

complaint

Ms R complains that she was mis-advised by Heron House Financial Management Ltd (HHFM) about Fixed Protection 2014 (FP).

background

In February 2014 Ms R was going through a divorce and decisions were being made about how her and her husband's pension benefits should be split.

Ms R took financial advice from HHFM. It advised her to set up a new personal pension plan which a pension credit payment from her husband's pension could be paid into. It told her the lifetime tax allowance limit set by Her Majesty's Revenue and Customs (HMRC) was reducing from £1,500,000 to £1,250,000 in the new tax year. As her pension credit was likely to be above £1,250,000, it advised that she get FP prior to the cut-off date of 5 April 2014. Ms R got her FP certificate from HMRC in March 2014. This kept her lifetime allowance at the old level, £1,500,000, if she complied with the rules.

Ms R and her adviser talked about the Lifetime Protection rules. Once FP was in place any further pension contribution could invalidate the protection.

Ms R got her recommendation report from HHFM in May 2014. She realised she'd breached FP as she'd made payments into an existing pension plan after 6 April 2014. She complained to HHFM, who didn't uphold her complaint. So, she brought her complaint to us.

Our adjudicator looked into Ms R's complaint and didn't uphold it. In summary she said:

- The adviser understood Ms R had an existing plan which employer payments from a previous business owned by Ms R were paid into. But, she'd sold that business over a year before.
- Ongoing payments into this plan weren't mentioned at any point. Despite lengthy discussions about how payments after 5 April 2014 could invalidate the protection.
- Ms R got the FP certificate from HMRC in March 2014, before the payments were made into her existing plan. This certificate provided clear details of how protection could be lost.
- HHFM had correctly advised her to take out FP and helped her to get it.
- Ms R wrote to the existing plan provider in May 2014. Ms R said, having sold the business she had originally been making payments from, she had mistakenly arranged for another company to make the payments instead. This was an investment company – which her accountant said making the payments through wasn't advisable.

After further consideration Ms R decided not to accept our adjudicator's opinion and her solicitor's responded on her behalf. In summary her solicitors said:

- The adviser should've asked Ms R outright whether payments were being made into her existing plan; and
- Details of how the protection could be invalidated should've been confirmed in writing before FP came into force.

The adjudicator replied and said she hadn't changed her view for the following reasons:

- Ms R told HHFM the premiums into her existing plan were paid from a business she'd sold.
- Ms R had forgotten she'd arranged for payments into her existing plan to carry on being paid from another business.
- The actuarial report didn't refer to any ongoing payments.
- The guidance provided by HMRC in the FP application, and on the certificate, clearly showed that further payments could invalidate the protection. So, she felt Ms R ought to have known this.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. 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, on what I consider is most likely to have happened in light of the available evidence and the wider circumstances. Having done so, I have come to the same conclusion as the adjudicator, and for broadly the same reasons.

advice given

Looking at what was discussed at the time, I think, more likely than not, HHFM made it clear to Ms R that if she made future pension payments it could invalidate her FP. Further, Ms R wasn't due to get her pension credit until after 5 April 2014. So, she knew that HHFM had to check whether paying this into her pension, after this date, could invalidate her FP. I think Ms R would have known from this, and general discussions with HHFM, future payments could invalidate her FP.

questions asked

Ms R's solicitor said if she'd been asked outright if she was making pension payments this situation could've been avoided. I've looked at what Ms R told HHFM about her pension arrangements, and what was in the actuarial report. I can't see that HHFM was given any information which might lead it to believe that Ms R was continuing to make ongoing pension payments. Ms R didn't volunteer this information. She told HHFM that employer payments had been paid into her existing plan through a business she'd sold a year before. So, I don't think I can fairly hold HHFM responsible for Ms R losing her FP because it didn't ask her this specific question.

information in writing

HHFM drafted a recommendation report in March 2014, but didn't send it to Ms R until May 2014. This covered FP. Whilst it was reasonable to expect the report to be given to Ms R in a timely fashion, I can understand the reasons for the delay here. Her adviser planned to also provide investment advice, but the divorce and division of assets weren't yet settled. Although it might have helped if Ms R had received this report sooner, I don't think the delay caused her to lose FP. I say this because:

- The written certificate she got from HMRC in March 2014 telling her she had FP clearly explained how things worked. She got this before she made the payments in April and May 2014 that led to her losing FP. She says she didn't read this, but instead filed it away. Had she done so, it might have reminded her that she needed to cancel the payments she was making into her existing plan. The information given

in the certificate (and in the application form she signed) about FP was, for the most part, the same as the information given in the recommendation report. So, I think Ms R had all the information she needed about FP in writing before it came into force.

- Looking at the discussions that took place between Ms R and HHFM I think she understood how FP worked and the impact of future payments.
- Ms R sent a letter to her existing plan provider asking it to cancel the payments she made in April and May 2014. She said she had mistakenly transferred payment arrangements to her investment company, after she sold her business in November 2013.
- Ms R's adviser wrote to HMRC asking for her to keep FP. He said that due to personal pressures and the complexities of a divorce she had overlooked a longstanding pension arrangement.

I can see that this was a difficult time for Ms R and I sympathise with the situation she now finds herself in. However, I think the information HHFM gave her about FP was clear, fair and not misleading. And I can't see that HHFM caused her FP to be lost as a result of any act or omission on its part.

my final decision

For the reasons given above I do not uphold Ms R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 12 February 2016.

Kim Parsons
ombudsman