

The complaint

Mr E complains that Recency Investment Services Limited (referred to as Regency) caused him to miss the end of the 2020/2021 tax year when taking income from his pension by not making him aware of relevant deadlines. As a result he has lost the availability of his personal allowance and basic rate tax bracket in that tax year.

What happened

In February 2020, Mr E had a regular review with his adviser at Regency, at which point a Fact Find was completed alongside a capacity for loss questionnaire. He had an existing James Hay SIPP valued at approximately £1,522,000, as well as a Group Personal Pension (GPP) via his previous employer worth approximately £46,500. He also had cash ISAs and National Savings and Investments. His objectives at that time were stated to be “growth and income”. The capacity for loss questionnaire at that time asked, “*Will this investment provide for your current/future daily living expenses*”, to which the response was “*possibly from 2020/2021.*”

At the time of the advice he had no income from employment having been made redundant in 2019, the file indicates he was accessing his savings to provide an income although the level of this is not stated.

In October 2020 a further review was carried out and a recommendation was made for Mr E’s GPP to be transferred to Aviva. This report outlined Mr E’s attitude to risk as balanced, his capacity for loss and his circumstances and objectives. There is an element of inconsistency in this report, which states on page four that Mr E may want to consider drawing £5,000 per annum from his James Hay pension. The client’s total desired annual income was not stated in the report or in any other information completed at the time of the advice. Mr E has since clarified that this was a typo, and it ought to have read ‘£50,000’.

The report states that the recommendation to take income was based on the fact that Mr E had no earned income and was living on his savings, and indicated that it would trigger the Money Purchase Annual allowance, limiting the level of future contributions which could attract tax relief to £4,000. The report also referenced the small-pots rule, outlining the fact that accessing via the “small pots” rules would not trigger the MPAA which could prove beneficial as Mr E would like to be able to pay more into his pension in the future.

During the time of the recommendation and subsequent communications, Mr E and the adviser were following two potential approaches relating to methods of accessing income from his pensions. The first, and Mr E’s preferred approach was to utilise the availability of small pots. Whilst Mr E’s pension fund within the GPP did exceed the £10,000 limit for this, it was possible for Mr E To transfer into an arrangement with Aviva which segmented the fund and allowed the small pots rule to be utilised. The adviser suggested that Mr E accessed just one small pot during 2020/2021 tax year, with any additional income required being taken from the James Hay SIPP.

Mr E stated that he preferred to take three small pots (the maximum allowed) and knew that it would incur a tax charge for him. However, when Mr E contacted the administrators for the

GPP, he was told that due to a change of administrators, the fund was in a blackout until early 2021 and he could not commence his own transfer to Aviva until the blackout was lifted.

A second approach was therefore put in place if the fund could not be accessed in time, which was to access the full amount of income required from Mr E's James Hay SIPP. During the end of 2020 and early 2021, the focus appears to have been on the transfer of the GPP onto the Aviva platform in order to access the small pots required by Mr E with the entire income being taken from the James Hay SIPP as a fallback position.

An Annual Review Report was produced for Mr E and his wife on 12 February 2021. This confirmed that the GPP was in the process of transferring to Aviva and states that the small pots application was amongst the areas discussed. There is no detail recorded relating to the income required by Mr E and whether the plan for small pots was likely to be successful.

On 4 March 2021, the adviser emailed Mr E with a valuation of his James Hay SIPP. It states that he had received confirmation from James Hay that they were unable to offer small pots but that Mr E could draw taxable income from the pension. It states that Mr E would need to tell him how much he wanted to withdraw in "the next couple of days."

On 17 March 2021, Mr E confirmed that he wished to withdraw £47,000 from his James Hay SIPP and on 18 March the required forms were sent to him. These were signed and returned on 18 March and sent to James Hay. However, the deadline for requesting income withdrawals from the James Hay SIPP is 10 working days before the first of the month in which the income is to be paid, which in April 2021 was 17 March 2021. This deadline had been missed by the time Mr E's request was sent to James Hay.

On 26 March 2021, the adviser emailed Mr E stating that he had chased James Hay with regard to the £47,000 withdrawal, and he was doing what he could to get the transaction completed in time.

On 30 March 2021, the adviser wrote to Mr E as he was leaving Regency on 31 March, and outlined the position at that point – that he was unable to access small pots from the Aviva pension as it was still "in transit", and that James Hay had confirmed that their processes would not facilitate the income payment in the timescales and would not be able to make the payment until 1 May 2021 at the earliest. The letter sent stated that this was *"a disappointing position and an overall reflection of the level of service we have come to expect from James Hay."* There is no other indication of poor service or dissatisfaction in relation to James Hay within the file.

The investigator upheld the complaint but felt that Mr E and Regency were both partly to blame for the delay and as a result were jointly responsible for any additional tax liability Mr E said he would incur. Mr E didn't accept this so the complaint was passed to me to decide.

Provisional findings

I issued my provisional decision on 25 October 2022. It said:

"The issue to be decided is whether Regency acted unreasonably when facilitating Mr E's income withdrawal from his SIPP and whether their actions caused him to miss the 2020/2021 tax year end and incur a loss.

The timeline of events and options available to Mr E in relation to accessing his pension tax efficiently added an element of complexity to the income withdrawal. And I have no doubt

this led to Mr E's income withdrawal not being processed in time to maximise Mr E's personal allowance and basic rate tax bracket available in 2020/2021 tax year.

It was apparent from October 2020 that Mr E wanted to access income from his pension during the 2020/2021 tax year. This was confirmed in the review dated 1 October 2020 and the subsequent email discussions. In an email dated 21 October 2020, the adviser stated "I do not think you should draw 3 small pots and pay £2,000 in tax. I think you should take one this year and "top up" from James Hay." The adviser's intention by suggesting this was that he could then utilise further small pots and maximise Mr E's personal allowance in the tax years prior to his state pension age. Whilst there is no explicit statement outlining the total amount of income Mr E required per year in retirement, it is clear that Mr E did wish to access his funds in some way before the end of the tax year.

In order to access Mr E's funds in the way he wished to do, it was necessary to carry out the transfer from the GPP to the Aviva platform as outlined above. This was delayed by a number of months due to the blackout during the change of administrators, resulting in a short period of time in February and March 2021 when the required income could be requested.

Regency told Mr E via email on 4 March that if he wanted to take income from his James Hay SIPP he would need to tell them how much in the "next few days." Mr E did not confirm that he wanted to take £47,000 income until the afternoon of 17 March 2021, with Regency sending the forms to him the following day, 18 March. Regency have stated that a delay of 10 working days cannot be considered to be "a few days" and that the reason the deadline for accessing income was missed was Mr E's delayed response. Regency states that as an accountant and experienced investor, Mr E would have had an awareness of tax year ends and therefore should have responded more promptly in order to ensure payment of his pension income.

However, Mr E says that he was not aware of the urgency or the existence of the deadline and states that Regency as his adviser should have made him aware of this. He believes that the adviser was unaware of the deadline, which was unreasonable for a professional financial adviser. He also says that during this period he was led to believe that the transfer to Aviva was progressing and that he would be able to access these funds before the end of the tax year.

I have considered both these points. Whilst it is accurate to state that Mr E was an experienced investor and an accountant who would have been aware of the date of the tax year end, there is no indication that he had accessed income from his pension in the past and should have known the timescales involved when doing this, particularly the timescales specific to his James Hay SIPP. It is reasonable therefore that he would have relied on his adviser to whom he paid an ongoing advice charge to make him aware of relevant factors affecting his financial planning. And I think this would include the deadlines for requesting income withdrawals.

I turn now to whether the adviser should have known the deadlines for advising James Hay that an investor wished to access income from their pension. James Hay publish the payroll deadlines in the support section of their website for advisers, which are generally ten working days prior to the first of the month (when the payment would be made). It is reasonable that an adviser providing advice in relation to James Hay products would have an awareness that such deadlines existed, and due to the importance of the March deadline (being the last opportunity for tax planning in each tax year) it is reasonable that they would check this deadline and ensure that their clients were made aware.

In 2021, the deadline was 17 March. However despite Mr E advising on that date that he wished to access income from his James Hay SIPP, they did not issue the forms until the next working day. Generally a response time of the next working day would be considered appropriate, however due to the nature and timing of the request, it would be reasonable to consider that this would be prioritised. This suggests that Regency were not aware of the deadline, which I think falls short of the standard expected. But even if I could accept that Mr E didn't let Regency know in time to get the forms to James Hay before the deadline expired, I'm satisfied he was only in that position because the adviser failed to let him know about the deadline in advance. I'm satisfied that if the adviser had told Mr E about the deadline in his email of 4 March 2021, Mr E would've responded in good time to meet the deadline.

It appears that following the request Regency did take steps to try to ensure the income payment could be made however due to the deadline having been passed this was not possible.

Overall, I think Regency ought to have been aware of the deadline for accessing income from Mr E's James Hay SIPP. So, I uphold Mr E's complaint and consider that Regency fell short of the standards expected of them in their capacity as Mr E's adviser. It is fair to consider that due to the importance of tax efficiency to Mr E, had they made him aware of the deadline he would have confirmed his desired level of income earlier in order to ensure his income could be paid within the 2020/2021 tax year.

Mr E stated in his response to the investigator on 6 April 2022 that he would have taken an income of £50,000 each year, and that by not being able to take £47,000 in 2020/21, he is "down that amount cumulatively". The file does not include an indication of the level of income required in retirement by Mr E however his intention to take £47,000 in 2020/21 is clear.

Due to Mr E not being made aware of the deadline, I accept he has lost the opportunity to use his personal allowance at 0% tax and the remainder of the £47,000 income at a tax rate of 20% for tax year 2020/21. This is based on the inference from the file that Mr E had no other income in that tax year.

Mr E states that he has not withdrawn his income from his pension pending the outcome of his complaint and has met his income requirements from other sources, however it was entirely his choice to do this. Having considered the income taken by Mr E in the following tax year, I cannot find evidence to suggest that he paid additional tax as a result of Regency's errors as he did not take income above £47,00 from his pension. So, there is therefore no tangible loss for Mr E to be redressed in respect of his complaint.

Mr E may argue that he should've been entitled to withdraw an extra £47,000 in the tax year ending March 2022, so that he is in the same position he would've been in but for the issues with Regency. And that he should be entitled to do so now, with Regency compensating him for the extra tax he would have to pay at the higher rate. However, it is evident that Mr E hasn't drawn an income from his pension above the £47,000 he withdrew at the beginning of the tax year because he had no need to do so. So, I don't think it would be reasonable to expect Regency to compensate Mr E for tax he would have to pay as a result of him withdrawing extra income he doesn't need. Mr E hasn't provided evidence of any other financial loss he suffered as a consequence of him to having to delay his income withdrawal – he says he used savings instead. And Mr E hasn't explained how or why this caused him a loss. It seems to me that retaining the income in the SIPP has more advantages than withdrawing it to be held in savings. So, I'm not persuaded he's suffered an actual loss.

However, I understand the level of frustration experienced by Mr E by the loss of his personal allowance – while I don't think this caused a financial loss, it denied him an opportunity to take income in a tax-efficient way that year. So, I think compensation for the distress and inconvenience this caused is warranted. I therefore direct that Regency pay Mr E a sum of £500 in order to reflect the distress and inconvenience experienced due to this loss of opportunity."

Responses to my provisional decision

I have received responses from both parties in relation to my provisional decision. Regency have confirmed they have no further points to raise.

Mr E has stated the following

- He feels he's been disadvantaged by the investigator's view as he was delaying withdrawing funds until his complaint was resolved. He said he made the investigator aware of this and wasn't told his approach would mean he wouldn't be compensated for any loss.
- He has incurred a tangible loss because he has depleted his savings as a result of the advice he was given. He says the fact the loss hasn't been crystalised shouldn't prevent him from receiving compensation.

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 taken into account the submission from Mr E I see no reason to change my decision. So I remain of the view I set out in my provisional decision – my findings as set out above should be considered as part of my final decision.

I have considered the points reiterated by Mr E. I understand his frustration and accept that his actions may have been influenced by the investigator's view. I note he feels that he is being penalised for this. However, I remain of the view that if Mr E needed the extra income at the time he would've taken it over the following year from his SIPP. Although Mr E has utilised his savings, I do not agree that he has incurred a loss (crystalised or uncrystalised) as a result of Regency's poor service. I don't think it's likely that the interest Mr E has potentially lost out on by removing extra funds from his savings would've exceeded the growth he achieved by keeping funds within his SIPP – whether he needed to benefit from the growth or not. And it's evident that he can replenish his savings by taking funds from his SIPP at any time. So, I still think Mr E has experienced a loss of opportunity in relation to his financial planning rather than a financial loss.

Mr E states that had the complaint process been completed within six months, he would have taken the additional income and therefore be able to demonstrate his loss. I have taken this into account, however I am not persuaded that even if he had done so, I would have found the business responsible for the additional higher rate tax charged. My rationale for this is that as stated in my provisional decision, Mr E does not appear to have been in a financial position that taking the "missed" income in the following (or subsequent years) was necessary to maintain his desired standard of living. It seems to me it was more of a nice to have and Mr E's preference over using his savings – but that doesn't mean it is an uncrystalised loss. In any event, I would've expected Mr E to mitigate the impact of Regency's mistake and it appears he did so. So, I don't think it would be fair or reasonable for Regency to cover a significant tax charge that Mr E does not need to incur, simply to replenish his savings.

Overall, while I think Regency's mistake had an impact on Mr E, I think this was limited to him losing the opportunity to take income in a tax-efficient manner in the financial year ending April 2021. And I think £500, which Regency has agreed to pay him, fairly compensates him for this.

My final decision

For the reasons given above, I uphold this complaint.

Regency Investment Services Limited should pay Mr E £500 for the distress and inconvenience caused by its poor service.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 15 December 2022.

Joanne Molloy
Ombudsman