DRN-4240836

The complaint

Mr J complains that Wesleyan Assurance Society misinformed him about taking benefits from his pension, causing him to be subject to the Money Purchase Annual Allowance (MPAA).

What happened

Mr J had a Wesleyan pension plan and in October 2021 he contacted them about accessing pension funds.

On 18 October 2021 Wesleyan wrote to Mr J with a valuation for his pension of £9,972.59. The letter explained that the options that he had with his pension plan depended on the features of the plan he'd chosen. It directed him to the policy documents for his plan. And said, "*if you decide that you want to access your pension savings in a way that is not available under your Wesleyan pension plan you may still be able to access your savings in the way you want by transferring them to a new pension with a different provider, or to another Wesleyan plan".*

Wesleyan's letter also contained retirement risk warnings and the Money Advice Service Guide "Your pension: your choices". In the retirement risk warnings was an explanation about how the amount that could be paid into a pension could be affected by taking an uncrystallised funds pension lump sum (UFPLS). And this was also explained in more detail in the Money Advice Service Guide.

On 23 October 2021 Mr J wrote to Wesleyan asking to take 25% of his pension pot.

On 26 October 2021 Wesleyan called Mr J regarding his request. In that call Mr J explained that he wanted to take 25% tax free cash from his pension. But the call taker told him that he wouldn't be able to do that because he couldn't put his pension into flexi-access drawdown. He was told that his fund size needed to be £30,000 for Wesleyan to be able to put his fund into flexi-access drawdown. The call taker explained that taking a lump sum would mean that 25% of that would be tax free and the rest taxed at an emergency tax rate.

On 1 November 2021 Wesleyan wrote to Mr J again. It provided an application form as well as a further Key Risk Summary, the Money Advice Service booklet, and illustrations of his pension. The Key Risk Summary had a section about continuing to pay into a personal pension. It explained the MPAA and said "*the MPAA is triggered if you take any benefits in the form of a taxable lump sum…*". The letter said, "*please do not send in your application form unless you are absolutely sure you understand the risks that relate to this option as there are no cancellation rights".*

Mr J submitted the application form to take a £5,000 cash sum from his pension. There was a warning on the first page that explained that choosing to withdraw money from the pension plan may restrict the amount that could be paid into a money purchase pension (without incurring a tax charge) in the future. It explained that if the application was successful Wesleyan would inform Mr J if the MPAA applied to him. Mr J signed the declaration on the application form. It included the declaration that he'd read and understood the information provided about the MPAA.

Mr J's application was processed. He received an income payment, with 75% of his withdrawal being taxed. And was informed that he was subject to the MPAA that limited the amount he could contribute to money purchase pensions.

Mr J complained to Wesleyan. He said that the information he was provided was misleading. He said that his pension was a small pot pension being under £10,000. He said that the booklet he was provided indicated that the MPAA wouldn't be triggered if the pension pot was less than £10,000. And that he had no idea what the MPAA was. No one from Wesleyan explained MPAA to him.

Wesleyan investigated Mr J's complaint and didn't uphold it. It explained that the risks had been explained to Mr J in its correspondence and it'd provided all of the information that it needed to. It said that the documentation made it clear that a small pot pension could be taken as a whole pot. But that wasn't the request that Mr J made. So it wasn't necessary to contact him to let him know that his pension fund had gone above £10,000 at the point the payment was made.

Mr J's case was referred to our service and was looked into by one of our investigators. Our investigator was unable to resolve the complaint to the agreement of either party and the case was referred for an ombudsman's decision.

I issued a provisional decision to both parties explaining that I didn't think Mr J's complaint should be upheld. I explained my reasons, pointing out Wesleyan's obligations and how I thought the information it provided met those.

Wesleyan acknowledged and accepted what I'd said in my provisional decision. Mr J was understandably disappointed with my suggested outcome. He was still of the opinion that information about the MPAA wasn't clear and nobody at Wesleyan asked him if he understood it.

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.

I've not been provided with any further evidence or arguments that I had not previously considered in reaching my provisional decision. And, having considered the circumstances a final time, my final decision is that I'm not upholding Mr J's complaint. I understand that Mr J has ended up in an unfortunate position where he has been unable to make the contributions to his pension that he wanted to after this pension withdrawal. I've not underestimated the impact of that on him. But for the following reasons I don't think this was down to any error on Wesleyan's part. These reasons follow the same reasoning that both parties have already seen in my provisional decision.

I would start by explaining that Wesleyan were the administrators of Mr J's personal pension. They were not engaged to provide him with financial advice. So I am not considering the rules about providing suitable recommendations. Of significance in a case like this are the Overarching Principles of business that the regulator has set out under the PRIN section of its handbook. Of particular relevance are:

- Principle 2 – a firm must conduct itself with due skill, care and diligence

- Principle 6 – a firm must pay due regard to the interests of its customers and treat them fairly
- Principle 7 – a firm must pay due regard to the information needs of its clients and communicate in formation to them in a way which is clear, fair and not misleading

I have looked at all of the information that Wesleyan provided Mr J. I understand that there was quite a bit of material that Mr J was sent. But I don't think that was unfair. Pensions are not simple financial products. The rules around them are complicated and there were a number of options each with relative merits or risks dependant on customer circumstances. Wesleyan were not advising Mr J on the most suitable option for him. So didn't need to fully understand his specific requirements. But it did need to provide him with the information to be able to make his own decision. And to signpost him to advice.

I would expect Wesleyan to direct Mr J to the Pension Wise service. Which it did. I would expect Wesleyan to provide Mr J with the Money Advice Service guide that it did. Again, I appreciate that this is over twenty pages. But it is an independent document that I consider provides clear information of the options available.

I think that there was an unfortunate misunderstanding in this case. Mr J requested that he take 25% from his pension. Which Wesleyan say they took to mean he wanted to make a partial UFPLS. Which wasn't unreasonable. But I don't think it mattered that Mr J wasn't clearer on this point. I say this because when he spoke with Wesleyan on the phone he made it clear that he just wanted to take 25% of his pension as a tax free lump sum. This is an option that is sometimes available for pension products. But Wesleyan explained to Mr J on the phone that he wouldn't be able to do that with that pension.

Wesleyan's call handler asked if Mr J had contacted Pension Wise and Mr J said he had. And he'd been told he could take 25% tax free. In response to that Wesleyan's call handler explained that Mr J's pension plan didn't allow flexi-access drawdown. In order to transfer to Wesleyan's flexi-access drawdown plan his pension would need to be over £30,000. He was told he could take the full amount or could take a part of his fund. It was made clear that 75% of any amount taken would be taxed at an emergency tax rate. Mr J chose to take £5,000. Mr J believes that he was told that he could only take £5,000. But that isn't reflected in the call recording I have listened to with Wesleyan.

Wesleyan have said that the information it provided Mr J after its phone call with him was tailored to his responses. It said that the '*summary of risks'* information included specific information about the MPAA because he'd said he had other pensions. I think that was reasonable. Again, Wesleyan wasn't giving Mr J a personal recommendation so it didn't have to explore the pension contributions he intended to make in the future.

I've looked at the information that Wesleyan sent Mr J. I quoted part of it above when explaining *what happened*. I think it made it clear that the MPAA would be triggered by taking a taxable lump sum. And I think that the phone call Mr J had with Wesleyan ought to have made it clear that the option he was choosing would be taxable. The letter Wesleyan sent him on 18 October 2021 explained that he may be able to access his benefits in the way he wanted with another provider if it wasn't available under his Wesleyan pension plan. Which I think was fair.

Overall, I think that the information that Mr J was given was fair, accurate and not misleading. The rules around MPAA aren't set by Wesleyan. But it did everything I would expect to treat Mr J fairly. I'm sorry that Mr J thinks that he didn't really understand his options. But I think that Wesleyan provided him with the information he needed to make a decision as well as directing him to independent advice. For these reasons I'm not intending to uphold Mr J's complaint.

I understand that Mr J thought that he should have been exempt from the MPAA because he held a small pot. But the information he was given didn't say that. Instead it explained that a small pot pension (less than £10,000) could be taken as a whole lump sum. In that circumstance the MPAA wouldn't have been triggered. But that wasn't the type of withdrawal that Mr J asked Wesleyan to make. If he had, I would have expected Wesleyan to have contacted him prior to processing his application when his fund size went over £10,000. But, as Mr J applied for a partial UFPLS, his £5,000 income request was always going to trigger the MPAA. The fact that Mr J's pension fund exceeded the amount to qualify as a small pot didn't make a difference in this case.

My final decision

For the above reasons, I'm not upholding Mr J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 9 August 2023.

Gary Lane
Ombudsman