

The complaint

Mr B complained that he has suffered a financial loss as a result of St James's Place UK Plc (SJP) causing a delay in the establishment of a drawdown facility on his pension. He also complained that it breached his contract in failing to provide specialist tax advice to him.

Mr B would like to be compensated for any financial loss he has suffered as a result, as well as a refund on all management and administration charges (including any setup fees) from December 2021 when his account was transferred to it. He would like compensation for the distress and inconvenience caused to him and he would also like SJP to provide future management and administration services free of charge on his retirement account.

What happened

Mr B has a personal pension which is managed by SJP.

On 1 April 2023, he contacted SJP to instruct it to set up a regular monthly income withdrawal of £1,000. On 3 April 2023 SJP contacted his SJP adviser to check if he had sought or been provided with advice relating to this regular withdrawal plan.

As he had not spoken to his adviser about this, SJP sent him information and risk warnings about taking regular income payments from his pension. This was sent to him on 11 April 2023, which is within the internal service standards SJP works to, which is 5 working days.

This communication, however, contained some conflicting information. The letter stated that SJP would begin the process of setting up the regular payment once either Mr B responded to say he accepted the risks or ten working days had passed – whichever came sooner. The covering email, however, said that this limit was ten calendar, rather than working, days. Consequently, the letter indicated that the latest this requirement was met would be 25 April 2023 but the covering email 21 April 2023. The letter also contained a copy of a document entitled 'Advice, Guidance and Opt Out Form' and asked him to complete and return this.

It wrote to him again on 4 May to chase a response. Mr B contacted SJP on 9 May, when he confirmed that he accepted the risk warning and also made a complaint about the delay that SJP had caused to establishing the regular withdrawal from his pension.

SJP responded to Mr B's complaint on 30 May 2023. It advised him that it can process a request after ten working days, as indicated in the letter, but also confirmed that it required the Advice, Guidance and Opt out form to be completed before the withdrawal could be established, as this was a regulatory requirement. It went on to say:

During our telephone conversation on 29 May 2023, you advised that we should have processed your payment after ten working days when we did not get confirmation of the acceptance of risk associated with the request. If we had of processed your payment ten working days after 11 April 2023, this would take us to 25 April 2023, with bank holidays included. Regular income payments take four days to sell down the units and process the payment. 1 May 2023 was a bank holiday, which means the earliest we could have made

the payment would have been 2 May 2023, if we had received confirmation regarding the Advice, Guidance and Opt Out form.

SJP also acknowledged that the letter had caused some confusion and apologised for this. Consequently, it proposed to use the date of 2 May 2023 to calculate the value of the units sold to fulfil the first monthly payment of £1,000.

It accepted that the delay to the first payment had resulted in two payments being made in May 2023, which meant that Mr B became liable for income tax and had to reclaim the overpayment from HMRC.

It paid him £250 in respect of the distress and inconvenience it had caused him, together with interest at 8% per annum simple on the delayed first payment.

Mr B was unhappy with this response and wrote to SJP on 12 June 2023 to raise a number of issues. I will not list each here but will address the most pertinent.

Firstly, Mr B queried whether the completion of the Advice, Guidance and Opt out form was a regulatory requirement and if so, why it wasn't included in the Annual Drawdown Review documentation that SJP sent to him in November 2022.

Secondly, he explained that he felt that SJP had known from 11 April 2023 that the payment he requested for 28 April could not be made by that date, but that it had not informed him of this. He felt that this was a breach of trust and that SJP was essentially '*lying by omission*' to him.

Finally, he said that as he received two payments in May, resulting in him making an overpayment of income tax, he considered this to be a potential breach of contract, and a failure to provide the specialist tax advice that was included in the service he received from SJP.

Unhappy with SJP's response to his complaint, Mr B brought it to this service.

Our investigator reviewed the evidence and formed the view that the complaint should be upheld. Neither Mr B nor SJP responded to this view, so this case has been passed to me to review the evidence again and make 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 reviewed all the evidence in this case, I agree with our investigator and uphold this complaint.

I will explain how I have reached my decision.

Firstly, I think it's important to reflect upon the role of this service. Our role is to impartially review the circumstances of a complaint and make a decision on whether a business has made errors or treated a customer unfairly. Our role is not to punish a business for making mistakes, but where we find it has, to make a determination of what the business should do to put things right and place the customer back in the position they would have been, had the mistakes not occurred.

Having said that, and having reviewed the circumstances on this case, I am satisfied that SJP did indeed make some mistakes, particularly around the communication it sent to Mr B on 11 April 2023.

Having said that, I'm satisfied that SJP is correct to use working days, rather than calendar days, when setting its service standards. This is considered best practice throughout the financial services industry, as it ensures that a business is not unfairly penalised by being expected to work outside regular working hours, such as weekends and bank holidays.. Given this, I find that it's fair and reasonable that SJP uses 25 April 2023 as the date by when it should have valued the units for the first payment. As the prices of unit based investments varies from day to day, I find it fair and reasonable for SJP's redress to Mr B to take this into account.

Looking now at Mr B's points in reply to SJP's response to his complaint, in terms of whether the Advice, Guidance and Opt Out Form was a regulatory requirement, as the pension transfer regulations require providers to give

'appropriate retirement risk warnings at the point when the retail client has decided how to access their pension savings.'

Under these regulations, SJP is also required to record whether its client has received the risk warnings, regulated advice or pensions guidance about their proposed actions. So, on balance, I don't think SJP acted unreasonably by setting out the warnings to Mr B or asking him to complete the form.

His second point was that SJP knew that it could not make payment on 28 April 2023 as requested as early as 11 April 2023 and so should have informed him at that point. I don't find that this is a reasonable view, as the transfer could have begun at any point before 25 April 2023 if SJP had received the information sooner, so I can't see that it has done anything wrong here.

His final point was that he felt that receiving two payments in May and consequently incurring an income tax charge that he then had to reclaim was a breach of contract in terms of the tax advice SJP provides him. As neither party has provided the terms and conditions of the contract Mr B has with SJP, this is difficult to determine. On balance, however, I think it would be reasonable to consider that as the two payments were made as the result of an error, it would have been difficult for SJP to anticipate this and provide advice to him in advance.

Having said this, the requirement to reclaim the incorrectly incurred income tax deduction would have clearly inconvenienced Mr B further, so I find it reasonable for SJP to increase the amount paid to Mr B in terms of his distress and inconvenience by a further £100.

Putting things right

In order to compensate Mr B fairly, St James's Place UK Plc should:

- compare the number of units it actually sold in each of the funds he's invested in to realise the first income withdrawal payment of £1,000 with the number of units that would have been sold if the transaction had been processed on 25 April 2023.
- If the calculation shows that a lower number of units would have been sold if the transaction had taken place on 25 April 2023 than actually were, then a loss has occurred and SJP should compensate Mr B for this.
- If a loss has occurred and SJP should purchase an equivalent number of units to place into Mr B's pension to place it back into the position it would have been had the

units been sold on 25 April 2023

If there is a loss, the compensation should, if possible, be paid into Mr B's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into Mr B's pension isn't possible or has protection or allowance implications, it should be paid directly to him as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid. This should be based on his marginal rate of tax.

It should provide Mr B with details of its calculations in a clear, simple format. Lastly, I think SJP should pay Mr B a total of £350 for the distress and inconvenience it has caused him, including any payments it has already made.

My final decision

For the reasons explained above, I uphold Mr B's complaint.

My final decision is that Saint James's Place UK Plc should pay Mr B the sums calculated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 19 April 2024.

Bill Catchpole
Ombudsman