DRN-4269892

The complaint

Mr R has complained that an advisory firm, subsequently purchased by Capital Professional Limited (trading as Ascot Lloyd) failed to advise him to delay a withdrawal from his self-invested personal pension (SIPP), resulting in his having to use a higher proportion of his standard lifetime allowance than would've been the case, had he waited until the following tax year. Mr R says he now potentially faces a higher lifetime allowance charge in future.

What happened

In February 2009, Capital Professional Limited (referred to from hereon as Capital Professional) advised Mr R that he could withdraw a quarter of his SIPP value as a pension commencement lump sum and generate a taxable income with the remaining three quarters. In doing so, Mr R would use up 37.25% of his standard lifetime allowance.

Mr R went ahead with the withdrawal in early 2009, prior to the end of the 2008/09 tax year. Mr R's SIPP provider subsequently confirmed his pension commencement lump sum payment and taxable income withdrawal had indeed used up 37.25% of his standard lifetime allowance.

The standard lifetime allowance for 2008/09, the tax year when Mr R initiated the pension withdrawal, was set at £1,650,000. For the tax year ending 5 April 2010, the standard lifetime allowance was set at £1,750,000.

In late 2012 the Government announced a new scheme starting on 6 April 2014 under which the standard lifetime allowance would reduce. Those impacted by the scheme were eligible to apply for, amongst other things, a certificate for/of fixed protection, which would allow them to avoid certain charges on a protected fixed value in their pension benefits. On 13 May 2014, HM Revenue & Customs (HMRC) issued Mr R with a certificate for fixed protection 2014, confirming his entitlement to a lifetime allowance of either £1,500,000 or the standard lifetime allowance, whichever was greater.

On 26 November 2021, Mr R complained to Capital Professional saying it should've been aware of the impending increase in the standard lifetime allowance and, as such, should've advised him to delay his withdrawal request until after 6 April 2009. Had Capital Professional done so, Mr R said he would've only need to used 35.13% of his standard lifetime allowance in the tax year ending 2010, as opposed to the actual 37.25% he used of the previous year's allowance.

Using his fixed protection value of £1,500,000 as a benchmark, Mr R calculated that the 2.12% difference between the two percentage figures given above equated to £31,800. He complained that this meant that, were he ever to exceed his lifetime allowance, he could face an additional lifetime allowance charge on this sum (although this calculation doesn't appear to account for tax).

Capital Professional responded to Mr R's complaint stating it had been made too late to consider it, and so Mr R brought his complaint to this Service. An ombudsman considered the timeliness of Mr R's complaint and concluded it had been made in time for this Service to consider the merits of the complaint. It was then allocated to our investigator to give an initial finding on the merits.

Our investigator requested further information and Mr R confirmed that he had held three personal pension plans, and that by 30 April 2021 he had utilised 45.75% of his available lifetime allowance (incorporating the 37.25% used in 2009), meaning 54.25% remained available to him. Although the standard lifetime allowance had decreased by this point, due to Mr R's certificate for fixed protection 2014, his allowance remained at £1,500,000. Thus, 54.25% represented an unused allowance of £813,750.

Mr R also confirmed that his SIPP was valued at £1,204,148 on 21 December 2022. Of this, £871,719 was crystallised (i.e., it was the residual fund that was used to generate the tax-free lump sum and taxable income in 2009) and £332,429 remained uncrystallised (i.e., funds which have yet to be used for a withdrawal and so have not been tested against the lifetime allowance).

During the course of our investigator's review of Mr R's case, the Chancellor announced plans in the 2023 budget to remove the lifetime allowance. (Some residual implications may impact the amount of tax-free cash that can be taken by a small group of consumers, but Mr R does not fall within that group).

Our investigator did not uphold Mr R's complaint, reasoning that Mr R hadn't incurred a lifetime allowance charge and was unlikely to do so based on the value of his pension benefits compared to his remaining lifetime allowance. Furthermore, following the Chancellor's announcement, an excess charge for exceeding the lifetime allowance would no longer be applied in any case.

Mr R disagreed. He said his pension was invested for growth, and it was possible this growth could exceed the standard projection rates used by the industry and relied upon by our investigator. Mr R also noted that the Chancellor's plans to abolish the lifetime allowance were not yet in place, and even once fully implemented the potential remained for a lifetime allowance to be reinstated in some form or another. In summary, Mr R felt that he was at risk of future detriment, and that this risk would've been avoided if Capital Professional had advised a delay in arranging the pension withdrawal.

As the parties could not agree, the matter has been referred to me for a 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.

Regarding jurisdiction, I agree that this complaint has been brought in time, and I'm not planning to revisit the timeliness arguments made in the previous jurisdiction decision. However, for clarity I note that the jurisdiction decision refers to Ascot Lloyd Financial Services Limited, when in fact the respondent business is Ascot Lloyd (as a trading style of Capital Professional Limited). Capital Professional has since confirmed it accepts responsibility for the original advice, hence why this decision refers to Capital Professional.

As such, I will now turn to the merits of this complaint. It is true that, with a brief delay, Mr R would've been able to undertake the same transactions but would've used a slightly smaller proportion of his standard lifetime allowance to do so. However, that doesn't mean that Capital Professional should've necessarily advised him to delay.

At the time the advice was given, the standard lifetime allowance had risen every year since it was first implemented, and it wouldn't have been reasonable to expect Capital Professional to have predicted a reversal to this position several years in the future. The percentage of the allowance Mr R lost by not delaying his transactions was relatively small and would've been easily eclipsed by future increases, had the lifetime allowance continued to follow the pattern seen prior to that point.

Furthermore, the entire value of Mr R's SIPP was only a little over a third of the standard lifetime allowance at that time, so he already had a large margin available to him. And, although Mr R's SIPP was not his sole pension fund, it was by far his largest holding. (I understand that two other funds were used to purchase annuities, and represented only 3.27% and 5.23% of his total lifetime allowance usage of 45.75% by 30 April 2021.) So, taking into account the reasonable assumption of continued yearly increases to the lifetime allowance, there was no reasonable prospect of Mr R's exceeding his allowance.

As such, I don't think that Capital Professional gave Mr R unsuitable advice. Based on information available at the time, no substantive benefit or risk to mitigate would've been apparent to justify a recommendation that Mr R delay drawing benefits from his pension.

If Capital Professional didn't give unsuitable advice, there can be no detriment to Mr R resulting from it. However, even had I found the advice unsuitable, Mr R has suffered no loss here. He has not incurred a lifetime allowance charge, nor has he had to change his financial plans in order to avoid one.

In fact, Mr R's complaint relates solely to the possibility of *future* loss, and I cannot see any prospect of such loss at present. As stated above, the value of Mr R's SIPP is far lower than his unused allowance. So, even if he were to crystalise all the remaining funds in his SIPP, he would not incur a charge.

Furthermore, the lifetime allowance – such as it pertains to Mr R – is being removed (permanently, to the best of our knowledge) and no future charges will be applied. Mr R has said we cannot know what further schemes or rules may be introduced in the future, but – while this is true – I cannot factor unknown, unquantifiable future events into my current findings.

In summary, I don't think Capital Professional gave Mr R unsuitable advice by failing to recommend that he delay his pension withdrawals. And, even if it had, I don't think that Mr R has suffered a loss, or – based on the best available information at the time of writing – that he is likely to suffer a loss in future.

My final decision

I'm not upholding this complaint or making any award against Capital Professional Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 4 October 2023.

Ellie Clare
Ombudsman