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Ombudsman's Determination

Applicant	Mr and Mrs T
Scheme	Camerons (BMS) Retirement Benefit Scheme (**the Scheme)**
Respondent(s)	Clifton Asset Management Plc (CAM), Morgan Lloyd Administration Ltd (MLA), Morgan Lloyd Trustees Ltd (MLT).

Complaint Summary

1. Mr & Mrs T's complaint against CAM, MLA and MLT concerns investment advice they received from CAM, MLA and MLT:

    - CAM, MLA and MLT incorrectly informed Mr and Mrs T that they could invest the Scheme assets in taxable moveable property; and
    - CAM, MLA and MLT's proposed solution to the situation did not resolve it.

Summary of the Ombudsman's Determination and reasons

2. The complaint should be upheld against CAM, MLA and MLT because:

    - CAM, MLA and MLT initially incorrectly informed Mr and Mrs T and administered the Scheme on the basis that they could hold certain commercial vehicles used by their company as Scheme assets, and in reliance on that information Mr and Mrs T have incurred a tax liability.
    - The solution to the problem proposed by CAM, MLA and MLT was unreasonable and, in any event, did not prevent Mr and Mrs T from incurring a tax liability as a result of the information provided to them.

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Detailed Determination

Finance Act 2004 (FA04)

3. The FA 04 came into force and introduced a new tax regime for pension schemes.

4. The Scheme is a small self-administered pension scheme (**SSAS**) and defined under the FA 04 (paragraphs 1 to 5 of Schedule 29A) as an occupational pension scheme which is an "investment-regulated pension scheme" as one or more of its members "is or has been able (directly or indirectly) to direct, influence or advise on the manner of investment of any of the sums and assets held for the purpose of an arrangement under the pension scheme relating to the member." (Paragraph 1(2)(b) of Schedule 29A to the FA 04).

5. If an investment-regulated pension scheme invests in taxable property, scheme members and the scheme are liable for tax. Sections 174A, 185A, 273A and Schedule 29A to the FA 04 make provision for tax charges where an investment-regulated pension scheme holds investments that are taxable property.

6. Taxable property under the FA 04 includes residential property and, as relevant to Mr and Mrs T's complaint, "tangible moveable property", essentially things you can touch and move such as cars, vans and office furniture. The tax consequences of investing scheme assets in taxable property are severe and summarised in paragraphs 7 and 8.

7. The member is subject to the unauthorised member payments charge at 40% on the relevant unauthorised payment value. The scheme administrator is liable to a scheme sanction charge, which is generally 15% of the unauthorised payment value and if certain limits are exceeded the member may also be subject to an unauthorised payments surcharge of 15% of the value.

8. Other consequences of investment in taxable property include capital gains tax (also at 40%) on the disposal of the asset.

Material Facts

9. The Scheme was established by a trust deed and rules dated 15 February 2006. A new trust deed and rules relating to the Scheme was adopted following the tax changes to pension schemes with effect from 6 April 2006 as a result of the FA 04.

10. On 20 April 2006 the Scheme purchased nine vehicles from Cameron (BMS) Ltd (the Company). In May 2006, following advice/information from CAM, Scheme investment contracts were established with AXA Sun Life (AXA).

11. CAM offers specialist financial services (including in relation to SSASs) to business and individuals throughout the UK. MLA and MLT were established by CAM to carry out administration and trustee services for SSASs established with them.

12. The CAM Managing Director sent a report to Mrs and Mr T, dated 7 June 2006 (the June 2006 Report), following a meeting they attended, with the CAM Managing

Director and Client Liaison Manager, to discuss their requirements (the CAM Meeting). In the first paragraph of the June 2006 Report the CAM Managing Director explains that the Report provides details in relation to their new SSAS and that the CAM Client Liaison Manager would provide them with "ongoing administration and support."

13. The section of the Report, headed "Identified Priorities", dealing with Mr and Mrs T's requirements, as discussed at the CAM Meeting, stated:

"You wish to establish a Directors pension scheme with self-investment capabilities"

"You wish to transfer existing pension funds into the proposed pension scheme."

"You wish to utilise the self-investment flexibility available within SSAS's, specifically the use of the "Sale and Leaseback" facility for purchase of company owned assets, thus releasing funds from the pension scheme for the benefit of the company."

"You wish to utilise the self-investment flexibility available within SSAS's, specifically the loanback facility."

"You wish to utilise the self-investment flexibility available within SSAS's, specifically the use of the commercial property purchase facility."

14. In the section of the Report headed, "Company Overview & Objectives", it states, in relation to the CAM Meeting arranged with the CAM Managing Director and Client Liaison Manager, that the meeting was to discuss "corporate funding, retirement planning and self-investment. It also states that "A SSAS can be initially funded by way of regular premiums and the transfer-in of existing pension benefits. The transfer values can be utilised for self-investment, such as the purchase of company owned assets thus releasing funds to the company" and that the "transactions to be effected" included "£54,250 Asset purchase and leaseback (commercial vehicles)."

15. In the section of the Report headed, "Strategies to suit Objectives", it states, in paragraph 1, "Existing pension funds to be transferred/disinvested into the SSAS to provide funds for sale & leaseback (asset purchase)/commercial property purchase/loanback purposes." In paragraph 2 of that section the stated strategy is to "Purchase commercial vehicles owned by the company via your SSAS."

16. In the section of the Report headed, "Advantages Associated with the Recommended Course of Action", it then states that "Your SSAS can offer a quick and simple means of raising capital via loanbacks and purchase of company assets – loan/Rental payments are made to the members own pension fund."

17. In the section of the Report headed, "The Independent Trustee (Morgan Lloyd)", it states:

18. "The Independent Trustee must have the expertise, understanding and level of administration that we demand. The role of the Independent Trustee is to effectively police the scheme and all transactions. They are responsible for the following:

- Standard scheme documentation including initial registration of the scheme
- Inland Revenue consultation/negotiation
- Record keeping
- Attendance at one trustee meeting per year"

19. In the Appendix to the Report it states, in relation to MLA and MLT, that the "company/ department employs staff who not only have a wealth of experience dealing with Small Self-Administered Schemes, but who are also able to develop good working relationships with the Trustees/members of pension schemes."

20. The Technical Director of MLT wrote to Mr and Mrs T, in MLT's capacity as Scheme trustees, in June 2006 (the **MLT Letter**"). The MLT Letter explains that MLT intends to continue to provide the administration to the Scheme in the capacity of "Scheme Administrator", and that MLT's main area of responsibility from 6 April 2006 will be the Scheme Administrator:

    "Will be solely responsible in the eyes of the Inland Revenue for ensuring that the scheme operates correctly. Failing which the employer, the Scheme Administrator and the members can face tax charges and ultimately the scheme will lose its registered status."

    "Must have extensive detailed knowledge of the new pension scheme rules."

    "Will have to deal with changes to the pension scheme rules and update their knowledge and systems accordingly."

21. The CAM Managing Director and Client Liaison Manager met with Mr and Mrs T in 2007 and notified them that the Scheme had invested in taxable property which would incur tax charges. A "no-cost" solution was proposed by the CAM Managing Director and Client Liaison Manager, which involved the establishment of a new contract with Clerical Medical (**CM**) with effect from 4 April 2008.

22. The commission generated by the CM policies was intended to cover the tax charges so the policies were set up on a commission basis to replace the AXA policies, and were subject to penalties on surrender.

23. Lawyers acting for CAM, MLA and MLT received a letter from HM Revenue & Customs (**HMRC**), dated 22 June 2007, which stated that:

    "Any machinery purchased after 5 April 2006 by an investment regulated pension scheme would be tangible moveable property and potentially taxable as such, no distinction is drawn in relation to the type or usage of the machinery."

24. No further action appears to have been taken until 27 May 2010, when the Financial Director of CAM wrote to Mr and Mrs T to update them (the **CAM 2010 Letter**). He updated them on the change brought about by the FA 04 and that, as from 6 April 2006, investment in vehicles/machinery by a SSAS gave rise to certain tax charges.

25. The CAM 2010 Letter maintained that CAM had acted reasonably and had adopted a two pronged approach to assist those of their clients impacted by this change. This followed clarification of the tax charges with HMRC and an opinion from a leading QC regarding the tax liability and any defence against those tax charges. The CAM 2010 Letter proposed that the Scheme sanction charge was paid not from the CM commission, but instead from the Scheme.

26. A settlement agreement was proposed which required affected clients to enter into an agreement with CAM, MLA and MLT whereby CAM would be able to respond to any tax claims made by HMRC (the **Settlement Agreement**). Mr and Mrs T declined to enter into the Settlement Agreement and received a demand for payment of tax for the tax year 2006/7.

27. Mr and Mrs T corresponded by email with the CAM Financial Director following receipt of the CAM 2010 Letter, and on 28 September 2010, Mr T requested a refund of the CM commission. Mr T said in an email dated 29 September 2010, that:

    "[The CAM Client Liaison Manager and Managing Director] said that I needed to move the policy from AXA to Clerical Medical to generate commissions that would cover any fine arising from the wrongful transaction carried out for the sale of the vans to the pension scheme. This would be held in escrow until such time but ultimately if the fine comes it will be to Camerons. If the fine does not come to them the money will be transferred to me, or into my pension scheme. (Obviously we need to complete our payments to Clerical Medical to achieve these commissions). This was the sole purpose of moving the scheme I was told, so I don't understand why you cannot send the monies to me?"

28. In an email to Mr T, dated 11 October 2010, the CAM Financial Director said, reiterating his comments in his email of 28 September 2010, that:

    "…we will need to disinvest funds from the Clerical Medical investment in order to have sufficient cash within the Scheme to cover the refund.

    Turning now to the matter of the commissions generated, we are indeed holding these pending the resolution of the outcome of the ongoing legal arguments with HMRC."

29. Mr and Mrs T requested postponement of the tax payable for the year 2006/7 and their request was granted, as confirmed in a letter from HMRC to Mr and Mrs T's accountants dated 7 April 2011.

30. In a letter, this time on MLT headed paper, dated 13 April 2011, the CAM Financial Director advised Mr and Mrs T's accountants on behalf of MLT that:

    "We have not been dealing with your client's scheme since we offered to do so on the basis of a settlement agreement that they chose not to sign."

31. The CAM Financial Director also said, on behalf of MLT, in the course of recommending that the accountants appeal the assessment to postpone the tax that:

32. "For the schemes that have signed the settlement agreement, we will be looking to run the argument that the assessment is out of time." In June 2012 Mr and Mrs T's complaints were accepted for investigation by The Pensions Ombudsman (**TPO**).

33. On 18 December 2012 a technical adviser at HMRC wrote to Mrs and Mrs T, following a review of their case, confirming that HMRC considered the vehicles purchased by the Scheme as tangible moveable property and therefore taxable. Mr and Mrs T were considering whether to appeal the decision, but did not have a disagreement with HMRC.

34. On 16 January 2013, CAM, MLA and MLT (via their legal representative), appealed to HMRC in relation to the tax charges associated with HMRC's assessment of the tangible moveable property.

35. On 17 January 2013 Mr and Mrs T appealed (via their representative) to HMRC on the same issue as a protective measure whilst the then Deputy Pensions Ombudsman considered their complaint.

36. In February 2013 the previous Deputy Ombudsman at this office issued a provisional decision (the **2013 Provisional Decision**).

37. It later became apparent that there was a potential overlap of issues. On 12 June 2013 my office wrote to the Applicants, and CAM, MLA and MLT, informing them that, due to the overlap of the appeals to HMRC and the complaint to TPO and the possibility for contradictory decisions arising because of this overlap, the Deputy Ombudsman was going to postpone making a final determination until the appeals were resolved.

38. The relevant HMRC appeal was heard by the First Tier Tax Tribunal in the case of Morgan Lloyd Trustees Limited (as administrator of the Wren Press Pension Scheme) Hallam v The Commissioners for Her Majesty's Revenue and Customs UKFTT0131 (TC) (the **FTT Case**), which considered HMRC's definition of 'tangible moveable property'. It was handed down on 8 February 2017. CAM, MLA and MLT had indicated they were considering appealing the decision and so Mr and Mrs T's case remained on hold pending expiry of the appeal period.

39. I issued a Provisional Decision on 8 November 2017 (the **2017 Provisional Decision**). This determination therefore takes into account the 2013 Provisional Decision, the FTT Case, and my recent Provisional Decision. It also takes into account submissions made by all of the parties' consequent to both Provisional Decisions.

Summary of Mr and Mrs T's position

40. Mr and Mrs T say that they relied on the information provided to them by CAM in the June 2006 Letter, and otherwise, when they decided to use the Scheme to purchase the vehicles used by the Company.

41. They say that they also relied on the information provided in the MLT Letter and expected MLA and MLT to be up to date with the tax rules applicable to SSAS's and to ensure that the Scheme operated within those rules.

42. The vehicles were purchased after the FA 04 came into effect and Mr and Mrs T expected, on the basis of their discussions with CAM, the June 2006 Report, and the MLT Letter, that CAM, MLT and MLA would together ensure that the Scheme complied, in all respects, with the changes to the tax rules applicable to SSASs with effect from 6 April 2006.

43. Mr and Mrs T understood that the commission generated by the switch to the CM policies would cover any Scheme tax charges following identification of the error and would not have switched the policies had they known that was not the case.

44. Mr and Mrs T do not have a disagreement with HMRC and did not wish to enter into the Settlement Agreement. Instead, they want the error rectified and any tax paid.

45. They have spent a considerable amount of time and effort trying to resolve the situation. It has also caused them considerable distress as it has not been possible to resolve this matter themselves with the result that they appointed Guardian Pension Consultants Limited (Guardian) to provide them with assistance and guidance in relation to this matter.

46. By way of letter dated 31 May 2017, Mr and Mrs T submit that CAM, MLT and MLA negligently recommended the surrender of the AXA Trustee Investment Plan and commencement of a new regular premium Trustee Investment Plan with CM, to create liquidity in the scheme to settle HMRC tax penalties but failed to settle the CM commission into the Scheme.

47. They submit that to remedy the losses incurred I direct that:

    - CAM, MLT and MLA to submit corrected HMRC Scheme Returns and Event Reports, at no cost to the Scheme to include correctly reporting the investment in taxable properly and unsecured loans to the employer.

    - CAM, MLT and MLA to settle the cost of all related HMRC tax liabilities arising in respect of the above.

    - CAM, MLT and MLA to make payment to the Scheme to meet any investment loss suffered by the Scheme relative the hypothetical investment value, had the defective payments to the employer post A Day been invested instead in a conventional pension investment fund.

- CAM, MLT and MLA to make such payment as required to provide the scheme with the investment value it would currently hold had the AXA Trustee Investment Plan not been surrendered but instead remained in force.
- CAM, MLT and MLA to reimburse all charges that have been levied by them in respect of the defective loan and lease arrangements, plus interest to the date of payment.
- CAM, MLT and MLA to pay to the scheme the CM commission which they currently hold, plus interest to the date of payment.
- CAM, MLT and MLA to reimburse the expenses incurred in dealing with this matter.

Summary of CAM, MLA and MLT's position

48. Despite various discussions with a representative of CAM we did not receive a formal response to Mr and Mrs T's complaint from CAM, MLA or MLT.

49. However, CAM, MLA and MLT's legal representative Veale Wasborough Vizards (**VWV**) later supplied submissions to my office on 22 March 2013, as a response to the 2013 Provisional Decision; the following paragraphs summarise that submission.

50. The 2013 Provisional Decision should have gone into more detail when discussing tax charges.

51. The definition of 'tangible moveable property' that the Deputy Ombudsman used in the 2013 Provisional Decision included 'office furniture' which isn't included in any definition CAM, MLA and MLT is aware of.

52. The HMRC guidance in relation to tangible moveable property was conflicting and the full extent of the changes to that legislation were not immediately apparent. The advice that was given to Mr and Mrs T was provided when there was no Registered Pension Scheme Manual to accompany the changes to the tax legislation and therefore nothing to explain the effect of the change to the definition of 'personal chattels' to 'tangible moveable property'.

53. The 2013 Provisional Decision implies delay by the CAM, MLA and MLT. Dealing with HMRC can be a protracted process, especially in complex cases, which does not appear to have been considered in the 2013 Provisional Decision.

54. In relation to the 2013 Provisional Decision's directions:

    - CM policies cannot be reissued on a nil commission basis; and
    - The award of £1,500 for distress and inconvenience in favour of Mr and Mrs T is disproportionately high.

55. Following the 2017 Provisional Decision VWV on behalf of CAM, MLA and MLT submit that:

56. The company which in 2006 was known as “Clifton Asset Management plc” (number 3455324) was dissolved on 29 November 2016 and therefore no longer exists.

57. Pursuant to Regulation 5(1)(a) of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991, what was (relevantly) prohibited was “personal chattels”. Commercial vehicles are not personal chattels because they are used in business: see e.g. Ogilby v Wentworth-Stanley [142] Ch 288 and also for a well-known legal definition of “personal chattels”, see the Administration of Estates Act 1925, section 55(1)(x).

58. It was a well-known Revenue practice prior to A Day to permit SSASs to own commercial vehicles. At paragraph 141 of the Tribunal decision, it is made clear that there was no hint that there was to be any tightening of the previous rules until 25 July 2006. The Scheme, of course, purchased the vehicles on 20 April 2006. HMRC has not, during the course of negotiations over the tax charges in the present case, suggested that the Scheme should be treated more harshly on the basis that the property in question was commercial vehicles as opposed to other machinery.

59. They reject the suggestion that there can have been any maladministration or breach of duty prior to 8 August 2006 and submit that the directions should be approached on the basis that there was no maladministration or breach of duty prior to 8 August 2006. Namely:

- The unauthorised payment occurred prior to August 2006, and therefore the related tax charge cannot have been caused by wrong advice given from 8 August 2006. In any event, it is not certain that the amounts of tax due will be finally agreed with HMRC within the period of 56 days envisaged by the directions.

- The scheme sanction charge and payment surcharge cannot have been caused by wrong advice given from 8 August 2006.

60. It would be wrong in principle for Mr And Mrs T to obtain the commissions as well as for CAM, MLT and MLA to pay the tax liabilities. It was never intended that they should be put in a better position than they would have been in if the tax liabilities had not arisen.

Conclusions

61. To come within my jurisdiction CAM, MLA and MLT need to be “concerned with the administration” of the Scheme (Britannic Asset Management v Pensions Ombudsman [2002] 49 PBLR (the “Britannic Case”). In the Britannic case at first instance Lightman J said (paragraph 20):

62. “…In my view the Claimants are correct when they say that “administering the Scheme” means (in whole or in part) e.g. inviting employees to join, keeping records of members, communicating with members, calculating benefits, providing benefit statements, paying benefits when due, keeping documentation up to date, dealing with governmental or regulatory agencies (Inland Revenue, DWP, OPRA) etc., it will no doubt involve running the fund, investing and managing the Scheme’s assets. The

ultimate responsibility for all those acts will usually lie with the trustees, but (1) if someone else carries out the day to day running on their behalf that person may be a manager; (2) if someone is otherwise involved with an act of administration for the trustees (whether by carrying out such an act or advising on it) that person may be concerned with the administration of the Scheme. But the touchstone is whether he is engaged to act, or advise, on or about the trustees' affairs in running the Scheme."

63. CAM has provided information concerning the ability of the Scheme to invest in Company vehicles and MLA and MLT have ongoing responsibility, as does the CAM Client Liaison Manager, in the running of the Scheme and to ensure that the Scheme complies with tax legislation and HMRC rules. Therefore, I find that CAM, MLA and MLT are concerned with the administration of the Scheme.

64. Essentially Mr and Mrs T's complaint is about the information and administration services provided to them by CAM, MLA and MLT, in particular, in dealing with HMRC. Mr and Mrs T invested the Scheme assets in Company vehicles because they understood this to accord with tax legislation and HMRC practice.

65. In the June 2006 Report and the MLT Letter, it was clearly highlighted that CAM, MLA and MLT had the expertise to provide Mr and Mrs T with the correct information and guidance in relation to tax legislation and rules governing a SSAS and any changes to the legislation and the rules.

66. Mr and Mrs T invested Scheme assets in the vehicles soon after the FA 04 came into force and it would have been reasonable, in my view, for steps to be taken to ensure that this was possible under the new tax regime. It states in the MLA Letter that MLA will "detect changes to pension scheme rules and update their knowledge and systems accordingly."

67. It was reasonable for Mr and Mrs T to expect that they would be correctly informed, and the Scheme properly administered, given that CAM, MLA and MLT held themselves out to have expertise in this area.

68. Mr and Mrs T's relied on the knowledge of CAM, MLT and MLA, and expected the Scheme to be administered in accordance with tax legislation and HMRC practice. It was reasonable for them to expect the information provided to them to be correct, and for CAM, MLA and MLT, to provide them with ongoing support and assistance once the error had been discovered. An error they could not have been expected to anticipate themselves as they relied on the expertise of CAM, MLA and MLT.

69. The FTT Case concluded that machinery was tangible moveable property under the FA04 and therefore did attract tax charges.

70. However, the decision made in the FTT Case related to machinery and not vehicles. Even under the prior tax regime applicable to pension schemes which mentioned classic cars and cars, a reasonable adviser would have enquired on whether commercial vehicles fell within the definition of tangible moveable property. Cars are

tangible and moveable and therefore fall more comfortably within the concept than machinery.

71. CAM, MLT and MLA submit that the directions should be approached on the basis that there is no breach of duty prior to 8 August 2006 (see paragraph 59). I do not as CAM, MLT and MLA have suggested "presuppose that under the prior tax regime, commercial vehicles were prohibited". HMRC has treated the vehicles purchased by the Scheme as movable tangible property. However, reference in HMRC guidance to vehicles (i.e. classic cars) under the old regime (personal chattels) should have put a reasonable advisor on notice that under the new regime, commercial vehicles may fall to be taxed. Specifically, in the December 2005 pre-budget technical note Technical Note, HMRC listed "classic cars" as an example of tangible movable property (see paragraph 32 of the FTT case) "classic and vintage cars" were also listed in the HMRC guidance published on 12 April 2006 (see paragraph 34 of the FTT case). In June 2006 cars were again mentioned as examples of tangible movable property (see paragraph 26 of the FTT case).

72. For the reasons set out above, CAM, MLT and MLA should have been alert to the possibility that the vehicles in issue would be taxable under the new regime and proceeded accordingly. It is pertinent that even under the old regime there would have been at the very least a question mark over them being "personal chattels" or being put to "personal use" which the old regime sought to forbid. It follows that even in May 2006, under the old regime, a competent professional advisor would have been put on enquiry as to whether or not the commercial vehicles in use were personal chattels or tangible movable property. I therefore do not consider that the scheme administrator will be discharged from the scheme sanction charge under section 268(7) FA 04 or that the unauthorised payments surcharge under section 268(3) FA 04 will be discharged for the same reason. As a result, I consider that CAM, MLA and MLT are liable for maladministration from the outset and not only post 8 August 2006, as they argue ought to be the case.

73. Mr and Mrs T have queried why I have not directed that CM reissue the policy on a nil commission basis. They also submit that CAM, MLT and MLA should cover them for any investment loss suffered by the Scheme had the payments been invested instead in a conventional pension plan. They refer to the AXA policy which was surrendered. However, paying an amount equivalent to the commission on the CM policy and treating the CM policy as re-issued on a nil commission basis would be 'double counting', i.e. Mr and Mrs T would enjoy an impermissible additional benefit. In relation to the alleged investment loss as a result of surrendering the AXA policy, it is evident that Mr and Mrs T agreed to surrender the AXA policy and take out the CM policy because they were advised that the commission generated by the CM policies would cover the tax charges so the policies were set up on a commission basis to replace the AXA policies. In all other respects it is implicit that Mr and Mrs T were happy to switch policies. However, the commission Mr and Mrs T were advised would cover the tax charges did not get transferred and so that is the appropriate loss that has to be paid in respect of that particular issue, and not any potential investment loss as a result of surrendering the AXA policies.

74. CAM, MLA and MLT do not believe that the 2013 Provisional Decision goes into sufficient detail in relation to HMRC's charging procedures. What is included in the 2013 Provisional Decision, and repeated here is merely a summary of the substance of the relevant parts of the FA04, and I am satisfied that a detailed discussion in relation to HMRC's charging procedures is not necessary.

75. In relation to the point the CAM, MLA and MLT made as detailed in paragraph 51 of this Determination, the government website (https://www.gov.uk/guidance/pension-trustees-investments-and-tax) gives guidance to trustees for pensions investment and tax and describes tangible moveable property as ' things you can touch and move for example cars and vans or office furniture'.

76. I consider that providing incorrect information in relation to the Scheme and failing to make good any errors in a reasonable manner is maladministration. CAM, MLA and MLT, did not take reasonable steps to remedy the position when they discovered the error, and MLA and MLT clearly stopped carrying out their duties in relation to the Scheme once Mr and Mr T, reasonably in my view, refused to enter into the Settlement Agreement proposed to them.

77. In addition, there is the delay in communication of progress to Mr and Mrs T from the CAM, MLA and MLT, from June 2007, when the lawyers for the CAM, MLA and MLT, received a letter from HMRC concerning the tangible removable property, until the letter to Mr & Mrs T, which they received from CAM in May 2010. This is a significant period of time, which, in my view, goes beyond any natural delays caused by dealing with HMRC on a complex matter.

78. There is no evidence that Mr and Mrs T had seen the legal advice on which they were told the Settlement Agreement was based, so they could not make an informed choice. In any event, they simply wanted the matter resolved as they do not have any dispute with HMRC. I consider that this is a dispute between the CAM, MLA and MLT, and HMRC.

79. Mr and Mrs T did not have the expertise to determine that vehicles used by the Company could not be held in the Scheme under the new tax regime, and were entitled to rely on the expertise offered to them by CAM, MLA and MLT.

80. Mr and Mrs T clearly experienced difficulties and, as they were unable to obtain any reasonable assistance from CAM, MLA and MLT, they needed to appoint Guardian to assist them in rectifying the situation in which they found themselves, due to no fault of their own. I am satisfied that this was a reasonable step to take in the circumstances.

81. The issue of the timing of the payment of the unauthorised payment charge is a matter between Mr and Mrs T and HMRC. I am satisfied that the parties' representatives can resolve any issues relating to the timing of this payment by Mr and Mrs T, and the payment that I have directed CAM, MLA and MLT to pay in relation to this.

82. CAM, MLT and MLA, submit that the 2013 Provisional Decision's proposed award of £1,500 for distress and inconvenience was too high. However, Mr and Mrs T were clearly concerned about the significant amount of tax HMRC were asking them to pay. The initial delay by CAM, MLA and MLT, and eventual cessation of communications with Mr and Mrs T, caused them a considerable amount of distress and inconvenience. As such I have decided that an increase in award from the 2013 Provisional Decision is warranted. Furthermore, this case has been on hold due to the pending FTT case and my determination should properly reflect the current, revised approach of this office and of the courts in respect of awards for non-financial injustice.

83. I have been told that CAM Plc (03455324) was dissolved in November 2016 and therefore no longer exists. However, a company with the same name (CAM Plc) and the same address and same directors is still registered at Companies House albeit under a different company number (07206291). It seems unusual that upon dissolution a company with exactly the same name remained in place and continued trading (its name having been changed from Sprintstep Plc to CAM Plc at this time). It is worthy of note that following the 2013 Provisional Decision indicating that the complaint would be upheld against CAM Plc and shortly prior to the FTT case reaching its decision at the beginning of 2017, CAM Plc (03455324) was dissolved. A fact told to my office after the issue of the 2017 Provisional Decision. I find that CAM Plc, MLA, and MLT, are equally liable for their actions in respect of Mr and Mrs T's complaint. Should my directions need to be enforced it will be a matter for CAM Plc to persuade the court that there is no legal entity against which judgment can be enforced..

84. For these reasons I uphold Mr and Mrs T's complaint against CAM, MLA and MLT.

Directions

85. Within 56 days of the date of this determination CAM, MLA and MLT (the amounts to be divided equally between them) shall:

- pay Mr and Mrs T the amount of the members' unauthorised payment charge of £21,000 (£54,250 x 40%), or such other amount confirmed by HMRC;
- pay the amount of the Scheme sanction charge of £8,137.50 (£54,250 x 15%), or such other amount confirmed by HMRC;
- confirm with HMRC the amount of the unauthorised payment surcharge (if any) and pay that amount;
- pay an amount equivalent to the commission received in relation to the CM policies to the Scheme (such amount to be confirmed by CM);
- pay an amount of £1,493.81 to the Scheme representing the early encashment fee charged by CM on 7 December 2010;

- pay £1,500 plus VAT to cover the fixed fee charged by Guardian to Mr and Mrs T in order to resolve this matter; and
- pay £2,000 to Mr and Mrs T in recognition of the very significant distress and inconvenience they have suffered.

Anthony Arter

Pensions Ombudsman
20 March 2018