. It should also give Mr W a certificate showing this, if requested, so he may reclaim the tax from HMRC.

In carrying out the calculations, it was reasonable for Mercer to request the relevant evidence from Mr W or HMRC to confirm the exact figures that have been paid and when they were paid.

In resolving the charges and interest with HMRC, Mr W had said that he sought help from his accountant, which wasn't unreasonable given the nature of the issues. The investigator said that it was likely that Mr W would always have incurred accountant's charges for work unrelated to the errors of Mercer and this service wouldn't expect Mercer to reimburse costs that would in any case have been incurred.

However, Mr W had provided a breakdown of a separate invoice from his accountant detailing work that specifically related to resolving the HMRC matters caused by Mercer, which the investigator sent to Mercer. She therefore thought that it would be reasonable for Mercer to reimburse Mr W for those costs which he wouldn't otherwise have incurred.

Aside from the direct financial losses incurred, the investigator also considered the additional stress and inconvenience these errors had caused Mr W. It had taken Mr W some time to resolve the charges and penalties from HMRC, and it also took him several months to obtain the information and responses he needed from Mercer.

In the circumstances, therefore, as well as the above, Mercer should pay Mr W an additional £500 compensation for the distress and inconvenience he'd suffered as a result of Mercer's actions.

Mercer disagreed, however, saying that additional efforts should be put into extracting evidence from SL which it said would demonstrate that Mr W was aware of the tax charge but nevertheless proceeded to invest further contributions on a non-advised basis.

It also said that £500 in respect of distress and inconvenience was excessive, and this would be appropriate for someone who'd been defrauded, which wasn't the situation here.

The investigator replied to say that she understood the concern around the lack of information from SL, but as it wasn't the party complained of, this service had no power to compel it to provide the information. And Mr W had confirmed that the first letter he received which alerted him to the issue was in July 2023.

She also said that SL confirmed itself that it had only sent statements to Mr W after he'd made the first contributions in 2019, so she couldn't conclude that any communication from SL would have changed this. However, as Mr W was communicating with Mercer as his adviser in relation to the contributions in 2019 and 2020, the responsibility was in any case on Mercer to ensure that he was aware of any limitations on contributions applicable to him and to ensure that any advice was in his best interests.

And the investigator reiterated that she was only holding Mercer responsible for the MPAA breaches in the 2019/20 and 2020/21 tax years, and not after this.

She further noted the comment regarding the recommended distress and inconvenience payment, but whilst she agreed that there was no suggestion that this had happened to Mr W, she didn't agree that this figure was only suitable for someone who had been defrauded.

She said that, as set out on our website, £500 would be considered reasonable where the impact of a mistake had caused considerable distress, upset and worry – and/or significant inconvenience and disruption that needed a lot of extra effort to sort out. Typically, the impact would last over many weeks or months, but it could also be fair to award in this range if a mistake had a serious short-term impact.

Mercer maintained its stance, however, and requested that the matter be referred to an ombudsman for review. As such, it was referred to me.

I issued a provisional decision on the matter on 23 July 2025, in which I set out my reasons for upholding the complaint. The following is an extract from that decision.

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done so, I've reached broadly the same conclusions as the investigator on the merits, albeit with some differences on how far Mercer's liability for the excess contributions should reasonably extend, and also on the manner of calculating whether any redress is due to Mr W.

To firstly address the matter of Mercer's liability for Mr W's contributions above the MPAA, I've noted that, within the suitability report of 23 May 2016, Mercer recommended that Mr W take tax free cash and begin to draw down income.

SL then wrote to both Mr W and Mercer to confirm that, as income had been taken from the plan, the MPAA rules would henceforth apply. SL also said that it received the instruction from Mercer on 26 May 2016 to make the payment (although I accept that it hasn't provided the evidence for this).

And so, whilst I think it could be argued that Mr W ought reasonably to have known from the 2016 letter that he had a MPAA of £10,000, this was three years prior to his first contribution after this, and he was nevertheless entitled to rely on the expertise of Mercer, which had, in 2016, not only recommended the income drawdown, but seemingly instructed the payment on Mr W's behalf, and had then been notified that the MPAA would then apply.

Therefore, notwithstanding the "know your client" fact finding which ought to have been undertaken when new advice was given from 2019 onwards, I think it could in any case reasonably be argued that Mercer, as the financial expert which was then advising Mr W to make further contributions, ought to have been aware that Mr W was subject to the MPAA.

But I also think that, whilst the contributions Mr W made from April 2021 (until he received the letter from SL in July 2023 informing him that he'd exceeded the MPAA) were on a non-advised basis, he was nevertheless doing so on the basis of advice previously given to him which he understood to mean that he had the full unrestricted annual allowance. It was in essence a continuation of the pattern which had been established on the basis of recommendations and advice previously received on the amount which he could contribute annually.

And so, my view is that Mercer's liability should also extend to the contributions made up until the receipt of the letter in July 2023.

I've noted what Mercer has said about letters which SL might have sent before July 2023, and it's regrettable that the latter hasn't responded fully to information requests made by both Mercer and this service. But where there is perhaps uncertainty over events, as may be the case here, I need to consider, on balance, what is more likely than not to have been the case.

And in my consideration of this, I do think it would seem odd for Mr W to have been receiving letters prior to July 2023 saying that he'd exceeded the MPAA but to ignore these and continue making contributions anyway. This would be quite a risky strategy, given that he would be accruing tax charges and interest on these excess contributions, with no guarantee of any subsequent complaint about this being upheld. And I think it's notable that he contacted both Mercer and SL shortly after receiving the letter in July 2023 to try to resolve the issue.

Therefore, I'm satisfied, on balance, that the first letter Mr W received which notified him that he was exceeding the MPAA was in July 2023. And, in line with my comments set out above, it follows that I consider Mercer are liable for the contributions Mr W made in excess of the MPAA from 2019 up to that point.

Putting things right

As with the investigator, my aim is to put Mr W as closely as possible into the position he would have been but for Mercer's error.

This isn't straightforward to determine. Mr W has on the one hand benefitted from the tax relief within the SIPP, but has also needed to pay tax charges and interest, and when accessing the pension benefits derived from the contributions he's made, he'll need to pay tax on 75% of the withdrawals.

Therefore, my current view on how redress should be calculated is as follows, in four parts:

- 1) Mercer should establish the fund value derived from 20% of the excess over the MPAA in gross contributions as at the date Mr W paid the tax charge. This represents the tax relief within the pension that Mr W wouldn't have gained, if he'd made those contributions into some other form of investment such as an ISA. This value should then be notionally reduced by 15% to account for the tax he'll need to pay on withdrawal (assuming that Mr W is a basic rate taxpayer and that he'll be able to withdraw 25% of this pension funds tax free).*
- 2) Mercer should deduct from (1) the amount of the tax charge and the interest accrued up to the point of payment of the tax charge. If this results in a positive figure, then there has been a gain. If it's negative, then there has been a loss. And to this loss or gain should be applied the actual rate of return experienced by the pension funds up to the date of any final decision along these lines.*
- 3) Mercer should pay Mr W 15% of the fund value (as at the date of any final decision along these lines) derived from the other 80% of the gross contributions over the MPAA, as this represents income tax Mr W would not have had to pay on the eventual benefits if he'd made those contributions into some other form of investment such as an ISA. It should also reimburse Mr W the fee charged by his accountant specifically relating to this matter.*
- 4) If there is a gain from (2) above, this may be offset against the amount due in (3). If there is a loss, this should be added to the redress determined by (3).*

I've also considered the matter of the distress and inconvenience payment, and I'd again agree with the investigator that an amount of £500 isn't restricted to the type of payment this service might typically make for cases involving fraud. As set out by the investigator, this level of payment would also be appropriate in situations where the impact of a mistake had caused considerable distress, upset and worry – and/or significant inconvenience and disruption that needed a lot of extra effort to sort out. And typically, where the impact has lasted many weeks or months.

I think this situation, in which Mr W became aware that he was liable to pay tax charges and interest, and then the amount of time needed to resolve it, would be consistent with the above. And so I agree that the additional sum of £500 would be appropriate here."

Mr W accepted my findings. Mercer expressed disappointment that the requested information hadn't been forthcoming from SL, and that it felt it was being punished for the latter's failure to provide that information.

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 do understand Mercer's disappointment that the requested information hasn't been provided, but I think it's worth reiterating my point in the provisional decision that, on

balance, I don't think it was more likely than not that Mr W would have received letters from SL notifying him of the MPAA breach, and that he simply disregarded these.

As such, and for the reasons given in the provisional decision, my view remains that the complaint should be upheld.

Putting things right

Mercer Limited should undertake the calculation as set out in the provisional decision and pay Mr W an additional £500 in respect of the distress and inconvenience caused by this matter..

My final decision

My final decision is that I uphold the complaint and direct Mercer Limited to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 26 August 2025.

Philip Miller
Ombudsman