

The complaint

Ms O complains that BeaconIFA Limited (Beacon) provided her with poor advice in respect of contributions to a personal pension plan (PPP) resulting in her incurring a tax charge. She would like the tax charge refunded.

What happened

Ms O was a shareholder and Company Secretary in a business (OS), which was majority owned by her partner, Mr W. She also had a separate employment and was a member of that employers' occupational pension scheme. OS had significant cash reserves which Ms O and Mr W sought advice on how best to extract from the business. Beacon undertook calculations and advised that pension contributions could be paid by OS for both Ms O and Mr W, which would extract funds tax efficiently from the business. It calculated how much could be paid taking into account unused pension allowances and advised a contribution of £56,900 could be paid for Ms O. A PPP was set up and the contribution was paid in March 2021.

Beacon hasn't disputed it made an error in the calculations. It understated the contributions being made to Ms O's occupational scheme through her other employment. This meant £29,374.82 of the contribution to the PPP exceeded her available pension allowances. This has tax consequences for the person receiving the contribution, so Ms O. HMRC subsequently raised an annual allowance tax charge of £11,749.93, plus interest of £703.10. The tax liability was paid by Mr T on 28 January 2023, it isn't clear when the interest owed was settled.

Ms O complained to Beacon asking it to re-imburse the tax costs. It apologised for not telling Ms O that it didn't provide tax advice and that she should have had the calculations checked elsewhere. But it said Ms O was still better off due to having extra funds in her pension as there would have been tax on the funds had they been taken as salary or dividends. However, it offered her an ex-gratia payment of £1,500, which she rejected. Beacon then increased the offer to £2,250.

Ms O referred her complaint to our service and our investigator looked into it, but she didn't uphold it.

Our investigator said she could only consider the impact on the unsuitable advice on Ms O, not on Mr W or OS. And it did appear that Ms O had benefitted by having an additional sum in her pension which might outweigh the tax charge. And as Ms O hadn't paid the tax herself, she hadn't suffered a financial loss. But she said given the involvement of both Mr W and OS it might be appropriate if complaints were made by them.

Ms O didn't agree and her accountant, who also acts for Mr W and OS, submitted a detailed response on her behalf. The accountant said:

1. Both Ms O and Mr W were shareholders in OS. And that Beacon had *"been instructed to advise on the most tax efficient manner of extracting excess capital from the family-owned business"* (OS). And that allocation of this capital referred to

by Beacon between Ms O and Mr W was only notional and was arrived at to maximise the possible pension contributions that Beacon (incorrectly) thought could be paid. As the funds were only notionally allocated, these didn't have to be used for Ms O, as Beacon had tried to argue.

2. Beacon had conceded it's error, and the main purpose of seeking its advice was to extract the excess capital tax efficiently, so it should be held responsible for the tax consequences of the advice.
3. In respect of the loss there were two distinct aspects, which were disputed. First in respect of the tax charge of £11,749.93. Beacon claimed that if the pension contribution hadn't been paid the same amount would have been taken as either dividend or salary and also subject to tax, meaning the actual tax charge incurred was not a loss. The accountant said this wasn't the case as OS could have simply retained the capital concerned to be withdrawn at a later date by more tax efficient means, such as paying pension contributions in future tax years. And second, Beacon had acknowledged there would be a tax liability on Ms O withdrawing funds from the pension in future, which it put at £4,406.22 using various assumptions. Describing this as a future liability which may be offset by investment growth and possible IHT relief in the future. But this wasn't certain to be the case.
4. That Ms O hadn't benefited financially from the excess contribution given the alternative set out in point 3 above, meaning the additional tax charge incurred was unnecessary.
5. That Mr W paying Ms O's tax charge rather than her personally was irrelevant, neither had expected the tax charge and the fact that Mr W paid it merely confirmed the interlinked nature of their finances.

Our investigator said having considered the accountants comments, she appreciated that whilst Ms O, Mr W and OS were interlinked and involved with the complaint, she could only consider the impact the advice had on Ms O and her pension, and she didn't think there was a loss.

As Ms O doesn't agree it has come to me to decide.

My provisional decision

I issued my provision decision on 15 September 2023, I explained the reasons why I was planning to uphold the complaint. I said:

I've considered all the available evidence and arguments to decide (provisionally) what's fair and reasonable in the circumstances of this complaint. Having done so, I'm planning to uphold the complaint.

Beacon accepts it made an error. I'm not convinced by the arguments it has made that Ms O hasn't suffered a loss. Ms O and her accountant have made persuasive arguments to the contrary. And I agree there is a loss and I think Beacon was responsible for it.

I think it is clear that Beacon was advising Ms O, Mr W and OS in the whole. The suitability report was specifically addressed to Ms O and Mr W but also refers to OS. And the purpose of the exercise was how Ms O and Mr W could build pension funds through the tax efficient extraction of capital from OS.

If Beacon's advice to Ms O had been that OS should pay a contribution of around £29,000 for her, which would not incur an income tax liability for her and a corporation tax deduction for OS, she might have deemed this attractive. If Beacon had then confirmed that HMRC would subsequently demand payment of a 40% annual allowance tax charge of around £11,750 plus £700 interest from her. Then I'd expect Ms O to have questioned whether there

was a benefit in making the contribution. I think she would have concluded that there probably wasn't, and she wouldn't have proceeded. Not least because, as the accountant has explained, none of the parties involved here (Ms O, Mr T or OS) were obliged to do anything at the time and could have deferred action until subsequent tax years.

*And the exact tax charge incurred was a risk of the recommendations Beacon made. It's suitability report directed Ms O and Mr W to an appendix and a section headed "**Pension Contributions from Limited Companies**". This explained the mechanics and tax treatment for OS and Ms O and Mr W and said:*

"You are permitted to pay as much as you like into your pension, and the contributions will be tax-free as long as they do not exceed the annual allowance (currently £40,000 per year). Carry forward allowances can be used through pension contributions from limited companies."

So, the tax charge was only incurred because of the error made by Beacon. As there was no need for Ms O to otherwise take funds from OS, she isn't in a neutral position and has suffered a loss. Ms O appears to have had no need for extra income or capital at that point, further suggesting she wouldn't have taken any other action. And it's important to note that even if she had opted for an alternative, she would have had the use of the net amount immediately. Whereas when the contribution was paid it would be at least seven years before she could take any benefits from the PPP.

Beacon has suggested the arrangement offers inheritance tax advantages, possibly offsetting the actual tax cost incurred, and that's possible. But there is no evidence on the fact find it completed or in the suitability report that inheritance tax planning was a concern to Ms O, as it isn't mentioned. So, a pension contribution without tax relief is a less attractive investment as under current rules 75% of the future fund would be subject to income tax, when benefits are taken. As Beacon has said it's possible that tax free growth on the pension investment would offset this. But this isn't certain. And in any case tax-free growth without a tax liability on the contribution was the basis of the recommendation made.

Once the tax assessment was raised there was no option but to pay it. And whether Mr W made the payment rather than Ms O herself is immaterial as he might (and may already have done so) ask her to repay him this "debt". Ms O and Mr W are a couple and how they choose to manage finances between them is their business and, I think, irrelevant to this complaint. The fact is they have around £12,453.03 less money available to them than they should have.

I don't have details of OS' tax position. But it may be that OS obtained a corporation tax deduction for the excess contribution it paid for Ms O. And it might be argued that this offsets in part the loss Ms O suffered due to the annual allowance tax charge. I've considered this carefully, but I don't think this is a reasonable argument. Because, as explained above, OS didn't need to do anything and could, in all probability, have secured a similar corporation tax deduction on the excess contribution in the following year, without a tax charge for Ms O.

So, taking everything together, at this stage I think the complaint should be upheld. And unless something changes my mind, I think it's fair that Beacon should put Ms O back into the position she should have been in.

Putting things right

Ms O has suffered a loss as a result of Beacon's error, being the tax and interest payable to HMRC on the excess contribution and it's fair that she be compensated for this loss. The tax

liability was £11,749.93. The interest was £703.10, but this may have increased. So, Ms O should confirm what interest was paid to HMRC in respect of the tax liability.

Ms O has also been deprived of the use of those funds from the date the tax liability and interest due were settled until the date the above redress is paid to her by Beacon. So, it's fair that interest at 8% per year simple is added to the loss from the date the liabilities were paid until the date of settlement.

Beacon should provide Ms O with a simple calculation to show how it arrived at the final figures.

Income tax may be payable on any interest paid. If Beacon deducts income tax from the interest, it should tell Ms O how much has been taken off. Beacon should give Ms O a tax deduction certificate in respect of interest if Ms O asks for one, so she can reclaim the tax on interest from HMRC if appropriate.

I also think Ms O has been caused distress and inconvenience by what has happened, and Beacon should pay her £150 compensation in respect of this.

Response to provisional decision

Ms O accepted my provisional decision. She confirmed that the tax liability of £11,749.93 was settled on 28 January 2023 and the interest due on the tax liability was £703.10, which was settled on 25 July 2023.

Beacon didn't respond to my provisional decision.

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.

Having done so, I've decided to uphold the complaint.

As set out in my provisional decision I think Beacon's error led to the tax liability. And because as neither Ms O nor her business, OS, needed to take any other action, the tax liability is a direct loss for her. And it is fair that she be compensated for her loss.

Putting things right

To put Ms O back into the position she should have been in as closely as possible Beacon must:

- Pay her compensation to reimburse the tax liability incurred of £11,749.93 paid on 28 January 2023 and the interest charge of £703.10 paid on 25 July 2023.
- Add interest at 8% per year simple to the above amounts from the dates the tax liabilities were paid (as noted above) until the date Beacon makes settlement.
- Provide Ms O with a simple calculation of how it arrived at the final figures.
- Pay Ms O £150 compensation for the distress and inconvenience she has been caused.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint against BeaconIFA Limited.

I direct BeaconIFA Limited to pay the compensation set out above.

If BeaconIFA Limited considers that it's required by HM Revenue & Customs to deduct income tax from the interest to be added, it should tell Ms O how much it's taken off. It should also give Ms O a certificate showing this if Ms O asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O to accept or reject my decision before 21 November 2023.

Nigel Bracken
Ombudsman