

The complaint

Mr B complains that St. James's Place Wealth Management Plc (SJP) didn't make it clear that he would have to pay an Early Withdrawal Charge (EWC) when he arranged to transfer his pension to another provider through a series of partial transfers.

What happened

I issued my provisional decision on this complaint on 16 August 2022. The background and circumstances to the complaint and the reasons why I was provisionally minded to uphold it in part were set out in that decision. I have copied part of the decision below and it forms part of this final decision.

"One of our investigators considered Mr B's complaint. He sent his assessment of the complaint to both parties setting out the background and circumstances to it. In summary, Mr B transferred his pension to the SJP retirement account in November 2016. In October 2019 he was looking to transfer the pension to another pension provider. He was aware the account had an EWC, but understood there was a 'withdrawal allowance' that accumulated each year allowing him to transfer a proportion of the pension without the EWC being applied. There was a delay in transferring because the new pension provider required that Mr B took financial advice before making the partial transfers. Mr B employed a financial adviser and paid a fee of £1,500 for advice.

In August 2020, the day before the transfer process was going through, SJP told Mr B that he would be charged the EWC if he went ahead with it. My understanding is that although attempts were made to try and halt the transfer this wasn't possible. £113,400 was transferred to the new pension provider. An EWC of £3,507 was applied.

Mr B complained about the matter to SJP. SJP agreed to refund the EWC and pay Mr B £500 compensation for the distress and inconvenience caused to him. However he was told the EWC would be applied on any subsequent partial transfers.

Our investigator thought that the EWC on transfer was provided for in the retirement account's terms and conditions. He noted Mr B had asked about the EWC in calls he made to it. He said although he hadn't found that Mr B had specifically asked if the EWC applied, he agreed it would have been good practice for SJP to have pointed it out given it was clear from Mr B's questions that he thought it didn't apply.

Mr B had wanted SJP to refund his financial adviser's fee of £1,500. However the investigator thought that the advice was a necessary expense to complete the transfer as required by the new pension provider. SJP had refunded the EWC. And in the circumstances he didn't think SJP needed to refund that fee.

Overall, the investigator said that as SJP had refunded the EWC that had been applied and had paid Mr B £500 compensation for not making it clear that the EWC applied, he didn't think SJP needed to do anything more.

Mr B didn't agree with the investigator's findings and the complaint has been passed to me

to decide.

What I've provisionally 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.

Like the investigator, I'm satisfied that the EWC on transfer was provided for in the account's terms and conditions. Mr B was clearly aware that the EWC might apply as evidenced by his questions to SJP about it.

However, whilst I accept that SJP may have had the right to apply the EWC as per its terms, as I've said, I'm bound to consider the matter on the basis of what's fair and reasonable in all the circumstances.

When responding to the investigator's assessment Mr B referred to misleading information he was given in telephone calls with SJP on 17 October 2019, 17 March 2020, and 30 March 2020. He said these needed to be considered in deciding whether SJP had misled him about the EWC, as this directly resulted in him incurring the £1,500 fee to affect the transfer. SJP has been unable to locate copies of the calls for 17 and 30 March 2020 (albeit it said in its letter to Mr B dated 23 June 2020 that it had listened to the 30 March 2020 call). I have, however, listened to the 17 October 2019 call.

In that call Mr B said, in summary, that he was requesting a partial transfer of some of his funds out of his SJP retirement account to another provider. He said the amount of money that he had been told he had accrued which was outside of the EWC was £95,000. He said he'd requested the new pension provider to approach SJP to take the £95,000 from his SJP fund and he 'just wanted to make sure' that the amount the new provider was requesting came from the amount that was outside of the EWC 'wrapper'.

SJP's response appeared to confirm Mr B's understanding, and I think it was reasonable for Mr B to form the understanding that the money he was intending on transferring wouldn't be subject to the EWC.

When Mr B discovered that the EWC would apply attempts were made to stop the transfer. Mr B has said if he'd known the withdrawal allowance didn't apply to transfers and the EWC would apply, he would have waited until the EWC period had ended and transfer the whole amount at that time.

As I've said above, whilst I accept that the EWC was provided for in the terms and conditions, I think SJP's response to Mr B's query on 17 October 2019 was misleading, and reasonably led Mr B to understand he could arrange a partial transfer for a certain amount that wasn't subject to the EWC. I've found Mr B's evidence credible, and I'm satisfied that if he'd been correctly alerted about the EWC in the 17 October 2019 call then he would have stopped the transfer and, at that point, had time to do so.

So on the one hand, I think SJP did make an error. And I accept that Mr B wouldn't have transferred if he'd known about the EWC. At that point he hadn't engaged the new adviser or agreed to pay the £1,500. So I think it follows that if he'd been correctly informed in the 17 October 2019 call he wouldn't have incurred that fee.

However on the other, my understanding is that the £1,500 fee was for full advice about the suitability of transferring the whole amount (albeit on a partial basis) to the new provider. Mr B and his adviser were sent a document dated 18 June 2020 headed Summary of Charges. On the second page of the document titled "Important Notes" point 2 said:

2. When income payments, uncrystallised funds pension lump sums, distributions and tax free cash payments are taken, Early Withdrawal Charges apply only to amounts in excess of the available Withdrawal Allowance. No Withdrawal Allowance is available for transfers out or on the purchase of an annuity.

Mr B had already been led to believe the EWC didn't apply and given its lack of prominence may reasonably have missed this information. However whilst I accept that this was on small print on the second page of the document, it did come under the heading "Important Notes." The adviser had already been engaged at this point, and Mr B had agreed to pay £1,500 for advice. The adviser was acting in his professional capacity and I think, on the face of it, this was sufficient to have at least reasonably alerted the adviser that no withdrawal allowance was available for transfers.

I accept that if SJP hadn't given misleading information in the 17 October 2019 call then it's unlikely that Mr B would have been interested in transferring and wouldn't have engaged the adviser in the first place.

However, I think the information that SJP provided on 18 June 2020 ought to have alerted the adviser that no withdrawal allowance was available for transfers out. The subsequent distress and inconvenience that was caused by the ongoing process and the EWC being applied wouldn't have occurred. SJP paid Mr B £500 for that (my decision here is on the understanding this has actually been paid), and it refunded the EWC that had been applied of £3,507. I also understand that Mr B transferred to a different provider as he considered SJP's charges and performance were poor. Although he paid the £1,500 for advice on the full transfer, he now has over £100,000 with the pension provider he wanted and benefits from any associated lower charges/improved performance on those monies. This wouldn't have been the case if he had waited until the end of the EWC period to transfer the whole amount.

Taking all the above into account, I'm intending on awarding Mr B a sum of £750 (50%) towards the cost of the financial adviser's fees."

Accordingly, my provisional decision was to uphold Mr B's complaint in part.

I asked Mr B and SJP to let me have any further evidence or arguments that they wanted me to consider before I made my final decision.

Mr B said, in summary, that if copies of the conversations that he'd had with SJP on 17 and 30 March 2020 had been available they would have added weight to the point he'd made about being consistently misled. He said information about the Withdrawal Allowance in the 18 June 2020 document was very small and could be (and was) easily missed. He said the information provided reinforced the idea the money allocated to the Withdrawal Allowance was eligible for partial transfer.

Mr B said the £1,500 spent with the IFA was to transfer the whole pension in a series of partial transfers. The £113,000 was around 25% of the whole pension and was transferred to a cheaper and better pension provider. But he now had to leave the remaining pension until it was fully outside of the Early Withdrawal Charge (EWC); incurring SJP's higher fees for this period. He suggested another sum as compensation.

SJP said, in summary, that it had endeavoured to make Mr B aware of the EWC and that it was documented in the Annual Wealth Accounts issued each year. It said Mr B should have been aware of EWCs before he decided to proceed with the transfer.

It said the relationship between Mr B and SJP's partner had broken down in 2019. SJP had agreed to stop ongoing advice fees, so if Mr B wanted financial advice he would likely have needed to pay for this elsewhere. The provisional decision said if Mr B had known about the EWC position when he called in October 2019 he would not have transferred his plan or incurred IFA fees. Mr B had been happy to incur an IFA fee to proceed transferring a proportion of his funds without the EWC. So as SJP had waived the charge on the proportion of the funds transferred out, Mr B was back in the position he would have been in had any misunderstanding about the EWC not taken place. So Mr B got the result that he'd intended and he was happy to pay a fee for.

It thought given the break in the relationship Mr B would have been keen to transfer his funds as soon as he was able to; the partial transfer allowed him to move a good proportion of funds without the EWC which it thought was a good resolution for Mr B whilst he waited for the EWC period to end on the remaining funds. The fee of £1,500 was in respect of the full transfer which would always have needed to have been paid in the future when Mr B wanted to move his funds away from SJP.

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 seen no reason to depart from the findings set out in my provisional decision.

As I said in that decision, I'm satisfied that Mr B was alerted to the EWC. But for the reasons I explained, I think SJP misled him into believing it didn't apply to the partial transfer(s) - i.e. because they were within the withdrawal allowance. And given the timings, if Mr B hadn't been misled, he wouldn't have engaged the financial adviser in the first place and not had to pay any fee at all.

Both parties have commented on the compensation I said I was minded to award. However I'm satisfied the compensation is fair in all the circumstances for the reasons I set out in the provisional decision. The starting point is what the position would have been if Mr B hadn't been misled (rather than what the position would have been if the misrepresentation had been true). So Mr B wouldn't have arranged partial transfers and wouldn't have paid any fee to the IFA (as he could have waited until the EWC period was over and transferred the full amount in one go, without incurring advice fees).

However I think there are additional factors that should also be taken into account in deciding fair compensation as I set out in my provisional decision (including the role of the IFA, and that at least some part of Mr B's pension has been transferred and the benefits associated with that – as SJP has also referred to). Having taken everything into account, I think £750 is fair in all the circumstances.

Putting things right

St. James's Place Wealth Management Plc should pay Mr B a sum of £750 (50%) towards the cost of the financial adviser's fees.

My final decision

My final decision is that I uphold Mr B's complaint in part, and St. James's Place Wealth Management Plc should pay compensation to Mr B as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 October 2022.

David Ashley
Ombudsman