

## The complaint

Mr L complains that Insight Financial Associates Limited (“Insight”) failed to correctly open a personal pension plan for him before the end of the 2022-23 tax year.

## What happened

I issued a provisional decision on this complaint last month. In that decision I explained why I thought the complaint should be upheld and what Insight needed to do in order to put things right. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

*Mr L is the sole director of a limited company. In March 2023, following advice from his accountant, he engaged Insight to provide him with advice and assistance in opening a personal pension plan (“PPP”) to receive contributions from the limited company. The suitability report produced by Insight noted that Mr L wanted to open the PPP in order that the company could make a small contribution that tax year so that it could take advantage of the pension carry back rules to make a larger contribution in the new tax year.*

*Insight’s records show that it opened the PPP for Mr L with a firm that I will call P. Emails from the time suggest that Insight only held details of the bank account for Mr L’s limited company – it didn’t hold details of Mr L’s personal bank account to which any benefits would be paid in the future. So the company bank account was used for both sections of the application – the paying company account and the future beneficiary account.*

*P’s records show that it received and processed the application before the end of the tax year. And they also show that a contribution of £3,600 was received from Mr L’s company. But later P asked Insight to confirm whether Mr L’s company bank account was that of a sole trader or limited company. Since it was the latter P advised that it would be unable to accept the application. And since P says no amendments were permitted to an application that had been submitted, it closed Mr L’s PPP.*

*Mr L complained to Insight about what had happened. He said that he noticed the discrepancy in the bank account details before the end of the tax year. And he says that, since the PPP application was cancelled, he would be unable to make use of the pension allowance carry forward rules from that year – he had no other pension provision.*

*Insight looked at Mr L’s complaint. It said it had made Mr L aware that his PPP might not be able to be opened before the end of the tax year. And it said he might have the option of carrying forward the unused allowance so wouldn’t miss out on any pension contributions. It said it couldn’t agree with the loss estimates that Mr L had provided. So it didn’t think the complaint should be upheld. But, as a gesture of goodwill, Insight offered to pay Mr L £100 for the inconvenience he’d been caused. Unhappy with that response Mr L brought his complaint to us.*

*It appears that Insight now accepts responsibility for the errors that occurred when Mr L's PPP was opened, and that led to his plan being cancelled. For completeness I have reviewed everything that happened, and I am also satisfied that the error lies solely with Insight. It chose to use the bank account details that it held for Mr L's company rather than asking Mr L to provide his personal account details. Whilst I accept that might have been done for reasons of expediency, it was clear that Mr L understood the time pressures around the opening of the pension, and I think would have responded quickly to any request.*

*Insight says that it made Mr L aware that it might not be possible for the PPP to be opened before the end of the tax year. And as I've said above, the timings were certainly very tight. The report that Mr L was given at the time doesn't suggest any risks that the pension plan might not be opened in time. It is of course possible that information was given to Mr L verbally. But in any case, the evidence suggests that, had Insight provided P with all the correct information, the PPP would have been successfully opened, and received the first contribution, before the end of the tax year.*

*It is clear from the suitability report that the pressing need to open the PPP before the end of the tax year was so that Mr L might be able to take advantage of the carry forward rules on annual contribution allowances. I think both parties were aware that Mr L didn't already hold any other pension plans. And HMRC rules are clear that a consumer cannot carry forward unused allowances from any tax year where they were not a member of at least one UK registered pension scheme.*

*So I am satisfied that the cancellation of Mr L's PPP application meant he was not a member of a UK registered pension scheme in the tax year 2022-2023. So that meant he would not be able to carry forward any allowance he hadn't used. So whilst the contribution his company made, that was returned by P, was relatively small (£3,600) the impact was far greater. It denied Mr L the opportunity to receive in the following tax year, additional contributions using the carry forward allowances of £36,400. So he has missed out on a total contribution to his pension plan of £40,000.*

*I accept that I need to make some assumptions when reaching that conclusion. The additional contribution hadn't been made by Mr L's company when the PPP was cancelled. But I am satisfied from the information I have seen about the retained profits of the company that both the payment was affordable, and that it would have been tax efficient for it to be made. So I am satisfied it is reasonable to conclude that missed contributions totalling £40,000 should form the basis of the loss I am assessing here.*

*I cannot put Mr L back into the position he would have been had nothing gone wrong. I can see that Insight did discuss with P the possibility of reversing the cancellation, or backdating the opening of a new PPP. It seems neither was permissible. So I need to consider, when formulating my redress here, the financial loss that will have been experienced by Mr L. But in doing so, given that Mr L is the sole director and shareholder of the company, I think it reasonable to consider any additional taxation needing to be paid by the company to be direct losses to Mr L.*

*In putting my redress directions together, I need to be mindful of the nature of the payment that was being made by the company, and when it might be of benefit to Mr L. Mr L has just turned 55 years of age so would now be entitled to use any pension benefits he had accrued. But the information he gave to Insight last year indicated that he didn't intend to retire until he was 70 years old. So I think it*

*reasonable to conclude that there might be an extended period of time before Mr L made use of the pension contributions his company is making.*

*Since it was not able to make the pension contribution, Mr L's company will have needed to pay corporation tax on the £40,000. In response to this provisional decision I ask Mr L to confirm that actual rate of corporation tax that was paid in the year ending October 2023. But based on the estimated profits he gave to Insight I would expect the effective rate (after marginal relief is applied) to have been around 22%. So any funds that are available either to distribute to Mr L as dividends or income, or to be added to his pension at a later date, would be reduced by the corporation tax that needed to be paid. So I intend to direct Insight to compensate Mr L for that loss.*

*And the funds that will be available to Mr L when he retires will also be reduced. At this stage it would be purely speculation to discuss how Mr L might take any surplus monies from his company when he decides to leave. He might sell the business, or part of it, as a going concern. Or, when he retires, he might decide to wind up its operations. But given those uncertainties I don't think it unreasonable to conclude that any excess funds retained by the company, since it was unable to make the pension contribution, would be taxed at Mr L's marginal rate. And I'm not persuaded that would be any different to funds held in Mr L's pension plan when he retired. With the exception of a pension commencement lump sum ("PCLS" – often known as tax free cash), those pension savings would also be taxed at a marginal rate when they were taken as income.*

*So I think the only personal taxation loss that Mr L will suffer, as a result of his company not being able to make the pension contribution of £40,000 would be the tax savings on that amount by taking a PCLS. Assuming that Mr L would be likely to be a basic rate taxpayer at retirement (based on the target income he discussed with Insight) the tax saving he would make by taking a PCLS would amount to £2,000.*

*There is no doubt that this matter will have caused some distress and inconvenience to Mr L. So I also intend to direct Insight to pay him £200 to reflect that inconvenience.*

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Both Mr L and Insight have provided some further comments on how I have proposed matters should be put right. Although here I am only summarising what each have said, I want to reassure Mr L and Insight that I have read, and carefully considered, their entire responses.

Insight says that the pension contribution made by Mr L's company in the year following its advice was less than the annual allowance. So it says the firm would have been unable to make use of any carry forward allowance in any case.

Mr L says that he is a higher rate taxpayer. So he says that when I am looking at the additional tax he will need to pay as a result of losing his entitlement to a PCLS on this contribution I should calculate it on that basis, or by looking at dividend tax rates for a higher rate taxpayer. In either case he says his loss exceeds the £2,000 that I estimated. He also says that his accountant confirmed that his company would need to pay corporation tax at a rate of 25%. He says that he is unable to offset any corporation tax payments against personal income tax that is due. But Mr L says that he thinks a settlement of around £10,000 would be fair, although less than his actual loss – he calculates that what I proposed would result in a payment of around £8,400.

## **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.

As I set out in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr L and by Insight. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I have thought carefully about the responses I have received from each party. It doesn't seem that either disagrees with the underlying conclusions I have reached about what went wrong – just how I have proposed things should be put right. But, after having reviewed those proposals, and in particular in the light of the comments Mr L and Insight have made, I am not persuaded they should be changed. I would however like to comment further on why I have decided on that approach.

I don't think it is reasonable to draw any adverse conclusions from the failure of Mr L's company to maximise the pension contribution it could have made in the tax year following Insight's advice. It is entirely possible that, following the loss of the ability to carry forward the previous year's allowance, it decided to remunerate Mr L by alternative means. I am satisfied that, based on the reason Insight was asked to provide advice in the first place, the opportunity to make the intended contribution using the carried forward allowance was lost.

As I said in my provisional decision, formulating redress on this complaint is complex, and does not have a straightforward answer. It is not therefore surprising that Mr L appears to have misunderstood the logic behind some of the proposals I made. I think those misunderstandings generally follow from a need for my redress to distinguish between losses experienced by the company now (in additional corporation tax payments being due), and those experienced by Mr L once he takes his retirement benefits (due to a lower PCLS being available). And given the timings of those losses, Mr L's taxation position might reasonably be different in each case.

In terms of the additional corporation tax payable Mr L has failed to provide evidence of the rate that was actually paid by his company. Whilst I accept that the company's profits most likely exceed the threshold for the small profits rate of 19%, some profit will benefit from marginal relief. On balance, in the absence of the additional information, I think the 22% rate I set out in my provisional decision is fair. So I will direct compensation based on that taxation rate.

But the corporation tax would have been paid by the company, so any redress should be treated as if it were retained there too. In order for the funds to be paid to Mr L I need to account for any personal income tax he would have been likely to pay. Despite what Mr L has said about the tax liabilities he has (when discussing another part of the compensation) I think it reasonable to conclude that he might manage his dividend payments from the company so that he only pays basic rate tax on that withdrawal. So I am still satisfied that a reduction of 8.75% to that compensation would be reasonable.

I set out in my provisional decision why I thought that any tax that might be paid on funds retained in the company (as a result of not making the additional contribution) would be similar to tax paid on income from a pension plan after retirement. Those conclusions remain unchanged. But as I previously said, Mr L will lose out by having a reduced pension balance from which he could take his PCLS. So effectively he will need to pay income tax on 25% of the missed contribution when he reaches the point at which he would take his retirement benefits.

But I think the timing of that payment, and so when the additional income tax will need to be paid, is important. The loss will occur when Mr L takes his retirement benefits – not now. So the additional income tax Mr L needs to pay will be based on his financial circumstances in retirement rather than now. The information Mr L has previously given to Insight suggested that he would be a basic rate taxpayer at that time. So that is what has led me to a reasonable conclusion that the additional tax Mr L will need to pay is £2,000 (that is 20% of the PCLS he could take – and the PCLS is 25% of the missed contribution).

So, for the reasons given above, and in my provisional decision, I think that Insight needs to pay Mr L the compensation I previously set out, and repeat below for clarity.

### **Putting things right**

I think that Insight needs to do the following in order to put things right;

- Pay compensation directly to Mr L equivalent to the corporation tax that his company will have paid on the missed £40,000 of contributions. The corporation tax that has been paid would have been retained by the company, and so would be subject to further taxation when it was paid to Mr L. So I think it reasonable to reduce that compensation payment by 8.75% to reflect the basic rate tax Mr L would pay on any dividend distributions from the company.

As I set out above, I think it reasonable to use an overall rate of 22% for the corporation tax that has been paid.

- Pay further compensation to Mr L equivalent to the tax savings he will lose by having the amount of pension savings available for a PCLS reduced by £40,000. I expect Mr L to be a basic rate taxpayer at that time so the tax savings he will lose out on amount to £2,000.
- Pay £200 to Mr L to reflect the distress and inconvenience he has been caused by this error.

### **My final decision**

My final decision is that I uphold Mr L's complaint and direct Insight Financial Associates Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 13 August 2024.

Paul Reilly  
**Ombudsman**