

The complaint

Mr M complains that he asked Coffey Brooks Financial Services Limited (“Coffey Brooks”) to arrange a pension withdrawal and they failed to warn him about the Money Purchase Annual Allowance (MPAA). He booked a holiday thinking he would only have to pay tax. Once he found out the withdrawal would restrict future pension contributions he decided against it. He had to borrow money to pay for his holiday so he would like to be compensated for the cost of borrowing and the stress and anxiety he felt.

What happened

In 2022 Mr M had the opportunity to travel overseas as part of his work. He wanted to extend his visit and take a holiday while he was there.

To pay for the holiday he wanted to take a withdrawal from his pension fund, which Coffey Brooks advised him on. Mr M contacted Coffey Brooks to discuss the withdrawal on 20 June. He spoke with his adviser on 22 June to discuss the tax implications of the withdrawal, given Mr M’s salary put him into the additional rate bracket. On 1 July Mr M emailed to request a withdrawal of £750 net a month plus a lump sum of £15,000 net. He said he would need the lump sum by mid-August for the holiday, with the monthly amount to start as soon as possible.

On 4 July Coffey Brooks emailed Mr M to confirm his salary so they could work out the tax. When he replied with this information the Office Manager said that they would get it processed in the next day or two.

Mr M booked the holiday and paid a £1000 deposit on 5 July with the balance due by 12 August. Later that day, Mr M’s adviser called to discuss the withdrawal. He told Mr M that, as well as the tax he would have to pay, he would also in future be subject to the MPAA.

This meant that future pension contributions would be restricted to £4,000 a year. His employer was contributing 10% of his salary at the time. Although he could have the difference as salary, it would then be subject to Income Tax and National Insurance, so the value to him would be lower. Mr M decided against taking cash from his pension.

Mr M complained to Coffey Brooks that he had not been warned of the MPAA before committing to the holiday, which he then had to fund using borrowing. Coffey Brooks did not uphold his complaint. They said that they had told him about the MPAA before the withdrawal and they did not advise him either to take the withdrawal or to book the holiday.

Mr M did not accept this outcome so brought his dispute to this service where the complaint was ultimately referred to me for a decision.

My provisional decision

I issued my provisional decision on 19 May. It said:

I’ve considered all the available evidence and arguments to decide what’s fair and

reasonable in the circumstances of this complaint.

I am providing this provisional decision as, based on everything I have seen thus far, I intend to depart from the investigator's recommendation.

I don't think it is fair to expect Mr M to know about the MPAA when he asked for the withdrawal. He was certainly told when he was advised to set the pension up in 2020 (by another firm), so he would have accepted it at that time. But it is unlikely that he thought about it again until he wanted a withdrawal so I don't think it is fair to expect him to remember everything two years later. So it was Coffey Brooks's responsibility to tell him about the MPAA as part of any advice they gave on withdrawals.

Mr M and his adviser held an initial telephone conversation on 22 June 2022. Both sides seem to agree that they discussed tax but not the MPAA. No recording of the call exists so we have only the testimony of both parties. Neither party has suggested that the phone call was intended to be any more than an initial chat about the amount of tax Mr M would pay. So I don't think that phone call was intended to cover all the possible disadvantages of something complex like drawdown or could reasonably have been perceived in that way by Mr M. So I am not satisfied that it is fair to hold Coffey Brooks responsible for not covering the MPAA in this particular phone call.

I think Coffey Brooks responded to Mr M's actual, formal, request for the withdrawal within a reasonable timeframe. He emailed late on 1 July (a Friday) to request the withdrawals. His adviser was away so the Office Manager replied. When the adviser returned on Tuesday he called Mr M, which was when the MPAA was first raised. From the adviser's point of view, he had called Mr M soon after a request for a withdrawal to discuss the implications; importantly he had called before the withdrawal had been processed. Mr M had said that he needed the lump sum by mid-August, so the adviser was also calling in advance of that.

But Mr M says that the discussion about the MPAA was too late because he had already paid his deposit that morning. But he hadn't told Coffey Brooks that he was going to pay a deposit that day, only that he wanted the lump sum by mid-August.

So I don't think that Coffey Brooks could reasonably have known that it would be important for Mr M to know of all the possible disadvantages before the Tuesday morning so holding them to that timetable – which is essentially what Mr M is doing – can't therefore be fair and reasonable. Furthermore, I have not seen any evidence that Coffey Brooks advised Mr M to book the holiday, or to take the withdrawal.

So I think that, based on what I have seen so far, Coffey Brooks have acted fairly so I do not intend to ask them to do anything.

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.

Mr M has responded to my provisional decision and I have considered carefully the points he has made.

To summarise, Mr M says that the phone call of 22 June was more than just an initial chat, it was a request for formal advice; he feels that my provisional decision did not pay sufficient regard to the regulatory requirements in place at the time; he therefore remains of the view that Coffey Brooks should have warned him about the MPAA before he booked his holiday.

I can assure Mr M that I have considered the FCA's regulatory requirements as they applied to Coffey Brooks in arriving at my decision.

Unfortunately there is no recording or other contemporaneous record of the phone call so I have to decide on the balance of probability what is most likely to have happened.

I remain of the view that this phone call did not constitute formal advice. Mr M himself says that the phone call was a "request to obtain advice." Coffey Brooks said that if advice had been provided, it would have been in the form of a suitability report.

Also, the emails that I have seen over the relevant period show Mr M requesting a withdrawal and discussion of amounts. But there is nothing in the emails to indicate that advice had been provided.

The FCA Handbook defines a personal recommendation as one that is "presented as suitable for the person to whom it is made" or is "based on a consideration of the circumstances of that person." Where such a recommendation is given, the following requirements are relevant:

COBS 9.4.1R:

"A firm must provide a suitability report to a retail client if the firm makes a personal recommendation to the client..."

COBS 9.4.7R:

"The suitability report must, at least..."

(3) explain any possible disadvantages of the transaction for the client;"

The MPAA would clearly have been one of these disadvantages, and I would expect to see it covered in any suitability report. But as I have said it is not reasonable to expect advisers to cover "any possible disadvantages" outside of the context of a suitability report. Mr M received a suitability report in relation to the transfer of his pension and withdrawal of tax free cash, so he has some experience of what a regulated advice process looks like. But even if he hadn't previously received advice, I don't think he could, reasonably, have considered the 22 June call as being Coffey Brooks's final, considered, assessment of the transaction or that Coffey Brooks would have been in a position to make such an assessment at that point.

So I remain of the opinion that Coffey Brooks did not actually advise Mr M to take the withdrawal from the pension.

As I said in my provisional decision, Coffey Brooks responded to Mr M within a reasonable timeframe so there was no reason for Mr M to commit himself to the holiday before receiving the formal recommendation.

Mr M also says that Coffey Brooks should have kept records of the phone call. But COBS 9.5.3R says "A firm need not retain its records relating to suitability if the client does not proceed with the recommendation." And since the transaction did not proceed, they were not required to keep any records. So I do not think that Coffey Brooks have done anything wrong in this respect.

For the reasons given above I can see no reason to change my provisional decision.

My final decision

For the reasons given I do not uphold Mr M's complaint against Coffey Brooks Financial Services Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 16 August 2023.

Martin Catherwood
Ombudsman