DRN-5207616

Financial Ombudsman Service

The complaint

Mr W complains that advice given by a representative of St James's Place Wealth Management Plc led to him missing out on tax relief on his pension contributions.

To put things right he wants compensation of £8,000, and to be able to transfer away without penalty.

What happened

Mr W is a client of Hyland Financial Planning which is an associated partner practice of St James's Place Wealth Management Plc ("SJP"). So SJP is responsible for answering the complaint.

In March 2022 Mr W emailed his adviser as he was expecting around £150,000 from the sale of a property which he wanted to invest. He thought it would be tax efficient to make a contribution to his pension, which he could access in three years when he turned 55. Mr W told the adviser he had two personal pensions (one with Standard Life valued at around £32,475, the other with Aviva around £2,390) which he could potentially amalgamate, plus a workplace group personal pension with Scottish Widows ("SW") to which he was contributing around £2,200 gross a year.

The adviser suggested an online meeting the following week as the end of the 2021/22 tax year was approaching. On 1 April 2022 Mr W asked SJP if his employer contributions counted towards the maximum £40,000 pension contribution he could receive tax relief on and was told they do. He was asked to provide copy payslips, and if he had made any pension contributions for the previous six years, so the adviser could calculate how much headroom he had prior to the meeting. Mr W confirmed he hadn't made any pension contributions during the past six years, apart from £25,000 he'd sent that day to SW. Mr W thought he could contribute another £4,000 which would exhaust the allowance for 2020/21, but he had unused allowance from the previous two years. He also raised the possibility of investing £20,000 into an ISA prior to the end of the current tax year, and potentially more in the following year.

The meeting took place on 4 April 2022, at which the adviser completed a fact find of Mr W's circumstances. This showed he was divorced, employed full-time earning around £85,500, making him a higher rate taxpayer, and his attitude to risk was assessed as medium.
After the meeting the adviser emailed Mr W confirming what had been discussed, and provided a suitability report, illustration and key facts document. He recommended Mr W make the maximum permitted pension contribution to his SJP personal pension of £41,500, which would result in a gross contribution of £51,875, as long as he claimed the additional tax relief (as a higher rate taxpayer) of around £10,375 from HMRC, via self-assessment. The illustration demonstrated the adviser had reduced the ongoing charges on Mr W's plan to 1.7% and SJP's usual early withdrawal charge from six years to three. The investment would be into SJP's "*Adventurous*" portfolio.

Mr W followed this advice including contacting HMRC to claim the additional tax relief. Unfortunately HMRC didn't accept the backdated claim for tax relief meaning Mr W wasn't able to gross up his contribution as he'd expected. But the adviser insisted his interpretation of the tax rules had been correct.

In July 2022 Mr W asked the adviser whether he should transfer his other pension plans to SJP in order to benefit from ongoing advice. But the adviser explained that even though the value of Mr W's plans was relatively small, the analysis required considerable work which was chargeable, and he wasn't able to discount the fee as he had previously.

In July 2023 Mr W received final confirmation from HMRC that he was not entitled to the level of tax relief the adviser had led him to believe. There was further correspondence after this where Mr W explored his pension options. He finally raised a formal complaint about the incorrect information he was given about the tax relief in January 2024. Mr W said that had he been given the correct advice he would've split his contribution over two tax years, allowing him to claim more tax relief than he did.

SJP acknowledged Mr W's complaint and gave him several progress updates. But in July 2024 after several months of waiting for an outcome, Mr W referred his complaint to this service.

Our investigator clarified that at the time of the advice the annual amount an individual could pay into a pension without incurring a tax charge was £40,000, so long as their eligible income was at least that amount. So in 2021/22 Mr W had scope to invest more than the £40,000 limit as he hadn't fully utilised his allowance in the previous three years. But HMRC rules don't allow Mr W to backdate his claim for additional tax relief for being a higher rate taxpayer.

So he thought the SJP adviser had given Mr W the wrong information about the tax relief he could claim back. But he didn't think this resulted in an actual financial loss, as in 2022/23 Mr W had made a further contribution of £40,000 on which he received the full amount of tax relief, so he'd benefitted from the maximum amount of tax relief he was entitled to in both tax years. And even if Mr W had been given accurate information about the tax relief he could claim, the investigator wasn't convinced he'd have chosen to split the 2021/22 contribution over two years. As that would've restricted him to investing £20,000 less into his pension overall than he actually had done. He appreciated Mr W wanted to transfer away without penalty having lost faith in SJP, but he didn't think waiving their fees was appropriate. But he recognised Mr W had experienced a significant disappointment in relation to the tax relief he could claim to enhance his pension. And he'd been put to additional trouble by the adviser suggesting he pursue the matter with HMRC rather than investigate whether he'd made an error himself, so he felt SJP should pay Mr W £500.

SJP accepted this recommendation, but Mr W didn't, thinking SJP had "*got away too lightly"* when he compared £500 to the amount of tax relief he feels he lost out on.

So he asked an ombudsman to make a 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 agree with the conclusion reached by the investigator. Let me explain why. Mr W has framed his complaint as that he's worse off financially due to the incorrect advice from the SJP adviser. While it's clear the advisor did give Mr W the wrong information, doing so simply raised his expectations about how much the government would uplift the contributions he was making to his pension plan by. But as Mr W was never entitled to that additional money, he hasn't really lost out on it.

As well as reviewing the information on the Gov.UK website, the investigator had a conversation with HMRC to confirm his understanding of the rules which apply to claiming tax relief on pension contributions. This confirmed that while unused allowances from previous years can be utilised, it's not possible to backdate claims for tax relief. At the time of the advice HMRC rules limited the amount an individual could contribute to their pension in a year without incurring a tax charge to £40,000 (or their annual salary if lower). Mr W consulted SJP a few days before the end of the 2021/22 tax year, and usually £40,000 would be the most he could contribute to his pension in that tax year. But as Mr W hadn't made significant pension contributions in the previous two years, he could make up for that by utilising the unused allowances from those years, meaning he could contribute up to a total of £120,000 (3 x £40,000) before the end of the 2021/22 tax year, without incurring a tax *charge*.

In other words, Mr W would otherwise have been charged additional tax in 2021/22 for paying more than £40,000 into a pension in one tax year. So the unused allowances from the previous years enabled him to make those contributions, but they don't entitle him to additional tax relief. Mr W chose to contribute £66,500 in 2021/22 made up of £41,500 to his SJP plan in addition to the £25,000 he'd already paid to his SW workplace plan. And due to the unused allowances from previous years he didn't incur a tax charge for exceeding the annual allowance. I can see Mr W did mention the SW contribution in his email to the adviser when asked about contributions, but he made it without seeking advice first.

The SJP adviser was under the impression that not only would Mr W receive standard rate tax relief on the total contributions he made that year, he'd also be able to retrospectively claim via his self-assessment return, the additional 20% tax relief for being a higher rate taxpayer, which he would've been eligible for had he made those contributions in the relevant tax years (2020/21 or 2019/20). But that wasn't right.

When Mr W told the adviser what HMRC had said, I can see the adviser maintained his interpretation of the tax rules was correct. He seems to have thought the problem arose because Mr W was trying to backdate the contributions rather than utilise unused tax relief from previous years, so he encouraged Mr W to pursue the matter with HMRC. It's not easy to find the information on HMRC's website, but while higher rate taxpayers can claim additional tax relief on pension contributions in the year they are made, utilising unused annual allowances from previous years simply offsets the tax charge which otherwise would be payable in the year the contributions are actually being made. It's not possible to reclaim tax from previous years, nor is it possible to backdate a contribution as if it had been made in a previous year.

Mr W says he made a contribution of £40,000 in 2022/23 and a further £20,000 the following year, as his income had reduced, (meaning he was no longer a higher rate taxpayer). He received the full tax relief due on both contributions, and this exhausted the proceeds of his property sale.

So had the adviser understood the tax rules correctly and given Mr W the right information from the outset, he'd have been told in 2021/22 he could contribute three times the £40,000 annual allowance, minus the £25,000 he'd already sent to SW (and any other contributions he'd made). But he'd also have been told that tax relief would only be available on £15,000 in 2021/22 (being the £40,000 limit less the £25,000 to SW) and he'd missed the opportunity to claim the additional higher rate tax relief for the preceding years which cannot be claimed retrospectively.

Prior to the advice meeting, Mr W had contemplated putting the maximum £20,000 in an ISA in 2021/22 and perhaps also 2022/23, which he could access when he liked. But while any interest earned would be tax-free, he'd receive no tax relief on his contributions. Based on this I can't say it's more likely than not he'd have decided against contributing to his pension, particularly as he didn't intend to access the funds at least for another three years. It may feel like it to Mr W, but he hasn't actually "lost" £8,000, as he could only have benefitted from that additional tax relief had he been in a position to make contributions to his pension in 2019/20 and 2020/21. Given he only received the sale proceeds in 2021/22, he missed the opportunity to claim higher rate tax relief in those years.

Due to this experience, Mr W wished to leave SJP and to do so without penalty. I can see the SJP adviser had reduced the period SJP's usual early withdrawal penalty applies from six years to three and had discounted their usual fee. So I don't feel it would be reasonable to require SJP to refund any fees.

However it is disappointing and unprofessional that the SJP adviser not only misunderstood the tax rules as they applied to Mr W. But he made matters worse by insisting he was right and put Mr W to additional trouble pursuing the claim via HMRC. It also looks like when he set out his recommendation, he overlooked the £25,000 Mr W said he'd already contributed to SW which made the figures wrong. And I entirely understand Mr W's frustration and embarrassment spending time arguing his case with HMRC which was ultimately fruitless.

So I think SJP should pay compensation to Mr W for the considerable trouble and upset he was caused. And I think the £500 recommended by the investigator is in line with what I'd suggest here.

My final decision

I uphold this complaint. St James's Place Wealth Management Plc should pay Mr W £500.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 25 June 2025.

Sarah Milne
Ombudsman