

complaint

Mr R has complained that he was given poor advice by Mazars Financial Planning Limited ("Mazars") about his pension that's led to him paying more tax.

background

Following changes to pension rules in 2006, Mr R was given advice from Mazars to apply for enhanced protection against any lifetime allowance ("LTA") charge. He also applied for primary protection, which would cover him if he lost the enhanced protection. Mr R was protected against any LTA charge, but he might've lost the enhanced protection if any further pension contributions were made. Mr R was issued an enhanced protection certificate in February 2008 with dormant primary protection.

Mr R was a member of his employer's non-contributory pension scheme that he says he joined to qualify for the death in service benefit. He says that he thought he'd only lose the enhanced protection if he made any further contributions to his pensions himself, but not if only his employer made contributions. Mr R remembered telling Mazars this information in a phone call in March 2006, so it should've known there was a potential problem with his enhanced protection. When Mr R applied to take some of his deferred pension in 2013, he found out the enhanced protection had been lost because of his employer's contributions.

Mazars say it gave Mr R adequate warnings about losing the protection if further contributions were made. And that it had advised Mr R to take primary protection as well to cover him if he lost enhanced protection.

One of our investigators looked at the complaint, but didn't think Mazars had done anything wrong. He said Mazars had made Mr R aware that the enhanced protection would be lost if any further contributions were made. But Mr R disagreed, so the complaint was passed to me for a decision.

I issued a provisional decision in May 2017. I explained that I'd considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr R says that he told Mazars that he was thinking of becoming a member of his employer's non-contributory pension scheme in a phone call in 2006. Mr R told us he started working with that employer in 2005 and joined the scheme in April 2006, so I didn't think there was any reason to doubt Mr R would've made Mazars aware of that then.

I saw several letters that Mazars sent Mr R setting out the advice he was given. In a letter dated August 2007, Mazars said:

"Enhanced Protection - Those who have funds in excess of the £1.5 million as at 5th April 2006 or expected that their funds will grow but are not making further contributions into their plans, can register so that there will be no future reference to the value of their fund when benefits are taken."

and

"The Mazars Service - Mazars will assist clients to obtain all the necessary information and provide a register of such benefits calculated as at 5 April 2006. We

*will then calculate your personal allowance as a comparison with the annual allowance and advise on the most appropriate form of registration for your particular circumstances. **This can include registering for Enhanced Protection but with a Primary Protection underpin in case at some point in the future either you have reason to make further pension contributions or a forgotten a pension becomes payable which could create a tax liability on the excess fund values.***

and

"The advice which we provide is based on full disclosure of all pension plans either in payment or waiting to be paid. Any policies which are declared after registration could be subject to a tax liability and therefore we urge clients to check all records to ensure that we are given full details." (emphasis added)

And in January 2008 Mazars said:

*"As you have a total fund that is above the Life Time Allowance (LTA) for pension fund of £1.5 million and have ceased all further contributions, then Enhanced Protection is the most appropriate for your purposes. **At any time you make a further contribution into your plan then Enhanced Protection will be cancelled, you will not have the ability to then register for Primary Protection, the amount of the fund above the LTA, as below, will be subject to an excess tax charge of 55%.***

and

*"Because your capitalised pension fund is in excess of £1.5 million and to allow for any error or opportunities in the future whereby you wish to make further contributions into a pension plan, then we would also registered you for Primary Protection as an underpin. **Thus should additional contributions be made and you are disqualified from Enhanced Protection, then Primary will be the "fall back" position, in which case we calculate that you register for an amount of 2.52 times the LTA as stated below.***

If you register for Enhanced Protection you should not have, nor make in the future, contributions into any of your current plans or create a new pension arrangement. To do so will mean that the enhanced protection will be disqualified and you will be liable to a LTA excess tax charge on taking any part or all of your remaining pension arrangements. (emphasis added)

I saw Mazars had details of two of Mr R's pension schemes, but I didn't see it had any information from his employer's pension scheme. I noted that Mazars didn't have a copy of what questions Mr R was asked about his pensions or what pensions he said he had. But it said that it would've asked Mr R what pensions he had and then found out their values to be able to give advice. I thought that, if Mr R had told Mazars he was a member of his employer's pension scheme, it would've got information before it advised him.

So I thought in January 2008 Mazars was giving advice on the basis that no further contributions to any pension were being made, so it recommended he apply for enhanced protection. And I couldn't see that Mr R wrote back to say he was a member of his employer's pension scheme, or asked what the effect of his employer's contributions would be.

Mr R said he told Mazars he was thinking about joining his employer's scheme in a phone call in March 2006. But that was over a year before he was given advice and before he told us he'd joined his employer's scheme in April 2006. So I didn't think Mazars were at fault for not advising about the effect of this scheme if Mr R hadn't given further details about it or let it know he'd joined the scheme.

Mr R has said that another, linked business were giving him tax advice, so Mazars should've known his employers were contributing to a pension on his behalf. But that business was a separate entity to Mazars, so I wouldn't expect all of the information about Mr R to be shared.

I also thought Mazars made it clear enough to Mr R that he could lose his enhanced protection if further contributions were made in the future. But the actual position would depend on a number of different factors, and I didn't think Mazars could've predicted whether the enhanced protection would've been lost at the time. For example, how Mr R's work scheme was set up and the amount of further accruals before the pension was taken. So I didn't think the advice to apply for enhanced protection was wrong at the time.

But Mazars also applied for primary protection at the same time, taking into account the value of Mr R's declared pension funds. So if he lost his enhanced protection, he'd be able to rely on the deferred primary protection. At the time Mr R applied these were the only two options available to Mr R to protect against the LTA, so I thought it was right for Mazars to apply for both – the enhanced protection as the first position and the primary protection as a fall-back position. It follows I didn't think Mazars have mis-advised Mr R.

Mazars replied to my provisional decision to say it had nothing further to add.

Mr R didn't reply to my provisional decision.

my findings

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

As neither party has given me any new information they'd like me to think about, I see no reason to depart from my provisional decision.

my final decision

For the reasons set out above, I don't uphold Mr R's complaint against Mazars Financial Planning Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 31 July 2017.

Mark Hutchings
ombudsman