

## **The complaint**

Mr G has complained about the amount of tax he's had to pay since drawing income from his Retirement Account held with St. James's Place Wealth Management Plc (SJP). He's also complained about the Early Withdrawal Charges (EWC) incurred when transferring away from SJP.

## **What happened**

I issued my provisional decision on this complaint on 4 November 2024. The background and circumstances to the complaint and the reasons why I was provisionally minded to uphold it were set out in that decision. I've copied the relevant parts of it below and it forms part of this final decision.

## **Copy of Provisional Decision**

Mr G's complaint was considered by one of our investigators. He issued his assessment of it to both parties on 18 April 2024. The background and circumstances to the complaint were set out in his assessment, so I won't repeat them all here. But to recap, Mr G had held his pension with SJP for some time. In 2021, Mr G retired from full time employment and sought advice in respect of accessing his pension benefits held with SJP.

Mr G was advised to put his funds into a Drawdown arrangement and phase crystallisation to achieve an annual income of £81,000. It was agreed that £30,089 Tax-Free Cash (TFC) would be released at that time, and further TFC would be released if necessary.

Mr G took income of £7,070 gross per month. By the end of 2022 Mr G had exhausted his crystallised fund and had paid around £23,000 in tax on the income taken.

In 2023 Mr G sought the help of another financial adviser. He decided to transfer his pension to another pension provider. When he transferred he incurred an early withdrawal charge (EWC).

Mr G complained to SJP on 2 February 2023. SJP agreed to refund the EWC as a gesture of goodwill. In relation to Mr G's complaint about the tax liability and crystallisation, it said its suitability letter included details about the tax that would be paid on the income, and that this had been discussed. They said the suitability letter detailed the other options too, and there would be further TFC available in future when Mr G accessed funds with his new provider. Mr G subsequently referred his complaint to us.

Our investigator noted the suitability report from the time that SJP advised Mr G said he required a total income of £81,000 net to fund his lifestyle. It said he would look to reduce the level of income he was taking in roughly 10 years. It was agreed Mr G would crystallise part of his pension to take an income and release £30,089 of the TFC. The investigator said the suitability report had a detailed section dedicated to the alternative options available to Mr G at retirement. He said another section confirmed that given the level of income Mr G intended to draw he would be paying higher rate tax. And an illustration had been provided which confirmed the tax rate applicable would be 40%.

Overall, the investigator thought Mr G had been alerted to the different options available and the advice given by SJP had allowed Mr G to meet his objectives. Although he thought there may have been other alternative options for Mr G to have achieved his objectives, he didn't think SJP's advice had been unsuitable in the circumstances.

Mr G, through his representative, didn't agree with the investigator's findings. Further evidence and arguments were exchanged between the investigator, SJP and Mr G's representative. I haven't repeated them all here, but I have taken them all into account in making my provisional findings below.

### **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.

The suitability letter dated 25 November 2021 recorded that Mr G wanted to *"draw an income of £81,000 net (£120,356.61 gross) from these funds in 1<sup>st</sup> year"*. And that it would be reviewed year on year, but he would be looking to reduce the level of income in roughly 10 years' time. It recorded that Mr G's pension with SJP was valued at over £1.6 million at that time. And he had three other pensions with other providers valued in total at approximately £125,000. It recorded he had £225,000 in an ISA. The adviser recommended that Mr G crystallise part of his fund to provide the income of £81,000 and this would release £30,089 tax free cash. The suitability report didn't set out what income would be paid to Mr G. However other documentation shows the income paid was £7,070 per month which was £5,290 net.

As the investigator said, the suitability letter did have a section explaining the alternative options available to Mr G at retirement, and that he would be paying higher rate tax. The illustration also confirmed the tax rate applicable would be 40%. However, the section setting out the alternative options available provided a generic description of those options. It didn't provide any figures showing alternative ways that Mr G could provide the income that he required or the particular benefits to Mr G in doing so.

Mr G's representative has said he doesn't think Mr G was put in an informed position. He's referred to wording in the suitability letter that he thinks, effectively, didn't provide a full or true reflection of the options available to Mr G. Having carefully considered the matter I agree. In my view the 25 November 2021 suitability letter was misleading.

As Mr G's representative noted, the suitability letter said, amongst other things:

*"You are not concerned about any income advised changing your Income Tax rate or reducing any of your tax allowances because last year you were an additional rate taxpayer and you realised to generate the level of income you need to start to enjoy your retirement and continue your existing lifestyle, **it will require you by default to be a higher rate taxpayer.**"* my emphasis added.

Under 'Other impacts of crystallisation it said'

*"Despite the impacts noted above, my recommendation is to proceed because as mentioned previously in this letter you are aware you **will need to become a higher rate tax payer in order to obtain the level of income you require for your current lifestyle**".* My emphasis added.

In my opinion this is clearly misleading. Given Mr G's particular circumstances and

objectives, there were alternative ways that Mr G could have provided the income he required that didn't require him to pay income tax at the higher rate. And had advantages in terms of IHT (at the that time). Mr G wasn't alerted to these alternatives, and would clearly have understood from the suitability letter that he was always going to have to pay higher rate tax in order to obtain the amount of income that he required. So in my opinion he wasn't put in a position to make an informed decision.

There were a number of ways Mr G could have obtained the income he required without paying higher (or basic rate) tax, for example by phasing tax-free cash and only drawing income below his personal allowance (if still unused in the 2021/22 tax year), taking capital from his ISA, or a mixture of two/all three.

Using funds in the ISA first to provide income rather than taking them from the pension was advantageous in terms of both income tax and inheritance tax. SJP's adviser has said that Mr G didn't want to use the funds in his ISA as he wanted to retain them for other purposes - including his children's wedding, gifts to his children for property purchase and for his and his wife's travel.

On the one hand, if this had been a reason not to draw funds from the ISA it should have been recorded at the time. It was a material factor in the advice given. On the other, in my experience clients often want to retain a certain level of savings in their ISA as it provides flexibility for planned or unplanned capital expenditure in the future.

Mr G subsequently moved financial firms, and he is now phasing tax-free cash, taking an income to the personal allowance limit (along with another small income he gets from another pension) and taking capital from his ISA. My understanding is that he isn't currently paying any income tax. However I also understand he is now taking a lower level of income – approximately £63,000.

When SJP was advising Mr G his intention was to take an income of around £81,000 for around ten years. Providing this sum primarily from the tax-free cash (the maximum Mr G could take was £268,275) and his ISA (recorded as £225,000 in the suitability letter) would have depleted both the tax-free cash and ISA prior to the ten years. I understand that the value of the ISA when Mr G's new adviser arranged the £63,000 income was £375,000. Whilst I don't know the reason for that difference (it might include Mrs G's ISA), I don't think it's key to deciding the fair outcome of this complaint.

For the reasons I've set out above, I think the suitability letter was misleading, and failed to alert Mr G that he could obtain the income he required without paying higher rate tax, or indeed any income tax, at least for a period. I therefore need to consider what Mr G would more likely than not have done if he hadn't been misled.

In my opinion there were clear advantages to taking capital from the ISA and phasing tax free cash (as I have outlined above) at least to some extent. Whilst I recognise, as I've said, that some clients want to retain a certain level of capital for flexibility, given the advantages, I think Mr G would more likely than not have chosen to take income differently.

As I've said above, Mr G has now structured his withdrawals such that he isn't currently paying any income tax on an income of £63,000. Whilst this means he isn't currently paying any income tax he is, in effect, deferring paying basic rate tax on the non tax-free cash part of his remaining pension fund. At some point the tax-free cash/ISA funds will either be depleted, or he will get to the stage that he wants to retain a certain level of capital in those funds. It is very likely Mr G will have to pay basic rate tax on the capital that is being left in the pension at some point. His original objective was to take an income of £81,000 for around 10 years, and then look to reduce that income. In my experience that is consistent

with a general lowering of income requirements as clients move into later years of their retirement.

I think it follows that although Mr G was always likely to pay basic rate tax on the capital retained in the non tax-free cash part of the pension at some stage, he wasn't always bound to pay higher rate tax on it. And by paying higher rate tax he had to take a larger amount from the fund to pay the net income required.

So taking all the above into account, I think SJP's adviser should have set out how Mr G could have obtained the income he required through taking an income from the pension - which might have been zero in the 2021/22 tax year depending on his other income). Plus taking a combination of capital from the tax-free cash available from the pension and his ISA. In my opinion there were clear advantages to structuring the combination of withdrawals so that he wasn't paying higher rate tax – depending on his future income requirements and circumstances he might never need to pay higher rate tax on it.

I think Mr G would more likely than not have decided to structure the withdrawals from the different sources of income/capital available to him so that he wasn't paying higher rate tax – at the least. I accept that he may have decided, as he is currently doing, to structure them so he isn't paying income tax at all. But as I've said, its highly likely he will have to pay basic rate tax on that income he took which was subject to higher rate tax. So either way, I think fair compensation is for SJP to pay Mr G compensation to the value of the higher rate tax he had to pay on the income he withdrew from his pension for the relevant period.

In relation to the EWC, my understanding is that SJP has agreed to refund it to Mr G. I haven't therefore considered it in any further detail in this decision.

### **My provisional decision**

My provisional decision is that I uphold Mr G's complaint.

In assessing what would be fair compensation, my aim is to put Mr G broadly back into the position that he would have been in if SJP had not misled him.

I intend to order that St. James's Place Wealth Management Plc pays Mr G the additional higher rate tax above the basic rate that was deducted from the income payments made during the relevant period. My understanding is these payments were made from 6 December 2021 to 4 November 2022 inclusive. The tax deducted would otherwise have been retained within the pension. However Mr G has subsequently transferred his pension away from SJP. To ensure certainty and for pragmatic purposes, I therefore intend for St. James's Place Wealth Management Plc to add interest at the rate of 8% simple to the amount of higher rate tax deducted from the time of each income payment to the date of a final decision.

### **Responses to Provisional Decision**

I'd asked both parties to let me have any further evidence or arguments that they wanted me to consider before I made my final decision.

Mr G's representative said whilst the decision was welcome overall, he was disappointed that it didn't allow for a refund for the entire tax liability. It said SJP's letter dated 25 November 2021 said the client wanted the income for the first year, and it couldn't locate where Mr G had referred to adjusting his income after 10 years. In its experience it was highly likely Mr G would have adjusted his income after a shorter period.

It said Mr G's expenditure at the time included car finance which no longer existed, and his income requirement changed in a short space of time. It said SJP could have made clear that Mr G didn't need to incur tax in the first and subsequent years even if his income remained higher as I'd noted in my decision.

Mr G's representative said it appreciated that the complaint couldn't cover every aspect of the potential damage done. However based on sequencing returns theory, the unnecessary increase in income withdrawal during the early years would have had impact on the future overall returns.

SJP said it agreed with my provisional findings. And subsequently confirmed it would refund the EWCs as a gesture of goodwill.

### **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 to uphold the complaint.

As Mr G's representative has acknowledged, it's very difficult to provide for each and every possible way in which losses might occur. My role is to decide what, in my opinion, is fair and reasonable in all the circumstances of the complaint, and decide what is fair compensation.

The reference to reducing income in roughly 10 years was under "Your Future Objectives" in the suitability report. I accept Mr G may have adjusted his income requirements earlier. But either way, the reasons why I thought refunding the higher-rate tax provided for fair compensation in the particular circumstances was set out in my provisional decision, and I don't think I can materially add to that explanation.

### **My final decision**

Accordingly, my final decision is that I uphold Mr G's complaint.

I order St. James's Place Wealth Management Plc to calculate and pay compensation to Mr G as I set out in my provisional decision.

St. James's Place Wealth Management Plc has also agreed to refund the EWCs to Mr G as a gesture of goodwill. I understand the amount was £10,467.99.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 6 January 2025.

David Ashley  
**Ombudsman**