

The complaint

Mrs P complains ITI Capital Limited (“ITI Capital”) took too long to sell her holdings and make her cash available to be drawn from her pension. She says she suffered losses as a result.

What happened

Mrs P had a pension operated by a third party. The pension held a trading account with ITI Capital. On 13 January 2021 an email was sent on Mrs P’s behalf to ITI Capital saying Mrs P wanted to sell all her trading account holdings and transfer the funds to the pension provider. The email asked ITI Capital how Mrs P could do this. Her query was repeated in an email on 19 January and an email and phone call on 3 February.

On 5 February ITI Capital emailed saying that “...*all the trades, transfers or cash withdrawals, accounts closure requests should be initiated by the [pension] provider only and emailed to [email address given] Please contact your [pension] Provider and ask them to email us their signed disinvestment request letter.*”

On the same day an email for Mrs P to ITI Capital disputed this in part - and said Mrs P was able to authorise trades and wanted to sell her shares. The email asked that Mrs P be told when this had happened and how much was raised, so she could let her pension provider know. A chaser for this was made on 8 February. She received a reply on 12 March, by which time her pension provider had already sent a request to ITI Capital.

On 16 February 2021 Mrs P’s pension provider emailed ITI Capital with an account closure request. It chased this on 4, 11, 19 and 30 March and 8 April 2021. On 30 March it said it had received £1549 but was expecting around £11,000.

On 9 April 2021 ITI Capital sold Mrs P’s holdings, producing around £11500. Her pension provider chased these proceeds a number of times in April and also May, at which point it expressed concern about where the money had gone. It chased again on 3 June and again on 15 June 2021.

Mrs P says the cash was finally sent to her pension provider in mid-June 2021. She says on 15 May 2021 her pension incurred annual charges comprising a £907 administration charge, a £205 income drawdown charge and a £120 investment management charge. She says she would’ve avoided these had she been able to close the pension before that time and she could’ve done so if ITI Capital hadn’t delayed things. She actually drew out all the cash sums received from ITI Capital and then closed the pension in July 2021.

The pension provider has since agreed to charge for just the part of the year the pension was in force rather than for the whole year. So it has charged £205 in total, made up of a £151 annual charge, a £34 income drawdown charge and £20 for investment management. This is equivalent to paying for two rather than 12 months’ charges.

Mrs P intended to draw £9000 from the pension in the 2020/2021 tax year. She has said she would’ve been able to use her personal income tax allowance so that she didn’t incur income

tax on this. She says that due to ITI Capital delaying things, the £9000 wasn't drawn in the 2020/2021 tax year but in the following tax year. This resulted in her incurring basic rate tax on that whole amount at 20% or £1800 in total. This is because she started to draw her state pension in January 2021. So she received a few months' state pension payments in the 2020/2021 tax year - but received a full year's worth in the following tax year, which used up more of her tax allowance and she had none left to cover the £9000 withdrawal.

Mrs P has also said she may have lost out on dividends due to stocks going ex-dividend in the period. She also points out her funds were disinvested for two months after her holdings were sold, but says it is hard to pin down the financial consequences of this.

ITI Capital has told us it received a 15 February 2021 account closure request. It paid the account's existing cash of £1549 to the pension provider on 15 March. It realised Mrs P's holdings by 13 April. But it didn't pay over the resulting cash and close the account until 15 June 2021. It has apologised for the distress and inconvenience caused by the delays and it offered Mrs P £500 compensation to settle her complaint.

Our investigator didn't think this was fair and thought ITI Capital's delays had led to Mrs P being unable to use personal allowance she would otherwise have used and that this meant she suffered more tax – as well as extra charges of £205 from the pension provider. So our investigator thought an offer covering the extra tax, the extra charges and a sum for distress and inconvenience would be fair.

ITI Capital didn't respond.

Our investigator sent a June 2022 assessment saying ITI Capital should cover the extra tax Mrs P paid and also pay £205 for the extra charges. She also recommended ITI Capital pay £500 in view of worry the delays caused Mrs P.

ITI Capital didn't reply.

Mrs P replied, welcoming our investigator's assessment and its conclusions.

I wrote to ITI Capital and Mrs P on 21 September 2022 suggesting the information provided to us by Mrs P - and which our investigator had passed on to ITI Capital – showed that the amount Mrs P could've drawn in the 2020/2021 tax year without paying tax was £8386 and so she could've escaped £1677 tax on that amount if it had been available for her to draw in that tax year. I also said the £1549 ITI Capital had paid over to the pension in March 2021, if drawn before the end of the 2020/2021 tax year, would've saved Mrs P tax of £310.

I said if ITI Capital did delay Mrs P's funds and should compensate her for the tax allowance that was wasted by this delay - but not for tax allowance she could've still used despite this delay - the allowance she was deprived of due to the delay was £6837. So her tax loss was 20% of £6837 making £1367.

I invited ITI Capital and Mrs P to comment on this. ITI Capital didn't reply.

Mrs P did reply. She said, in brief summary:

- She accepted there wasn't enough spare personal allowance to allow the full £1800 tax saving she'd initially mentioned.
- She instructed her pension provider to pay her £9000. Her provider acted on an execution-only basis. When funds to pay the requested withdrawal did not arrive, the provider didn't have authority to pay her £1549 instead before the end of the 2020/2021

tax year - or a remit to advise her to request such a payment. Her request for £9000 was made in good time for it to be completed before the end of the 2020/2021 tax year. It was never clear ITI Capital wasn't going to deliver, because ITI Capital never communicated properly with Mrs P or her pension provider. Mrs P had no reason to believe the £9000 wouldn't be paid in full and in time. So, she didn't ask to withdraw the £1549 before the end of the 2020/2021 tax year because she fully expected to receive the full payment (of £9000) in a timely fashion, like both she and her husband had in previous years.

- As well as the tax, there were the extra fees she had to pay, as listed by our investigator. It had taken a whole year to negotiate these down, pro-rata, to charges for the part-year.

The complaint wasn't resolved informally, so it has been passed to me for a final 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 Mrs P's complaint. I'll explain why and on what basis.

I've seen nothing to suggest there was any good reason why ITI Capital couldn't have arranged to sell Mrs P's holdings and pay the money across to her pension provider before the end of the 2020/2021 tax year.

I say this on the basis that ITI Capital hasn't given any good reason why this shouldn't have happened. I also say this because there was plenty of time - more six weeks - between the pension provider's instruction and the end of that tax year.

In my view both the sale of the holdings and the payment of the resulting cash are transactions ITI Capital ought to have completed promptly once the instruction was received. In my view ITI Capital took too long over both.

In light of what I've said above, I don't need to consider whether ITI Capital also took too long to respond to the email sent in January 2021 or whether it was reasonable for it to wait for a sale instruction from Mrs P's pension provider rather than acting on her instruction. The time taken by ITI Capital was too long in any event.

If Mrs P had received her funds in the 2020/2021 tax year, I see no reason why she couldn't have drawn the £9000 she planned – and so saved tax that she instead had to pay when she drew that income in the following tax year. I also see no reason why in that situation she couldn't have drawn the rest of the income after 5 April 2021 and well before the May 2021 date on which a further year's pension charges became due.

So I think ITI Capital's delays are responsible for Mrs P paying additional tax and also paying additional pension charges. Mrs P has since had the pension charges reduced to £205. Her holdings ought to have been sold earlier by ITI Capital too, but she continued to receive the investment return during the delay. So I don't think that delay caused her financial loss.

I've thought carefully about what Mrs P has said about not withdrawing the £1549 that was transferred by ITI Capital to her pension provider in the 2020/2021 tax year. She's explained why this didn't happen. I accept what she says about her pension provider's role. I accept also that ITI Capital didn't communicate adequately with her or her pension provider about the delay. I also accept that Mrs P gave her instructions in plenty of time for funds to be paid by ITI Capital to allow her pension provider to pay the full £9000 she wanted that tax year.

But I still think that as there was £1549 she could've withdrawn in the 2020/2021 tax year, on balance it isn't fair and reasonable to award compensation for that part of her tax allowance not having been used.

I say this bearing in mind Mrs P had a plan to take funds before the tax year end. So she was aware this was a significant deadline. She hadn't had confirmation that the requested payment had been made in time to meet the deadline. Also she had waited three weeks for a reply to her January request for guidance and then more than a month for a reply to her follow up question. She was aware ITI Capital was moving slowly.

In these circumstances I don't think it would be fair for me to proceed on the basis that Mrs P could reasonably disregard the impending tax year deadline, thinking her request was bound to be completed before it. I say this while acknowledging that Mrs P did make her request in plenty of time and was not at fault for it not being carried out in time. But I think it would've been reasonable for her to seek to mitigate her tax loss by withdrawing what she could as the tax year deadline approached.

So, on balance, I conclude the loss caused by ITI Capital's delay does not include that part of Mrs P's tax allowance that she could've used up by drawing the £1549. So I conclude that the tax loss caused by ITI Capital was 20% of £6837 making £1367.

I've considered also the distress and inconvenience caused to Mrs P by ITI Capital's delay. Our investigator concluded that Mrs P suffered several months of worry. I'm satisfied the delay caused Mrs P inconvenience, frustration and some worry too. ITI Capital hasn't said anything to make me think she didn't. In arriving at my award for this, I give weight here also to the frustration Mrs P suffered by virtue of ITI Capital keeping her from well over £10,000 for around two months after it had sold her holdings. The financial implications of this are, as Mrs P says, difficult to specify but clearly this understandably frustrated and upset Mrs P.

I also note in passing that had it not been for ITI Capital's errors, Mrs P wouldn't have had to spend time negotiating to reduce the loss caused to her by ITI Capital, by seeking a rebate on the extra fees she was charged – something she has now successfully achieved.

Overall I'm satisfied that ITI Capital did cause Mrs P distress and inconvenience and that the award of £500 suggested by our investigator – and also offered by ITI Capital earlier on but on a slightly different basis – is fair and reasonable redress for this in all the circumstances.

Finally, I'd mention that I've seen nothing to evidence a loss of dividends or to suggest that I ought to make an award for such a loss on top of the sums I've already outlined above.

So, in conclusion, I uphold Mrs P's complaint on the basis and to the extent I have set out above.

Putting things right

ITI Capital Limited should compensate Mrs P for the losses, distress and inconvenience its failings caused her to suffer.

So, to put things right, ITI Capital Limited should:

- Pay Mrs P £1367 for extra tax she paid.
- Pay Mrs P £205 for extra charges she paid.
- Pay Mrs P £500 for distress and inconvenience she suffered.

If any of these sums aren't paid to Mrs P within one month of ITI Capital Limited getting notification from us of Mrs P's acceptance of this decision, then ITI Capital Limited should also pay Mrs P simple interest on any outstanding sum at the rate of 8% per year from the date of my decision until the date ITI Capital Limited pays Mrs P the relevant amount.

My final decision

For the reasons I've given above, I uphold Mrs P's complaint and I order ITI Capital Limited to put things right by paying Mrs P the sums I've set out and explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 28 October 2022.

Richard Sheridan
Ombudsman