

Ombudsman's Determination

Applicant	Mr R
Scheme	The Investor SIPP (the SIPP)
Respondents	The Trustee of the JPMC UK Retirement Plan (the Trustee) Interactive Investor (II)

Outcome

1. I do not uphold Mr R's complaint and no further action is required by the Trustee or II.

Complaint summary

2. Mr R complained that a delay to the crystallisation of his account in the SIPP (**the Account**) resulted in him:
 - using more of his protected Lifetime Allowance (**LTA**) than he needed to; and
 - incurring additional tax on future withdrawals.
3. Mr R asked to be reimbursed £27,259 for additional LTA tax he paid for exceeding his protected LTA, and £6,000 for additional income tax he paid on £30,000 of subsequent taxable withdrawals.

Background information, including submissions from the parties

4. The SIPP's provider is II. The SIPP's administrator is BW SIPP LLP (**BW**).
5. Mr R was a deferred member of the JPMC UK Retirement Plan (**the Retirement Plan**), a defined contribution (**DC**) arrangement with a Guaranteed Minimum Pension (**GMP**). The Retirement Plan's administrator is Mercer.
6. Mr R has Fixed Protection 2012, which protected his LTA at £1.8m.
7. In the summer of 2019, Mr R reviewed his pension arrangements with Willis Towers Watson (**WTW**).
8. In December 2019, when he reached age 55, Mr R crystallised two pension arrangements as follows:-

- Lazard London Staff Pension Scheme: he put his pension into payment without withdrawing a Pension Commencement Lump Sum (**PCLS**). This Benefit Crystallisation Event (**BCE**) amounted to 5.57% of his protected LTA.
 - The Retirement Plan – GMP element: he put his GMP into payment and withdrew a PCLS. This BCE amounted to 2.21% of his protected LTA.
9. Mr R also had uncrystallised pension benefits in the following pension arrangements:
- the SIPP;
 - the JP Morgan UK Pension Plan (**the Pension Plan**); and
 - Additional Voluntary Contributions in the Retirement Plan (**the AVCs**).
10. The Pension Plan’s administrator was WTW.
11. Mr R told Mercer that he would be transferring the AVCs to the SIPP in due course (**the Transfer**).
12. On 7 January 2020, Mercer wrote to Mr R and confirmed details of the BCE for the GMP element of the Retirement Plan.
13. On 8 January 2020, Mr R completed and signed II’s “SIPP account transfer form” (**the Transfer Form**) for transferring the AVCs to the SIPP. On the Transfer Form he stated the following:
- the benefits he was transferring were not in drawdown and had not been crystallised;
 - assets would be transferred as cash; and
 - the estimated value was £400,000.
14. On 9 January 2020, Mr R telephoned Mercer and requested paperwork to allow him to transfer the AVCs to the SIPP. On the same day, Mercer emailed a retirement settlement letter (**the Settlement Letter**) to Mr R for the GMP element of the Retirement Plan, which included details of his LTA percentage crystallised.
15. On 30 January 2020, Mr R contacted Mercer and complained about not receiving transfer paperwork and information about the AVCs. Mercer responded later the same day. The current transfer value of the AVCs was £411,896.38.
16. On 31 January 2020, Mr R completed and signed the Retirement Plan’s “application to proceed” (**the Application to Proceed**). Mr R sent the Application to Proceed to Mercer.
17. On the same day, Mr R asked II how he could start the drawdown process from the Account.

18. On 3 February 2020, Mr R sent a handwritten letter to II (**the II Letter**). The II Letter said that the necessary forms were enclosed, and he wanted the Transfer to be progressed quickly as he wanted to crystallise the Account, take the maximum PCLS, and withdraw some taxable cash in the current tax year.
19. On the same day, II sent Mr R instructions on the drawdown process. He needed to complete a three-stage process by completing the following documents: (i) "Taking Pension Benefits Form", (ii) a retirement questionnaire and (iii) an LTA declaration (together, **the Drawdown Documents**). Each stage would typically take five working days.
20. On 4 February 2020, Mercer received the Application to Proceed.
21. On 12 February 2020, Mercer acknowledged Mr R's transfer request and confirmed details of its self-service website where the Drawdown Documents could be downloaded.
22. On 13 February 2020, BW completed and signed Mercer's "Personal Pension Scheme Transfer Declaration Form" (**the Transfer Declaration Form**).
23. On the same day, BW sent a letter to Mercer (**the Mercer Letter**) and enclosed the following documents:
 - the II Letter;
 - the Transfer Declaration Form;
 - a copy of the Application to Proceed;
 - the Transfer Form; and
 - HM Revenue & Customs (**HMRC**) website screenshots for the SIPP.
24. In the Mercer Letter, BW said that Mr R wanted to transfer his benefits in the Retirement Plan to the SIPP, and it confirmed the SIPP's bank account details. BW also said: "Please provide full details of the transferring plan including details of crystallised and uncrystallised amounts".
25. On 20 February 2020, Mercer received the Mercer Letter and other documents.
26. On 3 March 2020, the following actions took place:-
 - Mercer wrote to Mr R and confirmed that £411,563.31 had been transferred to the SIPP.
 - Mercer wrote to BW and confirmed that the Transfer amount had been paid to II (**the Transfer Letter**). The Transfer Letter did not say whether Mr R's benefits had been crystallised or not.
27. On 4 March 2020, Mercer made the Transfer payment. Mr R has said that on the same day, he sent the completed Drawdown Documents to II.

28. On 5 March 2020, Mr R informed II of the following points:-

- He was due to receive the Transfer payment from the Retirement Plan. He asked for the Account to be credited with the payment as soon as possible.
- He had completed and sent the Drawdown Documents as he wanted to crystallise the Account and start drawdown.
- He wanted to withdraw £30,000 of taxable cash in addition to his maximum PCLS in the current tax year.
- He asked for the Drawdown Documents to be processed urgently due to current market conditions.

29. Mr R has said that on two occasions, II informed him that the Account should be crystallised four to six days after it received the final Drawdown Document.

30. Mr R has said that on 6 March 2020, the Account received the Transfer payment.

31. On 10 March 2020, Mr R told II that he had returned the Drawdown Documents. He said that due to recent market moves he wanted to crystallise the Account as soon as possible as he had already exceeded his protected LTA.

32. On 11 March 2020, II allocated the Transfer payment to the Account.

33. Mr R has said that on 13 March 2020, II received the final Drawdown Document.

34. On 16 March 2020, II confirmed to Mr R that the Transfer payment had been allocated to the Account. It said that the Drawdown Documents had been sent to BW for review.

35. On 18 March 2020, II replied to Mr R's 10 March 2020 email and said that it would process the Drawdown Documents in due course. It also said that the next step was to send him the funds.

36. On 23 March 2020, Mr R asked II for an update.

37. On 26 March 2020, BW telephoned Mercer and asked for a confirmation letter for the Transfer, including the transfer value, fund split and any court order. BW did not specifically request information about crystallisation status of the AVCs. BW mentioned that Mr R was waiting to receive his benefits from the Account, and it asked to receive the information that day. Mercer said that a copy of the Transfer Letter would be emailed later the same day or the following day, which BW confirmed was acceptable.

38. Later the same day, Mr R telephoned II for an update. He was informed of the telephone call between BW and Mercer.

39. On 28 March 2020, II told Mr R that it was still waiting for the Transfer Letter.

40. On 30 March 2020, Mercer emailed the Transfer Letter to BW.

41. On 31 March 2020, Mr R told II that the AVCs were uncrystallised. He said that he had been advised that it would take around five days to crystallise his benefits. He also said that if crystallisation was not completed before 6 April 2020, there would be tax implications, which he would hold II accountable for. He asked for the Account to be crystallised urgently.
42. On 1 April 2020, BW telephoned Mercer and asked for confirmation of whether the AVCs had been crystallised. Mercer's representative could not answer the question immediately, and BW was asked to send the request by email. BW sent the email the same day. The email did not give Mercer a deadline.
43. On 2 April 2020, the following actions took place:-
 - Mr R telephoned II and asked for an update. He said that he needed the £30,000 of taxable cash by 3 April 2020. II said that the Transfer was still outstanding, so it could not yet pay him his benefits. Mercer had been chased for the crystallisation information several times. Mr R told II that Mercer needed to be chased again.
 - Mr R emailed and telephoned Mercer for an update. Mercer said that it had emailed the Transfer Letter to BW on 30 March 2020 and asked if there was anything else outstanding. Mercer also emailed the Transfer Letter to Mr R.
 - Mr R telephoned II again and updated it on the position. The II representative could not obtain an update from the relevant BW department, so an email was sent. The email address was provided to Mr R so that he could send a copy of the Transfer Letter.
 - II telephoned Mr R and told him that he would not receive his benefits before 6 April 2020. This was because Mercer had not confirmed whether the AVCs had been crystallised. II said that BW had asked Mercer for the information on 26 March and 1 April 2020.
 - Mr R told II that he wanted to continue to withdraw his maximum PCLS, but cancel the £30,000 of taxable cash, as he did not want to receive it in the 2020/2021 tax year.
44. On 3 April 2020, Mercer telephoned II and asked what further information was outstanding. While II was trying to contact the relevant BW department, II has said that Mercer disconnected the call.
45. BW has said that on 6 April 2020, Mercer confirmed that the AVCs were uncrystallised.
46. On the same day, II informed Mr R that the Transfer had been completed.
47. On 7 April 2020, Mr R told II that as he had not received the £30,000 of taxable cash during the 2019/2020 tax year, he had lost 20%, or £6,000, in additional higher rate tax (**HRT**). He held II accountable for the additional tax. He also said that the Account had still not been crystallised and he had not yet received his PCLS.

48. On 8 April 2020, II told Mr R that despite chasing Mercer several times, it did not receive the Transfer Letter until 6 April 2020. Mr R's drawdown request was being processed and he would be updated with timescales.
49. On 10 April 2020, the following actions took place:-
 - II told Mr R that as he had cancelled the £30,000 taxable withdrawal, he would need to complete another set of the Drawdown Documents.
 - Mr R told II that he had advised it on 3 April 2020 that he had cancelled the £30,000 taxable withdrawal and he now only wanted to withdraw his PCLS.
 - Mr R raised a complaint against II regarding the delay in crystallisation of the Account.
50. On 11 April 2020, II told Mr R that his complaint had been logged and it would contact him the following week with an update.
51. Later the same day, Mr R told II that he would advise it of his financial loss resulting from the delay, after the Account had been crystallised.
52. On 14 April 2020, the following actions took place:-
 - II confirmed to Mr R the timescales for dealing with his complaint.
 - Mr R asked how he could send a letter to II's complaints department.
 - II told Mr R that he did not need to complete another set of the Drawdown Documents if he confirmed by email that his situation had not changed. BW knew that he wanted to fully crystallise the Account and withdraw his maximum PCLS. II estimated that it would take two weeks for Mr R to receive his PCLS.
 - Mr R confirmed to II that his situation had not changed, and he said that he had not cancelled his original PCLS and drawdown request. As this had caused further delays, he would add this to his complaint.
53. On 15 April 2020, II crystallised the Account. The value crystallised was £1,459,128.91, and the maximum PCLS was £364,782.23. This BCE amounted to 81.05% of Mr R's protected LTA.
54. On the same day, II paid Mr R's maximum PCLS to his bank account.
55. As II had told Mr R that crystallisation should take place four to six days after receiving the final Drawdown Document, following a request from Mr R on 21 April 2020, II sent him valuations for the Account as follows:
 - 19 March 2020: £1,350,571.97
 - 20 March 2020: £1,365,857.40; and
 - 23 March 2020: £1,333,845.58.

56. Taking the average of these valuations, Mr R believed that the Account should have been crystallised with a value of £1,350,091. This would have resulted in him receiving a PCLS of £337,523. He confirmed to II that the Account had received the Transfer payment, and he would be sending additional information to II's complaints department in due course.
57. On 22 April 2020, Mr R sent a complaint letter to II about the delay. He said that the delay had caused him to suffer financial loss as follows:-
- He should have had a remaining protected LTA of £309,909 towards a future BCE for the Pension Plan. Due to the delay, he now only had £200,872 remaining. So, he would have to pay an additional 25% tax on £109,037, amounting to £27,259.
 - As he would pay HRT in future years but was a basic rate tax (**BRT**) payer in the 2019/2020 tax year, he would have to pay an additional 20% tax on the £30,000 of taxable income in the future, amounting to £6,000.
58. He also said the following:-
- II was required to "treat customers fairly" by the Financial Conduct Authority.
 - There was nothing more he could have done to assist II in carrying out his instructions.
 - II had no focus or urgency and its procedures were not fit for purpose.
59. On 27 April 2020, II asked Mr R when he wanted to start receiving drawdown income. Later the same day, Mr R said that he wanted to start drawing income from 28 May 2020.
60. On 4 May 2020, Mr R asked II if it had received his complaint letter. The following day, II confirmed that it had.
61. On 28 May 2020, Mr R asked II for an update on his complaint. He said that he had been told that he would receive an update after four weeks if his complaint had not been resolved.
62. On the same day, II apologised for the delay and said that his complaint would be reviewed later that day.
63. On 9 June 2020, II responded to Mr R's complaint with the following points:-
- The information relating to whether the AVCs had been crystallised was received on 6 April 2020. This did not leave sufficient time to process his benefits before the end of the current tax year.
 - Mercer had been chased for the information on 26 March and 1 April 2020.
 - If the information had been provided when the Transfer payment had been received, the drawdown could have been completed within the current tax year.

BW needed to receive the information within the first three weeks of March 2020 to ensure that II had time to close the Transfer and start the drawdown process.

- It was Mercer's fault that the information was not received, which meant that II could not process his drawdown.
- It did not uphold this part of Mr R's complaint and did not take responsibility for the financial loss he claimed.
- It accepted that it incorrectly told him that he needed to start the drawdown process again and complete a second set of Drawdown Documents after he cancelled the £30,000 taxable withdrawal on 2 April 2020. It offered to credit the Account with £60.
- It also apologised for not sending him an update on its response to his complaint after four weeks.

64. Mr R did not accept the £60. He told II that Mercer had sent him a copy of the information BW had requested and it had not asked Mercer to confirm whether the AVCs had been crystallised.

65. On 18 June 2020, Mr R wrote a letter to Mercer. He said that his complaint to II had not been upheld because it did not know whether the AVCs had been crystallised. So, II held Mercer accountable for the delay in processing the Account. Mr R requested compensation of £33,259.

66. On 7 July 2020, Mercer emailed a letter to Mr R with the following points:-

- It had provided all the information BW had requested on 30 March 2020.
- The transfer of the AVCs was not a BCE, so there was no crystallisation percentage to be disclosed.
- If BW had required information about any previous BCE, then BW should have requested Mr R to complete an LTA declaration. Information about his previous BCE had been provided to him in the Settlement Letter on 9 January 2020.
- It did not expect BW to request this information from Mercer.
- It did not uphold his complaint.

67. On 5 August 2020, Mr R submitted a complaint to the Trustee under Stage One of the Retirement Plan's Internal Dispute Resolution Procedure (**IDRP**).

68. On 1 October 2020, the Trustee replied to Mr R's complaint under Stage One of the IDRP. It made the following points:-

- It was not Mercer's standard practice to provide crystallisation information in transfer confirmation letters. Information on all the benefits he had crystallised in

the Retirement Plan had already been provided to him in the Settlement Letter and should have been known to BW.

- It would be highly unusual for a transfer of crystallised benefits to be requested from an occupational DC scheme. Having checked with a number of large scheme administrators, it understood that letters regarding transfer payments did not include crystallisation information.
- Mr R had already provided crystallisation information to II in the Transfer Form.
- Mercer made the Transfer payment on 4 March 2020, and II then had more than one month to crystallise his benefits.
- Crystallisation had occurred shortly after BW's correspondence and requests for information.
- The information requests from II in late March/early April 2020 were not as timely as it would have expected. The requests did not express urgency or give deadlines.
- Mercer was asked about crystallisation on 1 April 2020, and as the end of the tax year was 5 April 2020, which was a Sunday, crystallisation needed to take place by 3 April 2020. This gave Mercer very little time to respond.
- It did not uphold his complaint.

69. On 1 October 2021, Mr R submitted a complaint to the Trustee under Stage Two of the IDRPs.

70. On 19 November 2021, the Trustee replied to Mr R's complaint under Stage Two of the IDRPs. It did not change the position it held in its response to his complaint under Stage One of the IDRPs.

71. On 23 May 2022, after Mr R crystallised his benefits in the Pension Plan, WTW sent him a chargeable amount notice. It said that the value of his benefits had exceeded his remaining available protected LTA. For LTA purposes, his benefits from the Pension Plan were valued at £369,637.04. As his remaining available allowance was £201,060.00, the chargeable amount was £168,577.04. The rate of tax was 25%, so the charge was £42,144.26, which would be deducted from the transfer value.

72. With effect from 6 April 2024, the Government abolished the LTA.

73. Following the complaint being referred to The Pensions Ombudsman (**TPO**), II, the Trustee and Mr R made further submissions that have been summarised below.

74. II's further submissions:-

- While Mr R confirmed on the Transfer Form that the AVCs had not been crystallised, II expected the transferring scheme to confirm crystallisation status. II did not rely on clients providing this information, and this was standard industry practice. Not providing crystallisation information in transfer confirmation letters was not standard practice. It was standard practice to receive this information in the "immediate days following the transfer of assets or cash". The Mercer Letter clearly asked for details of crystallised and uncrystallised amounts. This was to avoid unauthorised withdrawal tax charges.
- HMRC's Pension Tax Manual says that a transferring scheme administrator must tell the receiving scheme within 31 days of the transfer if they have reason to believe that the member has flexibly accessed their pension rights before the transfer and the date on which the benefits were first flexibly accessed. II accepted that there was no regulatory obligation for Mercer to confirm the crystallisation status within 31 days, but II did not know this until Mercer had confirmed that Mr R's benefits were uncrystallised.
- BW's service level agreement (**SLA**) for chasing information such as crystallisation status was five working days. It had been pro-active in chasing Mercer within the potential 31-day period. It requested the crystallisation status again on 26 March 2020 and 1 April 2020.
- The value of the Account had increased while II was waiting for the crystallisation status and the PCLS had increased by over £31,000. It did not agree that Mr R had suffered financial loss.
- Mr R could have avoided crystallising the higher PCLS amount by partially crystallising the Account and requesting a specific PCLS amount.
- Mr R had retained a cash balance in the Account that was sufficient to cover the PCLS and £30,000 taxable withdrawal during the Transfer process. He was not prevented from investing the cash balance during the Transfer process.
- Mr R's BCE at age 75 was not until 2039. It was not possible to know the value of the investments at that time or whether there would be changes in LTA legislation.
- There was market volatility during the Transfer process. After Mr R's portfolio lost value in March 2020, the markets started to recover, and the value of his portfolio increased, although it remained below the "original book cost of his holdings". Mr R actively traded his portfolio during the period 6 March to 17 April 2020, which contributed to the increase in value of his portfolio.
- It offered Mr R £2,000 for distress and inconvenience (**the Offer**).

75. The Trustee's further submissions:-

- Mercer interpreted the request in the Mercer Letter "Please provide full details of the transferring plan including details of crystallised and uncrystallised amounts" as requesting the value of crystallised and uncrystallised values separately, if relevant, which was not the case for Mr R.
- As the benefits Mr R had transferred to II had not been flexibly accessed, there was no regulatory obligation for it to inform II of Mr R's crystallisation status.
- While it agreed it was standard practice to issue a transfer confirmation letter, it was not standard practice to provide crystallisation status.
- II knew that Mr R's benefits were uncrystallised because it was stated in the Transfer Form and the II Letter.
- Neither the telephone call nor the email from II on 1 April 2020 expressed urgency about receiving the crystallisation status.
- It accepted TPO's suggestion of offering Mr R an award of £500 to resolve his complaint.

76. Mr R's further submissions:-

- It was clear from the formal responses TPO received from both the Trustee and II that his instructions had been received well ahead of deadlines set by the firms. He had subsequently received an email from II which confirmed that the deadline for authorising a tax-free lump sum in writing before the end of a tax year was 5:00 pm on 18 February.
- He could not have commenced the Transfer sooner as Mercer needed to start the transfer process after he reached age 55.
- He had instructed II to withdraw the £30,000 of taxable cash for the 2019/2020 tax year and this had been part of his retirement planning. He planned to invest it in his and his wife's ISAs in the 2020/2021 tax year. The £30,000 was invested in cash during the Transfer process so it did not achieve investment returns in the Account.
- He had no other sources of taxable income that he could use to mitigate his loss in the 2019/2020 tax year, otherwise he would have done so.
- He provided evidence that showed:
 - if he had received £30,000 of taxable income from the Account in the 2019/2020 tax year he would have paid BRT on the whole amount.
 - in the 2021/2022 tax year, he withdrew one-off income payments from the Account of £25,000 on which he paid HRT. In total he paid HRT on income of £42,990.

- in the 2022/2023 tax year, he withdrew one-off income payments from the Account of £20,000 on which he paid HRT. In total he paid HRT on income of £47,115.
- He would not have needed to withdraw the £25,000 in the 2021/2022 tax year and £5,000 in the 2022/2023 tax year if he had received the £30,000 of taxable cash in the 2019/2020 tax year.
- As his LTA would not increase with inflation; fiscal drag, asset appreciation and dividends in his portfolio would lead him to pay a 25% LTA charge when he reached age 75. This amount would be significantly larger due to the delay in his crystallisation. This was avoidable if II had efficiently carried out his instructions.
- He had subsequently crystallised benefits in excess of his protected LTA and therefore had not benefitted from the increase in value of the Account's PCLS.
- He was prepared to accept the Offer in respect of the LTA part of his complaint.

Adjudicator's Opinion

77. Mr R's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or II. The Adjudicator's findings are summarised in paragraphs 78 to 94.
78. While the AVCs were transferred to II on 4 March 2020, the Account was not crystallised until 15 April 2020. This delay was caused by II not being informed by Mercer of the AVC's crystallisation status until 6 April 2020, which was after the end of the 2019/2020 tax year. The question the Adjudicator needed to consider was whether the relevant actions taken by II, and Mercer on behalf of the Trustee, were reasonable, and if not, whether this amounted to maladministration.
79. Mr R sent the transfer forms to II on 3 February 2020, when he confirmed that he wanted to crystallise his benefits in the Account before the end of the current tax year. So, at this stage II was aware of Mr R's intentions and his planned timescale. While Mr R said on the Transfer Form that his benefits were uncrystallised, II required formal confirmation from Mercer, so in the Mercer Letter dated 13 February 2020, it asked for details of the crystallised and uncrystallised amounts. Mercer should have replied to the request in the subsequent Transfer Letter it wrote on 3 March 2020 by confirming that the entire Transfer amount was uncrystallised, but it did not. However, the Adjudicator was prepared to accept Mercer's explanation of its interpretation of the request, such that it did not believe it was required to confirm that the AVCs were uncrystallised.

80. It was II's responsibility to ensure that it had sufficient information to enable Mr R's benefits to be crystallised. So, if the information was not forthcoming, II should have chased Mercer in accordance with its SLA, which was after five working days of issuing the request. On this basis, II should have first chased Mercer on 20 February 2020. However, it did not do so until the telephone call on 26 March 2020, 30 working days after sending the Mercer Letter. Furthermore, as the II representative did not specifically ask about crystallisation, when the Transfer Letter was received on 30 March 2020, the crystallisation status was not stated. If II had chased Mercer in accordance with its SLA, and been specific with its request, the Transfer and subsequent crystallisation would most likely have taken place within Mr R's required timescale. So, II's actions were not reasonable and amounted to maladministration.
81. The Adjudicator's next consideration was whether II's maladministration caused Mr R to suffer financial loss. Mr R claimed that II's actions resulted in him incurring financial loss in two respects:
- during the delay period the Account increased in value resulting in his crystallisation amount being higher and consequently he further exceeded his protected LTA, causing him to incur an additional LTA tax charge of £27,259; and
 - as the delay caused him to miss the opportunity to pay only BRT on the £30,000 taxable withdrawal, he also paid an additional £6,000 in HRT.
82. Mr R said that he would accept the Offer in regard to the LTA part of his alleged financial loss, but the Offer was made to address both aspects of his alleged financial loss. For this reason, and the fact that the financial implications of each consequence could not be considered in isolation, the Adjudicator considered both parts of Mrs R's alleged financial loss together.
83. II did not deny that it had a duty of care to crystallise Mr R's Account. However, this duty did not necessarily extend to any kind of financial loss suffered by Mr R in respect of the crystallisation. In order to assess this, the Adjudicator considered a recent case, *Khan v Meadows*¹ (**the Khan Case**), that went before the Supreme Court in June 2021.

¹ <https://www.supremecourt.uk/press-summary/uksc-2019-0011.html>

84. In the Khan Case, the Supreme Court found that when considering the scope of the professional's duty in looking at what losses were recoverable for the breach, it was necessary to consider the purpose for which the professional assumed the duty. Although the Khan Case was in respect of clinical negligence, it also referred to the scope of the liability, as opposed to the 'but for' causation test. The Supreme Court found that a doctor was only liable for losses falling within the scope of their duty of care to advise the claimant that they carried the haemophilia gene, which resulted in the birth of a baby with severe haemophilia and not the wider costs associated with the baby's autism. The doctor had been asked to advise only if the patient carried the haemophilia gene, and there was no finding that the doctor should or ought to have been aware of any fact which gave rise to a duty to advise on any other matter.
85. In Mr R's complaint, II indicated that the Account could be crystallised within the required timescale, having been warned that he wanted to access his funds prior to the end of the current tax year. So, the purpose undertaken by II and its duty was to crystallise Mr R's Account in accordance with best practice and prior to the end of the current tax year.
86. However, taking into account the implications of the Khan Case, the Adjudicator did not consider that the purpose for which II assumed its duty to crystallise Mr R's Account included any care or responsibility for any future tax charge associated with Mr R's LTA. This was particularly the case where the subsequent BCE in respect of the Pension Plan, which was not administered by II, and the timing of it was beyond II's control. So, in this scenario, it was not reasonably foreseeable that Mr R would incur an additional LTA charge under a separate pension scheme with another provider.
87. While Mr R knew that it was likely that he would exceed his protected LTA at some future date irrespective of II's actions, the Adjudicator did not see evidence that Mr R looked to mitigate the scale of this possible loss by transferring more funds into cash or by ceasing to trade his portfolio during the market upturn.
88. Mr R claimed a financial loss of £27,259 as his remaining protected LTA was reduced to £200,872. However, it was arguable that by delaying the crystallisation event Mr R benefitted by $£109,037 - £27,259 = £81,778$, an increase that may not have been obtained in subsequent investments due to market forces. Mr R explained that in his view he had not seen a net gain from II's actions as his portfolio would have remained invested after crystallisation and the increase was a result of market forces from which he would have benefitted irrespective of II's actions. However, Mr R's comments reinforced the Adjudicator's view that II did not have a duty of care for any claim made by him for the increase in value of the Account. As commented on by both Mr R and II, an increase or decrease in the value of the Account was driven by market forces.

89. Prior to making his decisions in 2020 to crystallise the Account, Mr R reviewed his pension arrangements with WTW, so it was likely that he was aware that changes in the value of the Account would impact his remaining protected LTA. While Mr R may have been aware of the consequences of this, he did not raise concerns about it with II at the time. If this was the case, bearing in mind he had a protected LTA of £1.8m, this suggested that it was not a priority for him or it was something that he may have considered as being unavoidable.
90. Mr R did not provide evidence that II caused him to incur a direct financial loss by exceeding his protected LTA. Furthermore, Mr R's decision to crystallise the Pension Plan in 2022, thereby incurring an LTA charge, showed that decisions in respect of his retirement planning were solely his, and that he was accountable for any resulting tax implications.
91. In respect of Mr R's claim that he paid additional income tax, the Adjudicator accepted that the delay to the Transfer resulted in Mr R deciding to cancel the £30,000 taxable withdrawal when he was a BRT, resulting in him paying HRT on the amount in subsequent years. However, this potential loss of £6,000 could not be considered in isolation from the benefit of receiving an additional tax-free amount of 25% of the Account's increase in value during the delay period.
92. The usual remedy for claims of this nature was to place an applicant in the position they would have been if the errors made had not occurred. In this instance, the delay ensured that Mr R received an additional tax-free amount of $25\% \times £109,037 = £27,259$. As Mr R paid HRT on at least part of his income since the Account's crystallisation, and he indicated that he would continue to do so in the future, receiving the additional £27,259 as PCLS saved him $40\% \times £27,259 = £10,904$ in income tax.
93. So, taking both financial consequences into account, and setting aside any future tax implications Mr R might incur, overall he benefitted from the Transfer's delay. On this basis, II's maladministration did not result in Mr R incurring a financial loss.
94. Mr R had already been offered £2,000 from II and £500 from the Trustee. A non-financial injustice payment higher than this was unlikely to be awarded if the complaint was referred to the Pensions Ombudsman for a final decision.
95. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R's comments are summarised below:-
- He did not agree that he had made a profit from the delay.
 - He could not comment on the relevance of the Supreme Court case as he had no legal background. He observed that its relevance was tangential at best, and he said that if this was the most similar scenario that could be found, then his case might be more unique than it appeared.

96. I have considered Mr R's comments, but they do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

97. I empathise with Mr R's position during the transfer process, as he made every effort to conclude the transaction before the end of the current tax year. This was important to him as he wanted to withdraw taxable income from his pension during a year when he was paying BRT.

98. I agree with the Adjudicator that II had a responsibility to crystallise Mr R's SIPP in a timely manner, and II should have chased Mercer much sooner than it did. This amounts to maladministration by II and resulted in a delay to the SIPP's crystallisation.

99. The consequences of the delay and the subsequent vagaries of the market were threefold for Mr R:-

- as he exceeded his protected LTA, he paid higher tax on the crystallisation of another pension arrangement two years later;
- he received a higher PCLS from the SIPP; and
- he paid additional tax on the taxable withdrawal.

100. In respect of the first consequence, the Adjudicator relied on the Khan Case to conclude that II's duty to crystallise Mr R's benefits in the SIPP did not include any care or responsibility for any subsequent tax charges resulting from a future voluntary crystallisation event. I acknowledge that a reasonable person might consider that the medical aspect of the Khan Case means that it would not be relevant to a pension complaint. However, in my view that is not the case. This is because the outcome of the Khan Case and Mr R's complaint both rely on the extent of responsibility of an advising party.

101. While I acknowledge that Mr R told II that he wanted the crystallisation to be carried out before the end of the current tax year, the purpose of this was to minimise his income tax, not to minimise tax on a future crystallisation event. Indeed, I note that Mr R did not state his concern about exceeding his protected LTA when he submitted his transfer documentation to II, and without being told, II would not have known that he planned to crystallise another pension in the future.

102. I also note that the issue of Mr R paying higher tax on his other pension arrangement only materialised due to market returns obtained during the transfer process, and which it appears Mr R did not mitigate against. So, I cannot find that II had a duty of care for any claim Mr R is now making in respect of the fact that his SIPP increased in value and, two years later, he exceeded his protected LTA.

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103. I accept that II's delay resulted in Mr R paying an additional £6,000 in HRT on the taxable withdrawal. However, the delay and subsequent increase in value of his SIPP also meant that he received a higher PCLS, which was tax-free, and saved him £10,904 in tax. So, taking these two consequences of the delay into account, Mr R benefitted by paying £4,904 less in tax.

104. Mr R has already been offered non-financial injustice payments of £2,000 from II and £500 from the Trustee, and in this case I will not award a higher amount for the distress and inconvenience that he has suffered. If Mr R wishes to accept the payments, he should contact the Respondents directly.

105. I do not uphold Mr R's complaint.

Dominic Harris

Pensions Ombudsman

26 September 2024